

In a year of wearing masks, social distancing and being without loved ones... Here's to the return of better times, and more smiles and hugs. **Happy Holidays!**



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dbbr DAILY BUSINESS REVIEW

South Florida's Real Estate Market is Hot. But Are Developers Ignoring Its Affordable Housing Crisis?

by Melea VanOstrand

As the housing market in South Florida boomed during the COVID-19 pandemic, the cost of housing and the gap in renters' wages increased with it.

That means if someone works a minimum-wage job in Florida, they have to work 93 hours a week to afford the average one-bedroom rental home at fair market rent, according to the National Income Housing Coalition.

Matt Rieger, CEO of Housing Trust Group in Miami, said the need for affordable housing has greatly increased since the pandemic started, while people who made over six figures recovered quickly and the stock market went up 25%.

"People who live in affordable housing developments aren't really invested in the stock market," Rieger said. "Instead, they're working paycheck to paycheck, and a great percentage of those paychecks go to paying the rent."

Rieger said the No. 1 job for residents in his affordable housing developments is an Uber driver.

"Those are my residents," Rieger said. "It was a really scary thing because, even if you weren't living in affordable housing because you made a little too much money to qualify for our developments, there were a whole bunch of new people

SEE HOUSING, PAGE A2

Sen. Rubio's Competing List of South Florida Judicial Nominees Is Out: Who Made the Cut?

by Michael A. Mora



DIEGO M. RADZINSCHI

Normally, there is one judicial nominating commission, but Sen. Marco Rubio went against precedent and created his own earlier this year.

A judicial nomination showdown between a Florida senator and congresswoman reached a critical point, as their recommendations for four powerful positions became official.

The picks emerge from within an unusual power dynamic, as U.S. Sen. Marco Rubio and Rep. Debbie Wasserman Schultz have put forward competing nominations. Normally, there is one judicial nominating commission, but Rubio went against precedent and created his own earlier this year.

The four coveted positions in the Southern District of Florida include two district court judge seats, one seat for U.S. attorney and one for U.S. marshal.

Bruce Rogow, a constitutional law expert and founding professor of Nova Southeastern University's law school, praised the recommendations. Rogow

SEE JNC, PAGE A2

Quinn Emanuel Secures Injunction Protecting Aon Confidential Insurance Info From Competitor



J. ALBERT DIAZ

Miami-Dade Circuit Judge William Thomas entered an order granting Aon an injunction against Marsh on the terms that were requested by Aon.

by Jasmine Floyd

Quinn Emanuel attorneys have secured a judgment in a South Florida court on behalf of insurance company Aon in a case over a rival's alleged misappropriation of trade secrets and confidential information about its customers.

Aon Risk Services Inc. claimed in the action that Marsh USA Inc. recruited 43 of its employees as part of a planned attack on its business.

Miami-Dade Circuit Judge William Thomas entered an order granting Aon an injunction against Marsh on the

SEE INSURANCE, PAGE A6

Florida Leading Country For Commercial Bankruptcies, as Practitioners Await Filing Wave

by Dan Roe

After four months of continual decline, commercial Chapter 11 bankruptcy filings rebounded by 42% in June, while all commercial chapter filings increased by 11%, according to Epq Systems' AACER bankruptcy information services. Despite the recent uptick, commercial and all-chapter bankruptcies were significantly depressed in the first half of 2021 compared with the same period in 2020.

The first six months of 2021 have yielded 41% of the all-chapter filings compared with the first half of 2020. While commercial bankruptcies climbed in June, all-chapter filings were flat and noncommercial filings were down 2% from May.

Florida, California and Illinois continued to lead the country in total bankruptcy filings. California and Florida beat the national average on total filings, each with 45% of their 2020 filings by June, while Illinois bankruptcies tailed off at 37% of the state's 2020 figures.

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PUBLIC NOTICES & THE COURTS

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FROM PAGE A1

HOUSING

that lost their job, so now more people were eligible.”

Housing Trust Group is one of the largest affordable housing developers in Florida. The way Rieger sees it, solving the affordable housing crisis should be a priority, but it hasn't been.

“We just haven't had the political will. We haven't had the houses of Congress, and the Senate and the executive branch lined up, frankly, like we do now. It's not enough of a margin in the Senate to get anything passed outside of reconciliation but the great hope is that, with President Biden's agenda, the infrastructure bill is hopefully not stalled, we can get some resources necessary to make a dent in this,” Rieger said. “I don't have a disillusioned idea that it's going to be enough to ultimately meet the demand, but every little bit helps, and we need a lot.”

For Rieger, creating affordable housing isn't a way to get rich. Two variables that he said affordable housing developers should consider are insurance and

property taxes. Rieger said his insurance costs have gone up over 50% in the last two years, despite rent staying the same. That means developers should structure their capital in a way that they can withstand rising costs.

“We have enough cash flow from operations to pay for insurance and our mortgage, but it doesn't leave a lot left for my owners and payroll,” Rieger said.

STIGMA ATTACHED?

Housing Trust Group has a few developments in the works in Miami, and Rieger said the goal for all of them is to ensure there isn't a negative stigma attached.

“We want our affordable housing developments to look equal to or superior to our market-rate competitors right next door and right across the street,” Rieger said. “The only detectable difference a resident or anyone else should find between that market rate and that HTG affordable development is they have to show us their W2 to show they make a certain amount of money or less, and no matter what the market says, I can only charge a certain amount of rent. That's the only difference.”

Max's Landing, an affordable apartment located in Kendall, is Housing Trust Group's fifth development in Miami-Dade County. It's a mixed-use building with 76 units reserved for people earning between 30% and 80% of the area's median income.

Hudson Village, named after Rieger's son Hudson, will be a high-end eight-story, 96-unit affordable multi-family apartment in Hollywood.

Father Marquess-Barry Apartments, a 60-unit development for seniors — many of whom are on a fixed income — is named after Rev. Canon Richard Marquess-Barry, a former pastor of St. Agnes Episcopal Church in Overtown, who died before the deal closed.

“I assure you we are bending over backward to make that a really special place to honor that great man,” Rieger said.

The developments are expected to be finished by the end of the year. Additional developments include Courtside Apartments in Overtown, Wagner Creek in the Health District, Veranda Apartments in Homestead, and Princeton Park in the Princeton section of unincorporated Miami-Dade.



Matt Rieger, CEO of Housing Trust Group in Miami, said the need for affordable housing has greatly increased since the pandemic started, while people who made over six figures recovered quickly and the stock market went up 25%.

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

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BANKRUPTCY

The overall low filing rates can be attributed to an injection of government money via forgivable Paycheck Protection Program loans and other disbursements to businesses, eviction moratoriums, and a high availability of private equity capital, McDermott Will & Emery bankruptcy partner Craig Rasile said in an interview earlier this month.

“Certain companies were allowed to avail themselves of loans to keep the lights on and pay salaries, mortgages, utility bills — obviously that's going to forestall any bankruptcy filings,” Rasile said. “Then you have many states that issue moratoriums on eviction actions by landlords and lending institutions. You don't have the typical liquidity crisis among borrowers that you typically see during a wave of restructuring filings.”

Bankruptcy lawyers such as Rasile and Gary Freedman, Nelson Mullins Riley & Scarborough partner and bankruptcy and financial restructuring group vice chairman, predict that the commercial filing wave will break later this year and early in 2022.

“We've shifted our emphasis from running to bankruptcy court to trying to

give the borrower a leash to work through their financial situation,” Freedman said earlier this month. “Some are going to work out and some aren't, but we're not going to figure that out, and the banks aren't going to figure that out, until the end of this year.”

Commercial Chapter 11 filing numbers may have benefited from the subchapter V debt limit increase, which rose from \$2.5 million to \$7.5 million for small business bankruptcies under the CARES Act. The debt ceiling will remain at the latter rate until March 27, 2022.

“A lot of small businesses that were not doing well to begin with — the COVID interruption was too much for them — now that the economy is coming back, they're so weak, with so much accumulated debt, they're unable to continue but want to try to utilize the small business subchapter,” Tripp Scott creditors' rights and bankruptcy partner Charles Tatelbaum said in a July interview.

“It's very debtor-friendly,” Tatelbaum continued. “It's less expensive. It's less time-consuming. Most of what we're seeing except in the very large cases is an uptick.”

Yet commercial bankruptcies are still down 30% compared with the first six months of 2020, and they're 38% down compared with the first half of 2019.

Big Law bankruptcy practices boomed in the early months of 2020, hitting 3,198 filings in March before seeing a 27% drop in April. Commercial filings per month haven't exceeded 2,780 since then, and May and June filings were down 30% to 40% compared with pre-pandemic filings rates.

Commercial Chapter 11 and Chapter 13 filings both fell 40% in the first half of 2021 compared with the same period of 2020, while commercial Chapter 7 filings fell 24%.

The slowdown has prompted many bankruptcy lawyers to fall back on other skill sets, including transactions and litigation, while others have found work on loan modification and forbearance as borrowers find ways to restructure without declaring bankruptcy.

Ohio bankruptcies surpassed Georgia's for the fourth-highest state in 2021 filings, with both states posting roughly 40% of their 2020 bankruptcies. Texas came in at sixth, with 10,069 filings in 2021 so far, and Michigan and New York climbed the 2021 filings list while Tennessee fell two spots to ninth. Alabama rounded out the top 10, just as it did in 2020, with 7,413 bankruptcy filings this year.

The states with the most bankruptcies relative to their 2020 filings are

Wyoming, California, North Dakota, Florida and Indiana, all with 44% to 46% of 2020 total filings. The states lagging behind their 2020 figures most are Idaho, Maine, Delaware, West Virginia and Illinois, with 33% to 37% of 2020 filings.

Texas led the country in Chapter 11 filings with 568 in 2021, followed by Delaware with 373 filings and California with 263.

Many of the same states that led overall filings also led the country in Chapter 7 filings, with the top five including California, Florida, Ohio, Illinois and Michigan.

But southeastern states dominated Chapter 13 filings, with Georgia leading the way at 4,830 this year and Alabama, Florida, and Tennessee following closely. California, by contrast, saw just 2,584 chapter 13 filings in the first six months of the year.

Per capita filings, the number of filings per 1,000 state residents, were highest in Alabama, Nevada, Tennessee, Indiana, and Delaware, with 2.23 to 3.15 filings per 1,000.

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

FROM PAGE A1

JNC

pointed to Rubio selecting a candidate that could be the first London School of Economics Ph.D. to rise to Florida's federal bench.

“This is the most impressive and diverse list of selectees that I can recall over the past 50-plus years of watching this process,” Rogow said. “Each of these folks has established herself and himself as experienced, top-notch lawyers. Educationally, gender, culturally-wise, and experience-wise, they are a cross-section reflective of South Florida. Marco, who is a lawyer, has done us right.”

But Rubio's judicial nominating commission snubbed some South Florida litigators that Wasserman Schultz had suggested, with some new names among the finalists.

Now, President Joe Biden will consider nominating candidates from the competing lists.

The U.S. Senate will ultimately confirm or vote down the president's nominees in an upcoming vote, as stated in the U.S. Constitution. That will leave Rubio and U.S. Sen. Rick Scott among those with the final say.

The two judicial spots opened up when U.S. District Judges Ursula Ungaro and Federico Moreno assumed senior status, with Ungaro retiring from the federal bench to start her private practice at Boies Schiller Flexner in Miami.

Rubio recommended a new finalist for a seat on the court — David Leibowitz, corporate counsel at Braman Management Association and nephew of the billionaire Norman Braman, one of Rubio's most prominent benefactors. Leibowitz earned his law degree from the University of Pennsylvania.

Rubio also selected Detra Shaw-Wilder, a partner at Kozyak Tropin & Throckmorton in Coral Gables, whose practice specializes in complex litigation. Shaw-Wilder, a graduate of the University of Miami School of Law, was also among Wasserman Schultz's selections.

Absent from the list were Wasserman Schultz's selections of Michael Caruso, a federal public defender in Miami; U.S. Magistrate Judge Shanek Maynard in Fort Pierce; Palm Beach Circuit Judge Samantha Feuer; Miami-Dade Circuit Judge Miguel de la O; and Miami-Dade County Court Judge Ayana Harris.

THE NEXT U.S. ATTORNEY?

Rubio recommended a new finalist for U.S. attorney, who could replace acting U.S. Attorney Juan Antonio Gonzalez. Added to the list of selectees was Andres Rivero, a partner at Rivero Mestre, which has offices in Miami and New York. He could end up leading an office covering Key West to Fort Pierce with about 250 lawyers.

Rivero worked as an assistant U.S. attorney for about five years, returned to Greenberg Traurig and eventually rose to a shareholder before leaving to become a founding partner of Rivero Mestre. The commercial litigator and white-collar criminal defense lawyer earned his law degree from the University of California, Berkeley.

Rubio's selectees also include two litigators based in Miami who are among Wasserman Schultz's finalists: Jacqueline Arango, a partner at Akerman; and Markenzy Lapointe, a partner at Pillsbury Winthrop Shaw Pittman. However, Michael Hantman, a partner at Holland & Knight in Miami and selected by Wasserman Schultz, was snubbed by Rubio's nominating commission.

For the position of U.S. marshal — who is responsible for the management, administration and direction of operations throughout the Southern District of Florida — Rubio selected Gadyaces Serralta, who is also among the Wasserman Schultz finalists. But Rubio declined to nominate another of Wasserman Schultz's candidates, Amos Rojas.

According to the federal government, the U.S. marshal covers a district that consists of nine counties and seven courthouses, with a population of more than 7 million residents.

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FLORIDA LAW REVIEW

Federal Appeals Court Reverses Course on Cruise Restrictions

by Jim Saunders

An appeals court reversed itself and at least temporarily blocked federal Centers for Disease Control and Prevention restrictions on the cruise-ship industry during the COVID-19 pandemic.

A panel of the U.S. Court of Appeals for the Eleventh Circuit cleared the way for a preliminary injunction against the restrictions. The same panel had issued a ruling that put the preliminary injunction on hold.

The two-paragraph order Friday did not explain the panel's reasons for vacating its previous ruling. But the move was a victory for Gov. Ron DeSantis and Attorney General Ashley Moody who contend that the CDC overstepped its legal authority by placing the restrictions on the industry.

Moody, backed by DeSantis, filed a lawsuit in April challenging the restrictions, which came after the cruise industry shut down because of COVID-19 outbreaks onboard ships early in the pandemic.

The legal battle focuses heavily on what is known as a "conditional sailing order," which the CDC issued in October. The conditional sailing order included a phased approach to resuming cruising, with ship operators needing to meet a series of requirements.

U.S. District Judge Steven Merryday last month agreed with the state's arguments and issued a preliminary injunction against the restrictions. U.S. Department of Justice attorneys, representing the CDC, appealed Merryday's ruling to the Atlanta-based appellate court.

Also, the Department of Justice attorneys requested a stay of Merryday's preliminary injunction while the ap-



Attorney General Ashley Moody contends that the Centers for Disease Control and Prevention overstepped its legal authority by placing certain restrictions on the cruise-ship industry during the COVID-19 pandemic.

peals court considers the underlying issues in the case. The three-judge panel on July 17 approved the requested stay, but then changed its mind Friday, saying

only that the federal government "failed to demonstrate an entitlement to a stay pending appeal."

The underlying appeal will still move forward, but Friday's decision allows the preliminary injunction to take effect. The panel was made up of Judges Charles Wilson, Jill Pryor and Elizabeth Branch.

After the July 17 ruling, DeSantis had vowed to fight to get the stay removed. The state on Friday also asked U.S. Supreme Court Justice Clarence Thomas to step in and eliminate the stay.

"I think most courts at this point have had their limit of the CDC issuing these dictates without a firm statutory basis," DeSantis said July 19. "I am confident we'd win on the merits at the full 11th Circuit, and obviously I am confident we would win at the U.S. Supreme Court."

But in asking the appeals court for the stay, the CDC's attorneys argued that the "preliminary injunction rests on errors of law and is a clear abuse of the district court's discretion."

"All of the cruise ships at issue here are foreign-flagged vessels that must stop at one or more foreign ports during each voyage," Justice Department attorneys wrote in the July 7 motion for a stay. "Cruise travel has the potential to introduce COVID-19 variants of concern into the United States from countries such as the Bahamas, Mexico, Honduras, Saint Maarten, Dominican Republic, Haiti, Aruba, and Saint Kitts and Nevis. The CDC has authority to make and enforce such regulations as in its judgment are necessary to prevent the introduction, transmission or spread of communicable disease from a foreign country into the United States."

Jim Saunders reports for the News Service of Florida.

DeSantis Vows to Oppose Mandatory Public School Mask Wearing

by Ryan Dailey

Gov. Ron DeSantis doubled down on his opposition to mask mandates for public-school students during the COVID-19 pandemic, saying he would call for a special legislative session if the federal government moves toward requiring masks in schools.

"There's been talk about potentially people advocating at the federal level, imposing compulsory masks on kids," DeSantis said. "We're not doing that in Florida, OK? We need our kids to breathe."

DeSantis made the remarks while in Fort Pierce for a ceremonial bill signing with House Speaker Chris Sprowls, R-Palm Harbor. DeSantis said he and Sprowls would back a special session if the federal government requires masks in schools, adding that Florida districts will keep masks optional for students.

"As of right now, all the school districts are going in that direction. But there is going to be, it looks like, a campaign from Washington to try to change that. I've talked to Chris Sprowls, if we need to bring [lawmakers] back in to be able to do something from the legislative perspective, he's all in," DeSantis said.

The comments came as Florida and other parts of the country are seeing a surge in COVID-19 cases and hospitalizations, at least in part because of the



DIEGO M. RADZINSCHI

Gov. Ron DeSantis said he would back a special session if the federal government requires masks in schools, adding that Florida districts will keep masks optional for students.

dangerous Delta variant of the coronavirus.

DeSantis on Wednesday endorsed Floridians getting vaccinated against COVID-19, but children younger than 12 remain ineligible for the shots. Last

year, DeSantis pushed schools to re-open for in-person learning amid the pandemic.

White House Press Secretary Jen Psaki was asked about DeSantis' opposition to mask mandates during a press

briefing Thursday. Psaki said President Joe Biden's administration "would have concern about any step that doesn't abide by public health guidelines."

Psaki told reporters the administration's decisions about public health are driven by the federal Centers for Disease Control and Prevention, which has issued guidelines advising that children younger than 12 should wear masks in schools. The federal government has not mandated that they do so.

"They did already announce that several weeks ago as a part of their CDC guidance for schools," Psaki said. "Because anybody under 12 is not eligible to be vaccinated, so they would not be vaccinated, and therefore they should be wearing a mask."

Psaki, who noted that she is a parent, said that "we know masks aren't the most comfortable thing" but told reporters that her children "are quite adjusted" to wearing them.

"If I were a parent in Florida, that would be greatly concerning to me," Psaki said of DeSantis' mask-mandate opposition. "Because kids under the age of 12 are not vaccinated, they're not eligible yet. As the president said last night, obviously it's going to be led by the FDA [U.S. Food and Drug Administration], but certainly we hope that will be soon."

Ryan Dailey reports for the News Service of Florida.

FROM THE COURTS

Plaintiffs Awarded \$1.7M in Attorney Fees, Gilead's Strategy Faulted

by Ellen Bardash

A biopharmaceutical company has again been made an example of in the Court of Chancery, with Chancellor Kathaleen McCormick finding its tactics in a Section 220 case were egregious enough to warrant paying more than \$1.7 million in plaintiffs' attorney fees.

McCormick's six-page opinion repeatedly calls conduct by Gilead Sciences Inc. and its Potter Anderson & Corroon and Cooley counsel "glaringly egregious" and starts off with a reference to the court's right to shift fees to deter abusive litigation, citing Gilead's actions before and during the case as well within the scope of that right.

"Although there is a fine line between glaringly egregious conduct and an aggressive litigation position, Gilead crossed

the line in this case," McCormick wrote.

The Gilead decision drew attention in November for its stance on the growing trend of corporations stonewalling shareholders into having to take derivative action in the Court of Chancery, then pursuing aggressive defense strategies in litigation that's meant to be summary in nature.

The plaintiffs, a group of five shareholders whose claims were consolidated, filed their respective cases after Gilead, based in the Bay Area, which makes an HIV medication, refused to provide any of the documents they requested. Attorneys representing them included those with Cooch and Taylor; Robbins; Pomerantz; Klausner, Kaufman, Jensen & Levinson; Bottini & Bottini; Bernstein Litowitz Berger & Grossmann; Heyman

Enerio Gattuso & Hirzel; and Cotchett, Pitre & McCarthy.

Gilead went on to argue the plaintiffs hadn't sufficiently proven an investigation into wrongdoing was warranted or that they were entitled to inspection, in addition to a defense suggesting the shareholders themselves were just tools for lawyers to use to get documents for litigation.

McCormick rejected all those positions after trial.

"Perhaps one of these positions, standing alone, could be forgiven as merely an aggressive defense. Perhaps not. I do not need to make that difficult call because, collectively, these positions rise to the level of glaringly egregious litigation conduct," she wrote.

Ellen Bardash reports for the Delaware Law Weekly, an ALM affiliate of the Daily Business Review. Contact her at ebardash@alm.com.



Delaware Court of Chancery Chancellor Kathaleen McCormick repeatedly blasted Gilead Sciences and its counsel for crossing over the line of aggressive litigation.

Georgia Insurance Chief Convicted on Fraud, Money Laundering

by Greg Land

A federal jury in Atlanta found suspended Georgia Insurance Commissioner Jim C. Beck guilty on 37 counts of money laundering, wire fraud and mail fraud in a five-year scheme prosecutors said drained more than \$2 million from the Georgia Underwriting Association, where Beck served as general manager before being elected in 2019.

Beck, 59, remains on a \$25,000 bond and is restricted to his home in Carrollton except for permission to leave for Sunday church services, medical appointments or visits with his attorneys.

Judge Mark Cohen of the U.S. District Court for the Northern District of Georgia has set a sentencing date of Oct. 8.

Following an eight-day trial, the jury took less than two hours to find Beck guilty on all counts.

"Mr. Beck and his trial team are obviously disappointed in the jury's verdict," said lead defense attorney Bill Thomas via email. "We believe we presented a strong defense as to why Mr. Beck's actions benefited the Georgia Underwriters Association and did not constitute fraud as alleged by the government. The jury obviously did not see it our way."

Before the sentencing hearing, "Mr. Beck along with his trial team will be reviewing this matter, the jury's verdict, evaluating his options and making a determination as to how to move forward in this matter," said the W.H. Thomas Firm principal, whose co-counsel includes Randy Chartash of Chartash Law—like Thomas, a former U.S. prosecutor—and political law specialist Douglas Chalmers of Chalmers & Adams.

The prosecution team includes Brent Gray, deputy chief of the Public Integrity and Special Matters Section, and Assistant U.S. Attorney Sekret Sneed; a Department of Justice spokesman declined comment.

According to the indictment and other sources, Beck used the Georgia Christian Coalition—which he chaired—and another company he controlled, Creative Consultants, to siphon money from the GUA to four shell companies he set up.



EMILY HANEY

Jim Beck was accused of a five-year scheme that siphoned more than \$2 million from the Georgia Underwriting Association, where he served as general manager before elected insurance commissioner in 2018.

The GUA is a state-mandated residual insurer that provides basic property and liability insurance to property owners who have difficulty finding other carriers, and is governed by a board appointed by the insurance commissioner. It collects premiums from its customers and issues assessments to association members that include every insurer authorized to write property insurance policies in Georgia.

The indictment said Beck's shell companies billed the GUA for online home inspections, data scans and mitigation services for water damage that never took place. He was accused of offering other individuals as much as 10% of every payment processed for assisting in the schemes.

The office of former U.S. Attorney BJay Pak began investigating Beck be-

fore his election, and indicted him in 2019.

Governor Brian Kemp suspended Beck while the charges were pending but he continued to draw his \$195,000 annual salary.

Kemp appointed former Doraville Police Chief John King as acting insurance commissioner while Beck's charges were resolved.

"While today is a somber one for our state, I commend the U.S. attorney's office and our law enforcement professionals for their work bringing this case to a close and ensuring justice for the gross misuse of Georgia Underwriting Association dollars," said King in a statement following Beck's conviction.

"When Governor Kemp appointed me to this role, I was tasked with re-

storing integrity and ethics to this office, and that's been my priority since day one," King said. "I look forward to continuing to move this Agency into the future, leaving behind the corruption of the past, and putting Georgia consumers first."

Beck could spend many years in prison: Federal sentencing guidelines for each of the criminal counts he was convicted of range from 46 to 57 months.

The indictment also said the government will seek the forfeiture of all of Beck's ill-gotten funds and of three Carroll County properties he owns.

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

FROM THE COURTS

Celebrity Chef Batali Settles Sex Discrimination Case With NY AG

by Ryan Tarinelli

New York Attorney General Letitia James says her office has reached a settlement with celebrity chef Mario Batali after a yearslong investigation determined that he engaged in sex discrimination.

The investigation came after sexual harassment accusations against the chef gained widespread attention in 2017 during the #MeToo movement.

The Attorney General's Office reports that more than 20 employees faced a "hostile work environment," including female and male workers who were subjected to sexual harassment by Batali and other employees.

Male workers "forcibly groped, hugged, and/or kissed" female employees, according to the Attorney General's Office. Workers also witnessed, or themselves faced, sexually explicit remarks from co-workers, unwanted sexual advances and inappropriate touching, the office said.

Batali engaged in sexual harassment himself too, James' office found. The celebrity chef

made "sexually explicit comments" to a female server and "forcibly grabbed her hand while she was serving him and pulled it toward his crotch," according to a settlement agreement from James' office. He had also shown a male server an "unwelcome pornographic video."

The \$600,000 settlement will go to at least 20 former employees, according to James' office.

Respondents in the settlement also included Joseph Bastianich, management services company B&B Hospitality Group and restaurants Babbo Ristorante Enoteca and Lupa Osteria Romana, which received back office and operation support from B&B Hospitality, according to the Attorney General's Office.

"Celebrity and fame does not absolve someone from following the law," James said in a statement. "Sexual harassment is unacceptable for anyone, anywhere—no matter how powerful the perpetrator."

Her comments come as her office is overseeing a separate sexual harassment investiga-

tion against another high-profile man: Gov. Andrew Cuomo.

The investigation is looming over the Cuomo administration after media reports that the governor was expected to be interviewed by attorneys associated with James' office, something seen as a sign the inquiry might be coming to a close.

A final investigative report is expected to be released publicly.

In the Batali investigation, James commented that Batali and Bastianich allowed "an intolerable work environment and allowed shameful behavior that is inappropriate in any setting."

"Every individual deserves to work in a safe environment, and today's agreement marks one more step towards remedying workplace harassment," the Democratic state attorney general said in a statement.

The settlement agreement says there will be biannual reports given to the Attorney General's Office, which will include a description of all harassment complaints and how management handled them. The biannual reports will go on for three years.



WIKIPEDIA

The New York Attorney General's Office found that Chef Mario Batali made "sexually explicit comments" to a female server and "forcibly grabbed her hand while she was serving him and pulled it toward his crotch."

Ryan Tarinelli reports for the New York Law Journal, an ALM affiliate of the Daily Business

Review. Contact him at rtarinelli@alm.com. On Twitter: @ryanarinelli.

NY Attorney in \$5M Extortion Scheme Suspended for 3 Years

by Jason Grant

A New York attorney who pleaded guilty to a crime involving a scheme to extort some \$5 million from a convicted securities-fraud defendant for the benefit of the attorney's friend, who was also convicted in the same underlying securities fraud case, has been suspended for three years from practicing law.

The attorney, Mark D. Weissman, pleaded guilty in 2019 to the federal crime of conspiracy to obstruct an official proceeding, according to a U.S. Attorney's Office news release on the plea and an Appellate Division, First Department decision issued Thursday that suspended Weissman's law license.

The First Department decision and the news release together explain that Weissman knew the extortion scheme, if successful, would have interfered with victims' efforts to collect part of \$12.7 million owed to them in restitution as a result of the underlying securities fraud convictions.

The decision and news release together further made clear that Weissman, a veteran lawyer now in his mid-50s and reportedly a Long Island resident, is a "childhood friend" of one of the co-defendants convicted in 2011 or 2012 in the securities fraud case. At the same time, he is a "relative through marriage" to the other co-defendant who was convicted in 2011 or 2012 in the same securities fraud case, the decision and news release make clear.

The fact that Weissman, who was admitted to the state bar in 1989, knew that the extortion scheme, if successful, would impede the restitution efforts of victims was the key aggravating factor listed in the First Department court's per curiam suspension opinion.

"The parties [Weissman and the First Department's attorney grievance com-

mittee] agree that [Weissman's] conduct was aggravated by his undermining and interfering with the [Brooklyn federal] court's restitution order in a case where there were millions of dollars that were lost by victims," the First Department's five-justice panel wrote.

At the same time, wrote the panel while setting out a long list of mitigating factors that were also considered in arriving at Weissman's suspension punishment, his "misconduct was not motivated by personal financial gain but rather by the desire to mediate a long festering hostility between two people," the two convicted securities-fraud co-defendants who were his childhood friend and relative through marriage, "with whom he had deep and close connections."

The panel ruled to accept the joint motion of the grievance committee and Weissman asking for a final punishment of three years for Weissman. Earlier in the disciplinary proceedings against him, the same First Department had ruled in 2020 that Weissman's federal conspiracy-to-obstruct crime was a "serious crime" under state Judiciary Law such that it triggered his immediate interim license suspension at the time.

On Thursday, in the appellate panel's final decision in the matter, it pointed out that the grievance committee and Weissman had together submitted a joint affirmation that laid out a collection of agreed-to facts, admissions, aggravating and mitigating factors and other information that the panel detailed in its opinion and considered in deciding to approve the jointly requested three-year suspension.

The extortion scheme that Weissman had helped orchestrate was somewhat complicated, and planning for it stretched on for months, but the scheme was busted before millions of dollars in extortion-

money was transferred after from the one securities-fraud criminal to the other, according to the U.S. Attorney's Office news release and stipulated-to facts recited in the First Department's decision.

According to the panel's opinion, which did not name either securities-fraud criminal, Weissman's childhood friend in 2017 asked him to tell his former securities-fraud co-defendant—who was Weissman's relative—that the friend wanted money from the co-defendant or the friend had a way to "get" him "in unspecified trouble."

Weissman relayed the message, and then in March 2017 told the co-defendant, the relative through marriage, that the friend was demanding \$5 million, the panel wrote while citing stipulated-to facts.

The relative co-defendant then told the FBI what Weissman had conveyed, and he began acting at the FBI's direction, the panel wrote, still citing the agreed-to-facts.

In March 2018, Weissman "informed the codefendant that his friend had identified a rabbi who would allow any funds paid ... to be paid through the rabbi's charity," the panel's opinion said. Moreover, it said Weissman and his relative in April 2018 "discussed that any funds ... could not be paid in the friend's name because of the friend's outstanding restitution obligations stemming from his conviction."

The next month, Weissman "arranged a meeting between the codefendant and the rabbi," the opinion said. But in late May 2018, Weissman sent messages "indicating that he no longer wanted to be involved," according to the panel, still citing agreed-to facts.

In June 2018, Weissman was arrested, the opinion said.

In agreeing to impose the jointly requested three-year suspension of Weissman's license, the panel wrote

"the sanction proposed by the parties is supported by case law cited," *Matter of Woodward* and *Matter of Siegel*, "we see no reason to disturb the sanction."

Among numerous mitigating factors laid out in the opinion by Justices Rolando Acosta, Barbara Kapnick, Troy Webber, Angela Mazzarelli and Lizbeth González were that Weissman, after pleading guilty to the conspiracy obstruction crime, "cooperated with the government in providing information ... about his friend's codefendant's finances in hopes that additional funds could be uncovered for purposes of repaying innocent victims."

Moreover, his "misconduct was highly aberrational and isolated in an otherwise law-abiding life" and "he fully cooperated with the AGC's investigation," the opinion said.

As part of Weissman's federal sentence, he was given four years' probation, with apparently no prison time, according to the opinion.

His license suspension will be retroactive to July 2, 2020, the date he was put on interim suspension, or until the expiration of his probation, whichever is longer.

According to LinkedIn, Weissman runs a small homeowner-focused law practice that handles issues like foreclosures, and also runs a boutique realty business on Long Island.

Weissman was represented by Michael Ross of the Law Offices of Michael S. Ross in Manhattan.

In an email, Ross said, "Mr. Weissman regrets the conduct that led to his suspension and looks forward to rejoining the bar in the future."

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.

CORPORATE COUNSEL

Letter Urges GCs to Take Disability Inclusion Seriously

by Phillip Bantz

In-house leaders for The Coca-Cola Co., Unilever, Archer Daniels Midland Co. (ADM) and other major corporations in the U.S. and U.K. are asking their fellow general counsel and chief compliance officers to do something about the “shockingly low” number of disabled people in the legal industry.

GlaxoSmithKline Consumer Healthcare general counsel Bjarne Tellmann and Elevate Services Inc. vice president of contracts solutions and disability inclusion Prashant Dubey co-authored an open letter that calls on GCs and CCOs to “make a simple commitment in 2021—take one concrete action toward improving the inclusion of people with disabilities in their departments.”

The letter encourages in-house leaders to hire more people with disabilities, organize disability awareness seminars for legal and compliance departments, publicly encourage disability disclosure or establish “tangible targets” for disability inclusion in 2022.

“Together, we commit to furthering the cause of disability inclusion in our organizations,” Tellmann said Friday in a LinkedIn post announcing the initiative. “The time has come to call on colleagues across the legal profession to do more to promote disability inclusion, alongside other dimensions of inclusion and diversity.”

Disabled people are the largest minority group in the U.S., but only 0.38% of lawyers in law firms are disabled, according to the letter, which cites statistics



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Some in-house leaders at major U.S. and U.K. corporations are asking their counterparts to do something about the “shockingly low” number of disabled people in the legal industry.

from Cornell University, the American Bar Association and the National Association for Law Placement.

“That is shockingly low, leaving precious few disabled lawyers to act as role models for younger disabled professionals, with the result that pathways for success can seem hard to scale. Many get discouraged,” the letter states.

Tellmann and Dubey also note that 60% of the 1.4 million disabled college graduates in the U.S. are unemployed and those who find work are 16% more likely than their non-disabled counterparts to be underemployed.

“A culture of low expectations is pervasive when it comes to disabled professionals,” they state in the letter. “As one disabled senior in-house attorney remarked, ‘[m]any profes-

sionals assume I am unemployed or work from home. Astonished to learn that I am an attorney, many proclaim me “an inspiration,” as if the biggest challenge in law school was negotiating hallways in a wheelchair, not mastering the rule against perpetuities.’”

So far, 23 legal and compliance chiefs have signed the letter, including: Jan Gustavsson, GC at Coca-Cola Hellenic Bottling Co.; Benjamin Bard, global chief compliance officer at ADM; James Ford, GC at GlaxoSmithKline; Ruby Shellaway, vice chancellor and GC at Vanderbilt University; Elevate GC Steve Harmon; and Ritva Sotamaa, London-based chief legal officer and group secretary at Unilever.

“We are inspired by legal and compliance department responses to the recent focus on race, gender, and social justice,” the letter states. “However, despite the resources allocated toward DEI, the inclusion of people with disabilities remains a footnote.”

The letter also asserts that too many organizations say they want to address the issue, but lack the “bandwidth or financial resources to do much” about disability inclusion.

“The implication is that disability inclusion is somehow a lower priority,” the letter states. “It is our hope that the inclusion agenda be executed in parallel rather than serial fashion, with equal focus placed on the inclusion of people with disabilities.”

Phillip Bantz is a reporter for Corporate Counsel. Follow him on Twitter @PhillipBantz.

FROM PAGE A1

INSURANCE

terms that were requested by Aon. Both sides stipulated to the terms, which bars Marsh from using or disclosing confidential information about Aon insurance or clients.

New York-based attorneys Andrew Berdon and Kimberly Carson of Quinn Emanuel; and Miami attorneys of Quinn Emanuel John O’Sullivan and Olga Vieira represented Aon. They did not immediately respond to requests for comment.

Aon had alleged that its competitor tried to misappropriate Aon’s proprietary, trade secrets and confidential information concerning its customers, their insurance policies, compensation of Aon and policy renewal dates.

Marsh had hired a group of Aon’s top sales performers, according to the complaint in the case. Marsh also further persuaded Aon’s personnel Michael Parrish, Michael Landa and Giselle Lugones to breach their contract to Aon by misusing and misappropriating the plaintiffs confidential information, Aon said.

By doing this Aon had been stripped from more than 40 key personnel in South Florida, and its customers were redirected to Marsh.

Aon said in its complaint that each of the individual defendants, had promised that they would deliver \$40 million in Aon business to Marsh, and Marsh has thus put the individual defendants immediately to work fulfilling such commitment, in breach of their prior obligations to Aon.

Upon Aon learning about the illegal activities, Aon promptly initiated an investigation, which included interviews of Aon employees who were recruited by Marsh, but rejected its advances.

According to the complaint, during the interviews the plaintiff learned that Marsh’s senior executives and in-house recruiters had obtained confidential information regarding Aon’s salary and benefits structures and the composition of client service teams supporting individual producers.

Marsh offered the employees cash including increases in base salaries.

Since Marsh was able to persuade a plethora of Aon colleagues and staff, phase 1 was complete.

Parrish, Lugones and Landa and the individual defendants were intensely engaged in stealing Aon customers in order to fulfill promises that Parrish made to Marsh that he and the former Aon employees would divert a minimum of \$40 million of their former Aon business to Marsh.

Aon filed a complaint stating causes of action, some individual and some by all defendants, including breach of contract and duty of loyalty and tortious interference with Aon’s business relations.

The plaintiffs also accused Marsh of violating state unfair trade practices laws and aiding and abetting breaches of duty of loyalty and restrictive covenants.

According to the stipulated order entered by Thomas, in addition to the restriction on disclosure of Aon customer information, each ex-employee of Aon has to wait two years before working

for any business of the same type; nor are they allowed to speak with the competition within the six months of them being employed.

Employees are prohibited from recruiting co-workers to work for them or convince them to leave Aon.

Under the order Marsh and those affiliated with Marsh will not interfere with the individual defendants. Marsh will also be provided a copy of this order to give to their affiliates who are responsible for developing the business of clients.

Aon and Marsh agreed that Thomas’ order would be temporary order, not a final decision. The parties are not waiving any defenses to the enforcement of the agreements.

This order will be in effect for a period of 12 months or until such time as the parties agree to mutually extend the order, or until further order of the court..

Representing Marsh USA and Marsh & McLennan Agency LLC were West Palm Beach attorneys Matthew S. Sackel and Hank Jackson of Shutts & Bowen; and Jason C. Schwartz, Howard S. Hogan, Greta B. Williams and Amanda C. Machin of Gibson Dunn & Crutcher.

Individual defendants were represented by various attorneys, including Michael Parrish, Robert Lynn, Caroline Parrish, Michael Landa, Giselle Lugones, Raymond B. Scott, Adam Lickstein, Matthew Maffai, Derek Carney, Scott Garman, Julie Layton and Janette Wilcox.

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

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FOCUS LATIN AMERICA

Mexican President Calls Cuba 'Example,' Wants OAS Replaced

Associated Press

President Andrés Manuel López Obrador said that Cuba is an "example of resistance," and proposed the entire country should be declared a World Heritage site.

While much of Cuba seems stuck technologically in the middle of the last century, López Obrador did not appear to be speaking ironically when he proposed the world heritage designation, which is usually used by the United Nations to honor historical sites.

The Mexican leader praised Cuba's ability to stand up to U.S. hostility since 1959. López Obrador did not mention recent street protests that were violently repressed by the Cuban government.

López Obrador has in the past stated his opposition to U.S. sanctions that limit commerce with the island, and said they should be ended.

López Obrador also said the Organization of American States should be replaced "by a



Mexico President Andrés Manuel López Obrador praised Cuba's ability to stand up to U.S. hostility since 1959 and proposed the entire country should be declared a United Nations World Heritage site.

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body that is truly autonomous, not anybody's lackey."

Mexico has publicly disagreed with the OAS leadership over its

role in the political situation in countries such as Bolivia.

López Obrador spoke Saturday at a ceremony attended by Cuba's foreign minister to mark the 238th birthday of Simón Bolívar, who led the fight to liberate several South American countries from Spanish rule in the early 1800s.

The Mexican government has said it is sending two navy ships to Cuba with food and medical aid on Sunday.

The Foreign Relations Department said the ships will carry oxygen tanks, needles and syringes, and basic food items like rice and beans.

The announcement came on Thursday, the same day that the U.S. government tightened the sanctions on some Cuban officials after they violently put down rare street protests earlier this month. The new sanctions target a Cuban official and a government special brigade the United States says was involved in human rights abuses during the government crackdown.

Anti-Corruption Prosecutor Praised by US Flees Guatemala

by Sonia Perez D.

Anti-corruption prosecutor Juan Francisco Sandoval fled Guatemala, arriving in neighboring El Salvador just hours after he was removed from his post.

Consuelo Porras, Guatemala's attorney general, had accused the former head of the Special Prosecutor's Office Against Impunity of "abuses" without specifying what they were.

Sandoval said he was fired because of his investigations into top officials in the administration of President Alejandro Giammattei. He said he had fled for his own safety, becoming the fifth law enforcement official in three years to do so.

"Sadly, this has become a situation that many public servants in Guatemala have had to go through simply because we are not useful for the regime," Sandoval said.

"Wherever I am, I'm going to continue working for the good of the people of Guatemala, but for my own safety, I am not going to be used by people who have made exploiting government funds a way of life," he said.

Sandoval arrived in La Chinamas, a border town in El Salvador, about 75 miles southeast of Guatemala City. He was accompanied on his trip out of Guatemala by human rights activists, Swedish Ambassador Hans Magnusson, and journalists from The Associated Press.

Julie Chung, the U.S. acting assistant secretary of state for Western Hemisphere Affairs, wrote that Sandoval's firing "is a step backward for the rule of law" in Guatemala. Chung wrote in her Twitter account that his removal "contributes to the perception that there is a systematic effort in Guatemala to weaken those who fight against corruption."

Iván Velásquez, the former head of the U.N. anti-corruption commission

expelled from Guatemala in 2019 by former president Jimmy Morales, called Sandoval's removal "an illegal, arbitrary and criminal act."

"The international community should protect him immediately," Velásquez said.

A government statement earlier Friday said Porras had removed Sandoval due to "constant abuses and frequent abuses to the institutionality" of the ministry.

Sandoval was a respected anti-corruption prosecutor with a record of pursuing dozens of criminal networks. Together with the former United Nations anti-corruption mission in Guatemala he helped take down former President Otto Pérez Molina and some members of his cabinet on corruption charges.

Less than two months earlier, U.S. Vice President Kamala Harris had stressed the office's importance amid a growing push against anti-corruption efforts in the country.

In June, Harris visited Guatemala as part of her work to find ways the U.S. can help address the root causes of Central American migration, among them corruption. She told Guatemalan officials that the U.S. wanted to support anti-corruption efforts, but that the participation of the anti-impunity prosecutor's office and Sandoval would be essential.

Observers had previously expressed concerns that Porras was blocking the work of Sandoval's office and that his job could be jeopardy.

Porras had blocked attempts by Sandoval's office to lift the immunity of government officials suspected of crimes or make arrests of powerful individuals investigated for corruption.

On Thursday, Porras removed another prosecutor from the anti-impunity office.

Sonia Perez D. reports for the Associated Press.

Ex-President Formally Charged in El Salvador Corruption Case

Associated Press

Prosecutors in El Salvador said they have formally charged former President Salvador Sánchez Cerén and nine other former officials with illicit enrichment and money laundering.

The charges are related to crimes allegedly committed when Sánchez Cerén served as vice president in the administration of President Mauricio Funes from 2009 to 2014. Sánchez Cerén left the country

in December and has not returned.

The nine other former top officials in the Funes' administration were also charged in an alleged illegal scheme to pay exorbitant bonuses. Four of them are also at large.

The scheme allegedly involved \$351 million in government funds that were used to make illegal payments to government employees and their associates. The case has become known as the "Public Looting" scandal.

Sánchez Cerén, who went on to serve as president from 2014 to 2019, allegedly received \$530,000 from the scheme.

Both Funes and Sánchez Cerén were members of the FMLN party, founded by guerrillas who fought the government in the country's 1980-1992 civil war.

Funes fled to Nicaragua, where he was granted asylum in 2016, allowing him to avoid facing trial back home on corruption charges.

Some of the officials detained are considered top leaders of

the FMLN, which along with the conservative ARENA party, governed El Salvador for many years.

On Sunday, FMLN supporters gathered outside the court demanding the release of the five detained ex-officials. The protesters claimed those arrested are political prisoners.

Both the FMLN and ARENA were reduced to a shadow of their former levels of support by the appearance of the populist New Ideas party of the current president, Nayib Bukele.

Most of the country's post-war presidents have been charged with corruption.

Francisco Flores, who was president in 1999-2004, died in 2016 while awaiting trial under house arrest.

Tony Saca, president from 2004 to 2009, is serving a 10-year prison sentence for corruption and has been ordered to return some \$260 million to the state. Courts ruled Saca could not explain the origin of \$6.5 million in income he made while president.

Crisis Communications: Tips for Standing With, Against or Staying Silent

Commentary by
Julie Talenfeld

Israel and Palestine. Black Lives Matter and systemic racism. Trump. The vaccine. Megan Markle!



Talenfeld

There are a *lot* of controversial ideas, topics, individuals and triggering topics out there these days. Just mentioning any of the above may set someone off, and equally, not mentioning it may just do the same. It makes sense that many high-powered executives at law firms and marketing agencies—along with these companies as a whole—remain unsure of when and how to take a stand for what, and for whom, they believe in.

I'm sharing my tips and tricks, along with helpful examples from those who have gone through it, in order to help you and your business to know how and when to take a stand.

Individuals at companies should always understand their company's policies before speaking out publicly, especially in written/social media form, regarding a controversial topic. One news associate at the Associated Press should really have done the same, as she was terminated from her pro-Palestine social media post that violated the company's social media policy. The policy states that "AP employees must refrain from declaring their views on contentious public issues in any public forum and must not take part in organized action in support of causes or movements." To wit, this is a news organization, and the woman in question is a journalist (and also interestingly, Jewish); it is her job not to show



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bias. However, this still represents an important lesson for all of us in navigating these turbulent waters.

Now is a really good time for companies, if they have not done so already, to draw up an exhaustive list of social media protocols for the brand itself as well as for all employees to follow.

REMEMBER WHAT YOU STAND FOR.

What are the values of your organization? Just like in meditation when we say, "return to the breath," you should always return to your corporate values when deciding whether or not to weigh in on a controversial topic. Is it in alignment with your corporate values to weigh in on the topic at hand? Regarding the vaccine, specifically, I felt it was important to take a public stand in support of vaccinations,

and I (also, publicly) incentivized our employees to get vaccinated by offering them extra paid time off, among other perks. One of our corporate values at BoardroomPR is to treat all of our employees like family. With this in mind, speaking out about the vaccine, and my desire for all of our employees to get one, felt like a no brainer because it is deeply connected with my corporate values as a CEO. I was glad to have my name, face, and business associated with this topic, and I would do it again!

BE MINDFUL OF YOUR AUDIENCE.

Are you working in/with communities directly impacted by this topic?

Always remember your audience—your clients, your community, those in your orbit, when deciding whether or not to weigh in on a controversial issue.

Never lose sight of who you are speaking to; this should be the second line of thinking (after your own brand and company values) when it comes to taking a stand.

CONSIDER YOUR POINT OF VIEW.

How is your voice or point of view productively contributing to the conversation?

Will people want to hear from you? Are you directly related to the topic at hand, or just a passionate bystander? Consider your involvement and impact, and how your voice contributes to the conversation.

USE YOUR INTUITION.

Ultimately, speaking out will either feel right to you, or it won't. Let your intuition guide you through deciding whether or not to speak up and out. If you thought about your corporate values, your audience, and the relevance of your point of view and yet, you're getting a conflicting feeling inside, that is okay and that is normal! Listen to it. You may thank that little voice later!

So next time you find yourself fired up about a controversial topic, I hope you'll walk yourself through these five steps: remember what you stand for, be mindful of your audience, consider your point of view, and use your intuition. With a little bit of thoughtfulness and attention, you'll know exactly what to do!

Julie Talenfeld is the founder and CEO of BoardroomPR, one of the largest PR and integrated marketing agencies in Florida specializing in media relations, online marketing, branding, public affairs and crisis communications. The firm has offices in Fort Lauderdale, Tampa, Orlando, West Palm Beach, Naples and Miami.

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FROM THE COURTS

Judge Eulogizes Former Law Professor in Footnote of Dissent

by Avalon Zoppo

In a dissent published Thursday, Judge A. Marvin Quattlebaum, of the U.S. Court of Appeals for the Fourth Circuit, eulogized one of his former law professors as an educator who “taught with passion and humor for over 40 years.”

University of South Carolina School of Law professor Howard B. Stravitz died April 30 at age 73. He taught civil procedure, federal courts and Jewish law at the school since 1983, and before that, practiced law with Cleary Gottlieb Steen & Hamilton in New York City for nearly a decade.

“He loved the law, his students, his colleagues, his friends and his family. He was deeply religious. And his wonderful personality influenced countless law students for over four decades, including me,” Quattlebaum wrote in the footnote of his opinion.

The tribute to Stravitz came as part of an opinion that delved into a debate on federalism and state rights.

In the majority opinion issued Thursday, Judge Pamela Harris and Chief Judge Roger Gregory reversed a district court decision that found an incarcerated man allegedly denied medical treatment couldn’t make a claim under the Federal Tort Claims Act because he did not get a certification from a medical expert, a requirement under West Virginia law, before filing his lawsuit.

The judges ruled that West Virginia’s state-law certification requirement is inconsistent with the Federal Rules of Civil



DIEGO M. RADZINSCHI

Judge A. Marvin Quattlebaum praised University of South Carolina School of Law professor Howard B. Stravitz, one of his former law professors, as an educator who “taught with passion and humor for over 40 years.”

Procedure, and therefore does not apply in the federal case.

They pointed to the U.S. Supreme Court’s 2010 *Shady Grove Orthopedic Associates v. Allstate Insurance* ruling, which stated if there is a valid federal rule that answers the “same question” as a state rule, then the federal one applies.

“Because [the plaintiff] has brought an FTCA claim in federal court, the Federal

Rules apply,” wrote Harris. “Indeed, the originally enacted version of the FTCA expressly instructed courts to apply the Federal Rules, and later versions omitted that clarification only because Congress deemed it ‘unnecessary.’”

Quattlebaum said in his dissent that the *Shady Grove* decision “was not without criticism.” He argued that none of the federal rules cited by the major-

ity answered whether someone needs a pre-suit certificate of merit to file a West Virginia medical malpractice suit under the Federal Tort Claims Act.

He said the decision could “[render] inapplicable many state-law provisions.”

“When combined with a broad view of what constitutes a conflict, *Shady Grove* runs the risk of undermining federalism and the right of states to determine the substantive requirements for state-law causes of action,” wrote Quattlebaum. “I fear the implications of the majority’s decision are quite broad, potentially rendering inapplicable many state-law provisions, even those we consider to be substantive.”

In his footnote, Quattlebaum wrote that Stravitz would have appreciated the debate.

According to his obituary, Stravitz had an “endless quest for knowledge” and was known for hosting dinner parties where guests engaged in discussions “that rivaled those of the famous Round Table at the Algonquin.” He graduated from Rutgers University School of Law-Camden in 1972 and worked as a law clerk for former U.S. District Chief Judge David N. Edelstein of the Southern District of New York.

“He will be missed. Even so, I cannot help but think he would enjoy the debate about the issues we face today. Hopefully, he would have joined in the dissent,” Quattlebaum wrote.

Avalon Zoppo reports for the National Law Journal, an ALM affiliate of the Daily Business Review. Contact her at azoppo@alm.com. On Twitter: @avalonzoppo.

Excessive Force Suit Dismissed in Fatal Shooting of Robbery Suspect

by Charles Toutant

A federal judge in New Jersey has dismissed an excessive force suit over the shooting death of an armed robbery suspect, finding that the police officer who pulled the trigger was entitled to qualified immunity.

Use of deadly force against Richard Bard was reasonable because he was firing shots at police, which posed a threat of severe physical harm, U.S. District Judge Noel Hillman said when he dismissed the suit against Vineland police officer Christopher Puglisi.

“To protect himself and the safety of others it was objectively reasonable for [Puglisi] to shoot twice at Bard who was actively shooting at him,” Hillman said. “Thus, after a highly individualized and fact specific inquiry into the totality of the circumstances confronting [Puglisi], it is evident that [Puglisi’s] actions were objectively reasonable. As such, as a matter of law [Puglisi] did not violate Bard’s constitutional rights under the Fourteenth Amendment,” Hillman said.

According to Hillman, Bard’s claims against Puglisi in his personal capacity are governed by the qualified immunity doctrine. Qualified immunity shields government officials from damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct, Hillman said.

Hillman said none of the facts was in dispute except whether Bard was running shortly before his death. Bard’s mother, Dana German-Bunton, disputed the police account of events leading up to



DIEGO M. RADZINSCHI

“To protect himself and the safety of others it was objectively reasonable for [the police officer] to shoot twice at [armed robbery suspect Richard] Bard who was actively shooting at him,” U.S. District Judge Noel Hillman said.

the killing because the police said Bard ran away from the scene after he and a companion robbed a man, then fired shots at others who came to the robbery victim’s aid. German-Bunton claimed her son, then 31, was unable to run due to a prior auto accident.

Hillman said that, even accepting German-Bunton’s reasoning, undisputed evidence from dash cam and surveillance video, and other witnesses’ testimony, showed that Bard did indeed run from the scene of the robbery.

Police said Bard and Jonathon Bain robbed a man on a bicycle in Vineland

at 1 a.m. on April 17, 2016. Initial reports said the robbery victim was shot. The two ran from the scene and were chased by Puglisi, according to police. Puglisi shot at Bard four times, striking him once in the groin and once in the hip. Bard was declared dead at a local hospital about an hour later.

The officer’s use of force meets the “objectively reasonable” standard expressed by the U.S. Supreme Court in *Graham v. Connor*, a 1989 case, Hillman said.

“This series of uncontroverted events meets the *Graham* objectively reasonable test, and presents the epitome of

Graham’s split-second judgment as to the use of force in circumstances that are tense, uncertain, and rapidly evolving,” Hillman said.

“Defendant was aware that Bard and his accomplice had just robbed and possibly shot a bicyclist, as well as shot three times at the bicyclist’s friends, which are severe crimes and posed an immediate threat to the public and the officers. [Puglisi] encountered Bard who was actively evading apprehension, and then Bard shot at Defendant two times, which clearly proved that Bard was armed, in addition to [Puglisi] having observed Bard retrieve a silver object from his pants. To protect himself and the safety of others it was objectively reasonable for [Puglisi] to shoot twice at Bard who was actively shooting at him,” Hillman said.

The suit was brought on behalf of Bard’s estate and German-Bunton. Vineland and various police officials were named in the original complaint, which was filed in 2017, but they were let out of the case in July 2018, leaving Puglisi as the only named defendant.

Solomon Radner of Johnson Law in Detroit and Conrad Benedetto of the Law Offices of Conrad J. Benedetto in Voorhees, who represented the plaintiffs, did not respond to calls about the ruling.

A. Michael Barker and Todd Gelfand of Barker, Gelfand & James in Linwood represented Puglisi. They did not respond to requests for comment.

Charles Toutant is a litigation writer for the New Jersey Law Journal, an ALM affiliate of the Daily Business Review. Contact him at ctoutant@alm.com.

COMMERCIAL REAL ESTATE

This Expert Expects a 15% Drop in Office Demand

by Les Shaver

For Green Street Director of Research Cedrik Lachance, the pandemic's defining commercial real estate story may ultimately be the work-from-home trend.

"Choosing where one does work has meaningful impact to not just office, but to residential, hotels, and suburban shopping centers, which will all have different fundamentals based on the decisions that people make," Lachance said in a recent blog post.

Lachance says implementing a hybrid workforce scares many companies as they try to manage workforces where some individuals want to be in the office five days a week and some individuals never want to see an office again.

Ultimately Green Street expects about a 15% drop in office demand versus pre-Covid trends. "It is not going to happen overnight, and you are going to see many disparities between markets and countries," Lachance said. "Coastal markets in the US should suffer a bit more from work from home, whereas in markets that are more dynamic from an employment perspective, often in the south, you might not even notice that work from home is becoming a greater percentage of the pie."

Overall, commercial real estate prices have risen 8% in 2021 July, according



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Implementing a hybrid workplace scares many companies.

to Green Street's Commercial Property Price Index. Across sectors, Lachance sees a 300-basis-point rebound in occupancy, pushing them above 90% across the industry. From a rent perspective, he sees 2019 levels returning by the end of the year.

While the story has been volatility in office through the pandemic, other sectors benefited. Lachance points to

manufactured homes and industrial as the two sectors with the best combination of market rent growth and occupancy gain expectations over the next five years. He sees a substantial cash flow rebound coming in senior housing and lodging. Additionally, he says non-traditional sectors represent more than half of the value of the REIT industry. The REIT structure provides a way for

investors to participate in the growth of these sectors.

"In fact, several other sectors should experience net operating income (NOI) growth in the four to five percent range for the next couple of years," Lachance said. "This is a good era for real estate fundamentals, and we see that continuing."

Les Shaver reports for GlobeSt.com.

What Slowdown? Freddie Mac Expects Housing Market to Remain Strong For 2021

by Ted Knutson

There have been a few signs that the frenzy in the home sales market is showing signs of abating, but a recent report by Freddie Mac promises that it will remain strong for some time to come.

The GSE predicts housing price growth to be 12.1% this year, up from 11.3% in 2020.

Sales are anticipated to reach 6.9 million this year, compared to 6.5 million the year before with purchase origination rising to \$1.8 trillion from \$1.5 trillion.

"The low mortgage rates that have supported the housing market throughout the pandemic are expected to increase later in the year, but just gradually," said the latest quarterly report from the GSE.

In addition to low mortgage rates, the market is being propelled by disposable after-tax income that has risen during the current recession and a major shortage of housing supply relative to the population, Sam Khater, Freddie Mac's Chief Economist stressed.



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It predicts housing price growth to be 12.1% this year, up from 11.3% in 2020.

However, he said Freddie expects refinancing activity to decline next year as mortgage rates rise with total origina-

tions dropping to \$2.6 trillion in 2022 to an anticipated to be \$3.9 trillion this year.

Estimates for housing price increases range across the board, depending on the source and how they are evaluating the market.

Fitch Ratings recently said that it expects US home prices could rise 8%-10% in 2021.

In a more nuanced analysis, Redfin has found that home prices in car-dependent areas have risen twice as fast as those in transit-accessible areas since the start of the pandemic.

In car-dependent areas nationwide, the median home-sale price has increased 32.8% to a record \$418,100 since January 2020. In transit-accessible regions, it has risen 15.6% to a record \$540,500 during the same time period.

Redfin attributes some of the growth in prices to the rise of remote work.

Frank Martell, president and CEO of CoreLogic, has said he expects price rises to continue, which could very well push prospective buyers out of the market in many areas which in turn could slow home price growth over the next year.

Ted Knutson reports for GlobeSt.com.

A Financing Gap is Leaving Some BFR Investors Behind

by Lynn Pollack

While the build-for-rent sector has exploded over the course of the COVID-19 pandemic, there's one sector that's finding it tough to break in: middle-market investors.

According to a new report from Walker & Dunlop, debt in the space has become "a tale of two markets," as large institutions, family offices, and smaller private equity firms are pouring capital into construction. The same goes for mid-market funds and high net worth individuals.

But there's a catch: "Where we see a large gap emerging, is within the construction lending sector. Institutional sponsors aren't having any trouble securing debt; however, middle market investors are facing difficulty due to the lack of banks active in the space," says Keaton Merrell, managing director, Capital Markets at Walker & Dunlop.

Many BFR developers are being forced into the position of breaking ground with lower leverage or with more expensive mezzanine financing.

"If you're working with a big project

or have a large institutional sponsor, you'll find debt financing no problem. But in the middle market, there are just not enough banks in this space," he says, forcing many BFR developers to move forward with lower leverage or expensive mezzanine financing.

Merrell urges banks to better understand the positive headwinds in the space "and want in on the action." BFR properties can typically outpace conventional properties when it comes to per-square-foot rents: consider Phoenix, where BFRs for garden walkup properties net \$1.90 per square foot, versus the

\$1.19 psf rate conventional properties can command. And BFR properties typically report expense ratios in the 20s, with acp rates narrowing toward parity with multifamily cap rates.

Bridge lending is also emerging as a new product in the space, according to Walker & Dunlop, with the typical bridge at certificate of occupancy financing hovering in the 65-80% loan to cost range.

"Lenders have been assuming lease-up risk, with even life companies considering bridge lending at certificate of occupancy," the report states.

Lynn Pollack reports for GlobeSt.com.

THE FIRM

Morgan Stanley Hasn't Forced Broad Office Return Mandate

by Andrew Maloney

Shearman & Sterling is one of the latest firms to confirm a hybrid approach to remote work and office attendance, about a week after one of its top bank clients, Morgan Stanley, urged law firms to return to offices.

Like many of Morgan Stanley's outside counsel firms, Shearman is asking "most" workers to come in three days a week but not full time. So far, there's no indication that Shearman and other firms adjusted their policies in light of the Morgan Stanley letter. Law firm leaders and other industry observers said the bank's statement alone hasn't—so far—forced a broad rethinking of law firm return-to-work policies but that law firms are still keen on their clients' input and remote working trends may shift later this year.

Shearman, which has represented the bank on large financing deals this year, said the majority of its employees should return to the office Tuesdays through Thursdays, beginning Sept. 13, so that "entire teams will be together the majority of the time and we are able to continue developing and training our lawyers."

While Shearman confirmed its policy this week to Law.com, the firm said in an email that

the policy was announced internally in June and was informed by a survey of its people as well as "trends we have observed in the market." That means it was crafted and announced internally before the letter last week from Morgan Stanley chief legal officer Eric Grossman, which stated that the legal profession "cannot long endure a remote model."

One Am Law 100 law firm leader, who declined to be named in order to frankly discuss the letter, said the points Grossman made "absolutely resonated" and the bank is very focused on the protection of excellence in the profession. "That said, we're not changing our approach," the firm leader said.

"We see the benefits that underlie Eric's position, but then at the same time, think people do need flexibility, patience and adaptability," the leader added. "And I don't even know how people will change. I don't think we will see law firms stepping back in reaction to the Morgan Stanley letter and changing to either a five-day return or accelerating something they'd be doing in the fall or later."

That doesn't mean clients won't have any influence on how their firms work in the near future. Katten Muchin Rosenman, which announced its policy internally last month, noted that while it's not de-



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About a week after one of its top bank clients, Morgan Stanley, urged law firms to return to offices, Shearman & Sterling confirmed a hybrid approach to remote work and office attendance.

manding a set number of days in-person, whether employees are at home or in the office will "of course" depend on clients, industry, practice group and firm needs.

Shearman noted in its policy that it is "obviously the case that we will honor any and all client commitments/meetings outside of the core office days, as anyone would expect."

"Our new approach is tailored to meet the business needs of the firm and our clients while also providing some flexibility and absolute clar-

ity for our people," said David Beveridge, Shearman's senior partner, in a statement.

Brad Hildebrandt, a legal consultant and founder of Hildebrandt Consulting, said he thinks the industry overreacted to the letter. Still, he said, the tone of the conversation about remote work is changing, based in part on a survey of 25 law firm clients he conducted.

"It's been a gradual shift," he said. "Each meeting I have with this group, it shifts a little more to, 'We want our people back in the office.'"

Hildebrandt noted firms have allowed for some level of remote work since before the pandemic and that flexible work arrangements will still pick up after the pandemic. But, he said one of his theories is that the lateral market is being fueled by partners not feeling connected to their firms and that firm leaders want to foster stronger connections again.

He also said once some number of firms reopen and begin bringing lawyers and staff into offices more regularly, there may be a snowball effect for lawyers that aren't in-person.

"There's going to be client meetings, training, business development," he said. "If I was a young lawyer sitting at home, I'd be kind of worried about not being there."

George Wolf Jr., a law firm consultant for Aon, said he thinks clients will ultimately have a significant influence on how firms work after the pandemic but that firms should and are seeking input from everyone. "At the end of the day, you want buy-in from your clients, you want buy-in from your attorneys," he said.

Andrew Maloney covers the business of law, focusing on national and global law firms for The American Lawyer, an ALM affiliate of the Daily Business Review. Contact him at amaloney@alm.com.

Meet General Counsel Behind Proposed \$26B Opioid Settlement

by Dan Clark

The four top legal department leaders overseeing a new \$26 billion opioid settlement are longtime veterans of their companies, with their tenure stretching back to some of the underlying corporate conduct at issue and in the early days of settlement negotiations. And the four likely had a heavy hand in crafting the final proposal.

The proposed settlement, which would end about 4,000 lawsuits across the country over the opioid epidemic, entails payments over the course of 18 years, including drug distributors AmerisourceBergen paying \$6.4 billion, Cardinal Health paying \$6.4 billion and McKesson paying \$7.9 billion. Drug manufacturer Johnson & Johnson would pay \$5 billion over the course of nine years.

The \$26 billion settlement comes about two years after many states first negotiated the proposed deal. The proposed agreement would resolve claims over the companies' roles in creating and fueling the opioid epidemic, stretching decades.

John Chou, who is the chief legal officer of AmerisourceBergen, has

worked in the legal department since 2002. He served as chief legal and business officer from 2017 to 2019. In 2019, he was given the title of chief legal officer. Before joining AmerisourceBergen, he served as chief European counsel at Arco Chemical Europe.

Lori Schechter, of McKesson Corp., began with the company as associate general counsel in 2012 and was made chief legal officer and general counsel in 2014. She was previously a partner at Morrison & Foerster.

Cardinal Health's general counsel, Jessica Mayer, has been with Cardinal Health since 2006 when she joined as managing counsel. She was made chief legal officer in 2019 and previously served at Arnold & Porter.

Michael Ullmann, the general counsel of Johnson & Johnson, joined the company's legal department in 1989 as a merger and acquisitions attorney. He was made general counsel in 2012.

In a Johnson & Johnson press release about the settlement, Ullmann said the company recognizes the opioid crisis is a "tremendously complex public health issue."

"This settlement will directly support state and local efforts



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The tenures of general counsel from AmerisourceBergen, McKesson Corp., Cardinal Health and Johnson & Johnson stretch back to some of the underlying corporate conduct at issue and in the early days of settlement negotiations.

to make meaningful progress in addressing the opioid crisis in the United States," Ullman said in the statement.

None of the general counsel were made available for interviews on their role in the settlement process.

James Shehan, senior counsel and chair of the FDA regulatory practice at Lowenstein Sandler in New York, said in litigation, the general counsel may have little to do other than occasionally meet with outside

counsel. That changes when it comes to settlements, he noted.

"General counsel play a prominent and often primary role in the case of a settlement," said Shehan, who previously served as general counsel and head of government affairs at the pharmaceutical company Novo Nordisk.

Generally speaking, the general counsel will likely decide if a settlement is in the best interest of the company and if so, what the limits of that settle-

ment should be. In settlements, the general counsel is constantly working with the CEO, chief financial officer and senior management in deciding what's best for the company.

Shehan, who was not involved in the opioid litigation, said it is an interesting settlement because there is a lot of concern over whether the money will go toward addressing the opioid epidemic. It is not likely that the legal leaders will be working to make sure the money is distributed properly unless there is a clawback provision in the settlement, he said.

Attorneys general from Tennessee, North Carolina, Pennsylvania, New York, Louisiana, Delaware and Connecticut joined the deal. Other states have 30 days to sign onto the deal, while local governments have 90 to 120 days to join. North Carolina Attorney General Josh Stein said "north of 40 states" are expected to join the settlement.

Dan Clark covers cybersecurity, legal operations and intellectual property for Corporate Counsel, an ALM affiliate of the Daily Business Review. Contact him at dclark@alm.com. On Twitter: @DanClarkalm.

BANKING/ FINANCE

JPMorgan Makes Crypto Available to All Wealth Clients: Report

by Jeff Berman

JPMorgan Chase & Co. started allowing all its retail wealth management clients to access cryptocurrency funds, becoming the latest large financial firm to throw its support behind crypto, according to a Business Insider report.

That makes JPMorgan the first large U.S. bank to give crypto trading access to clients other than its wealthiest ones.

JPMorgan told its financial advisers in a memo earlier this week that, effective July 19, they could take buy and sell orders from their wealth management clients for five cryptocurrency products, the Business Insider report said.

Four of those products are from Grayscale Investments: the Grayscale Bitcoin Trust, Bitcoin Cash Trust, Ethereum Trust and Ethereum Classic Trust. The other fund is the Osprey Bitcoin Trust.

The funds are reportedly available to all JPMorgan clients seeking investment advice, including the ultra-wealthy serviced by its private bank, self-directed clients who use its commission-free Chase trading app and mass affluent JPMorgan Advisors clients.

JPMorgan declined to comment on the report Friday. It also declined to comment on its current position on cryptocurrency in general.



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JPMorgan Chase & Co. is the first large U.S. bank to give crypto trading access to clients other than its wealthiest ones.

However, Greg King, CEO and founder of Osprey Funds, submitted a comment to ThinkAdvisor on Friday, saying: "We are excited to be onboarded to the JPMorgan wealth platform. OBTC [the Osprey Bitcoin Trust] remains the lowest-priced publicly traded bitcoin fund in the U.S. and

we believe JPMorgan's clients will see value in the product."

In 2018, JPMorgan CEO Jamie Dimon had second thoughts about wading into the Bitcoin controversy. After earlier calling the cryptocurrency a "fraud," he said in January that he wished he hadn't dismissed the technology in such broad terms.

"I regret making" those comments, Dimon said in an interview with the Fox Business network. "The blockchain is real. You can have crypto yen and dollars and stuff like that."

In September 2017, Dimon had said Bitcoin was "worse than tulip bulbs," and threatened to fire any trader who bought or sold them for being "stupid."

He said in January 2018 that he was still not very interested in the subject, and thought government intervention could eventually hamper Bitcoin's growth and acceptance.

In 2019, JPMorgan said it was turning to crypto to modernize one of its most central businesses. The biggest U.S. bank said it developed a prototype digital coin that it planned to use to speed up payments between corporate customers. The token, dubbed JPM Coin, was based on blockchain technology.

Earlier this year, the firm was reportedly preparing to offer a Bitcoin fund to wealthy clients in the latest sign that Wall Street was warming to the largest cryptocurrency after it soared in recent months. The actively managed fund would be available as soon as this summer, CoinDesk reported in April, citing sources familiar with the plans.

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

Millennials Getting Raises Have Retiring Boomers to Thank

by Justin Fox

After decades during which employers usually held the upper hand, something feels different in the U.S. labor market. Wages are rising across the income spectrum. Workers are quitting in huge numbers. McDonald's franchisees are offering hourly workers child care and college tuition.

The COVID-19 pandemic and the unprecedented government aid in response to it are clearly part of the explanation for this, but it may also be relevant that the working-age population stopped growing a couple of years ago.

Definitions of "working-age" vary. In Bureau of Labor Statistics lingo it means everybody 16 and older, while international statistics-keepers such as the Organization for Economic Cooperation and Development and World Bank tend to define it as ages 15 through 64. I think the metric I've chosen — ages 20 through 64 — better reflects who's actually available to work in the U.S., given that it includes every age group with a labor-force participation rate above 50% and excludes all those for which it is lower.

Changes in Census Bureau population estimates are responsible for most of the volatility in the non-smoothed line above. The sharp drop in both lines in the early 1950s can be explained by the big rise during the Korean War in the number of uniformed military personnel, who are removed from the population count for labor-statistics purposes (as are prison inmates and other institutionalized people). The Vietnam War also seems to have slowed growth in the 1960s, although as the famously numerous baby boomers started turning 20 in 1966 they overwhelmed its effects.

The oldest of the boomers are turning 75 this year and the youngest 57,

so their entrance into the 65-and-older ranks has been depressing the growth of the 20-64 population for a decade now. The Census Bureau's latest population projections, made in 2017, foresaw a modest rebound in the growth rate after the boomers finished aging out, but still much slower growth than seen in the 1950s through mid-2010s.

The reality has already undershot the projections. That would seem to be due mainly to a slowdown in legal immigration during the Trump administration that turned into a near-shutdown in the first few months of the pandemic. Growth will likely continue to undershoot the projections in coming decades — barring a big increase in immigration — because birth rates have fallen faster than foreseen. The estimated 3.6 million babies born in the U.S. in 2020 was the lowest total since 1979, and given that the rate of decline increased as last year progressed, births this year will likely be even fewer.

That U.S. population growth has slowed isn't exactly news. The shrinking of the 20-through-64 population since the end of 2018 has gotten less attention, which is not surprising given that hardly anybody keeps track of the 20-through-64 population (I had to subtract the BLS's 65-and-older population estimate from its 20-and-older estimate to get the numbers). The more closely watched "prime age" population of those 25 through 54 started shrinking in 2008, a few years after the baby boomers started turning 55, resumed growth in the mid-2010s as the most-populous part of the millennial generation turned 25, and appears destined to fluctuate within a narrow band for the next few years.

Analyses of these trends, however one chooses to measure them, tend to focus on the negative implications for

economic growth, U.S. geopolitical clout, retirement-system financing and other macro issues. These are valid concerns, but focusing on them to the exclusion of all else can be misleading, as four researchers from Canada and the U.K. described in a paper published recently in the American Political Science Review.

Drawing on a large new dataset of US news content, we demonstrate that the tone of the economic news strongly and disproportionately tracks the fortunes of the richest households, with little sensitivity to income changes among the non-rich. Further, we present evidence that this pro-rich bias emerges not from pro-rich journalistic preferences but, rather, from the interaction of the media's focus on economic aggregates with structural features of the relationship between economic growth and distribution. That is, gross domestic product growth, asset prices and other aggregate measures of economic performance offer "a portrait of the economy that strongly and disproportionately tracks the welfare of the very rich," and doesn't necessarily represent the experience of everybody else.

So let's try an economic metric that explicitly doesn't track the welfare of the very rich: real hourly earnings of production and nonsupervisory employees. I measured and smoothed it the same way as with working-age population growth (that is, by calculating annual percentage growth over a rolling three-year period).

OK, so it's not exactly a lockstep relationship. But it is a relationship — with a correlation coefficient that hovers around -0.6 (on a range where one and negative one signify perfect correlation and zero none at all) if you compare population growth with wage growth four or five years later. Which doesn't prove anything, of course, but it's interesting that a similar exercise with real GDP growth delivers a

correlation coefficient of just about zero no matter how you time-shift the data.

This is also of course what basic supply-and-demand economics would predict. All else being equal, scarcer labor should mean higher prices for that labor, which in turn should spur efforts to improve the productivity of that labor through investment and innovation. All else isn't equal, and again I don't think all the worries about the negative effects of a shrinking working-age population are misplaced. Barely positive growth over the long haul is probably fine, though, and over the short-to-medium term there's room for employment to grow among working-age Americans even if the working-age population doesn't.

It's not just that the current 72.3% employment-population ratio of the 20-through-64 age group is well short of past highs. Even the employment-rate peak of early 2000 should not be seen as the upper bound, J.W. Mason, Mike Konczal and Lauren Melodia argue in a new Roosevelt Institute paper, given that big gaps in employment rates by race, gender, education and age persisted even then.

Mason, an economics professor at the John Jay College of Criminal Justice of the City University of New York, has been making a spirited case in multiple venues recently that "there is much more space for demand-led growth in the U.S. economy than conventional estimates suggest," and that the Biden administration's ambitious spending plans could bring big labor-force and productivity gains. If that turns out to be right, the stalling of working-age population growth will mainly just be a boon for workers.

Justin Fox reports for ThinkAdvisor.com, an ALM affiliate of the Daily Business Review. Contact him at jfox@alm.com.

BANKING/ FINANCE

US, China Head Into First Talks in Months Still Trading Blows

Bloomberg News

The U.S. and China barreled into their first high-level talks since March trading sanctions and rhetorical barbs, raising the stakes for the effort to stabilize strained relations between the world's two largest economies.

Deputy Secretary of State Wendy Sherman, the U.S.'s No. 2 diplomat, is set to meet Foreign Minister Wang Yi on Monday in Tianjin, about 60 miles east of the capital Beijing. The visit follows a series of Biden administration actions challenging China's red lines on what it considers its internal affairs, prompting Beijing to protest and announce fresh sanctions against Americans including former Commerce Secretary Wilbur Ross.

Sherman intends to raise concerns about human rights in places such as Hong Kong and Xinjiang while seeking to reassure Beijing that the U.S. isn't building an anti-China coalition, senior administration officials told reporters Saturday. High-level engagement is needed to ensure responsible management of U.S.-China ties and cooperation on issues of common interest, such as climate change, said the officials, who asked not to be identified because the meeting's agenda hasn't been made public.

The talks are the first between top American and Chinese diplomats since the two sides had a testy exchange in Alaska, although they have since communicated by phone and U.S. climate envoy John Kerry has spoken with his Chinese counterpart. If the latest discussions are fruitful, they could set up a meeting between Presidents Joe Biden and Xi Jinping, possibly at a Group of 20 summit in October.

"Neither side wants to appear to be softening its position after the chilly Alaska meetings," said Avery Goldstein, professor of international relations at the University of Pennsylvania.



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Washington and Beijing will have to show they can get to grips with their disagreements without appearing to domestic audiences that they are giving ground.

Washington and Beijing will have to show they can get to grips with their disagreements without appearing to domestic audiences that they are giving ground. Foreign Ministry spokesman Zhao Lijian said last week that Beijing would use the meetings to "make clear our principles and positions on developing China-U.S. relations," later warning the Americans not to try to negotiate from a position of strength: "We did not buy it in Anchorage and we will not buy this in Tianjin."

Sherman's trip is part of a broad U.S. diplomatic push in the region, as Biden attempts to extract American forces from Afghanistan and bolster Washington's frayed foreign relationships to better answer the challenges posed by China's rise. Secretary of State Antony Blinken is slated to visit India this week while Secretary of Defense Lloyd Austin is traveling to Singapore, Vietnam and the Philippines.

In Tokyo last week, Sherman along with her Japanese and South Korean counterparts discussed preserving

peace in the Taiwan Strait, a reference to China's military pressure campaign against the democratically ruled island. The statement prompted protests from China, with Zhao saying the U.S. and Japan are "stuck in the Cold War mentality" and deliberately seeking bloc confrontation and attempting to form an "anti-China encirclement."

Separately, the U.S. and numerous allies blamed the Microsoft Exchange hack to actors affiliated with the Chinese government and said Beijing's leadership was responsible for an array of "malicious cyber activities." The U.S. also charged four Chinese nationals linked to the Ministry of State Security with a campaign to hack into computer systems of companies, universities and government entities.

China and the U.S. are also at odds over the coronavirus. The White House said on Thursday China was "stonewalling" a World Health Organization probe into the origins of SARS-CoV-2, including the possibility it escaped from a lab.

Chinese officials said earlier that day there was no evidence for the theory the virus leaked from a facility in Wuhan, the city where it was first observed in humans, and that no further resources should be put into such a probe.

Sherman's visit followed behind-the-scenes wrangling, with the Financial Times reporting earlier that she had suspended her travel plans after Beijing offered only a meeting with one of Wang's subordinates. While China designated Vice Foreign Minister Xie Feng, who holds a lower rank in the ministry than Sherman does in the State Department, for formal talks, it also agreed to grant her an audience with Wang.

"As the meeting occurs in the wake of the U.S.-allies cyber-attack charges against Chinese nationals and now with China apparently rejecting a phase two WHO investigation, I suppose it's impressive that the visit to Tianjin was salvaged at all," said Goldstein, the University of Pennsylvania professor.

US Jet Fuel Glut Is Too Big for Surging Air Travel to Drain

by Jeffrey Bair and Jill R. Shah

The U.S. is swimming in so much jet fuel that even this summer's surge in air travel can't save the market.

Air traffic in the U.S. has jumped to more than 2 million passengers a day, about 78% of where it was in the summer of 2019, according to the Transportation Security Administration. That's done little to diminish the massive glut in jet fuel stockpiles, which stand at their highest seasonal level in a decade. Part of the problem is that refiners are trying to cash in on resurgent gasoline demand by raising production rates, which indirectly leads to more jet fuel output.

The global oil market can't fully recover to pre-pandemic levels until jet fuel consumption is back to normal. The U.S. has one barrel of jet fuel for every three barrels of diesel and every five barrels of gasoline in inventory, Energy Information Administration figures show, leaving the aviation sector exerting considerable influence on how much refiners can process.

"Traffic data is a false flag for the jet fuel market," said Zachary Rogers, director of global oil service at Rapidan Energy Group. "The real metric is the



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Most forecasts for the recovery in aviation place the return to pre-2020 conditions at next year or later.

quantity of international flights, which at this point has barely recovered, and there are looming headwinds."

The best indicator of the market mismatch is the widening gap between jet fuel and diesel. Typically the two products trade within a nickel of each other

but currently physical jet fuel is 18 cents a gallon less in the U.S. Gulf Coast refining hub. Most analysts say a 10-cent spread would point to the beginning of a recovery in jet fuel markets.

"Meeting gasoline demand meant swamping the market with jet fuel,

which bled into the diesel pool, as refiners can only minimize middle distillate supplies to a certain extent," said Linda Giesecke, manager of global fuels at ESAI Energy.

Most forecasts for the recovery in aviation place the return to pre-2020 conditions at next year or later. JPMorgan Chase & Co. analysts wrote in a recent note that world jet fuel consumption will be at 80% of normal after next winter.

Some airlines are still advising caution over the travel comeback, with Southwest Airlines Co. and American Airlines Group Inc. reining in optimism this week. The return of vital international business trips remains cloudy, with flights still restricted from much of Europe and the U.K. as the delta variant gains ground.

The big gains in jet fuel demand already have been made, said Rebecca Babin, senior energy trader at CIBC Private Wealth, US. The market will continue to move toward firmer footing, but the rate of change may slow, she said.

"I feel like the market really is anticipating still significant improvements, and I think they might be a little smaller than that," she said.

Jeffrey Bair and Jill R. Shah report for Bloomberg News.

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DAILY BUSINESS REVIEW

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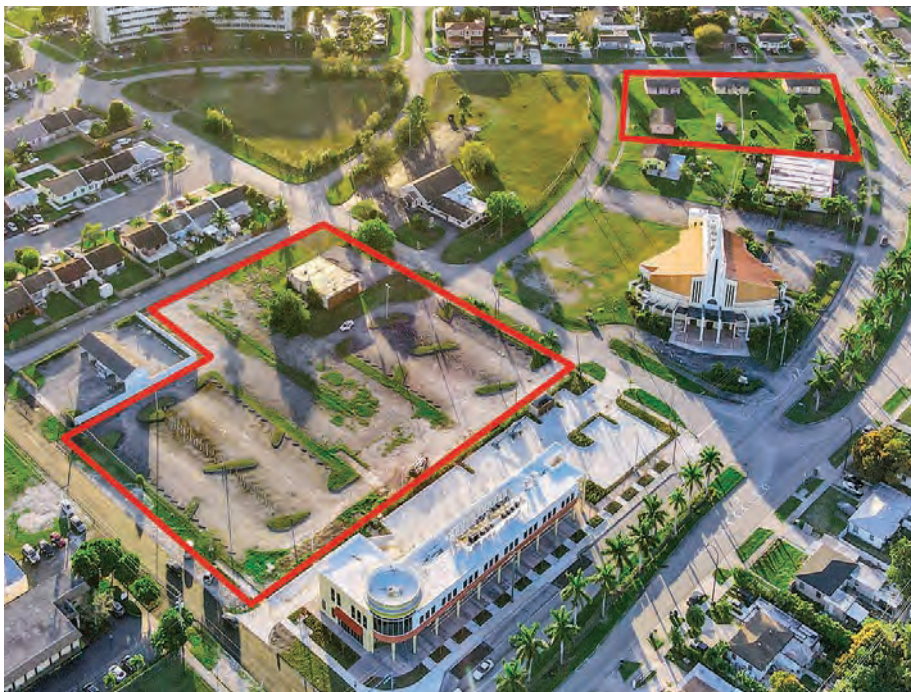
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PROFILES IN LAW

Once Living Off \$2-a-Day Budget, Miami Attorney Tanaz Salehi Now Runs an Insurance Defense Firm

by Raychel Lean

Law school is rarely a walk in the park, but for Miami insurance defense attorney Tanaz Salehi, it was the struggle of her life.

Alone in a new city, Salehi had little money and nowhere to live.

"I gave myself a budget of \$2 a day for food. I slept in my car, a Toyota Echo. I had one hub cap. I didn't have a radio," Salehi said. "It was like a mini lawnmower on wheels."

The concept of parents paying for college was brand new to Salehi, who had supported herself since she was 16. When questioned about how she'd pay for a law degree, her response was simply, "I'm going to make it work."

First, she needed somewhere to live.

"It was a place near Hialeah. Very inexpensive. I said, 'OK, I'm going to sleep in the parking lot of this building until I can make the money that I need to pay the rent and the deposit. And I did,'" Salehi said.

'HE STOLE EVERYTHING'

It took a few weeks of sleeping in the backseat, but Salehi raised enough money from multiple jobs to move in. After a stint with no furniture or bed, she became "somewhat comfortable" — stashing cash tips from Outback Steakhouse inside a diary.

But one weekend, a knock on the door changed everything. It was a stranger, Salehi recalled. A man pretending to look for somebody.

"I said, 'No, that person isn't here.' I was walking out to go to my shift and I left the diary in a clothes hamper in my closet, hidden with the money inside to deposit it in the bank," Salehi said. "He walked outside and he said, 'Can I borrow your phone?' And I said, 'Sure.'"

The next time Salehi saw his face was in a police photo lineup, after he had been arrested for robbing houses.

"He stole my clothing," Salehi said. "He stole everything that I had worked to purchase, and my diary and all the money."

Salehi still chokes up when she thinks about the following day's Outback Steakhouse shift, when floor manager Bridget asked, "What's wrong?"

"At the end of the night when we were cleaning up, all the workers had gathered around me and they gave me an envelope. They pooled their tips. They made up for the money that was taken, and it was life-changing," Salehi said. "Every time I walk into an Outback Steakhouse I'm like, 'God bless this place.' Everyone needs to get a 'Chocolate Thunder from Down Under' on me."



"I said, 'OK, I'm going to sleep in the parking lot of this building until I can make the money that I need to pay the rent and the deposit. And I did,'" said Miami attorney Tanaz Salehi, who's now managing shareholder of Salehi Boyer Lavigne Lombana.

Salehi credits mentors for getting her through law school. Among them: St. Thomas University Professor Amy Ronner, who singled her out for giving the best midterm.

"That was during a period of time where I was getting maybe two hours of sleep per night and my work was being done in the wee hours," Salehi said. "That moment where I felt completely and utterly worthless, she picked me up and said, 'You're a shining star.'"

Another professor who quietly knew Salehi's circumstances provided resources and supplies, while the Black Law Students Association donated books. By year two, Salehi had paid her outstanding balance and landed a scholarship through her grades.

ESCAPING IRAN

Now managing shareholder at Salehi Boyer Lavigne Lombana, she's a leader in her field, handling property and casualty claims. But Salehi's early years were turbulent, set in the wake of the Iranian Revolution, when the Islamic republic took over the monarchy.

Salehi's father was both a mathematics professor at the University of Tehran and a top-level employee for the exiled Shah. That made him a target, with little choice but to hide and escape.

Salehi was about 4 at the time, but still remembers trying and failing to grab her doll from under the bed as her mother snatched her up, running late to catch a flight to Istanbul. Her parents were nervous and scared at the airport, but now

it's their bravery and faith that stand out.

"We left everything behind. We left all our furniture, all the Persian rugs, the antiques, the hand-me-downs, all of our personal belongings, and we just left with a bag," Salehi said. "I'm so grateful for those experiences because now, as an adult, I look back and think of what my father and my mother went through, considering they had children that they had to tow from one country to another, and they had no idea what was next."

It turned out that Newport News, Virginia, was next, as Salehi's father had friends there from his time as a military helicopter pilot stationed in the U.S. And it was there, with Bob and Lana Bolton, that Salehi's family celebrated U.S. holidays and learned how to make American-style food.

Later, they stayed with relatives in San Francisco, where Salehi's mother made her clothes and her father aspired to work for NASA in Cape Canaveral. It didn't work out — getting security clearance after the Iran hostage crisis wasn't easy — but they moved to central Florida all the same.

Salehi's father had PhDs but started from scratch, establishing a cowboy rancher's steakhouse with his brother. Before long, Kissimmee Steak Co. was locally famous, and baseball player Nolan Ryan and actor Kurt Russell even came for a bite.

Salehi said she's still perplexed at how her father, in the pre-Google age, not only figured out how to open a business but also butcher cows and make the best steak in the county.

"I remember there was a line out the door," Salehi said. "It was really amazing because my father, who looked Iranian, big mustache and everything, he had his arms around these big, tall ranchers. And every night he'd give them a hug and they'd love his steak."

Salehi describes a man who was intelligent, charming, witty and logical — traits that led to intellectual discourse.

"He was a Middle Eastern man, but he was very progressive in the way that he raised me and what he wanted for me," Salehi said. "My ideas were always given credence and credibility, and he respected my opinion at a very young age. And as a young woman, God, how that can change your whole life."

In second grade, Salehi was drawing pictures of women with briefcases and became a leader among her siblings, despite being the youngest.

By undergraduate school, Salehi was financially supporting herself as her parents returned to Iran. She toyed with getting a PhD and teaching philosophy until her father reminded her, "You have the ability to make things move and to change things, and you have to be able to do that in your profession. I see you as a lawyer."

'WE'RE IN'

Salehi gravitated toward insurance defense work, starting a first-party property division at a large firm. But eventually, the team felt adrift, stifled by bureaucracy and red tape. It was at their favorite sushi restaurant that they considered starting a defense firm — an exciting but terrifying concept.

"I said, 'Is everyone understanding that this is going to be really, really hard? I'm OK with adversity. I don't mind being poor. Are we OK with that?'" Salehi said. "And they said, 'Yeah, we're in.'"

For Salehi's law partner Oscar Lombana, who never planned to start a firm, it all came down to his confidence in her.

"The only reason I decided to do it was because she was involved. I know whatever she's going to do is going to lead to success just because of the sheer tenacity and will that she has in her work," Lombana said. "We're very structured, thanks to her. It's three male partners and one female partner, and she's really the dominant presence in the room."

The firm credits its success to mentors, including Gregg Koff, Ray Cook, Melissa Hill, Jeff Hershman, Stacey Giuliani and Mohammad Sherif, noting their wisdom and faith kept the team going.

Adversity is what allows successful people to maintain success, the way Salehi sees it.

"If you're going through something ... create almost like a documentary in your brain of a time when you struggled and a time you went through adversity. Create the vignette in your mind. And when you're in that moment where you're lacking confidence or you feel unworthy, play that moment back and just keep in mind that you got through that," Salehi said. "There are moments when you wake up in the morning and you're like, 'I'm not going to make it.' But you've felt that way before and you made it."

Raychel Lean is ALM's Florida bureau chief, overseeing the Daily Business Review. Email her at rlean@alm.com or follow her on Twitter via @raychellean.

TANAZ SALEHI

Born: Tehran, Iran, 1981

Education: St. Thomas University, J.D., 2007; University of Florida, B.A. in philosophy, minor in criminology, 2001

Experience: Managing partner, shareholder, Salehi Boyer Lavigne Lombana, 2019-present; Business unit leader, partner, Kelley Kronenberg, 2010-2019; Attorney, Quintairo, Prieto, Wood & Boyer, 2009-2010, 2012-2013; Vernis & Bowling, 2007-2010.