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IN BRIEF

As Regulators Monitor Deutsche Bank, US GC Moves Into Global Anti-Crime Role

Deutsche Bank continues to shuffle its internal leadership focused on legal and regulatory issues, following several years of financial crime allegations and fines by U.S. and German authorities.

Joseph Salama, who was the bank's U.S. general counsel, will become the global head of anti-financial crime (AFC) as well as its group anti-money laundering officer, effective July 1. He will work out of the bank's New York and Frankfurt offices. In the new role, he will report to Stefan Simon, the bank's chief administrative officer and become a part of the executive committee.

Salama will replace the bank's current head of anti-financial crime, Stephan Wilken, who has served in that role since 2018. According to a memo shared with employees on the change, Wilken will remain with the bank, but it is not clear what role he will have within the organization. It is also not clear who will be replacing Salama as the U.S. general counsel.

Joseph Salama

Salama was not available for comment Thursday. In the memo to employees, Simon noted Salama's experience handling some of the regulatory matters the company has faced.

"In recent years, Joe has negotiated almost all of our major AFC-related legal settlements and has been a key contact for our monitors as well as for regulators and enforcers worldwide," Simon said.

The move comes shortly after the bank made settlements with the U.S. Department of Justice and saw enhanced regulations from Germany's financial regulator, BaFin.

In April, BaFin ordered Deutsche Bank to make greater safeguards to prevent money laundering. This was an additional measure, following BaFin's 2018 order installing KPMG as a special monitor to oversee the bank's progress on money laundering controls.

In 2018, BaFin accused the bank of money laundering for criminal organizations in Estonia. Criminal charges against the bank were dropped, but German prosecutors ordered the bank to pay $15.8 million in fines for failing to flag suspicious activity.

And in the U.S. earlier this year, Deutsche Bank was fined over $130 million by the U.S. Department of Justice to settle violations of the Foreign Corrupt Practices Act and allegations of fraud.

The Justice Department alleged that between 2009 and 2016, the bank knowingly maintained false records to conceal payments to a business development consultant who was acting as a proxy for a foreign official. The payments to the consultant were actually bribes, prosecutors alleged.

Simon, in the memo to employees, noted that the anti-financial crime function remains "critically important."

"Regulators around the world vigilantly monitor the progress we have made, and we are working diligently to comply with the requirements," Simon wrote.

A spokesperson for Deutsche Bank did not respond to questions on the structure of the legal department and the reasoning a leadership change in the anti-financial crime group. The in-house legal positions the bank is hiring for on its website are not specifically for compliance or anti-financial crime.

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INSIDE LAW JOURNAL

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Gibson Dunn Entitled to Arbitrator's $700K Award for Unpaid Legal Fees, Court Rules

BY JASON GRANT

A STATE appeals court Thursday ruled that Gibson, Dunn & Crutcher should receive an arbitrator's award of more than $700,000 in unpaid legal fees from former client World Class Capital Group, rejecting several of the investment firm's arguments, including that it never entered into a written engagement for services with Gibson Dunn.

DIEGO M. RADZINSCHI / ALM

World Class Capital argued that it didn't need to pay the attorney fees at issue because Gibson Dunn had "sued the incorrect parties."

"The law and public policy upon which respondents [World Class Capital Group and World Class Acquisitions] rely is the requirement that an attorney provide a client with a written letter of engagement, with their main argument being that an attorney's claim for breach of contract is unsustainable against a client who did not enter into a written engagement," wrote the Appellate Division, First Department court in an opinion that affirmed the legal fees award for Gibson Dunn, which in 2021 placed 12th on The American Lawyer's Am Law 200 ranking of firms.

The unanimous First Department panel then wrote, while citing Matter of Falzone (New York Central Mutual Fire Insurance), "Even if the arbitrator had made an error of law or fact in concluding that respondents had breached the retainer agreements, this alone would not justify vacating the award."

The panel did not make clear whether it believed the arbitrator had, in fact, made such an error, but it did appear to be buttressing a point it made earlier in the opinion that, under applicable law, it's rare that an arbitrator's substantive decision can be overturned.

"An arbitral award will be overturned only in the 'extremely limited' instances where it 'violates a strong public policy, is irrational, or exceeds a specifically enumerated limitation on the arbitrator's power,'" wrote the panel in its decision, citing Matter of Geo-Group Communications v. Jaina Systems Network.

The panel, composed of Justices Rolando Acosta, Troy Webber, Tanya Kennedy and Martin Shulman, affirmed Manhattan Supreme Court Justice Andrea Masley's 2020 decision granting Gib-

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Online

The First Department decision is posted at **nylj.com.**

RICK KOPSTEIN

Older state Supreme Court judges returning to the bench may not be placed in their original courts. Above, Manhattan Family Court.

Judge Association Decries Potential New Posts in Housing, Family Courts

BY RYAN TARINELLI

NEW YORK'S court system says older state Supreme Court judges returning to the bench could be placed in New York City housing or family court, but that idea is running into sharp criticism from a key judicial association.

The older state Supreme Court judges, who were forced off the bench due to an austerity measure, will be put in whichever court is most helpful in managing the court system's caseload, said system spokesman Lucian Chalfen.

That plan is not sitting well with the Association of Justices of the Supreme Court of the State of New York.

"The message was clear: Don't come back. We're going to send you somewhere," said Queens Supreme Court Justice Carmen Velasquez, who serves as president of the group.

There's no reason for the ousted judges to not return to their original courts, she said. Potentially shuffling them to New York City family or housing court is a slight to the state Supreme Court judges, she said, and the move

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'Bound and Handcuffed': 2nd Circuit Weighs Connecticut's Appeal of Order Lifting Pandemic Measure on Gun Licenses

BY TOM MCPARLAND

A LAWYER for the state of Connecticut asked a Second Circuit panel on Friday to reinstate an executive order that suspended fingerprinting for firearm licenses amid the COVID-19 pandemic, after a federal judge nixed the measure as unconstitutional.

Assistant Attorney General Stephen Finucane, argued that the June 2020 preliminary injunction had "bound and handcuffed" Gov. Ned Lamont and the state's top public safety official as Connecticut was preparing to combat a second wave of coronavirus infections last fall.

While the governor had no immediate plans to reinstate the order, Finucane argued, the district court's order would make it harder for the governor to reimpose similar restrictions in the future.

"This was a big deal at a very volatile time," the attorney told a three-judge panel of the U.S. Court of Appeals for the Second Circuit.

He also raised concerns that the plaintiffs in the case lacked standing to bring the suit in the first place, arguing that none had attempted to get their fingerprints taken, a required step for obtaining a handgun license in the state.

TOM GANNAM/AP

Connecticut suspended fingerprinting for firearm licenses amid the COVID-19 pandemic.

Attorney David Jensen, who argued for the plaintiffs, however, argued that the emergency order had the effect of preventing residents from legally obtaining firearms, and pushed back on the notion that his clients had not been harmed.

"I'm saying that they wanted [fingerprinting] but given that defendants had announced unequivocally that they weren't doing it, did they need to go down there and knock on the locked door and take video of it," Jensen said.

U.S. District Judge Jeffrey Alker Meyer of the District of Connecticut lifted Lamont's order last June, finding that the indefinite length of the suspension violated the U.S. Constitution.

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Brooklyn Federal Judge Tosses Securities Class Action Alleging Volkswagen 'Collusion' With German Automakers

BY TOM MCPARLAND

A BROOKLYN federal judge has dismissed a proposed securities class action claiming that Volkswagen had misled its investors about alleged collusion with other major German automakers.

U.S. District Judge Dora L. Irizarry of the Eastern District of New York ruled Thursday that the plaintiffs had failed to allege that any of the supposedly anti-competitive conduct between VW and other members of the so-called "Group of Five" cartel of German carmakers had violated foreign antitrust laws.

"Plaintiffs have not alleged adequately that Volkswagen engaged in any unlawful conduct. Thus, they fail to state a claim for securities fraud," Irizarry wrote in a 47-page opinion that dismissed the suit with prejudice.

Investors had sued VW and its board members in 2017, claiming that the company's public statements regarding its competitive posture ran contrary to the reality that it had "wrongfully colluded" with the other firms for decades.

BLOOMBERG

Volkswagen secured dismissal of a lawsuit, arguing that plaintiffs could not support a class action by repeating unproven allegations.

The filing followed VW's disclosure in July of that year that long-running talks among German automakers on car technology may have breached cartel rules. Later that same month, European Union regulators opened an investigation of the group, which also included Daimler, BMW, Audi and Porsche.

The company's stock dipped on news of both actions, according to the complaint.

Volkswagen, through its Sullivan & Cromwell attorneys, had moved to dismiss the lawsuit, claiming, among other things, that plaintiffs could not support a securities-fraud class action by

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Online

The Eastern District decision is posted at **nylj.com.**

New York Law Journal Inside

The Latest Big Four-Law Firm Alliance Follows Tested Model. Will EY Go Next?

BY DAN PACKEL
PHILADELPHIA

KPMG last week became the third member of the Big Four to ink an alliance with a U.S. law firm, when it partnered with Ogletree, Deakins, Nash, Smoak & Stewart.

Now, as observers carefully watch for any moves by EY—the only Big Four firm that hasn't yet sealed a partnership with Big Law—the benefits of such arrangements are coming into focus. The law firm participants and legal industry consultants say those benefits include global scale and more client business for each side.

Immigration firm Berry Appleman & Leiden was the first mover, linking up with Deloitte in June 2018 in a deal that also saw the accounting firm acquire its operations outside of the United States. Next came Am Law 100 firm immigration giant Fragomen, which announced a tie-up with PwC in September of that year. And in May 2019, Deloitte found another U.S. partner, labor and employment and health care specialists Epstein Becker & Green.

"Obviously we see that as proof of concept," Epstein Becker managing partner Jim Flynn said of the Ogletree-KPMG alliance. "I think the marketplace has seen the advantages of it, many of which we've demonstrated."

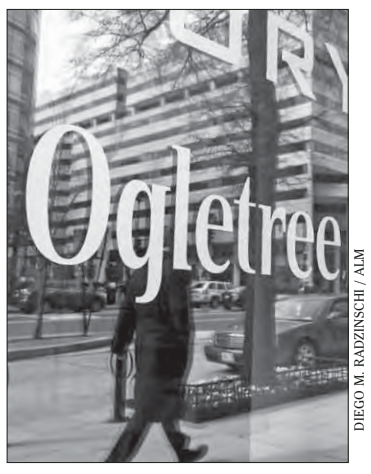
In particular, Flynn pointed to the extra business after partnering with Deloitte. "We've opened upwards of dozens and dozens of new clients on our side, and certainly forwarded as just as many to Deloitte," Flynn said in an interview. **"**It's certainly brought in revenues exceeding any direct expense we put into it."

In general, Flynn said his firm's alliance with Deloitte has allowed both parties to deepen and expand their client base over the past two years, owing to the complementary nature of their capabilities.

"We've been able to take some relationships that were very focused, either in one particular geography or one particular subgroup, and had opportunities to expand that, because we were able to show an international element on our side," he said. Conversely, Deloitte has been able to demonstrate U.S. capabilities that can been coordinated with what it's doing around the world. "In each direction, it allowed us to introduce some new opportunities to them, and them to introduce some new opportunities to us," he said.

Now Ogletree and KPMG are looking for some of the same opportunities. When Ogletree announced its partnership with KPMG Law's German arm last week, the law firm's managing shareholder Matt Keen said the alliance was meant to provide both entities' clients with access to tech-enabled immigration and labor and employment coverage around the world.

"I think it's highly strategic on Ogletree's part," said Zeughauser Group law firm consultant Kent Zimmermann. "The Big Four, as others have observed, are the single biggest underestimated threat to law firms, certainly outside the U.S., but increasingly in certain areas over time in the U.S. That would include areas where the Big Four, and the scale and resources they bring, could make them competitive with some things firms do outside of the practice of law."



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SHUTTERSTOCK

When Ogletree announced its partnership with KPMG Law's German arm, the law firm's managing shareholder Matt Keen said the alliance was meant to provide both entities' clients with access to tech-enabled immigration and labor and employment coverage around the world.

That includes helping companies move and organize their employees across jurisdictions, like KPMG does through its Global Mobility Services networks.

"This one makes a lot of sense to me, particularly because they [KPMG and Ogletree] don't have a lot of overlap," Zimmermann added. "If the firm had a big international platform where it was competitive with KPMG, that would make less sense."

That absence of overlap has been the case in two of the three prior alliances. BAL offloaded offices in eight countries to Deloitte as part of their arrangement, eliminating any duplication; Epstein Becker is solely located in the U.S.; and Ogletree only has international outposts in Canada, the U.K., Mexico, France and Germany. Fragomen, with an international presence spanning six continents, is the exception here.

All these alliances have involved firms that target specific practices. The field of such law firms immediately open to a similar arrangement will be limited, as recent success in the Am Law 200 will mute interest in bold new moves.

"Mostly it's going to be firms that have a highly specialized practice," said consultant Brad Hildebrandt. "The legal profession had such a fantastic year, there's not a whole of dramatic interest in most firms in aligning with the Big Four."

Benefits and Challenges

Yet, the Epstein Becker-Deloitte tie-up has been validated over the course of the COVID-19 pandemic, during which the two entities have collaborated in helping a number of multinational companies first move out of the office and then later plan the phasing back of office work.

And remote work at Epstein Becker had the effect of » Page 6

Jones Day Loses Bid To Squeeze Rival Orrick Over Firm's Paris Partner Poach

BY MIKE SCARCELLA
WASHINGTON, D.C.

A DISTRICT of Columbia judge has refused to force Orrick, Herrington & Sutcliffe to disclose certain internal information to Jones Day, which accused a former longtime practice-leading partner in Paris of breaching his partnership agreement after he departed for the rival law firm two years ago.

Jones Day lawyers asked a District of Columbia Superior Court judge in November to enforce an arbitral subpoena against San Francisco-based Orrick as part of an underlying proceeding involving the former partner. Many of the filings in the court case were redacted, leaving very little information available publicly. A judge sealed a telephonic hearing in April, denying ALM the opportunity to listen to the proceedings.

A newly docketed court order now has revealed for the first time the contours of the fight between the two major law firms.

Last June, the new filing showed, Jones Day filed a previously unreported arbitration action against a former partner in Paris named Michael Bühler, who had spent more than 20 years at Jones Day and had served at one point as the co-leader of the international litigation and arbitration practice. He joined Orrick in late 2019 as a partner, arriving with Nicole Dolenz, formerly a Jones Day counsel. Benson Legg, a retired chief judge of the U.S. District Court for the District of Maryland, was named the arbitrator in the Jones Day action.

The newly filed D.C. Superior Court order against Jones Day offered only a glimpse of the underlying allegation and left many questions unanswered about a rare public tangle over lateral hiring.

Law firm partnership agreements often contain arbitration clauses that keep employment-related disputes behind closed doors. Fluctuation among partner ranks at major firms is not uncommon, and firms broadly try to use arbitration to "quickly and efficiently resolve internal disputes in a way that protects confidential information and minimizes disruptions to client service," one Big Law firm told the U.S. Supreme Court in 2019.

Lawyers for Jones Day, including Michael Shumaker, the firm's administrative partner, and partners Caroline Littleton and Christopher Thatch, did not return a message seeking comment. Lawyers for Orrick, including Williams & Connolly partners Ana Reyes and John Villa, declined to comment Thursday. An email to Bühler was not immediately returned.

A case manager working with Legg said the Bühler arbitration was confidential and she could not provide details about the status of the proceeding. A spokesman for Orrick said the firm was declining to comment.

At Orrick, Bühler jointly leads the international arbitration practice with former U.S. Ambassador Charles Adams. "Client demand for international arbitration support is growing across all three sectors on which we focus—and we're committed to leadership in this important market," Orrick Chairman and CEO Mitch Zuklie said in 2019 announcing the arrival of Bühler and Dolenz.

Bühler, according to the newly filed court order, "transacted his employment arrangement with Orrick around the time he was representing a Jones Day client before an arbitral tribunal." An Orrick partner was a member of the arbitral tribunal. Jones Day asserted that Bühler did not tell the firm about a potential conflict of interest.

JASON DOILY/ALM

A newly filed D.C. Superior Court order in a case Jones Day brought against Orrick offers a rare public glimpse at a confidential arbitration proceeding over the scope of a partnership agreement.

One of the parties involved in the arbitration—the court ruling did not reveal any client names and attorney names—questioned the fitness of the arbitrator to remain on the panel, and the arbitrator was replaced. The arbitrator's name also was not revealed in court papers.

Jones Day has accused Bühler of a material breach of his partnership agreement and has argued he must forfeit any compensation that is due to him. Jones Day also contends that the firm is entitled to a "set-off of all costs incurred and damages arising out of Mr. Bühler's purported actions."

Legg, the arbitrator, in September issued a subpoena requiring Orrick to produce certain documents and to appear for a virtual hearing. Court filings do not show what documents Orrick was required to disclose to Jones Day.

The Williams & Connolly team for Orrick asked D.C. Superior Court Judge Alfred Irving Jr. to spurn Jones Day's effort to enforce the arbitral subpoena. Irving concluded he did not have "general jurisdiction" over Orrick and could not therefore compel the firm to respond to the subpoena Legg issued.

Jones Day "cites to the court's broad authority to enforce discovery requests," Irving, a veteran judge on the Superior Court bench, wrote. "This wide authority is, of course, appropriately exercised in active litigation before the court, where jurisdiction lies."

Irving also concluded that the terms of Jones Day's partnership agreement require a U.S. district judge, and not a state or local judge, to weigh arbitral-related enforcement matters. He suggested Jones Day could file an action in a federal trial court seeking to enforce an arbitral subpoena. It was not clear whether or when Jones Day might try to do that.

"As Orrick astutely noted, Jones Day could have designated the District of Columbia Arbitration Act as the governing law," Irving wrote, dismissing Jones Day's case. "The agreement's terms are clear and the court will not disturb them."

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COMMENTARY

Regulatory Uncertainty Makes Crypto Deals Vulnerable to Litigation

BY KAMAL GHALI AND MATTHEW SELLERS

THE MARKET for cryptocurrencies is exploding. Since its launch, bitcoin has skyrocketed in value. Ethereum is trading at an all-time high. And some commentators speculate that altcoins, or other cryptocurrencies, could be poised to challenge bitcoin's market dominance in the near future. For example, dogecoin, a relatively obscure cryptocurrency until its relatively recent explosion in value, momentarily enjoyed a market cap that rivaled Twitter.

While a handful of cryptocurrencies have become household names, the world is awash in digital coins. There are over 4,000 cryptocurrencies that can be bought, sold or traded on various exchanges and platforms, all with varying degrees of risk. The rise of these other digital coins may create significant investment opportunities. But regulatory uncertainty about the status of cryptocurrencies leaves economic transactions based on cryptocurrencies subject to regulatory attack and private litigation.

While the U.S. Securities and Exchange Commission has indicated that the decentralized nature of the networks on which bitcoin and ethereum operate make those currencies "assets" and not "securities," it has offered little concrete assurance when it comes to other cryptocurrencies. Whether a cryptocurrency is a security is a fact-intensive question, depending on things such as the way the coin is marketed, the "use" (if any) of the coin, how issuers use proceeds from coin sales, and whether a secondary market exists. That uncertainty raises the prospect that regulatory agencies, or private litigants, will attempt to unwind and attack cryptocurrency deals on the ground that they constitute an illegal sale of securities.

The SEC's recent case against Ripple Labs Inc. is a case in point. The case, which is being supervised by the SEC's Cyber Unit, alleges that since 2013, Ripple sold over 14.6 billion units of a cryptocurrency named "XRP" in exchange for over $1.38 billion. From the SECs standpoint, XRP isn't an asset; it's a "security." And because it's a security (and not an asset), Ripple's failure to file a registration statement with the SEC meant that its sale of XRP to investors was an illegal offering of securities.

For its part, Ripple's counsel has called the SEC "dead wrong" in its view that XRP constitutes an illegal security. But this is not the first time the SEC has targeted a cryptocurrency for enforcement action. And the sheer existence of the SEC's suit injects a level of regulatory risk when it comes to cryptocurrency transactions involving digital currencies other than bitcoin or ethereum.

Under federal law, illegal securities contracts are void. And in virtually every state, a contract to do something illegal is » Page 8

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Biden's First Judicial Picks Clear Senate Committee Over Some GOP Opposition

BY JACQUELINE THOMSEN
WASHINGTON, D.C.

THE SENATE Judiciary Committee on Thursday voted to advance all of President Joe Biden's first judicial nominees, despite some Republican opposition to a pair tapped for seats on the federal courts of appeals.

U.S. District Judge Ketanji Brown Jackson and Candace Jackson-Akiwumi, tapped for seats on the U.S. Court of Appeals for the D.C. Circuit and the Seventh Circuit, respectively, were among the nominees cleared by the committee. Jackson was voted out 13-9 and Jackson-Akiwumi had a 12-10 vote.

Sen. Lindsey Graham, the former chairman of the Judiciary Committee, was the only Republican to vote in favor of both nominees; his votes were delivered by proxy, through Sen. Chuck Grassley. Sen. John Cornyn joined Graham in supporting Jackson's nomination, but opposed Jackson-Akiwumi. The rest of the Republicans voted against the pair.

Senate Judiciary Committee chairman Dick Durbin began Thursday's hearing by lauding the picks. "These nominees will bring to the bench outstanding credentials and experience in a variety of professional perspectives that have been underrepresented many times in the judiciary," Durbin said. "And of critical importance, these nominees fundamentally understand the role a federal judge plays: Apply the law to the facts without consideration of politics or ideology. So we hope they can make even-handed, fair-minded judges."

But Grassley, the top Republican on the panel, said he would oppose the appellate nominations. "Both Judge Jackson and Miss Jackson-Akiwumi have impressive backgrounds, but neither satisfied me that they will adhere to the Constitution as originally understood," he said. Grassley said Jackson had said in the past that she did not believe in a "living" Constitution, but would no longer say whether that was her belief.

Grassley said that for Jackson-Akiwumi, he found her stances on *Roe v. Wade* and the Second Amendment to be "concerning," as well as parts of her record as a public defender. He said he was also concerned about whether she would apply Seventh Circuit and Supreme Court precedent.

If confirmed by the full Senate, Jackson and Jackson-Akiwumi would bring public defender experience to the bench. The judge, currently sitting on the D.C. district court, previously worked on appellate cases at the D.C. public defender's office. Jackson-Akiwumi, now a partner with the boutique firm Zuckerman Spaeder, spent a decade as a public defender in the Northern District of Illinois.

The committee on Thursday also voted in favor of three of Biden's judicial nominees for district courts: Zahid Quraishi and Julien Neals for the New » Page 6

Correction

The letter to the editor "New York's Court of Appeals Must Reflect Our State's Diversity" published on May 20 should have stated that women have twice held the majority on the New York Court of Appeals and that the judges ruled 4-3 in *Rivera v. State of New York.*

Expert Analysis

PROFESSIONAL RESPONSIBILITY

From Super Lawyers to Stealing Clients

In this article we review a number of recent developments touching on diverse parts of the professional responsibility universe, from conflicts of interest issues that arise when a judge's former law clerk works in a law firm with a matter in front of the judge for whom the law clerk formerly worked, through a case that considers when departing lawyers tortiously interfere with their former firm's business, to the latest legislative efforts to remedy the inequitable treatment of New York lawyers who reside outside the state.

Beginning in the New York State Senate, a bill was passed nearly unanimously earlier this month repealing §470 of the New York Judiciary Law. Readers of this column may recall a series of articles bemoaning the unfairness of the rule requiring New York-admitted lawyers in good standing but residing outside of the state to maintain a physical office in New York while no such rule applies to lawyers who reside in the state. In *Schoenefeld v. Schneiderman* (11-4283-cv, April 22, 2016), the U.S. Court of Appeals for the Second Circuit declined to find the rule unconstitutional. However, the COVID-19 pandemic has focused a spotlight on the problem. As reported in Law360, bill sponsor Sen. Brad Hoylman, D-Manhattan stated that "New York's laws ought to reflect the technological advancements of the last century, which make it possible for licensed attorneys to fully perform their services from outside of New York." The bill had the strong support of the New York State Bar Association, which noted that today upwards of 25% of New York admitted lawyers live outside the state. The bill now moves to the New York State Assembly where hopefully it will receive the same level of approval.

In *Ginarte Gallardo Gonzalez & Winograd v. Schweitzer*, 2021 NY Slip Op 02492, (April 27, 2021), the Appellate Division, First Department, upheld the lower court's denial of a motion to dismiss a claim of tortious interference

By **Anthony E. Davis**

brought by a law firm against several of its former lawyers. The departed lawyers were alleged to have accompanied clients of the law firm to various medical appointments and during the time spent with the clients made allegations as to unethical behavior of the principal of the law firm and expressly induced the clients to replace the law firm with the lawyers' firm going forward. The decision is notable both because it finds that such a claim may be viable if, in the course of the alleged misconduct, the former lawyers violated §§479 and 482

> Beginning in the New York State Senate, a bill was passed nearly unanimously earlier this month repealing §470 of the New York Judiciary Law.

on the New York Judiciary Law. Section 479, "Soliciting Business on Behalf of an Attorney" provides:

> It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal services, or to make it a business so to solicit or procure such business, retainers or agreements.

And §482 "Employment by Attorney of Person to Aid, Assist or Abet in the Solicitation of Business or the Procurement Through Solicitation or a Retainer to Perform Legal Services" provides:

> It shall be unlawful for an attorney to employ any person for the purpose of soliciting or aiding, assisting or abetting in the solicitation of legal business or the procurement through solicitation either directly or indirectly of a retainer, written or oral, or of any agreement authorizing the attorney to perform or render legal services.

In its decision, the court noted that in order to establish tortious interference, the plaintiff would have to show both the underlying elements of the tort and that the alleged conduct constituted a crime or an independent tort. The ingredients of the tort were spelled out in the lower court's decision as follows: "[T]here must be a valid contract, the defendant's knowledge of that contract, the intentional and improper procurement of a breach, and damages" and the "interference must be intentional, not merely negligent or incidental to some other, lawful, purpose." The Appellate Division upheld the lower court's conclusion that since violation of both of these sections of the Judiciary Law is a misdemeanor, upon proof of violation of either of these sections of the statute and the other elements of the tort, the plaintiffs may prevail.

As is clear from both the lower court's ruling and the Appellate Division's decision, it is this added element of criminality which makes the tort applicable in a situation where, absent the independent crime or tort, the actions of the lawyers would not be tortious. As the lower court expressly pointed out, absent this element, "a client may discharge his or her attorney at any time, with or without cause"… because "a client's retainer agreement with an attorney constitutes a contract that is terminable at-will" and such agreements "are classified as only prospective contractual relations, and thus cannot support a claim for tortious interference with existing contracts." Thus, "[a] competitor who lawfully induces termination of a contract terminable at will commits no ethical violation and does not produce a result contrary to the expectations of the parties." It is the addition of the element of the independent tort or crime which gives rise to a cause of action for tortious interference with a terminable

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MEDICAL MALPRACTICE

The Cause-in-Fact Medical Malpractice Defense

Much has been written in the general field of tort law about the cause-in-fact defense as contrasted with the legal concept of proximate cause, but the cause-in-fact defense is underemployed in medical malpractice cases tried in New York courts. The distinction between cause-in-fact, also referred to as "actual cause", and proximate cause is frequently important enough to present this defense opportunity for the malpractice defendant where situationally appropriate. In most cases, the plaintiff retains the burden of proving through expert testimony that the defendant has departed from the accepted standard of care, and separately that the departure or departures were a proximate cause of the injury complained of, warranting an award of damages to the plaintiff. Reliance upon expert testimony to establish a prima facie case of causal connection is a necessary element of any malpractice claim.

The difference between cause-in-fact and proximate cause is well illustrated by the noteworthy decision of the West Virginia Supreme Court in *Jones v. Virginia Railway*, 115 W.Va. 663 (1934). In that case, there had been an accident at a railway crossing equipped with lights and a gong to warn those crossing the tracks of oncoming trains. There was also a local ordinance which required that the railway print the word "stop" conspicuously on the roadway, which had not been done prior to the accident. Although there was a failure to mark the pavement as directed by ordinance, the dismissal of the case as a matter of law was upheld. The court reasoned that with operational lights and a gong, there was no factual issue of proximate cause to submit to the jury. As a matter of law, the negligence of the defendant was not the actual

By **John L.A. Lyddane**

cause of the accident. The court held that even if the ordinance had been complied with, the injuries would not have been prevented by markings on the street. Although the jury may well have reached the same conclusion, a valid legal defense is always preferable to reliance on a jury's determination of factual issues.

New York courts have recognized the important distinction between actual cause as a legal issue and proximate cause as a factual question for many years.

> New York courts have recognized the important distinction between actual cause as a legal issue and proximate cause as a factual question for many years.

In *Monahan v. Weichert*, 82 A.D.2d 102 (4th Dep't 1981), the Appellate Division focused on the difference between the effect of the patient's disease process and the alleged negligence of the surgeon in a case where a patient had lost mobility following knee replacement surgery. The appellate court wrestled with the mixed factual and legal character of the causation issues on the facts of that case. However, the court acknowledged that the first inquiry on the issue of causation should be the trial court's determination whether there was sufficient factual evidence to support the opinion of the plaintiff's expert that the departure of the defendant surgeon was causal to the plaintiff's claim of injuries.

The dismissal of the complaint is mandated where evidence on the issue of proximate cause is insufficient as a matter of law to create a question of fact for the jury. Where there is no evidentiary basis in the record to support the causation opinion, the opinion must be characterized as speculative and without foundation. *Lipsius v. White*, 91 A.D.2d 271, 279 (2d Dep't 1983). The question becomes which fact patterns present the opportunity for the cause-in-fact defense.

Consider the case in which two gynecologists perform a laparoscopic hysterectomy on one of their patients. The doctors maintain entirely independent practices, but they frequently assist one another in complex cases. The laparoscopic instruments are used on both sides of the patient by both surgeons. The patient sustains a ureter injury which does not manifest itself until a day after the procedure, and the patient undergoes a second procedure to repair the ureter, followed by a long, complicated course to recovery. It becomes apparent that neither the gynecologists nor the other professionals who treated the patient are able to explain how the ureter was injured, but all agree that ureteral injury is an uncommon but recognized complication of a properly performed hysterectomy.

When the case proceeds to trial, the plaintiff's expert has no other facts than those stated above. The plaintiff's expert witness explains that this is a rare occurrence, explains the various ways in which a ureter could be negligently damaged at surgery and supports the plaintiff's claim that the ureter should have been protected from injury. The witness states opinions that both surgeons departed from accepted standards of care in allowing the injury to occur, and that the departures were substantial factors in bringing about the injuries. However, based upon all of the evidence, the fact remains that injury to the ureter is a complication which can only be avoided entirely by forgoing an otherwise indicated surgical procedure. (As an aside, there is no informed consent claim, because the patient signed a consent form which specifically included injury to the bladder and ureters as listed complications).

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JOHN L.A. LYDDANE *is a partner at Dorf & Nelson who has extensive experience in jury trials of technically complicated liability matters, including professional liability cases and construction-related lawsuits.*

Only 'Balls and Strikes'? Sotomayor: Don't Ignore How Strike Zone Is Set

BY MARCIA COYLE
WASHINGTON, D.C.

DIEGO M. RADZINSCHI / ALM

"Figuring out where the strike zone is requires a value judgment. That's why different umpires have different strike zones but they all try to stay within the parameters of what their eyes give them," Justice **Sonia Sotomayor** said.

JUSTICE Sonia Sotomayor on Thursday said Chief Justice John Roberts Jr.'s oft-repeated comparison of the work of judging to umpires who call "balls and strikes" omitted a key element: defining the strike zone.

"Well, his analogy left out one important ingredient," Sotomayor said in a conversation with Rabbi Lyle Fishman for the Ohr Kodesh congregation just outside of Washington, D.C. "Figuring out where the strike zone is requires a value judgment. That's why different umpires have different strike zones but they all try to stay within the parameters of what their eyes give them."

Since his 2005 confirmation hearing, Roberts' analogy has taken on a life of its own during Senate confirmation hearings for all U.S. Supreme Court nominees. If the nominee doesn't volunteer some version of it, individual senators inevitably question the nominee about it or refer to it.

During his hearing, Roberts said: "Judges are like umpires. Umpires don't make the rules; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role." He later added, "And I will remember that it's my job to call balls and strikes and not to pitch or bat."

Sotomayor is one of the Supreme Court's most avid baseball fans, a sport beloved by her colleagues including Justices Samuel Alito Jr., Elena Kagan and Brett Kavanaugh. Sotomayor's team is the New York Yankees. One of her most famous cases as a federal district court judge involved the 1994-95 professional baseball strike. She ruled on the baseball salary cap in March 1995, ending the strike by opening day. In announcing her nomination to the Supreme Court, President Barack Obama said, "Some say Judge Sotomayor saved baseball."

Kagan, a New York Mets fan, alluded to Roberts' umpire analogy during her confirmation hearing.

"The metaphor may suggest to some people that law is a kind of robotic enterprise, that there's a kind of automatic quality to it. That it's easy, that we just kind of stand here and go 'ball' and 'strike' and everything is clear cut—and that there's no judgment in the process. I do think that that's not right. It's especially not right at the Supreme Court level where the hardest cases go." (Kagan might have been on to something. Minor league baseball has adopted a robot umpire experiment.)

Kavanaugh, whose team is the Washington Nationals, indirectly referred to Roberts' statement in his Supreme Court confirmation hearing when he said, "A good judge must be an umpire—a neutral and impartial arbiter who favors no litigant or policy."

Over the years, reams of paper have been spent by academics and media columnists dissecting the appropriateness of the "balls and strikes" analogy to the job of judges.

Sotomayor's conversation with the rabbi was a wide-ranging discussion of justice in American and Jewish law. At one point, Fishman, referring back to Sotomayor's searing dissent in a Fourth Amendment search case, Utah v. Strieff, asked her about the recent violent incidents involving law enforcement and people of color and their effects on young people.

Sotomayor called it an "incredibly important topic of discussion," but "it's one that people should not discuss or think they need to discuss as a 'Do I respect the police or not? It has nothing to do with respect for the police or not. It's a question about what do we as a society, how do we as a society want the police to interact with us—and not just to say, with Black people, or brown people or Asian people or even white people, but all of us. The parameters we set will be for all of us."

In those comments, she did not mention any specific police event, such as the killing of George Floyd in the custody of Minneappolis police, and the fatal police shootings of Andre Hill and Andrew Brown Jr.

Reflecting on the rise in hate crimes against Asian Americans, Sotomayor said she was "horrified" watching on television the attack of a senior Asian woman in New York City and how people witnessed it and did nothing. "I hope there is more conversation about that so that we become more sensitive to the need not to just stand idly by," Sotomayor said.

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Outside Counsel

Calling for a Truce: ADR in the Midst of Divorce Litigation

By **Laura E. Drager**

Many people assume that contentious litigation occurs in all divorce cases. In fact, statistics show that most divorces in New York are settled without any court appearance. In an uncontested divorce, the parties resolve all issues either by themselves, in mediation and/or with the help of attorneys. They seek court intervention solely to have a judge approve their settlement and sign the Judgment of Divorce. Litigation occurs only in contested divorce actions where the parties are unable to resolve the issues themselves. In 2019, statewide 44,531 uncontested divorce actions were filed compared to only 11,179 contested divorce actions. The percentage of uncontested and contested divorce cases in New York has remained relatively constant for the past 10 years. Report of the Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York, January 2021, Appendix G.

The New York State Unified Court System is committed to promoting the appropriate use of mediation and other forms of alternative dispute resolution (ADR) as a means of resolving disputes and conflicts peacefully. New York State Unified Court System, Alternative Dispute Resolution, Mission Statement, NYCourt.gov. The question, then, is since so many divorce actions are resolved without litigation, can ADR methods be successfully employed in divorce actions after litigation commences? The answer is yes, but only if expectations are realistic and coupled with patience.

Unlike other litigated matters involving business or personal issues, divorce litigation is dominated by intimate issues. I do not mean only the couple's sexual relations, but all aspects of the private lives of two people in a marriage that may not be known or fully appreciated by other people, even by close friends or family members. Alcoholism, drug use, affairs, visits to strip clubs, gambling (Atlantic City or investments), psychological or psychiatric issues, an inability of one spouse to deal with the partner's illness, an inability of one spouse to face a child's disability, different parenting styles, neglect, abuse, hidden assets or income, excessive debt—these are just some of the issues routinely seen in divorce litigation and cut across economic classes. To complicate matters, a divorce action may leave parties bereft of support systems they had previously relied upon. Parties lose friends when they divorce. One or both parties may have to move to a new neighborhood. A party may feel uncomfortable attending the same house of worship or be excluded from a social or country club. The anger and hurt felt by the parties may be palpable whether in court or even in virtual court appearances.

> Since so many divorce actions are resolved without litigation, can ADR methods be successfully employed in divorce actions after litigation commences? The answer is yes, but only if expectations are realistic and coupled with patience.

In some litigations, the emotions are too raw to allow productive settlement discussions. In other cases where, for instance, the parties have been separated for some time, ADR may be appropriate early in the litigation. In those cases, the parties may be in court because they cannot reach an agreement on certain issues, but they are in a good enough emotional place to be able to work together to reach solutions. Once a divorce litigation has commenced, before trying ADR, it is important to consider whether each party has accepted the reality of the divorce and is emotionally capable of discussing the issues that need to be addressed with the other party. (In reaching this decision, it is important to exclude cases where domestic violence has occurred, which typically result in a power imbalance between the parties.) In other words, have tempers sufficiently cooled for a party to make decisions based not on passion but on fact? If the temperature between the parties is too high, mediation will likely not succeed.

Even the very emotional parties may, after the passage of time and tempers subside, become more amenable to working together to find a solution to outstanding issues. Although ADR may be unproductive at an early stage, it may work at a different point in the proceedings. Recognizing the emotional shifts in a divorce action can help inform us as to whether ADR might succeed, if not immediately then perhaps later in the litigation.

Matrimonial litigations often present a range of challenging, sometimes overlapping issues. In determining custody, a court needs to decide which parent (if not both) will make legal decisions for the child, including education, medical care, religious training, and extracurricular and summer activities. A parenting schedule—the time each parent will spend with the child—needs to be set. At the same time, financial issues must be addressed, including distribution of marital assets and debt, setting of maintenance and child support. Child support is intertwined with custody since it is the residential parent who receives basic child support necessary to meet housing, food and clothing costs. Cer-

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Judges

« Continued from page 1

doesn't respect the specific experience needed to effectively operate a family or housing court.

The decision is seen as a power move by the Office of Court Administration and a way of exhibiting control over the older judges when they return, Velasquez said. It's also an indication the justices will be mistreated, she added.

Court officials forced out a total of 46 older judges months ago as a cost-cutting measure aimed at dealing with a 10 percent budget cut. The austerity move sparked a bitter fight in New York's legal community.

The dozens of older judges were denied what's called certification, which allows state judges to continue to serve on the bench after they reach 70 years old.

After lawmakers restored funding for this fiscal year, Chief Judge Janet DiFiore said they would have enough money and invited the ousted judges to renew their certification applications.

State Supreme Court judges who do receive certification usually stay in their same role, instead of being placed in a separate court, Chalfen acknowledged. But this time around, caseloads will determine whether the state Supreme Court judges are put in New York City family or housing court, he said.

"They will sit where the need will be," he said, adding that the coronavirus pandemic could bring a surge of cases for housing and family court.

Chalfen said it's not a guarantee that state Supreme Court judges will be placed in other courts, but DiFiore recently implied that in a video address.

"The welcome return of these seasoned jurists will undoubtedly increase our judicial capacity and will help us meet the increased demand for justice services in courts like the New York City family court," she said in a video statement.

The court system's Administrative Board will decide on Thursday which of the ousted judges will be granted certification, Chalfen said. If approved, the judges would return to the bench within weeks and would serve a term that goes until the end of 2022.

It's unclear how many older judges are pushing to rejoin the judiciary.

Velasquez said the court system is dragging its feet on bringing back the judges. She noted that DiFiore announced in mid-April that the older judges could renew their applications, but the Administrative Board is getting around to approving them about a month and a half later.

In response, Chalfen argued the court system moved as quickly as possible and some of the ousted judges had requested more time with the process.

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Gibson Dunn

« Continued from page 1

son Dunn's petition to confirm the arbitrator's legal fees award.

Masley, in her trial-level opinion, explained that Gibson Dunn had provided corporate transactional legal services pursuant to two different 2016 engagement letters. The first was addressed to a nonparty to the arbitration dispute and the litigation seeking to enforce the arbitrator's decision, the judge wrote, though it was signed by a designated general counsel for World Class Acquisitions.

The second engagement letter, wrote Masley, was addressed to World Class Acquisitions, was signed by a designated World Class Acquisitions general counsel, and was for legal services described as "Project Lasso" and "portfolio refinancing."

The second letter, as well as the first, provided in part, according to the arbitrator, that "the terms of this letter and the attached Terms of Retention will also apply to any additional matters that we [Gibson Dunn] may handle on behalf of WC, and any affiliate of WC for whom we also provide legal services, as to which you represent that you have the authority to bind such affiliates to the terms of this letter," Masley wrote.

During the arbitration and then in Gibson Dunn's action to enforce it, wrote Masley, respondents argued in part that it didn't need to pay the attorney fees at issue because "there was no written engagement letter" with the proper parties and that Gibson Dunn had "sued the incorrect parties."

Later in Masley's nine-page decision, she noted that the "arbitrator found that no new written engagement letter was required for the Project Lasso matter because WCA [World Class Acquisitions] had 'expressly retained' GDC [Gibson Dunn] to perform work in connection with the portfolio refinancing and previously paid GDC for the first modification of the Project Lasso loan."

In the First Department case, in which the appellate panel affirmed Masley's decision and, in effect, reviewed the arbitrator's decisions in part, Mitchell Shapiro of MCShapiro Law in Great Neck represented World Class Capital and World Class Acquisitions.

Shapiro, when reached Friday, declined to comment.

Mitchell Karlan, a Gibson Dunn partner in New York, represented the firm and also couldn't be reached.

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Letters Welcome

The Law Journal welcomes letters from its readers for publication. Letters should be of reasonable length and submitted with the understanding that all correspondence is subject to the editorial judgment. Letters may be e-mailed to adenney@alm.com .

IN BRIEF

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The bank went under a quiet reshuffling last year in the global general counsel position. In April 2020, Florian Drinhausen stepped down from his role as general counsel after just two years in the bank's top legal position. A reason was not given for his departure other than it was a "mutual agreement" between the bank and Drinhausen. He was replaced by Karen Kuder a month later.

Drinhausen accepted a role with the international firm Ashurst in its Frankfurt office, Law.com International reported Thursday.

Salama has worked in Deutsche Bank's legal department for the last 11 years. Before becoming U.S. general counsel, he served as global head of litigation and regulatory enforcement, and as Americas head of litigation. Before going in-house, he was an associate at Latham & Watkins and Cravath, Swaine & Moore.

—Dan Clark

New York AG Has 2 Lawyers Working With DA On Trump Probe

New York's attorney general said Friday that she's assigned two lawyers to work with the Manhattan district's attorney's office on a criminal investigation into former President Donald Trump's business dealings.

Attorney General Letitia James said her office is working alongside and cooperating with Manhattan District Attorney Cyrus Vance Jr. on the criminal probe. Vance's office has been investigating Trump for about two years.

James, a Democrat, said her office is also continuing its ongoing civil investigation into the the Republican ex-president and his company, the Trump Organization.

"Two of our assistant attorney generals have been cross designated as district attorneys," James said at a news conference on an unrelated topic.

It was James' first appearance before the news media since her office announced Tuesday night that its Trump investigation had evolved into a criminal matter. She did not say what prompted her office to expand its investigation into a criminal probe.

Trump issued a statement Wednesday complaining that he's being "unfairly attacked and abused by a corrupt political system." He contends the probes are part of a Democratic plot to silence his voters and block him from running for president again.

Duncan Levin, a lawyer for a witness who's cooperating with both investigations, said they've been talking to prosecutors from the attorney general's criminal division since March.

Levin represents Jen Weisselberg, the former daughter-in-law of Trump's longtime finance chief, Allen Weisselberg.

Jen Weisselberg has given New York investigators reams of tax records and other documents as they look into whether some Trump employees were given off-the-books compensation, such as apartments or school tuition.

Allen Weisselberg was subpoenaed in James' civil investigation and testified twice last year.

Vance's office has been investigating whether Trump, his company or people connected to them committed crimes relating to matters including hush-money payments for women who say they slept with Trump, property valuations and employee compensation.

James' civil investigation has centered on some of the same issues.

—The Associated Press

Times Square Shooting Suspect Says He Wasn't Even There

The man suspected of shooting and wounding three people in New York's Times Square, including a 4-year-old girl, said in a television interview that he did not know anything about it and had been in New Jersey at the time.

Farrakhan Muhammad spoke to WCJB-TV at a county jail in Florida, where he was in custody after being arrested Wednesday.

"I left New York a few days ago ... I was in (New) Jersey in a hotel," Muhammad said. He said he went to Florida to live with his girlfriend's relatives after being evicted.

Muhammad, 31, was arrested at a McDonald's in Starke, Florida. In New York, investigators say he wounded three people with stray bullets during some type of dispute involving his brother and others.

New York City Police Department Chief of Detectives James Essig said that Muhammad was identified as the gunman by his brother, who told officers he was the intended target of the shooting.

At a brief hearing Thursday in Starke, a judge gave Muhammad several days to consult with a lawyer on whether he will waive a full extradition hearing and agree to return to New York.

He's expected back in court Sunday, according to the Bradford County court clerk.

Also charged is Muhammad's girlfriend, Kristine Vergara, who was with him at the McDonalds. She is charged with being an accessory after the fact and was jailed Thursday on $500,000 bail, according to court records.

Muhammad and Vergara were ordered to have no contact with each other. She is being appointed a public defender but that lawyer's name was not immediately available.

Wendy Magrinat, a 23-year-old tourist visiting from Rhode Island, was shot in the leg. A 43-year-old woman from New Jersey was shot in the foot. The 4-year-old girl, from Brooklyn, was also shot in the leg.

New York Mayor Bill de Blasio said all three victims have been released from the hospital and are expected to fully recover.

—The Associated Press

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Verdicts & Settlements

MOTOR VEHICLE

Bus's Driver Didn't Notice Man In Crosswalk, Lawsuit Alleged

Mediated Settlement: $12,500,000

Court: Kings Supreme

Shou-Wei Zhou v. New York City Transit Authority and Elios White, No. 1526/15

Plaintiff Attorney(s): James C. Napoli, Caesar and Napoli, New York
Defense Attorney(s): Horace O. Rhoden, Armienti, DeBellis & Rhoden, New York

Facts & Allegations: At about 10:30 p.m. on April 30, 2014, plaintiff Shou-Wei Zhou, 47, a chef, was struck by, or collided with, a transit bus. The incident occurred on the northbound side of 188th Street, near its intersection at Hillside Avenue, in the Holliswood section of Queens. The bus's driver, Elios White, was executing a left turn onto the northbound side of 188th Street, from the eastbound side of Hillside Avenue. Zhou suffered injuries of an elbow, his groin, a hip, a knee, a lung, his pelvis, his sacrum, his scrotum and a testicle.

Zhou sued White and White's employer, the New York City Transit Authority. The lawsuit alleged that White was negligent in her operation of the bus. The lawsuit further alleged that the New York City Transit Authority was vicariously liable for White's actions.

Zhou claimed that the bus approached from behind him, after he had crossed about half of 188th Street, that he was struck by the front end of the bus, and that the impact occurred in a crosswalk of 188th Street. He also claimed that White had not sounded the bus's horn or braked. A witness, a motorist who had been traveling directly behind the bus as it approached the intersection, claimed that he saw the bus strike Zhou, that the impact occurred in a crosswalk, and that Zhou fell beneath the bus. Zhou's accident-reconstruction expert submitted a report in which he opined that White had not checked the crosswalk before beginning her turn.

Zhou also claimed that he had been crossing in an eastward direction, but White claimed that Zhou was walking in the opposite direction and therefore was outside of her field of view. White also claimed that Zhou was not struck but accidentally collided with the right side of her bus. White also claimed that the impact occurred far beyond the crosswalk. New York City Transit Authority investigators opined that the impact occurred some 70 feet beyond the crosswalk.

Injuries/Damages: Zhou suffered crush-induced injuries of his groin, pelvis and sacrum. The injuries included a comminuted fracture of his right iliac bone; a massive resultant hemorrhage; a fracture of his pelvis's inferior pubic ramus; an open fracture of his right hip's acetabulum, which is the pelvic cavity that receives the head of the right leg's femur; a comminuted, displaced fracture of his right sacral ala, which is one of two bony projections of the sacrum; dislocation of his right hip; damage of his femoral artery, femoral nerve and femoral vein; transection of his right spermatic cord; evisceration of the right side of his groin; lacerations of his perineum and his scrotum; and the loss of his right testicle.

Zhou also suffered a fracture of his right knee's patella, fractures of his right elbow's medial epicondyle, a pneumothorax, which involved a collapse of his right lung, pulmonary emboli and resultant pulmonary infarction. He developed colonic ileus: an obstruction of the colon.

Zhou was retrieved by an ambulance, and he was transported to a hospital. He underwent surgeries that included a tracheostomy, embolization of arterial bleeding, implantation of a vascular filter, ligation of his right spermatic cord, a repair of his left testicle, and a repair of his femoral artery, femoral nerve and femoral vein.

On May 8, 2014, Zhou underwent plastic surgery that involved debridement of his groin and his right thigh. On May 9, 2014, Zhou underwent complete amputation of his right leg. The procedure included removal of a portion of the pelvis. On May 10, 2014, Zhou underwent creation of a colostomy. He also required further plastic surgery and debridement of tissue. His colostomy was reversed on Nov. 20, 2014.

Zhou's right leg was replaced by a prosthesis. On Aug. 21, 2015, he underwent plastic surgery that involved removal of pelvic bone, to improve the fit of his prosthesis. Another such procedure was performed on April 12, 2019.

Zhou claimed that he suffers permanent residual erectile dysfunction. He also claimed that he would require extensive, lifelong medical treatment. He sought recovery of more than $9 million for future medical expenses, unspecified damages for past and future loss of earnings, and unspecified damages for past and future pain and suffering.

Result: The parties negotiated a pretrial settlement. The New York City Transit Authority agreed to pay $12.5 million. The settlement's negotiations were mediated by Allen Hurkin-Torres, of Jams.

MOTOR VEHICLE

Plaintiff Claimed Auto Accident Caused Injuries Of Spine, Shoulder

Decision: $85,000

Analdo Hernandez v. Nicole J. Cirillo, No. 152108/2019

Court: Richmond Supreme

Plaintiff Attorney(s): Richard E. Noll, The Noll Law Firm, P.C., Syosset
Defense Attorney(s): Gregory Maurer, Law Office of Nicole Lesperance, Westbury

Facts & Allegations: On Nov. 25, 2018, plaintiff Analdo Hernandez, 36, a restaurant's clerk, was driving on Kelby Street, near its intersection at Linwood Avenue, in Fort Lee, N.J. While he was proceeding through the intersection, his car's left side was struck by a sport utility vehicle that was being driven by Nicole Cirillo, who was traveling on Linwood Avenue. Hernandez claimed that he suffered injuries of his back, his neck and a shoulder.

Hernandez sued Cirillo. The lawsuit alleged that Cirillo was negligent in the operation of her vehicle. The matter proceeded to a summary bench trial.

Hernandez claimed that a green traffic signal permitted his entrance to the intersection. He claimed that Cirillo ignored a red signal.

Defense counsel conceded liability. The trial proceeded to damages.

Injuries/Damages: During the day that followed the accident, Hernandez visited Holy Name Medical Center, in Teaneck, N.J. He claimed that he was suffering pain related to the accident. He underwent minor treatment.

Hernandez ultimately claimed that he suffered herniations of his C5-6, C6-7, C7-T1, L4-5 and L5-S1 intervertebral discs, tears of annular tissue of discs of his spine's cervical region, and a tear of his right, dominant shoulder's glenoid labrum.

Hernandez underwent about six months of physical therapy, but he claimed that he suffered ongoing pain related to the accident. During the period that spanned March 2019 and February 2020, he underwent administration of a total of four epidural injections of steroid-based painkillers. Two injections were directed to his back, and two injections were directed to his neck. In October 2020, a doctor recommended surgical fusion of two levels of the cervical region of Hernandez's spine. Hernandez declined to undergo the procedure.

Hernandez claimed that he suffers residual pain and limitations that hinder his performance of physical tasks and some of his job's more rigorous duties, such as stocking heavy boxes.

Hernandez sought recovery of damages for past and future pain and suffering.

Defense counsel contended that Hernandez did not suffer a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). The defense's expert radiologist reviewed the results of a March 2019 MRI scan that addressed Hernandez's right shoulder, and the expert submitted a report in which he opined that the test's results did not depict evidence of recent trauma. The expert also opined that Hernandez suffered degenerative bulges of the C5-6 and L4-5 discs but not herniations of those discs, and the expert further opined that Hernandez did not suffer a herniation of the C7-T1 disc.

The defense's expert orthopedist opined that Hernandez does not suffer an orthopedic disability and does not require further treatment.

The parties negotiated a high/low stipulation: Damages could not exceed $90,000, but they had to equal or exceed $10,000.

Result: Justice Wayne Ozzi found that Hernandez suffered a serious injury. Ozzi determined that Hernandez's damages totaled $85,000.

MOTOR VEHICLE

Man Struck by Car's Mirror But Not Injured, Defense Argued

Verdict: Defense

Cesar M. Pimentel v. Jose A. Camacho, No. 151241/17

Court: New York Supreme

Plaintiff Attorney(s): Robert J. Bellinson, New York, NY, of counsel, Law Office of Ami Morgenstern, Queens
Defense Attorney(s): Matthew Marino, DeSena and Sweeney, Bohemia

Facts & Allegations: On March 29, 2016, plaintiff Cesar Pimentel, 38, a taxi's driver, was driving on a one-way roadway, Hamilton Place, in the Hamilton Heights section of Manhattan. Near the intersection at West 139th Street, Pimentel began passing the right side of a double-parked sport utility vehicle. One of the SUV's occupants opened one of the vehicle's doors, and the door struck and dislodged the left side-view mirror of Pimentel's car. The mirror was propelled into Pimentel's car, and it struck Pimentel. He claimed that he suffered injuries of his back, his neck and a shoulder.

Pimentel sued the SUV's driver, Jose Camacho. The lawsuit alleged that Camacho's passenger was negligent in his or her use of the SUV. The lawsuit further alleged that Camacho was vicariously liable for the passenger's actions.

Pimentel's counsel contended that the accident was a result of the SUV's passenger having failed to ensure that the door could have been safely opened.

Defense counsel conceded liability. The matter proceeded to a summary jury trial that addressed damages.

Injuries/Damages: After two days had passed, Pimentel sought medical attention. He claimed that he was suffering pain related to the accident. He underwent minor treatment.

Pimentel ultimately claimed that he suffered a tear of his left, nondominant shoulder's glenoid labrum, a tear of the same shoulder's rotator cuff, and trauma that produced bulges of his C4-5, C5-6, C6-7, L2-3, L3-4 and L5-S1 intervertebral discs. He claimed that his left shoulder developed synovitis: inflammation of joint-lining membrane.

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Judicial Ethics

Opinions From the Advisory Committee on Judicial Ethics

The Advisory Committee on Judicial Ethics responds to written inquiries from New York state's approximately 3,600 judges and justices, as well as hundreds of judicial hearing officers, support magistrates, court attorney-referees, and judicial candidates (both judges and non-judges seeking election to judicial office). The committee interprets the Rules Governing Judicial Conduct (22 NYCRR Part 100) and, to the extent applicable, the Code of Judicial Conduct. The committee consists of 27 current and retired judges, and is co-chaired by the Honorable Margaret Walsh, a justice of the supreme court, and the Honorable Lillian Wan, a court of claims judge and acting supreme court justice.

Opinion: 21-54

Digest: The Advisory Committee on Judicial Conduct cannot comment on whether Part 8 of the Rules of the Chief Judge precludes a county jury board from appointing or reappointing a jury commissioner whose spouse has assumed full-time judicial office within the same county.

Rules: Judiciary Law §§ 212(2)(l); 502(C); 22 NYCRR 8.1; 8.2; 100.3(C)(3); 101.1.

Opinion: The inquiring judge is one of three officials designated to serve on the county jury board. The current jury commissioner's term of office is expiring and the incumbent seeks reappointment by the board for another term. In the interim, however, the jury commissioner's spouse has assumed a full-time judgeship in the same county. Accordingly, the judge asks whether Part 8 of the Rules of the Chief Judge prohibits this appointment. This provision consists of two paragraphs:

> No person shall be appointed to a position in any state-paid court of the Unified Court System if he or she is a relative within the fourth degree of relationship, or the spouse of such relative, of any judge or the spouse of such judge of the same court within the county in which the appointment is to be made. The Appellate Division and Appellate Terms of the Supreme Court shall not be considered the same court as the Supreme Court for purposes of this Part (22 NYCRR 8.1).
>
> This Part shall not apply to appointments to positions in the competitive class nor to persons who have held permanent appointments in positions in the Unified Court System prior to the effective date of this Part or prior to the relative becoming a judge (22 NYCRR 8.2).

While the Rules Governing Judicial Conduct specifically require that a judge comply with the requirements of Part 8 (see 22 NYCRR 100.3[C][3]), we also note that the county jury board and the position of jury commissioner are both creatures of statute. Of particular relevance here, Judiciary Law § 502(C) states:

> The commissioner shall be an officer of all courts located in the county in which he acts and shall have authority to administer oaths or affirmations as to any matter relating to his duties under this article or the rules of the appropriate appellate division adopted pursuant thereto.

Therefore, we understand that the jury commissioner provides jurors to all the courts in the county, including (but not limited to) the specific court in which the commissioner's spouse now serves.

Here, the core issue is whether or not the jury commissioner, who serves as "an officer of all courts located in the county in which he acts" (Judiciary Law § 502[C]), will be appointed to "a position in" the same court where the current jury commissioner's spouse now serves (22 NYCRR 8.1). This presents a legal and/or administrative question beyond the jurisdiction of this Committee to resolve (see Judiciary Law 212[2][l]; 22 NYCRR 101.1).

In addition, we cannot comment on the ethical obligations of individuals other than the inquiring judge (see generally id.). Here, the inquiring judge is, in effect, seeking advice concerning the conduct of another individual (i.e. whether the jury commissioner may accept reappointment now that their spouse is a judge in the same county) and/or a separate multi-person entity that includes one or more non-judges (i.e. the jury board which serves as the appointing authority).

We must therefore decline to answer this inquiry.

Alliance

« Continued from page 2

shrinking the perceived distance between firm lawyers and Deloitte personnel. The screens and telephones that had mediated these relationships were now crucial to interactions with clients and colleagues as well.

But it's also taken time to make the right connections, owning to the massive size of Deloitte, which is home to roughly 2,500 legal professionals across over 75 countries, out of a total of 330,000 employees. Compare that to Epstein Becker, with just 300 attorneys.

"One of the challenges was really getting to understand everything Deloitte had to offer and all we had to offer the various parts of Deloitte," Flynn said. "There were certainly times where it took a while to get to know people."

That's an indication that any future alliance partners should be sure to bake in some time for a relationship to develop.

These opportunities and challenges are becoming clearer with each partnership—lessons that EY could potentially draw from. That accounting firm has been clear about its own ambitions for growing the share of legal work it handles, in recent years acquiring managed services providers Pangea3 and Riverview Law. And EY units outside of the U.S. have been hiring labor and employment lawyers, among other specialties.

"The organization aims to be a leader in enterprise legal services to large- and medium-sized corporations," EY's Cornelius Grossmann and Nicholas Bruch wrote a year ago, describing a goal of blending tech, law and consulting to solve clients' business needs.

Perhaps they can achieve this goal without an alliance partner. Or maybe they're just biding their time and taking in lessons from others. A EY spokesperson could not immediately comment on the organization's plans.

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Picks

« Continued from page 2

Jersey court, and Wilmer Cutler Pickering Hale and Dorr partner Regina Rodriguez for a seat in Colorado.

All of those nominees saw more bipartisan support: Quraishi, a former prosecutor and current magistrate judge who would be the first Muslim American Article III judge, was only opposed by GOP Sens. Ted Cruz, Ben Sasse and Josh Hawley, all three of whom opposed all of Thursday's nominees.

Sens. Mike Lee and Tom Cotton voted against Neals and Rodriguez, and Sen. Marsha Blackburn also opposed Neals' nomination.

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Perspective

'Lochner v. N.Y.' Assailed by Court of Appeals, After 116 Years

BY THOMAS F. WHELAN

Lochner, in 1905, struck down a New York law that sought to regulate the number of hours a baker could be permitted to work per week. It must be remembered that what became known as the *Lochner* era was truly the high-water mark of New York's jurisprudence and political power. New York was the largest state in population and in economic power. The Court of Appeals was the second most important court in the land. Chief Judge Alton B. Parker, who wrote the Court of Appeals decision and Associate Justice Rufus Peckhan, who wrote the Supreme Court decision, knew each other, having both served on the N.Y. Court of Appeals.

Justice Parker was a Progressive who was elected in 1897 to the Court of Appeals. Soon after writing the Court of Appeals opinion, he resigned from the bench and ran for the presidency in 1904, as a Democrat, against Theodore Roosevelt. Judge Peckhan was a former governor of New York. The attorney general of New York, Julius M. Mayer, who submitted a lean 19-page brief to the Supreme Court, was thereafter appointed to the federal bench, elevated to the Second Circuit, and upon his resignation, was replaced by Learned Hand. Chief Justice Hughes, who 30 years later drafted the opinion that overruled *Lochner*, was previously a progressive republican governor of New York.

After years of Tammany Hall rule, in 1894, Progressive Republicans took control of every branch of New York government. In 1885, the new state Legislature passed the Bakeshop Act, which mainly focused on work conditions, except for the one provision that regulated the hours of work of an employee. Seven years later, Joseph Lochner, who had emigrated from Bavaria, and after an interesting history surrounding his bakeshop, apparently had his friend, Aman Schmitter, file a "friendly" criminal complaint. It alleged that Mr. Lochner permitting Mr. Schmitter's employment for more than 60 hours in one week, during the week commencing April 19 and ending April 26, 1901. Lochner was convicted for violating the one provision of the Bakeshop Act. Before reaching the U.S. Supreme Court, Joseph Lochner's criminal conviction was hotly contested at the Appellate Division, Fourth Department, by a 3-2 vote and at the Court of Appeals, by a 4-3 vote, with both courts upholding the conviction.

The right to be free from arbitrary or unreasonable regulations, including those that interfere with the right to pursue an occupation, had been recognized by the Court of Appeals prior to the *Lochner* decision. Viewed in that light, in many ways, the opinions offered by the judges of the Court of Appeals are more enlightening and informative than the Supreme Court's reversal. Judge of the Court of Appeals, John Clinton Gray, wrote a concurring opinion that stressed that if the Bakeshop Law was limited to only the workweek restrictions, he would find the law to be invalid as an infringement of the liberty of contract. So, if he had persisted with that opinion, it is quite likely that there would be no *Lochner* era to repudiate.

The dissent by Judge Denis O'Brien noted the paternal, "class" legislation aspect of the Act, which infringed on the liberty and property rights of citizens. Then, the U.S. Supreme Court reversed the conviction of Lochner.

But often overlooked is the language set forth in the brief submitted by N.Y.S. Attorney General Meyer to the Supreme Court, which argues that the statute was a proper exercise of the police power of the state. He argued:

> Another consideration for this class of legislation in the State of New York is the fact that there have come to that State great numbers of foreigners with habits which must be changed so that in due course of time there may be that assimilation which has made so successful our previous immigrations. ...
>
> Another and final reason in support of this statute is the proper desire of the people to so safeguard their citizens that they shall be strong and healthy, for the State has a profound interest in the normal vitality of its citizens, who may be called upon to suppress riot or disorder within its borders, or to enlist in the service of their country for foreign wars whenever they may be called upon. ...
>
> The State, in undertaking this regulation, has a right to safeguard the citizen against his own lack of knowledge. In dealing with certain classes of men the State may properly say that, for the purpose of having able-bodied men at its command when it desires, it shall not permit these men, when engaged in dangerous or unhealthful occupations, to work for a longer period of time each day than is found to be in the interest of the health of the person upon whom the legislation acts.

It is based upon this reasoning, that the state argued that the propriety of the exercise of its police powers was purely a matter of legislative discretion, with which the courts cannot interfere.

Associate Justice Peckhan's majority opinion was kind when it noted the "paternalism" behind the intent of the statute. The majority detailed the numerous occupations that may fall under the state's control as the state assumes the role of *pater familias*, over every act of the individual. In an unassuming way, the majority highlights the claim that only immigrant occupations, like journeymen bakers, are the subject of such a law, when it states: "It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives."

> The dissent in 'Matter of Regina Metro.' continues the demonization of 'Lochner.' Yet, such reflexive defaulting to age-old Progressive and New Deal commentaries no longer reflects the reality of the recent U.S. Supreme Court's use of the Due Process Clause.

Importantly, then Justice Peckham concludes:

> The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose.

Then, just 30 years later, the *Lochner* era came to an end. In the midst of the New Deal's court-packing attempt, the Supreme Court, effectively overruled *Lochner* with the *West Coast Hotel Co. v. Parrish* decision in 1937. *West Coast Hotel* is often noted as "the switch in time that saved nine."

Yet recently, in the midst of the pandemic, the Court of Appeals in *Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. and Community Renewal*, 35 NY3d 332 (April 2, 2020), issued a lengthy 4-3 split opinion, concerning an amendment to the Housing Stability and Tenant Protection Act of 2019, which focused on retroactivity of potential overcharges by landlords. The High Court blasted the *Lochner* holding in extensive nonbinding *dicta*. The dissent repeatedly addressed the Supreme Court holding as follows:

> Time has not been kind to *Lochner* (citation omitted). It is regarded as one of the Supreme Court's most misguided decisions. ... With today's decision, the disgraced era of *Lochner* makes its tragic return home. ...
>
> This is *Lochner* redux: a grotesque usurpation of the legislature's role in determining economic regulation when no fundamental rights are at issue. ...
>
> The majority tries to distinguish its holding from *Lochner* by asserting that the HSTPA is retroactive whereas the bakeshop laws were prospective (citation omitted). That completely misunderstands what makes *Lochner* odious. ...
>
> Using the instant cases to re-animate the dead hand of *Lochner* requires a couple of grisly maneuvers....
>
> Our Frankensteinian role in resurrecting *Lochner* by assembling ill-fitting fragments of moribund doctrines frightens me, because it portends ill for the future.

The majority, instead of finding such language as an unfair assault on its opinion, concedes the *Lochner* analysis with the following:

> In an attempt to delegitimize our analysis by association, our three dissenting colleagues raise the ghost of *Lochner* (citation omitted), an outdated and long-discredited Supreme Court precedent that has nothing to do with retroactivity (citation omitted).... We agree wholeheartedly with the dissent that legislative judgments are presumptively constitutional and are subject to a rational basis analysis in which the policy preference of judges have no role. ...
>
> The modern rejection of *Lochner* has never been understood to require courts to abandon "fundamental principles" of fairness—not even when reviewing economic legislation.

So why has *Lochner* been so ferociously attacked for over a century? The decision commonly ranks, along with *Dred Scott* as the most discredited decision in Supreme Court history. It is even more discredited by legal scholars than the *Korematsu v. U.S.* decision, which permitted the forced detention of Japanese Americans during World War II. Over the years, constitutional scholars and now revisionist scholars have written extensively on the subject.

But does, and should, the reasoning set forth in the N.Y.S. attorney general's brief to the Supreme Court stand as the basis for such current day claims that the *Lochner* holding constitutes "a grotesque usurpation of the legislature's role in determining economic regulation."

When viewed in that light, is it the *Lochner* decision that is "odious" or the rationale offered by the state in defending the statute? Is there any doubt, as history has revealed, that a boastful foundation for the legislation consisted of stifling smaller bakeries, run by immigrant bakers, mainly of Jewish and eastern-European descent, who only needed an oven and the cheaper rent of a basement to run their family-owned bake shops? Is it the role of the state to ensure that its citizens are "strong and healthy," so the state has human capital "to suppress riot or disorder within its borders, or to enlist in the service of their country for foreign wars"? Finally, is it a profound right of the state "to safeguard the citizen against his own lack of knowledge"?

The dissent in *Matter of Regina Metro.*, continues the demonization of *Lochner*. Yet, such reflexive defaulting to age-old Progressive and New Deal commentaries no longer reflects the reality of the recent U.S. Supreme Court's use of the Due Process Clause. Is a court, in essence, to simply stand-by as "a potted plant" when confronted with a claim of an arbitrary action arising from economic legislation?

The majority holding in *Matter of Regina Metro.*, speaks of the role of the court as not "to abandon 'fundamental principles' of fairness—not even when reviewing economic legislation." So, should not the police power be balanced against an individual's liberty interest? We cannot ignore *Lochner*'s influence on the current use of the Fourteenth Amendment's Due Process Clause to protect both enumerated and unenumerated individual rights against State action.

The continued characterization of *Lochner* as a pariah, in this day and age, does little to explain why police power or economic regulations should be exempt from scrutiny of claims of governmental overreaching. As some have noted, should not courts start with the presumption in favor of individual liberty, instead of a presumption in favor of legislation? Even in the field of economic regulation, if such interferes with one's personal liberty, including the liberty of contract, should not the Courts scrutinize the Act, and see whether it really relates to and promotes the public health or the exercise of the police power by the State? Is it wrong for Courts to seek to protect fundamental liberties in general from claims of arbitrary governmental power? Anyone interested in liberty should favor judicial protection as expressed in *Lochner*.

The spirit of tolerance is elusive when discussing *Lochner*. Maybe there should be a statue of Joseph Lochner, the Bavarian immigrant baker, erected in Utica, NY, with a plaque describing his fight for not only his, but all of our individual liberty. It is the least that can be done to counter the continued gratuitous and unfair attacks that continue to besmirch his family name. Just as the Founding Fathers did, we must seriously preserve and protect our undeniable rights of life, liberty and the pursuit of happiness.

THOMAS F. WHELAN *is a Supreme Court Justice sitting in Riverhead, N.Y.*

Why These Appellate Judges Are Taking Senior Status

BY JACQUELINE THOMSEN
WASHINGTON, D.C.

A NUMBER of judges on federal appeals courts in the past few weeks have announced plans to take senior status—but the exits aren't expected to result in major ideological changes on those courts.

Judges Richard Paez and William Fletcher on the U.S. Court of Appeals for the Ninth Circuit have both announced plans to step back from their seats once the Senate confirms their replacements. Judge James Dennis of the Fifth Circuit will also take senior status, joined by Judge Bernice Donald of the Sixth Circuit. And the Judge Beverly Martin of the Eleventh Circuit plans to retire at the end of September, telling NLJ affiliate the Daily Report she hopes to help those "who are serving needlessly harsh sentences."

Why the wave of (semi) retirements? While some of them may have been in the works for a while, George Washington University law professor John P. Collins suspects it might have something to do with the judicial nominees that President Joe Biden has put forward so far, specifically for the appeals courts.

Collins, who researches the judiciary and nominations, pointed to the late Justice Ruth Bader Ginsburg's reported worry that anyone nominated to her seat by President Barack Obama and facing a Republican Senate might not be as liberal as she was, given as part of her reasoning for staying on the court. He said that Biden's appellate nominations may have given the judges' confidence they wouldn't be replaced by a more moderate judge.

"They all could have gone senior much earlier and they're all some of, if not the most liberal voices on their own courts," Collins said, highlighting Dennis and Fletcher as examples of more liberal judges. "And so it may be important to them to know, if I'm going to step down, that this administration isn't going to really shift the court to the right."

Maya Sen, a professor of public policy with Harvard University who studies the judiciary, said it's not unsurprising for a wave of liberal retirements to come with a change in administrations. A number of judges announced plans to take senior status in the weeks after Biden's inauguration, giving him the chance to fill those seats and other vacancies he inherited.

However, Sen said she suspects that the battle over Merrick Garland's Supreme Court nomination may have "rattled" some judges, after the GOP Senate refused to consider him for the vacancy and held the seat open until the next administration. And with Democrats holding only the slimmest of margins in the Senate, it may be now or never for some judges who want their replacements to be picked by this White House.


DIEGO M. RADZINSCHI / ALM

Several of the judges who plan to step away from active service come from minority backgrounds. Judge **Bernice Bouie Donald** of the Sixth Circuit was the first Black woman to be a judge in Tennessee and on her current court.

"Given how midterms usually go, I think many older judges are kind of looking nervously at the midterms and possibly the next occupant in the White House and kind of saying, 'Look, this might be my best chance of actually having someone who's like minded replace me, given what happened to Merrick Garland in the Republican controlled Senate,'" Sen said, acknowledging that she has not spoken personally with judges who have this mindset.

The Biden White House may be taking that potential ticking clock into account as they've announced 20 judicial nominees so far, significantly more than the Obama or Trump administrations at this point of their first terms. The Senate Judiciary Committee this week advanced five of those nominees, and Senate Democrats are promising to move on them quickly.

Sen added that some of the judges may have waited a bit further into Biden's administration to announce their seats will be opening, as to not look like their taking senior status was tied to politics. "They're gonna give them some time, but not too much time," she added.

Still, whoever is nominated for those seats won't do much to change the overall ideological composition of those courts: All of these judges were appointed by Democratic presidents, so a liberal seat will simply be filled by another liberal. Trump was able to deepen conservative majorities and flip multiple appeals courts to a majority of Republican-appointed judges; because so many appellate judges were confirmed under Trump, Biden will have a difficult time reshaping those circuits.

Sen said that, as Biden won't be able to reshape too much of the appellate courts, Democrats are currently "on defense" in filling those seats. Without significant conservative retirements, courts that flipped under Trump or saw their conservative benches deepen likely won't gain liberal judges unless Democrats maintain control into 2024.

"Democrats are playing defense with their appointments, trying to shore up the positions that they have and making sure that they don't lose any more ground," Sen said.

But the openings may also result in the federal bench becoming more diverse, particularly as several of the Biden nominees are firsts on their respective courts. The announcement that Biden would get a vacancy on the Fifth Circuit was met with calls for him to appoint a Black woman to that court.

Several of the judges who plan to step away from active service come from minority backgrounds themselves. Paez on the Ninth Circuit is Mexican American, and Donald of the Sixth Circuit was the first Black woman to be a judge in Tennessee and on her current court. Donald testified about that experience before the House earlier this year, saying that she helped prove that "people who look like me, in gender and race," can be good judges.

"But more than that, I think it has served to inspire others who may not have believed that they could do this to see that someone like them, can achieve those positions and do that job," she added.

Collins said most of the Biden appellate nominees were not widely expected to be picked for their respective seats, with the exception of U.S. District Judge Ketanji Brown Jackson for the District of Columbia, as they didn't come from traditional backgrounds for nominees, like current district judges or federal prosecutors.

"Seeing judges like this on particular courts is going to tell people, 'Hey, I can go into that public interest background if I ultimately want to become a judge, because now it's no longer the exception to the rule for who's going to get selected under certain administrations,'" Collins said. "So I think it sends a great signal to prospective nominees that these kinds of backgrounds are no longer going to sort of be disqualifying for these positions."

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Gun Licenses

« Continued from page 1

"All in all, I can well understand why the governor's order and the commissioner's actions were justified at the outset of the COVID-19 pandemic," Meyer wrote. "But with the passage of time it is clear that a categorical ban on the collection of fingerprints no longer bears a substantial relation to protecting public health consistent with respecting plaintiffs' constitutional rights."

Both sides acknowledged Friday that fingerprinting had resumed in the state.

Judges on the Second Circuit panel peppered both sides with questions about whether the states appeal was moot, after the worst of the public health crisis had passed. Such instances, they said, were increasingly common as the harshest government restrictions had begun to lift heading into the summer. "Actually, this is the third time this week where we had COVID issues and the question of, because everything is changing, whether there still is an actually case or controversy," Judge Dennis Jacobs said.

"In other words, we hope its moot," Judge Robert D. Sack agreed.

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Calendar

TUESDAY, MAY 25

NY State Bar (CLE)
Introduction to Business Entities In New York
1 p.m. – 2 p.m.
1 MCLE Credits
Register at: https://nysba.org/events/introduction-to-business-entities-in-new-york/

NY City Bar (Non CLE)
Privacy in the Wild: Why the Privacy Interests of Animals Matter
12 p.m. - 1:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=ANI052521&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314

WEDNESDAY, MAY 26

NY State Bar (CLE)
Ethics Update: Recent Case Review And Frequent Issues In Attorney Discipline
12 p.m.–1 p.m.
1.0 MCLE Credits
Register at: Ethics Update: Recent Case Review And Frequent Issues In Attorney Discipline - New York State Bar Association (nysba.org)
NY City Bar (Non CLE)
Women Leaving the Law During COVID-19: Why is it Happening & How Do We Fix It?
6:30 p.m. - 8 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/Members/Event_Display.aspx?EventKey=WILP052621&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314

THURSDAY, MAY 27

NY State Bar (CLE)
Handling Your First Pro Bono Asylum Case
1 p.m.–2 p.m.
1.0 MCLE Credits
Register at: https://nysba.org/events/handling-your-first-pro-bono-asylum-case/
NY City Bar (Non CLE)
How to Become A Judge: Citywide Family Court/Criminal Court/Court of Claims
1 p.m. – 2:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=EJS052721&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314

THURSDAY, JUNE 3

NY City Bar (Non CLE)
Strategies to Align Human Rights and the Environment Series: Part 1 An Industry Perspective
12 p.m.-1:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/Members/Event_Display.aspx?EventKey=BHWG060321&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314
Virtual Cocktail Hour for Solos and Small Firm Members
5 p.m.-6:15 p.m.
Location: Webinar
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Real Talk from Women General Counsels: What do Women Owe Each Other in the Workplace?
6:30 p.m.-8 p.m.
Location: Webinar
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FRIDAY, JUNE 4

NY State Bar (CLE)
Adaptive Governance For Climate Change And Public Health
3:30 p.m.–5:30 p.m.
2.0 MCLE Credits
Register at: https://nysba.org/events/adaptive-governance-for-climate-change-and-public-health/
Criminal Defense: Practice Tips, Ethics, Social Justice–The Pandemic & Beyond
9:30 a.m.–4:30 p.m.
5.0 MCLE Credits
Register at: https://nysba.org/events/criminal-defense-practice-tips-ethics-social-justice-the-pandemic-beyond/

NY City Bar (Non CLE)
Unlock the Golden Handcuffs: Free Your Money and Mind to Pursue the Career You Desire
12:30 p.m.-2 p.m.
Location: Webinar
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SATURDAY, JUNE 5

NY State Bar (CLE)
Immigration Advocacy: Perspectives Of Health Law, Psychology And Social Work
9 a.m.–11 a.m.
2.0 MCLE Credits
Register at: https://nysba.org/events/immigration-advocacy-perspectives-of-health-law-psychology-and-social-work/

MONDAY, JUNE 7

NY City Bar (Non CLE)
Supporting Reentry and Creating Opportunity: Implementing Strategies to Support the Successful Reentry of Individuals who were Formerly Incarcerated
5 p.m.-6:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=COR060721&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314

TUESDAY, JUNE 8

NY City Bar (Non CLE)
Advancing Equity: Pro Bono Leaders Discuss Their Career Paths and Bringing Increased Diversity to Pro Bono Roles In The Future
12 p.m.-1:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=PRBO060821&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314
Careers in Commercial Real Estate (City Bar Summer Series)
6 p.m.-7:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=SSCR060821

WEDNESDAY, JUNE 9

NY City Bar (Non CLE)
Current Issues in Real Estate Restructurings: Views from the Experts and the Bench
5:30 p.m.-7 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=BCR060921&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314
Diversity and Financial Regulators: Careers in the Financial Regulatory Field
5:30 p.m.-6:45 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=MIP060921

THURSDAY, JUNE 10

NY City Bar (Non CLE)
Mediation Apprenticeships, Mentorships, and Gaining That Coveted Experience!
10 a.m.-11:30 a.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=ADR032521&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314
Lawyers Connect: Virtual Summer Wine Tasting
6 p.m.-7:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=LCWT061021

MONDAY, JUNE 14

NY State Bar (CLE)
Starting Off Right: The Do's And Don'ts Of Retainer Agreements & Engagement Letters
12 p.m.–1:15 p.m.
1.5 MCLE Credits
Register at: Starting Off Right: The Do's And Don'ts Of Retainer Agreements & Engagement Letters - New York State Bar Association (nysba.org)

TUESDAY, JUNE 15

NY City Bar (Non CLE)
Do's and Don'ts of Appellate Practice: Interim Applications in the First and Second Department
12:30 p.m.-1:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=CMTE061521&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314

WEDNESDAY, JUNE 16

NY State Bar (CLE)
The SEC's Investment Adviser Marketing Rule: What Is New And What Remains The Same
11:30 a.m.–12:30 p.m.
1.0 MCLE Credits
Register at: https://nysba.org/events/the-secs-investment-adviser-marketing-rule-what-is-new-and-what-remains-the-same/

THURSDAY, JUNE 17

NY State Bar (CLE)
Auto Litigation 2021: Recent Developments In New York Auto Law
12:30 p.m.–2:30 p.m.
2.0 MCLE Credits
Register at: https://nysba.org/events/auto-litigation-2021-recent-developments-in-new-york-auto-law/
How To Get Paid For All Your Invoices Via Zero AR
1 p.m.–2 p.m.
0.0 MCLE Credits
Register at: https://nysba.org/events/how-to-get-paid-for-all-your-invoices-via-zero-ar/

NY City Bar (Non CLE)
Strategies to Align Human Rights and the Environment Series:
Part 2 An Advisory Perspective
12 p.m.-1:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/Members/Event_Display.aspx?EventKey=BHWG061721&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314

WEDNESDAY, JUNE 23

NY State Bar (CLE)
Fundamentals Of Construction Contracts & Litigation
9 a.m.–1:15 p.m.
4.0 MCLE Credits
Register at: https://nysba.org/events/fundamentals-of-construction-contracts-litigation/
Post-COVID Client Care: A New Look At Client Service Practices Or Techniques
12 p.m.–1 p.m.
1.0 MCLE Credits

NY City Bar (Non CLE)
Thriving As a Summer Associate/Intern: Practical Tips from Law Firm Associates
6 p.m.-7:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=SAR062321

THURSDAY, JUNE 24

Legal Writing: Striving For Clarity
12 p.m.–1:15 p.m.
1.5 MCLE Credits
Register at: https://nysba.org/events/legal-writing-striving-for-clarity/

FRIDAY, JUNE 25

NY City Bar (Non CLE)
Ten Years On: What the UNGPs Mean for the Legal Profession
8:30 a.m.-6:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=UNGP062521&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314

TUESDAY, JUNE 29

NY State Bar (CLE)
Getting Paid: Tips, Techniques And Ethics
12 p.m.–1 p.m.
1.0 MCLE Credits
Register at: https://nysba.org/events/getting-paid-tips-techniques-and-ethics/

WEDNESDAY, JUNE 30

NY City Bar (Non CLE)
Careers in Family & Matrimonial Law
6 p.m.-7:30 p.m.
Location: Webinar
To register and for more information: https://services.nycbar.org/EventDetail?EventKey=SSFM063021

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Clients

« Continued from page 3

at-will contract like the attorney-client relationship under ordinary circumstances.

The decision is also notable because it clearly applies not merely to partners who violate a fiduciary duty but to all lawyers who leave a firm. The decision therefore does not change the protocols regarding clients' choice of counsel when lawyers leave firms, so that it is proper for lawyers to inform clients of their pending departure from a firm after they have notified the firm, in order to give the clients the choice of whether to follow the departing lawyer, stay with the firm (or move the matter elsewhere). But in all other respects, acting to undermine the firm in ways that constitute the tort including by violating these provisions of the Judiciary Law may have very negative consequences in the long run.

The decision in *Straw v. Avvo* in the U.S. District Court for the Western District of Washington, Case no. C20-0294JLR (April 21, 2021) raises interesting issues concerning the conflicts of interest that may arise when judicial clerks move into private practice. In this case the plaintiff sought the recusal of the judge presiding over his case, arguing that because Avvo's law firm, Davis Wright Tremaine (DWT), employed an attorney who formerly served as one of the judge's law clerks while his case was pending, "the existence of [the law clerk] on the roster of attorneys at DWT … favors the trial judge's clerk, his firm, and that firm's clients." Mr. Straw argued, therefore, that the judge violates his duty to be fair and impartial by continuing to preside over this case. Citing earlier cases in the district that had held that "a rule barring former law clerks and externs, much less their entire law firms, from appearing in a particular court would be unreasonable and unjustified," the judge declined to recuse himself. He also noted that the clerk had not worked on Mr. Straw's case while a law clerk nor on the case since joining the law firm.

From the law firm's perspective in these situations, the governing Rule of Professional Conduct is 1.11(b), which deals with the imputation of conflicts that arise because of the firm's employment of a former government lawyer. New York's version provides as follows:

> (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
>
> (1) the firm acts promptly and reasonably to:
>
> (i) notify, as appropriate, lawyers and nonlawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;
>
> (ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;
>
> (iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and
>
> (iv) give written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule; and
>
> (2) there are no other circumstances in the particular representation that create an appearance of impropriety.

The decision in 'Straw v. Avvo' in the U.S. District Court for the Western District of Washington … raises interesting issues concerning the conflicts of interest that may arise when judicial clerks move into private practice.

Finally, the New Jersey Supreme Court Committee on Attorney Advertising recently issued what it refers to as a "reminder" of the rules that govern:

> attorney advertising of awards, honors, and accolades that compare a lawyer's services to other lawyers' services. Examples of such awards, honors, and accolades are: "AV Preeminent," "BV Distinguished," "Super Lawyers," "Rising Stars," "Best Lawyers," "Top Lawyer," "Top Law Firm," "Superior Attorney," "Leading Lawyer," "Top-Rated Counsel," numerical ratings, and the like. The Committee issues this Notice to the Bar to remind lawyers that they may refer to such awards, honors, and accolades only when the basis for the comparison can be verified and the organization has made adequate inquiry into the fitness of the individual lawyer. Further, whenever permissible references to comparative awards, honors, and accolades are made, Rule of Professional Conduct 7.1 requires that additional language be displayed to provide explanation and context.
>
> Comment 13 to New York's version of Rule 7.1 provides as follows:
>
> [13] An advertisement may include information regarding bona fide professional ratings by referring to the rating service and how it has rated the lawyer, provided that the advertisement contains the "past results" disclaimer as required under paragraphs (d) and (e). However, a rating is not "bona fide" unless it is unbiased and nondiscriminatory. Thus, it must evaluate lawyers based on objective criteria or legitimate peer review in a manner unbiased by the rating service's economic interests (such as payment to the rating service by the rated lawyer) and not be subject to improper influence by lawyers who are being evaluated. Further, the rating service must fairly consider all lawyers within the pool of those who are purported to be covered. For example, a rating service that purports to evaluate all lawyers practicing in a particular geographic area or in a particular area of practice or of a particular age must apply its criteria to all lawyers within that geographic area, practice area, or age group.
>
> Although Comment 13 does not single out any particular evaluation service, when they seek to reference any of these services, New York lawyers should take care to assure themselves that they meet the requirements of the Comment.

Malpractice

« Continued from page 3

The two attorneys representing the gynecologists argue in turn at the conclusion of the proof that there is insufficient evidence to submit the case to the jury, particularly on the issue of causation. Aside from the speculative testimony on the departures during surgery, there are multiple scenarios on causation. The injury to the ureter may have been caused without negligence, or by negligence on the part of one or both surgeons. In most instances, the trial court would charge the jury that speculation is no substitute for proof, and then allow the jury to decide the case. In some cases, the jury would find in favor of the plaintiff, but what then?

Sending the case to the jury is an error prejudicial to both defendants, and the award of damages by the jury tends to invest the plaintiff with a property right shifting the burden of proof to the defendant to reverse the new status quo. This is not a res ipsa loquitur case, because the event could occur in the absence of negligence. If the record has been carefully made by defense counsel, it will be easier to avoid having the court instruct the jury that it may not speculate in reaching a verdict on questions which can only be answered through speculation.

The court's obligation to rule as a matter of law on the cause-in-fact defense is perhaps more evident in the case involving a patient with a long-standing gastrointestinal condition, requiring ongoing surveillance and potentially requiring definitive surgical treatment. The surveillance is undertaken by the patient's gastroenterologist, who performs colonoscopies with biopsies on a regular basis for a period of 15 years. The patient is seen concurrently but less frequently by a colorectal surgeon who is in ongoing discussion with the gastroenterologist and the patient regarding treatment options. Both doctors attempt to help the patient live a normal life, with the understanding that ultimately the surgeon may need to perform life-changing surgery if the condition turns malignant. However, before definitive treatment is considered, the patient is found to have an aggressive form of bowel cancer which has metastasized, reducing the prognosis for survival.

The gastroenterologist is sued for a delay in diagnosis, based upon studies that are claimed to have shown pathological changes which required aggressive surgery at an earlier point. The case proceeds to trial without a claim against the surgeon. The plaintiff produces a surgical expert who opines that the biopsy-proven changes in the patient's colon required earlier surgery. The expert maintains that not referring the patient to his surgeon at an earlier point was a departure from the standard of care, and that the departure was the proximate cause of the spread of the disease and the reduced chances of survival.

Every defendant's case is entitled to evaluation and a defense on its own set of circumstances.

On the defense, the patient's colorectal surgeon is called to testify and is asked whether he agrees with the opinion of the plaintiff's expert witness that the changes in the biopsy results required earlier surgery. The surgeon testifies that the most recent biopsy results did not justify the extensive surgery and he would not have performed the surgery if the referral had been made, nor would he have investigated further before the malignancy manifested itself. Ordinarily the difference of opinion between two experts would present a factual question to be resolved by the jury, but this fact pattern would require the court to dismiss the claim as a matter of law. Whether the jury credited the testimony of the non-party surgeon or the plaintiff's expert on whether surgery was indicated, the gastroenterologist has a cause-in-fact defense that mandates dismissal. The fact that the surgeon would not have changed the approach to the patient deprives the opinion of the plaintiff's expert of a basis as a matter of law.

Every defendant's case is entitled to evaluation and a defense on its own set of circumstances. It does not take imagination to derive other scenarios in which the facts of the case cannot be overcome by the opinion of the opposing expert witness, and require dismissal as a matter of law. The challenge to defense counsel is to identify those opportunities in the unique facts of every appropriate case.

Divorce

« Continued from page 4

tain additional expenses such as payment of medical costs, child care, and other expenses if relevant (e.g., private school) must be determined. Before financial issues can be addressed, sufficient discovery must have been provided to enable both parties to know the extent of the marital estate and each party's income. Due to the complexity of these issues, courts often conduct custody trials separate from the trial of financial matters.

Interim decisions or agreements are often needed during the pendency of the divorce action. Can the parties continue to live together during the litigation or has the marital strife become too intense for the parties to remain in the same household? Is an award of interim support necessary? How will overdue tax payments or credit card debt be made? Should a child be in therapy or receive medical treatment if the parties cannot agree?

Limiting the issues to be resolved in mediation may be a more realistic approach than trying to resolve the entire case. Settling interim issues (e.g., temporary support; what school a child should attend) may be the only issues the parties can resolve early in the litigation. Mediating these limited issues may seem like baby steps, but if successful, the parties may then feel capable of addressing larger issues through mediation, such as custody or distribution of assets.

When to try ADR may also be affected by the cost of litigation. Once the parties have completed discovery and are facing the expense of a trial on the financial issues, they may be more inclined to consider resolving the case by ADR rather than litigation. Post-judgment matters, particularly where the issue in dispute is interpretation of a term of the parties' settlement agreement, like any contract action, may be immediately ripe for mediation or neutral evaluation.

Once the parties agree to try ADR, they must be allowed sufficient time for the process to work. ADR in a divorce litigation often takes far more time than ADR in other civil cases. Work schedules and child care responsibilities may make scheduling sessions with the parties difficult. Most parties in a divorce action, even after tempers have cooled, cannot tolerate long mediation sessions; they need time to process what was discussed and to consider possible solutions. Time will be particularly necessary the more complex the issue is. Thus, use of ADR methods in a contested divorce may not mean the case takes less time to resolve than full litigation. However, the court benefits by eliminating the need for a trial which, in a divorce action, is conducted without a jury and typically requires the judge to write a detailed decision. Even more important, a settlement by ADR methodology will likely lead to a lasting resolution that the parties feel better about because they decided the very personal issues at stake in a divorce action rather than a judge.

Courts should not be reluctant to provide the necessary time. A review of court statistics reveals that in any given year, roughly the same number of contested divorce actions are resolved as the number of cases commenced.

Courts should not be reluctant to provide the necessary time. A review of court statistics reveals that in any given year, roughly the same number of contested divorce actions are resolved as the number of cases commenced. (Statewide, in 2019, 11,179 contested divorce actions were filed and 14,136 cases were disposed; in 2018, 11,527 contested divorce actions were filed and 13,577 were disposed. Report of the Matrimonial Advisory and Rules Committee, supra, Appendix G.) Of course, resolution of some divorce cases takes much longer than one year. But the relevance of these statistics is that, to the credit of my former colleagues, there is no great backlog of unresolved contested divorce litigations. Allowing extra time for ADR will not increase an existing backlog and, more important, may decrease the number of trials. (It is important, as is presently done, to require regular reporting of the progress of ADR in any case and to end the ADR effort if there is no progress towards resolving the issues.)

In sum, even after a matrimonial litigation commences, ADR may be successfully employed where emotions have subsided; the issues under discussion are, if appropriate, limited; both sides have the necessary information to discuss the issues under consideration; and the parties have sufficient time to complete the ADR process.

Verdicts

« Continued from page 5

Pimentel quickly commenced a course of conservative treatment that comprised acupuncture, chiropractic manipulation and physical therapy. The treatment lasted about four months. In July 2016, Pimentel underwent decompressive arthroscopic surgery that addressed his left shoulder. The procedure included debridement of damaged tissue, lysis of adhesions of soft tissue and a synovectomy, which involved excision of inflamed tissue.

Pimentel claimed that his injuries prevented his performance of about four weeks of work. He further claimed that he suffers residual pain and limitations that hinder his performance of his work and his household chores. A doctor has suggested that Pimentel may require further surgery. Pimentel sought recovery of future medical expenses, damages for past pain and suffering, and damages for future pain and suffering.

Defense counsel contended that Pimentel did not suffer a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). Defense counsel contended that Pimentel's medical records indicate that Pimentel did not suffer a blemish, a bruise, a contusion or a hematoma as a result of having been struck by the mirror, and defense counsel argued that Pimentel therefore could not have suffered the injuries that he claimed to have suffered. The defense's expert orthopedist and expert radiologist submitted reports in which they opined that Pimentel's injuries were degenerative conditions.

Defense counsel also contested the severity of Pimentel's injuries. Pimentel's treating surgeon's records indicated that Pimentel's left shoulder was painless and exhibited full range of motion within weeks of Pimentel's surgery. The defense's experts submitted reports in which they opined that Pimentel's back, left shoulder and neck exhibited full range of motion.

The parties negotiated a high/low stipulation: Damages could not exceed $95,000, but they had to equal or exceed $15,000. Camacho's insurance provided $100,000 of coverage.

Result: The jury rendered a defense verdict. It found that Pimentel did not suffer a serious injury. It determined that Pimentel does not suffer permanent consequential limitation of use of a body organ or member, and it also determined that he does not suffer significant limitation of use of a body function or system.

DECISIONS WANTED!

The editors of the New York Law Journal are eager to publish court rulings of interest to the bench and bar. Submissions must include a sentence or two on why the decision would be of significance to our readers. Also include contact information for each party's attorneys. E-mail decisions to decisions@alm.com.

Crypto Deals

« Continued from page 2

void. To that end, courts have invalidated contracts deemed to constitute the illegal sale of unregistered securities. Indeed, in a case we are both litigating before the U.S. District Court for the Northern District of Georgia, a federal judge ruled, at the motion-to-dismiss phase, that an alleged contract involving a relatively obscure cryptocurrency was "void for illegality because performance would have required the unlawful sale of unregistered securities."

Such rulings raise the specter of private parties launching lawsuits to unwind cryptocurrency investments on the ground that the transactions constituted the illegal sale of securities. While the value of cryptocurrencies has skyrocketed in recent years, there is no denying that the market is volatile. And certain contractual arrangements might tempt investors to sue to unwind what now appears to be a bad deal. For example, a contract to pay for cryptocurrencies over time might be particularly vulnerable to such a suit. A buyer might take possession of the currency, see how the investment is going, and try to void the contract without making the rest of the payments once the value tanks. Notably, there are securities cases recognizing that a plaintiff may be entitled to a remedy known as quantum meruit, or basically a refund, in certain circumstances involving voided and illegal securities contracts.

Of course, plaintiffs trying to void cryptocurrency contracts might have limited remedies. While courts allow the possibility of plaintiffs recovering monetary damages in cases involving voided securities contracts, particularly where inequity would result if the violator of the securities laws kept the consideration, parties can't always get their money back. And courts might be skeptical if litigants look like they're trying to game the system. Indeed, the premise of such a lawsuit is that the contract itself was illegal. A plaintiff might have an uphill battle trying to get a refund on the ground that they made an illegal deal.

Whatever the outcome of individual cases, the regulatory vacuum over whether certain cryptocurrency transactions involve the illegal sale of securities may hamper more widespread adoption of cryptocurrencies and subject market participants to an increased risk of regulatory or private litigation.

But there's reason to believe that the SEC may offer more explicit regulatory guidance. Indeed, one of the recently appointed SEC commissioners has acknowledged that the U.S. is "behind the curve" when it comes to cryptocurrency regulations. And she has identified the need for the U.S. "to build a framework that is appropriate for this industry." Until cryptocurrency buyers and sellers are permitted to operate in an environment with greater predictability about the crypto-rules of the road, parties engaged in cryptocurrency transactions will continue to endure significant regulatory and litigation risk.

Volkswagen

« Continued from page 1

repeating unproven allegations against the automakers.

In her opinion, Irizarry said that "while plaintiffs' allegations regarding Volkswagen's cooperation with other manufacturers are detailed, they have not identified any specific laws Defendants violated or explained how Volkswagen's conduct ran afoul of those laws."

"Nowhere," she said, "do plaintiffs contend that some or all of Volkswagen's allegedly false or misleading statements still would be false or misleading even if Volkswagen's cooperation with its ostensible rivals was entirely lawful."

In a statement, Sullivan & Cromwell partner Robert Giuffra said that the court "rightly recognized this for what it was, an action littered with deficiencies that failed to meet basic standards for stating a claim, and we welcome the Court's decision to dismiss the case in its entirety."

An attorney for the plaintiffs did not immediately respond to a request for comment.

Sullivan & Cromwell's team also included attorneys Jason Kornmehl, Justin DeCamp and Suhana Han.

The plaintiffs were represented in the case by Keith Robert Lorenze of Henkel & Cohen in Miami and Jacob A. Goldberg, Leah Heifetz-Li and Phillip Kim of The Rosen Law Firm in Jenkintown, Pennsylvania.

The case was captioned *Mucha v. Volkswagen Aktiengesellschaft*.

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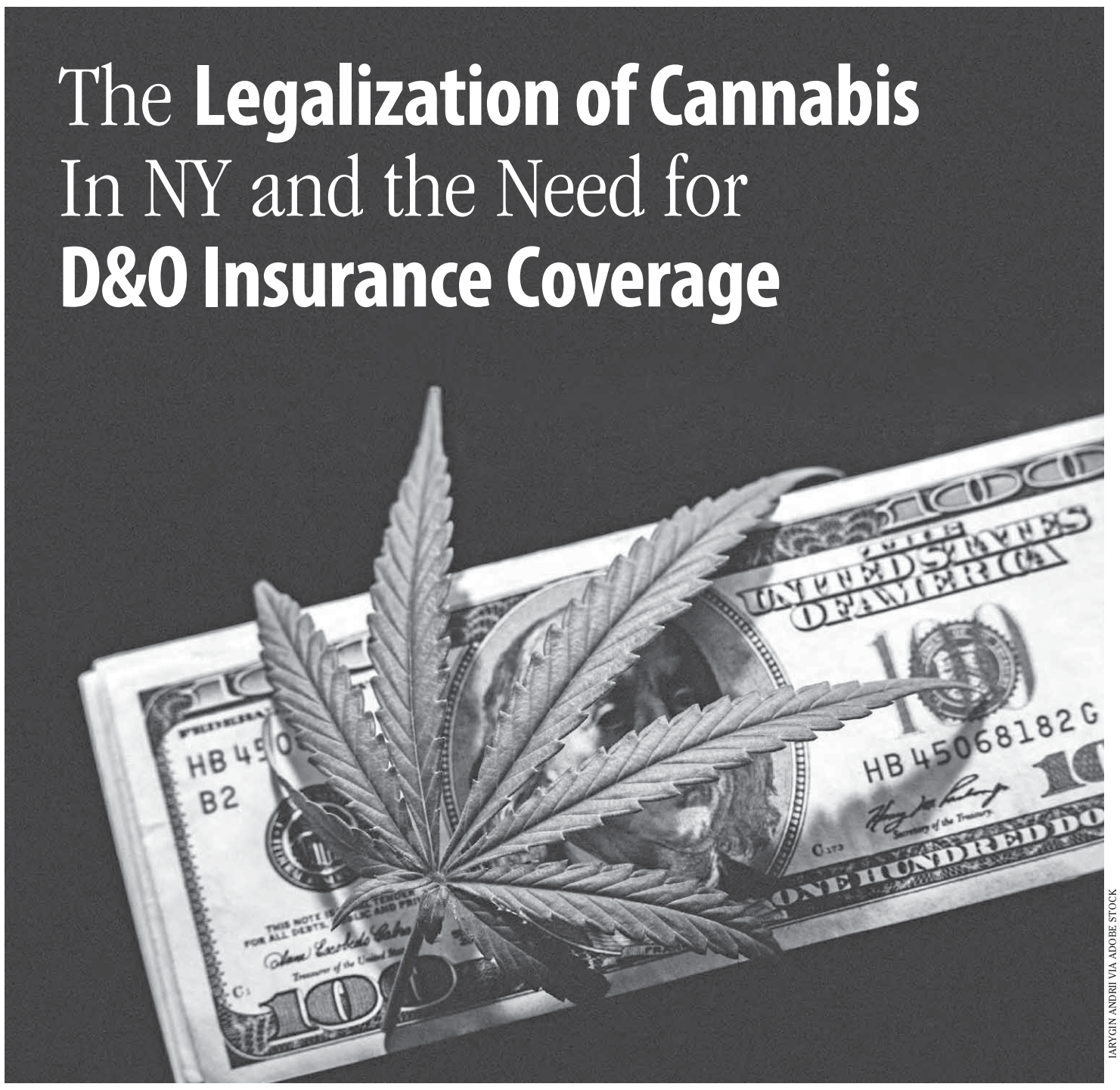

IARYGIN ANDRII VIA ADOBE STOCK

BY PETER A. HALPRIN, JEFFREY SCHULMAN AND MIKAELA WHITMAN

On March 31, 2021, Gov. Andrew Cuomo signed Senate Bill S854A to enact the Marijuana Regulation and Taxation Act, making New York the 16th state, along with the District of Columbia, to legalize adult-use cannabis. The potential implications of this Act on the economic and social landscape of New York state are staggering. The legal cannabis market in New York state is expected to capture $1.2 billion in sales by 2023 and the state expects to eventually collect $350 million in annual revenue.

As both the number and type of New York businesses in the legalized cannabis industry continue to grow, their need for insurance coverage will only expand. Plus, New York, as a global financial and investment epicenter, faces unique risks in the cannabis space as deals, investments, acquisitions, and mergers become common vehicles to cash-in on the green. These risks include claims by investors, customers, vendors, competitors and others for a variety of claims, including, mismanagement, misrepresentation, breach of fiduciary duty, misappropriation of trade secrets, and fraud. These risks exist in both public and private companies.

Such risks have been highlighted by the rash of shareholder and securities class action lawsuits recently filed against companies in cannabis related-businesses. Indeed, some of the biggest cannabis companies, including Medmen Enterprises, Canopy Growth, CannTrust Holdings, and Columbia Care have all already been on the receiving end of shareholder litigation. The leaders of these companies have been accused of making false claims, failing to act in the shareholders' bests interests and attempting to defraud shareholders. As cannabis companies and risks grow, the companies, as well as prospective investors, board members and managers will be compelled to buy D&O insurance.

As both the **number and type** of New York businesses in the legalized cannabis industry continue to grow, their **need for insurance coverage** will only expand.

D&O insurance policies provide three separate types of coverage, Side A, Side B and Side C. The first, Side A coverage, is liability coverage for the individual directors and officers. Under Side A coverage, the insurer agrees to indemnify the individual directors or officers for all "Loss" that those individuals become legally obligated to pay arising out of a "Wrongful Act" committed in their capacity as a director or officer. Side A coverage only responds, however, where the policy provides insurance to pay the directors' and officers' personal liabilities for which the corporation either cannot or will not provide indemnification.

The second, Side B coverage, is coverage for the payments a corporation makes on behalf of its directors and officers. Side B coverage reimburses the corporation for all payments for which the company is required to indemnify, or has legally indemnified, the directors or officers for "Loss" resulting from a claim alleging a Wrongful Act. The third, Side C, known as "entity" coverage, reimburses the corporate insured for liability arising out of a defined group of claims filed directly against the corporation. The scope of entity coverage for a publicly held company is often limited to securities claims.

While it is apparent that D&O insurance could be a crucial, and essential, component of a cannabis company's success and growth, obtaining adequate D&O insurance to date has been a challenge. The looming cannabis issues of federal legality, banking hurdles and reputational risks have largely kept admitted insurers out of the D&O market. This has led to a dearth of available D&O coverage. And, due to the nascent and highly regulatory nature of the cannabis industry, with limited historical claims available, the typical D&O coverage currently available has limited limits, multiple regulatory exclusions, and high premiums.

On a positive note, however, the introduction of the Secure and Fair Enforcement Banking Act (the SAFE Act) and Clarifying Law Around Insurance of Marijuana Act (the CLAIM Act) in March 2021, could pave the way for an influx of D&O insurers to enter the cannabis market. The SAFE Act would create a safe harbor for financial institutions, including banks and credit unions, removing potential liability or forfeiture for providing financial services to a cannabis-related business. The CLAIM Act, targeted at the insurance industry, would "create a safe harbor for insurers engaging in the business of insurance in connection with a cannabis-related legitimate business, and for other purposes." By creating a "safe harbor" for insurers to issue policies and insureds to transact business without fear of federal penalties, the SAFE Act and the CLAIM Act could open up the market to more competition, encourage more insurance product offerings and lower premiums.

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PETER A. HALPRIN, JEFFREY SCHULMAN *and* MIKAELA WHITMAN *are partners at Pasich LLP.*

The **30-Day Rule** for Insurer Coverage Disclaimers Still Stands

BY ANDREW R. JONES, COREY M. COHEN AND NICOLE A. PALERMO

It is widely accepted that insurers should provide a written disclaimer of coverage "*as soon as is reasonably possible*" after the insurer has actual or constructive knowledge of the grounds to do so. There are many factors considered in assessing what is "*reasonable*" in this context.

However, typically, New York courts have rejected an insurer's disclaimer of coverage if it occurs more than 30 days after notification of the claim. Accordingly, on its face, it was concerning that the Appellate Division, First Department, recently voided a disclaimer of coverage issued just *eight* days after the insurer received a demand for coverage. As explained below, however, the First Department found that prior notice of the accident and of facts providing a basis to disclaim (without an express demand by the insured for coverage under the policy) was sufficient to trigger the carrier's duty to timely disclaim pursuant to Insurance Law§ 3420(d)(2). Therefore the "30-day rule" lives to fight another day, but great care should be exercised in determining precisely when the 30-day clock begins ticking.

Appellate Court Decision

On March 16, 2021, in *Plumbing v. Burlington Ins. Co.*, 2021 NY Slip Op 01498 (1st Dep't March 16, 2021), New York's Appellate Division, First Department, overturned the trial court decision granting summary judgment finding that the insurer was not obligated to defend or indemnify the insured or putative additional insured. The First Department found against the insurer as a result of an untimely disclaimer. It was found that eight days after receiving a demand for coverage was deemed too late for the disclaimer when the carrier had prior notice of the underlying claim and facts that were the basis for the disclaimer but had failed to disclaim earlier.

Plumbing v. Burlington Ins. involved coverage determinations regarding an underlying personal injury action for bodily injury after a construction worker fell from a scaffolding on June 18, 2014. As a result of the fall, the construction worker suffered a skull fracture in multiple places and a traumatic brain injury. The personal injury action regarding this accident was brought on Aug. 26, 2014. Plaintiff insured ADD Plumbing's (ADD) broker provided notice to defendant carrier Burlington Insurance Company (Burlington) on July 15, 2014 "for records only." Then on Sept. 5, 2014, ADD's retail broker forwarded the underlying summons and complaint to Burlington. On Dec. 16, 2014, a demand for coverage was sent by a putative additional insured. At the time the demand for coverage was sent, ADD was not yet a defendant in the underlying action. On Dec. 24, 2014, just eight days after receiving the demand for coverage, Burlington disclaimed coverage to the additional insured and to ADD. ADD had not requested coverage under the Burlington policy at the time of the disclaimer.

A declaratory judgment action was initiated on May 31, 2016, by plaintiff ADD against Burlington Insurance Company, wherein ADD requested that the court declare that Burlington must defend and indemnify ADD in the underlying personal injury lawsuit. Burlington counter-claimed seeking a declaration that Burlington had no obligations to provide coverage regarding the underlying personal injury action. Burlington did not provide a disclaimer until Dec. 24, 2014, a mere eight days after receiving a demand for coverage by an additional insured on Dec. 16, 2014. The First Department based their decision to reverse the trial court and declare summary judgment for ADD based on Burlington's prior notice of the underlying claim for several months and Burlington's knowledge of the facts which provided a basis for disclaimer for almost two months prior to the disclaimer. While Burlington had not received a demand for coverage until Dec. 16, 2014, Burlington had notice of the claim, had investigated the claim and had notice of the facts which supported a disclaimer well prior to the Dec. 16, 2014, demand for coverage.

ANDREY POPOV VIA ADOBE STOCK

Analysis: Key Issues At Stake

Timely disclaimers of coverage are a core issue for coverage attorneys and insurers alike as timeliness can affect an insurer's ability to raise otherwise viable coverage defenses. Typically, the standard followed by New

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The **SPAC Gold Rush** and Implications For D&O Liability and Insurance

BY WILLIAM G. PASSANNANTE

2021 may be known as the year of peak SPAC, given the explosion in Special Purpose Acquisition Company (SPAC) initial public offering (IPO) transactions. SPAC transactions have implications for D&O liabilities as well as the insurance to pay those liabilities. Because SPACs present novel issues, we expect both plaintiff's lawyers and insurance companies to take some creative positions not always helpful to D&O policyholders.

The rate of increase in the number of these still-novel transactions has been astounding. The first SPAC transaction occurred in 2009, and only one was recorded in that year. In 2016, 13 transactions with total proceeds of $3.9 billion took place. 2020 had 248 transactions with total proceeds of $83.3 billion. So far in 2021, 308 SPAC IPO transactions have taken place with total gross proceeds of over $100 billion and an average IPO size of $325.8 million. The total count of SPAC transactions stands at 782—39% of them occurring in the first four months of this year.

Background

To describe the liability and insurance implications of the SPAC gold rush, some background describing SPACs, their popularity and the SEC's approach to SPACs will prove useful.

What is a SPAC? A special purpose acquisition company is a type of shell company—sometimes called a 'blank check' company—set up by a group of investors or sponsors for the specific purpose of raising money through an IPO with the object of purchasing another company. The SPAC itself has no operations, and its assets usually consist of the proceeds of the IPO. The SPAC then seeks within a limited period of time, typically two years, to acquire an operating target company. The acquisition by the SPAC of the target company is referred to as the *initial business combination*. If this de-SPAC transaction takes place, it often structured as a reverse merger. The combined company after the initial business combination is publicly traded, often does a public

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Inside

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Can **States** Require Insurers To Pay **Business Interruption Claims?**

BY ALAN LEVIN
AND ELLIOTT SCHREFFLER

As states consider ways to assist local businesses with managing the fallout from the COVID-19 global pandemic, one solution has been the adoption of legislation requiring property insurers to cover COVID-19 related business interruption claims that are otherwise excluded by the policy's language.

Such legislation, while presumably popular at the state capital given the insurance industries' ability to cope with heavy regulation, is not without constitutional limitation. This article discusses recent developments in the business interruption insurance landscape, the general constitutional analysis of contract impairment claims, and provides some guidance as to how courts may handle these challenges.

Business Interruption Coverage Denials

Businesses forced to shut-down to mitigate the spread of COVID-19 are turning to their business interruption policies to recover losses. These claims are routinely denied given that the policy requires some sort of physical loss or damage before coverage will trigger.

Courts typically affirm the carrier's denial. According to the University of Pennsylvania's "Covid Coverage Litigation Tracker," as of Feb. 22, 2021, 1,539 COVID-19 insurance coverage cases have been filed in federal and state court, with insurers winning over 90% of federal cases and slightly over 50% of state cases.

State Legislative Response

Various states have introduced legislation seeking to protect insureds from these coverage denials. Although these proposals are not an exhaustive list, the following are illustrative of the budding landscape. Florida and Illinois House Bills 1617 and 3166, respectively, applicable to all businesses operating in the state, would define business interruption coverage to include loss of use and occupancy due to a government shut-down order. New York, Pennsylvania and Rhode Island have proposed legislation applicable to businesses of a certain size. New York Assembly Bill 1937, which would nullify policy provisions denying claims for loss or damage due to "virus, bacterium or other microorganism," would apply to businesses with 250 employees working at least 25 hours a week. Pennsylvania Senate Bill 42, which would require business interruption coverages to include business interruption to include pandemic related losses, would provide those businesses defined as "small businesses" under the U.S. Small Business Administration's criteria 100% of coverage up to the policy limit, with all other businesses receiving 75%. Rhode Island's Senate Bill 0347, requiring virus transmission and pandemic, would apply to businesses with 100 employees working at least 25 hours per week.

ALPHASPIRIT VIA ADOBE STOCK

Contract Clause Claims

Legislation that adjusts private parties' contract rights is subject to specific constitutional constraints. Article 1, §10, Clause 1 of the U.S. Constitution, provides that "[n]o State shall … pass any Law impairing the Obligation of Contracts" (the Contract Clause).

Legislation violates the Contracts Clause where it "operate[s] as a substantial impairment of a contractual relationship." *Energy Rsrvs. Grp. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983) (internal quotation marks omitted). Substantial impairment need not rise to the level of "[t]otal destruction of contractual expectations" and may even exist where the new regulation restricts "gains reasonably expected" from the contract; where the alleged impairment occurs in an industry traditionally subject to heavy state regulation, a substantial impairment is less likely to be found. Id.

A finding of substantial impairment requires the state to justify its legislation based on some "significant and legitimate public purpose" remedying a "broad and general" social or economic problem. Id. The public purpose must be an exercise of the state's police power, not a benefit operating for a special interest. Id. See also *Ross v. City of Berkeley*, 655 F. Supp. 820, 833 (N.D. Cal. 1987) (legislation adjusting landlords' eviction rights for the stated purpose of protecting small independent businesses and "preserving a particular shopping district's commercial ambience" expresses "preference for one class of contracting citizens over another, suggesting the kind of favored treatment that clearly exceeds the state's police power.")Even where a court finds a justified public purpose, it may still invalidate legislation if it determines that the legislation's "adjustment [to] the rights and responsibilities of contracting parties" is unreasonable or inappropriate to the public purpose. Id.

By way of example, a substantial impairment was found where a state adjusted its pension laws, forcing an employer to recalculate 10 years of past contributions based on newly enacted vesting requirements. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 246 (1978). The U.S. Supreme Court found that Minnesota entered an area it rarely regulated, imposed "a completely unexpected liability in potentially disabling amounts" and, given that the legislation applied only to employers with 100 or fewer employees, it could not be characterized as protecting a broad societal interest. Id. at 247.

In contrast, substantial impairment was not found where New York closed its workers' compensation Special Fund for Reopened Cases, thus forcing insurers to bear the costs for certain reopened workers' compensation claims. *Am. Econ. Ins. Co. v. State*, 30 N.Y.3d 136, (2017). The New York Court of Appeals stated that: (1) New York had not been bound by contract to operate the Fund; (2) insurers never conditioned their contractual obligations to insureds on the state's continued operation of the Fund; and (3) although the premiums on policies issued to employers prior to the Fund's closing did not factor in liability for reopened cases, the risk of premium charged being insufficient to cover a carrier's liabilities is "a risk inherent in the insurance market, especially in a highly regulated market such as workers' compensation insurance." Id. at 152.

> Where 14th Amendment Due Process challenges are brought against economic regulations generally applicable to all insurers operating in a given industry, **courts apply a "rational basis" level of scrutiny.**

The Legal Battle

Various aspects of insurers' rights to contract are impacted. Not only will new and renewal policies be prohibited from excluding pandemic related losses, the heart of the issue is the retroactive effect on currently in-force policies. For starters, previously negotiated premiums are not adequate to cover this newly imposed liability, destroying insurers' expectations of the bargain. Yet, it is going to be hard for insurers to prevail when case law holds that where an "amendment [to the law] merely makes [insurers'] contracts with their insureds less profitable" the insurer has not suffered a substantial impairment. See *Am. Econ. Ins. Co.*, 30 N.Y.3d 136, 154.

To succeed, insurers will need to state their claims more broadly. Imposing liability on insurers for pandemic related losses may, to borrow the U.S. Supreme Court's language, be a "completely unexpected liability in potentially disabling amounts." See *Allied Structural Steel Co.*, 438 U.S. 234, 247. As the U.S. Small Business Administration noted in its March 2021 study "The Effects of COVID-19 Pandemic on Small Businesses," business closures have reached levels not seen since the Great Depression. Placing the burden of recovery on the backs of insurers would not only be unexpected from their perspective, but could be entirely "disabling" to the industry as a whole. The obvious counter from states is that there is no substantial impairment given the broad latitude states are given to regulate insurance markets. See *Am. Econ. Ins. Co.*, 30 N.Y.3d 136, 152 (the state's legislation could not be viewed as a substantial impairment because, in part, insurers should expect adjustments to their liabilities in such a highly regulated industry).

Were a court to find substantial impairment, to save the legislation the state must provide a sufficient "public purpose" remedying a "broad and general social or economic problem." The subjectivity involved in this evaluation is where courts are likely to labor. Remedying economic effects of the COVID-19 pandemic may be a sufficient justification, but it would need to be stated adequately—beyond helping businesses, something that touches the consumer. See, e.g., *Exxon v. Eagerton*, 462 U.S. 176, 194 (1983) (legislation designed to shield consumers from wholesale natural gas tax increases was no substantial impairment even though it nullified gas producers' contracts allocating tax increases to distributors.) Yet, courts may still characterize business interruption legislation as too narrow a remedy, especially where legislation is applicable to only certain sized businesses. See *Allied Structural Steel Co.*, 438 U.S. 234, at 248 (the changes to the retirement benefit laws operated as an impermissible substantial impairment because, in part, the legislation's limitation to employers with 100 employees or less was not protecting a broad public interest).

Takings and Due Process Claims

Insurers may also challenge the proposed business interruption legislation as a governmental taking in violation of the Fifth Amendment, or as a deprivation of property without Due Process in violation of the 14th Amendment. Both claims are likely to fail. Although the legislation requires insurers to pay money on liabilities for which they had not previously contracted, the "mere obligation to pay money, without identification of a vested property interest" is insufficient to constitute a taking. *Am. Econ. Ins. Co. v. State*, 30 N.Y.3d 136, 155 (2017). Likewise, where 14th Amendment Due Process challenges are brought against economic regulations generally applicable to all insurers operating in a given industry, courts apply a "rational basis" level of scrutiny. Id. at 158. The state legislation will be upheld "simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose." Id.

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SPAC

« *Continued from page 9*

capital raise, and carries on the target operating companies' business.

Generally, the proceeds of the SPAC IPO are held in a trust account and invested in conservative interest-bearing investments, though that is not uniformly required. Once the initial business combination is complete SPAC investors can either receive shares of the merged de-SPAC-ed company or receive back their share of the trust account.

Why are SPACs popular? Sponsors, who are often private investors, private equity funds, or private companies, often receive sponsor shares that receive special treatment. Sponsors often also receive warrants to purchase shares with an execution price modestly above the initial price of the shares in the SPAC. The sponsors thus benefit from rising share prices.

The alternative of going public by merging a private operating company with a SPAC can often be accomplished more quickly, and avoids some of the perceived problems with traditional IPO's such as the traditional IPO registration process with the SEC and the impact of market volatility on traditional IPO share pricing.

Some have suggested that going public via a SPAC merger is "cheaper" than a traditional IPO. Usually, that thought process lists underwriter fees paid by the sponsor, investment banking, legal and accounting fees, but neglects the dilution effect on other shareholders of sponsor shares and warrants. Indeed, some target companies negotiate over those warrants and shares as part of the SPAC transaction for that reason.

Investors in SPACs seek various things. Some investors seek yield, and the ultra-low yield environment has investors looking for higher-yielding alternatives, including SPACS. Some investors prefer to invest in SPAC warrants which provide the right to buy equity shares. Accounting for SPAC warrants is one topic that has led to increased SEC scrutiny of SPAC transactions.

What does the SEC think of SPACs? The attention paid to SPAC-related investment perhaps reaches an apex with the involvement of movie stars, professional athletes, and well-known celebrity investors. In March 2021, the U.S. Securities and Exchange Commission (SEC) published an investor Alert, warning, "It is never a good idea to invest in a SPAC just because someone famous sponsors or invests in it or says it is a good investment." The same Alert noted that "sponsors may have conflicts of interest so their economic interests in the SPAC may differ from shareholders. Investors should carefully consider these risks." Those potential conflicts of interest may form the cornerstone of the SEC concerns regarding the impact on public securities markets of SPACs—also reflected in a SPAC investor bulletin published in December 2020.

The SEC has described the de-SPAC transaction as the "real IPO", explaining, "If we do not treat the de-SPAC transaction as the 'real IPO,' our attention may be focused on the wrong place, and potentially problematic forward-looking information may be disseminated without appropriate safeguards." For example, the accounting treatment of SPAC-related warrants for sponsors is one area of potential disclosure possibly leading to financial restatements and the concomitant possible enforcement and accounting-related securities lawsuit activity.

Liability and D&O Liability Insurance Implications Of the SPAC Gold Rush

SPAC-related lawsuits. The SEC's public statements have suggested that enforcement attention will be paid to SPAC transactions. Private plaintiffs have filed and will doubtless continue to file a significant number of SPAC-related lawsuits. One well-known plaintiff's law firm has announced a task force to help investors victimized by fraud and malfeasance related to SPAC investments. The Securities Class Action Clearinghouse tracks 24 SPAC-related securities lawsuits filed between January 2019 and April 2021, becoming an increasing source of significant D&O liability exposure.

ALPHASPIRIT VIA ADOBE STOCK

D&O liability insurance implications. Policyholders purchasing D&O liability insurance expect that they will be provided an insurance policy suitable for their needs. They are entitled to the broad coverage sold by underwriters and not the creatively narrow interpretations devised by claims departments.

Different Times, Different Entities. Unfortunately, since the SPAC/de-SPAC process involves a complex of multiple entities, multiple boards and differing capacities over time, the temptation to assert unfounded arguments against coverage may be too hard for some insurance claims personnel to resist. Some of the complexities relate to the differing time periods in a SPAC transaction: (1) the time period of initial registration and offering associated with the SPAC entity itself; (2) the post-initial offering, but pre-target acquisition period; (3) the period during for the target company investment decision; (4) the time during which the initial SPAC shareholders are solicited by proxy to approve the de-SPAC merger with the target company; and (5) the time during which post-SPAC operating company operates as a public company.

Multiple Policies Covering Differing Boards. The target company will have private company D&O liability insurance covering it and its directors and officers prior to the SPAC process. It may make sense for the target to purchase a tail policy for post-transaction claims relating to pre-transaction events.

The SPAC entity itself will have D&O Liability insurance, which should cover early investment efforts such as road shows or early private placements. Here too, a 'tail' policy with a reporting period of six-years for the SPAC entity is worth considering at the time the initial policy is purchased. Personal coverage for the directors only—called *Side-A*—is also worth considering.

Wrongful Acts, Change in Control. The post-SPAC public company will require D&O insurance with appropriate *retroactive*, *prior and pending* and similar coverage-impacting dates to avoid inadvertent coverage gaps related to timing of alleged *wrongful acts*.

Likewise, the D&O liability insurance policies should be designed so that the *change in control* provisions or definitions of *management control* in the D&O liability insurance policy do not create potential inadvertent gaps. Similarly, thought should be given to the functioning of the usual D&O liability provisions in the SPAC context, including: Insured v. Insured, the so-called "bad acts" exclusions, and priority of payment clauses. An expert D&O liability insurance broker, risk manager or consultant can help make sure that policies are designed to perform as intended to provide broad coverage.

When a claim arises complexities of the SPAC transaction may require vigorous advocacy to obtain the fair value of the insurance purchased.

Conclusion

Peak SPAC or not, the more than $100 *billion* gold rush in SPAC transactions conducted to date in 2021, and the enormous growth in deal volume in this novel structure, will lead to increased assertions of liability against director and officers for alleged wrongful acts covered by D&O liability insurance policies.

ALPHASPIRIT VIA SITTINAN

Protecting Your Business Against The **Next Global Catastrophe**

BY ANDREA SCHILLACI AND RYAN P. MAXWELL

A recent confluence of events from the Suez Canal crisis, COVID-19 pandemic, and emerging just-in-time logistics models present ongoing global business challenges. In a world where it is not a matter of if, but when, the next global crisis will occur, this article will discuss the scope of commercial insurance coverages currently abuzz, including supply chain and contingent business interruption, and offer proactive business protections from these unexpected events.

Anatomy of a Global Crisis

In March 2011, Japan was ravaged by the Great Tohoku earthquake and tsunami, causing setbacks in global markets. That same year, Thailand suffered disastrous flooding with similar impact on trade. In 2017, groundwater invaded two high-speed rail tunnels in Germany. This caused Europe's busiest main line to close for seven weeks while all alternate routes from Germany to Switzerland were also closed for engineering and electrification work, resulting in diversion of significant daily traffic to France or through Austria.

Since early 2020, extended supply chain and travel disruptions have taken shape during the COVID-19 pandemic, resulting in global manufacturing shortages of masks, ventilators, and toilet paper; trip cancellations, cruise ship quarantines, and the grounding of airplanes; as well as epic unemployment and the roller-coaster closures of businesses and international borders.

Most recently in March 2021, a Taiwanese registered cargo ship, the Ever Given, owned by a Japanese company and carrying 18,300 shipping containers of Chinese cargo destined for Europe, lodged itself in a narrow stretch of Egypt's Suez Canal, blocking all traffic between the Red Sea and the Mediterranean Sea for six days, and disrupting an estimated $10 billion of trade daily. Notably, the Suez Canal was inadvertently blocked as recently as 2004, 2006, 2016, and 2017.

These disruptions may only directly impact some, but their impact is indirectly felt by all. And protecting a business, large or small, from the fallout of a global crisis can mean the difference between keeping the doors open and shutting them for good.

Insuring Your Next Global Crisis

One protection for risks associated with a global crisis is contingent business interruption (CBI) coverage. In relying upon third parties for manufacturing, supplying, and consuming, entities purchase CBI coverage to protect against property risks outside of their physical operation or control that their business depends upon. CBI coverage typically covers losses resulting from physical damage to the property of those entities relied upon by an insured. See *Zurich American Ins. Co. v. ABM Industries*, 397 F.3d 158 (2nd Cir. 2005).

Where regular business interruption insurance replaces profits lost following physical damage to the insured's property, CBI coverage protects the insured from damages to its suppliers' or customers' properties. CBI coverage provides an extra layer of protection where the type of physical damage sustained at a designated contingent property matches the risks of loss covered for the insured's own property. In the event of a covered loss, CBI coverage expands traditional business interruption coverage for a defined period of time.

For example, the entire state of Texas experienced unprecedented winter weather earlier this year, causing pipes to freeze and wreaking havoc on communities ill-prepared for the conditions. If your company's sole supplier of widgets was a Texas manufacturer whose pipes froze and burst, you might wind up on ice yourself if unable to find an alternate widget source solution. Under CBI coverage, if the supplier was designated as a dependent property, you are afforded coverage for a defined duration of time for lost business income as a result of the supplier's misfortune. CBI coverage is essential for businesses that rely heavily upon one source of anything; materials, products, purchases, or otherwise.

"CBI coverage sounds great, but my customers and suppliers are fine. Our losses were caused because a boat—a big one—just got stuck in the Suez Canal. Now what?"

Without physical damage disrupting the operations at your supplier or customer's property, CBI coverage is not the solution. But there's hope. Supply chain insurance is designed to cover losses suffered due to a disruption in the supply chain itself, without requiring physical damage to property. (*IRMI*, April 2019). This more comprehensive coverage provides broad application to supply chain disruptions from events like the COVID-19 pandemic and border closures, bankruptcies, labor strikes, civil unrest, military actions, or other significant delays in fulfillment from natural disasters such as an earthquake, flood, or volcanic eruption.

In a 2015 article, David Klein and Silvia Babikian of Herrington & Sutcliffe provide an example of the relative breadth of supply chain coverage. (10 No. 25 WJIBF 2). In 2014, a leading iron ore producer declared force majeure resulting from an Ebola epidemic in Liberia that required removal of its workers from the country. Those authors opine that "[a] supply-chain policy might cover losses from this kind of supply-chain disruption, even without property damage[,] … because the producer has interrupted operations due to the contagion itself or has become unable to transport product because shipping companies have halted operations in Liberia."

> Supply chain insurance is designed to cover losses suffered due to a **disruption in the supply chain itself,** without requiring physical damage to property.

Klein and Babikian's example took on new meaning in 2020. In the wake of the COVID-19 global pandemic, litigation has flooded the courts regarding physical damage limitations associated with business interruption insurance. However, those companies that purchased broader supply chain insurance coverage likely saw claims handled much differently. Those policies without a virus exclusion likely resulted in any number of covered supply chain disruptions across the economic landscape resulting from the COVID-19 pandemic.

Using the recent Suez Canal crisis as another example, suppose your business requires raw materials to be transported from India to various production facilities in the Mediterranean Sea. You rely upon the ability to use the Suez Canal to save time and money by avoiding hauling these materials over land, across various international borders, or around Africa's Cape of Good Hope by sea. Understanding that your shipping costs are extremely dependent upon the Suez Canal, you purchased supply chain insurance that provides you with extra security. If the Suez Canal were to be closed due to a civil or military disruption, natural disaster, or misplaced boat, your business can claim business income losses associated with the cargo's trip around Africa.

The moral of the story is that great care should be taken to identify the risks and choke points confronting your global supply chain and ensure those pieces which you cannot afford to lose.

Assessing and Addressing Your Supply Chain Risk

Risk managers for businesses reliant upon a global supply chain must identify and understand those entities inherently relied upon, including the risks and limitations confronting them. This is especially true where your business relies upon one key supplier or customer.

The global economy and just-in-time delivery models carry inherent risks and vulnerabilities that require prudent risk assessment and proactive loss mitigation. Broadly speaking, the process entails four strategic steps: identification of risks, a review of existing protections, crunching the numbers, and developing a loss prevention strategy.

First, you must carefully evaluate and identify your dependent entities top to bottom and front to back. Ask yourself the following:

- What would it cost me today if my key customer were to burn down tomorrow and how could I replace that source of revenue in the near and long term?
- What if my sole supplier of raw materials was seized by a foreign government for wartime production; how can I replace those materials and at what cost?
- What alternative supplies and inventory exist and how long can resorting to those alternatives take to implement or last in duration?
- How can I mitigate these risks?

Your next task is to review your existing protections, including insurance policies and contracts. Will they provide you any protection or compensation in the event of delays, disruption, or loss due to a global or national event?

Subsequently, you should examine the potential costs of CBI, supply chain, and other coverage options and compare them to the potential damages your business might incur in the event of a loss. A request for business interruption coverage generally requires an accounting for the scale and scope of an insured's business. The process is exponentially more difficult when attempting to procure CBI or supply chain coverage, since an insurer will need to explore the scope of operations associated with an outside entity and how their risks might impact the insured's business. Having a thorough understanding and accounting of those risks prior to procuring insurance will assist the insurance company in understanding the coverage you are looking for, while allowing you to ensure that the scope and scale of risks you confront during a global crisis are covered. As a cautionary tale, do not forget to review the policy language with your insurance professional in light of your understanding of the risk involved. Cutting corners at this step may mean the difference between a covered and non-covered claim.

Finally, you must implement your plan. Your plan includes not only strategic application of the steps outlined above, but periodic revisitation and reassessment for evolving global risks.

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Disclaimers

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York courts permits up to 30 days for an insurer to issue a disclaimer after receipt of the notice of claim. Under Insurance Law §3420(d)(2), "an insurer wishing to deny coverage for death or bodily injury must give written notice as soon as is reasonably possible of such disclaimer of liability or denial of coverage. When an insurer fails to do so, it is precluded from disclaiming coverage based upon late notice, even when the insured has in the first instance allegedly failed to provide the insurer with timely notice of the accident." Liability carriers must issue disclaimer letters in a correct and timely manner when there is a claim regarding bodily injury or wrongful death claims or a carrier is at risk of losing the ability to rely upon exclusions and considerations of breach of policy when disclaiming. This regulation exists for the purposes of providing protection to "the insured, the injured party, and 'any other interested party who has a real stake in the outcome' from prejudice resulting from a belated denial of coverage." *Admiral Ins. Co. v. State Farm Fire*, 86 A.D.3d 486, 488 (1st Dep't 2011).

While it is not unusual for an insurance carrier to issue a reservation of rights letter when dealing with an insurance coverage matter, merely providing a reservation of rights letter is insufficient for the carrier to protect their right to a disclaimer of liability or denial of coverage. A reservation of rights letter has no relevance to the question whether the insurer has timely sent a notice of disclaimer of liability or denial of coverage." *Hartford Ins. Co. v. County of Nassau*, 46 N.Y.2d 1028, 1029 (1979) (citing *Allstate Ins. Co. v. Gross*, 27 N.Y.2d 263, 269 (1970). A reservation-of-rights letter simply serves "to rebut a claim that the carrier waived the right to disclaim by defending the insured." *New York Central Mut. Fire Ins. Co. v. Hildreth*, 40 A.D.3d 602 (2d Dep't 2007).

Given the significant consequences of failing to timely deny coverage under Insurance Law §3420(d)(2), the decision in *Plumbing v. Burlington* is, on its face, alarming. While caution should not be thrown to the wind and the case kept in mind, we advise caution over panic. This is because the insurer was evidently well aware of the underlying action for a period of almost six months, even if there had not been a demand for coverage. In the decision, the court noted that the carrier Burlington was "on notice of the underlying accident several months before it disclaimed coverage and commenced an investigation with respect to the alleged accident." *Plumbing v. Burlington*. Further, Burlington's investigation had revealed the basis for disclaimer for "almost two months before disclaiming coverage." Id. Therefore, defendant was sufficiently aware of the facts to support a disclaimer but waited almost *two months* before disclaiming made the disclaimer untimely.

Main Takeaway: Caution Over Panic

Despite the seemingly alarming ruling in this case, in New York, we are not now living under an eight-day rule and in general courts seem to continue to utilize the 30-day rule as a guide. The cases in which a court applies a more stringent standard typically involve cases when there is more than meets the eye than a straightforward disclaimer issued within 30 days of notice.

While the decision in *Plumbing v. Burlington* seems broad, it does not create coverage where coverage does not exist. If there is no policy in force at the time of the accident, a failure to disclaim in a timely manner will not create a coverage obligation for the insurer. Essentially, "an insurer who fails to issue a timely disclaimer" is not prohibited from later raising a "lack of coverage defense" if "the insurance policy does not contemplate coverage in the first instance." *Westchester Med. Ctr. v. Travelers Prop. Cas. Co. of Am.*, 3 N.Y.S.3d 287 (N.Y. Dist. Ct. 2014) (citing *Hospital for Joint Diseases v. Travelers Property Casualty Insurance Company*, 9 N.Y.3d 312, 318 (2007)). As explained above, however, a failure to disclaim in a timely manner will invalidate a denial provided by an insurer who relied on otherwise applicable policy provision or endorsement.

Overall, an important takeaway is that this is an area of law in which timeliness is paramount. Courts are not likely to extend the time insurers have to issue a disclaimer to an insured or injured person. *Plumbing v. Burlington* should remind insurers and their counsel of the importance of measuring the time to disclaim from the earliest available date on which a carrier has notice of facts which provide a basis for a disclaimer, rather than from the date of an official demand for coverage. A disclaimer should be issued as soon as possible after having notice of a basis to disclaim.

Cannabis

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Presently, and as more insurers enter the D&O coverage cannabis space, insureds should ensure that they are working with brokers and insurers who are well-versed in the space. Cannabis companies, ancillary cannabis businesses, and potential investors in the cannabis space may have unique risks and challenges that require the attention of specialists. Given that, risk management professionals and in-house counsel in this space should work with their insurance professionals to monitor legislative and regulatory developments and to obtain the appropriate coverages.

Insureds should also take steps to maximize their potential D&O coverage. First, insureds should clearly communicate their business operations and potential exposures when shopping for a D&O policy. Second, insureds should read their insurance policies and understand the coverage provided, conditions, exclusions, and time restraints on coverage. In particular, given the regulatory nature of cannabis, most (if not all) D&O policies will carry some form of a regulatory exclusion. Further, given the wide variety of policy language in these cannabis D&O policies, insureds should carefully review policies and never assume that something is excluded. Third, given the limited D&O products available, insureds should explore alternative solutions such as captives and alterations to traditional D&O policies (e.g., purchasing Side A coverage only). Fourth, insureds should review ALL potentially applicable insurance policies to a claim.

Court Calendars

First Department

APPELLATE DIVISION

CALENDAR FOR THE MAY TERM

TUESDAY, MAY 25

2 P.M.

19/1394 People v. Derly Marte
20/4477 Aldalali v. Sungold Associates
20/2813 L., Nelson
19/4508 People v. Michael Crum
20/4163 Hoxhaj v. West 30th HL
20/5017 Lendl-Newark Partners v. JCMC
19/2529 People v. Paulino Camacho
21/16(1) Carr v. De Blasio
21/642 Smith v. Northern Manhattan
20/4244 People v. Randolph Jamison
20/5045 Comptroller, City of NY v. City of NY
20/2652 Gomez v. Trinity Centre
20/1267 People v. Mason McAllister
21/204N Advent Software v. SEI Global Services
15/2298 People v. Matthew Willams

WEDNESDAY, MAY 26

2 P.M.

19/5683 People v. Darryl Johnson
20/3852 Castillo-Sayre v. Citarella Operating
19/3539 A., Nicholas v. Kuska C.
20/4906 *Kato International v. Gerard Fox
20/2891 *Kato International v. Fox Law
18/3202 People v. Anthony Cochrane
20/4741(1) Lewis v. Pierce, Bainbridge
19/5045(2) 37 East 50th Street v. Restaurant Group
17/2289 People v. Courtland Allen
20/2363 McLaughlin v. Arch Insurance
19/5455 Warren v. Silas
20/841 People v. Erick Henderson
18/1335 People v. Ishmael Holmes
20/5001 East 72nd v. MTA
19/2530 People v. Timothy G. Grant

THURSDAY, MAY 27

2 P.M.

18/1046 People v. Ramon Acevedo
20/3114 Wilson v. City of NY
20/524 K., Kathryn v. Derek S.
21/747(1) Karipaparambil v. Polus
16/1633 People v. Amir Andrews
20/4594 Corona v. HHSC 13th Street
18/1492 People v. Tyasia Clark
16/1116 People v. Alejandro Zaragoza
21/317(1) Alvarez v. XL Specialty
20/4570 Muser v. Brook
21/659 Sanchez v. 1 Burgess Road
17/1509 People v. David MCcollum
18/2675 People v. Ali Moalawi
20/3835 Strongbow Consulting v. PricewaterhouseCoopers
21/171N Allstate Insurance v. Bizounouya

TUESDAY, JUNE 1

2 P.M.

18/3295 People v. Narada Matthews
20/3109 Okoroafor v. Emirates Airlines
20/3046 M., Sophia v. James M.
19/3115 People v. Eraldito Lara-Medina
20/3670 Villager Capital v. Union Settlement
21/877 Strategic Funding v. Steenbok, Inc.
19/4005 People v. Rudolph Brown
17/3382 People v. Luis Guzman
21/271(1) Wu v. Sabrina Balsky Interior
16/1595 People v. Ronald Smith
20/3904 Zeoli v. Jacobowitz
20/4468 People v. Daisy Rangel
20/1777 Gray v. City Of NY
20/4718 *Bosquez v. RXR Realty LLC
21/522N *Bosquez v. RXR Realty LLC

WEDNESDAY, JUNE 2

2 P.M.

18/3103 People v. Dennell Drake
20/4175 Manrique v. Delgado
20/4977(1) Bronson v. Jacobs
19/5879 R., Amanda v. Daniel R.
18/1358 People v. George Gray
20/889(3) Quadracci v. Freeman
19/5422 Walker-Vines v. NYC Health
18/4754 People v. Mitchell Carrington
18/1097 People v. Serge C. Theronier
21/733 King v. Board of Education
20/14(1) LabMD, Inc. v. Buchanan
19/2523 *People v. Donnie McCray
19/2531 *People v. Donnie McCray
20/2696 McVicker v. Port Authority
20/4199 Platt v. Windsor Owners

THURSDAY, JUNE 3

2 P.M.

19/1907 People v. Robert Jones
20/2302(1) Mees v. Stibbe NY
20/4445 G., Children
20/458 People v. Justo Garcia, Jr.
21/61 People v. Timothy Newman
20/2899 Corbett v. Bristol Development
18/21101 Briere v. Abdullah
14/1838 People v. Gabriel Perez
20/2737 Alston v. Divine Brothers
20/2021 CURE v. Mian
20/4257 Hayek v. MTA
16/2307 People v. Kalieh McMorris
19/3850 People v. Carleton Samuels
20/2622N Doe v. Yeshiva University
20/4770N The GAP v. 170 Broadway Retail

TUESDAY, JUNE 8

2 P.M.

19/813 People v. Dexter Murray
20/3543 City of NY v. Travelers Property
20/4276 M., Jabuki v. Nicole B.
18/2590 People v. Alexander Fuentes
19/4932 People v. Joseph Garner
20/3935 McQ., Children
17/1356 People v. Valerie Martinez
20/4968 Derringer v. F.G.G. Productions
20/2715 Camara v. Costco Wholesale
20/4529 Wagner v. Pegasus Capital
19/5128 People v. Odel Rhodes
20/3180(1) Lek v. Lek
20/402 State Division of HR v. Austin
20/3950 Liljov Realty v. NYSDHR
21/756N Samuelsen v. Wollman Rink

WEDNESDAY, JUNE 9

2 P.M.

18/4671 People v. John Carlucci
19/4749 Scekic v. SL Green
20/1217 H., Alexander
20/3054(1) Zubillaga v. Findlay Teller
20/3575 Tiozzo v. Dangin
19/1024 People v. Denzel Catlett
20/2657 FGP 1 v. Dubrovsky
19/5218 People v. Gage Quinones
20/3120 322 West 47th St. v. Guarino
20/4334 P., Maxwell
19/2951 People v. Angel Miranda
20/2377 Arch Insurance v. Petrocelli Electric
20/4842 Worthy Lending v. New Style Contractors
19/4542 People v. Wayne Martin
21/496 State of NY v. Brann

THURSDAY, JUNE 10

2 P.M.

19/4502 People v. Anonymous
20/4166 Morales v. Pistilli Realty Group
20/3982 A/D., Children
20/1019 A/D., Children
17/2071 People v. Elisette Jesus
21/555 Deka Immobilien v. Lexington Avenue Hotel
17/2956 People v. Trevell London
18/906 Park Union v. 910 Union
20/3565 Martinez v. 560-568 Audubon
19/1339 People v. Jermaine Hatchett
18/1648 People v. Hamza Sidibe
20/4709 Heffernan v. NYC Mayor's Office
19/03934 Rabi v. NYCDHP
20/4610 350 Bklyn Realty v. Clarke
20/3770N Woo v. Spackman

*****

The following cases have been scheduled for pre-argument conference on the dates and at the times indicated:

Acosta, P.J. Friedman, Renwick, Manzanet-Daniels, Gische JJ.

WEDNESDAY, MAY 26

11 A.M.

26898/16 Magalys Ali v. Riverbay Corporation

THURSDAY, MAY 27

10 A.M.

300527/16 Angela B. Espinal v. JPMorgan Chase & Co.

TUESDAY, JUNE 1

11:30 A.M.

23393/19 Grace Lipscomb v. Wilfred Almodoyar

TUESDAY, JUNE 8

9:30 A.M.

657133/19 Arbor-Myrtle Beach PE LLC v. Jacob Frydman

WEDNESDAY, JUNE 9

10 A.M.

156146/17 Geigel Martinez Roman v. Zapco 1500 Investment, L.P.

APPELLATE TERM

60 Centre Street Room 401

10 A.M.

MONDAY JUNE 7

Mcshan, J.P., Brigantti, JJ, Hagler, JJ.

16/474/475 People v. Fernandez, Giovani
18/347 People v. Watson, Kirk
19/288 People v. Bolta, Andy

MONDAY JUNE 14

Mcshan, J.P., Brigantti, JJ, Hagler, JJ.

21/030 Transus Llc, Et Al v. Beach View Apt. Corp
21/047 Rh 528 West 159 St. Lp v. Timofeeva, Ekaterina

New York County

SUPREME COURT

Ex-Parte Motion Part And Special Term Part

Ex-Parte Motions
Room 315, 9:30 A.M.

Special Term Proceedings
Unsafe Buildings
Bellevue Psychiatric Center
Kirby Psychiatric Center
Metropolitan Hospital
Manhattan Psychiatric Center
Bellevue Hospital

The following matters were assigned to the Justices named below. These actions were assigned as a result of initial notices of motion or notices of petition returnable in the court on the date indicated and the Request for Judicial Intervention forms that have been filed in the court with such initial activity in the case. All Justices, assigned parts and courtrooms are listed herein prior to the assignments of Justices for the specified actions. In addition, listed below is information on Judicial Hearing Officers, Mediation, and Special Referees.

IAS PARTS

2V Hom (60 Centre)
3 Cohen, J.M.: 208 (60 Centre)
4 Nervo: 327 (80 Centre)
5 Ramseur: 328 (80 Centre)
6 Rakower: 205 (71 Thomas)
7 Lebovits: 345 (60 Centre)
8 Kotler: 278 (80 Centre)
9 Sattler: 355 (60 Centre)
11 Edwards 412 (60 Centre)
12 Silvera: 442 (60 Centre)
13 Mendez: 442 (60 Centre)
14 Bluth: 432 (60 Centre)
15 Crane: 304 (71 Thomas)
17 Hagler: 335 (60 Centre)
18 Tisch: 104 (71 Thomas)
19 Sokoloff: 684 (111 Centre)
20 Kaplan: 540 (60 Centre)
21 Adams: 320 (80 Centre)
22 Headley: 136 (80 Centre)
23 Perry: 307 (60 Centre)
24 Katz: 325 (60 Centre)
25 James: 1254 (111 Centre)
26 Rosado: 543 (60 Centre)
27 Sharpe: 731 (111 Centre)
29V Lubell (60 Centre)
30V McMahon (60 Centre)
31 O'Neill Levy: 218 (60 Centre)
32 Kahn: 1127B (111 Centre)
33 Chan: 305 (71 Thomas)
34V King (60 Centre)
35 Edmead: 438 (60 Centre)
36 Saunders: 210 (71 Thomas)
37 Engoron: 418 (60 Centre)
38 Nock: 1166 (111 Centre)
41 Cannataro: 490 (111 Centre)
42 Bannon: 428 (60 Centre)
43 Reed: 222 (60 Centre)
44 Hoffman: 321 (60 Centre)
46V Latin (60 Centre)
47 Goetz: 1021 (111 Centre)
48 Masley: 242 (60 Centre)
49 Chan 252 (60 Centre)
51 Cooper: 212 (60 Centre)
52 Frank: 308 (80 Centre)
53 Borrok: 238 (60 Centre)
54 Schecter: 228 (60 Centre)
55 d'Auguste: 103 (71 Thomas)
56 Kelley: 311 (71 Thomas)
57 Kelly: 1045 (111 Centre)
58 Cohen: 574 305 (71 Thomas)
60 Crane
59 James, D.: 331 (60 Centre)
61 Ostrager: 232 (60 Centre)
62 Sweeting: 279 (80 Centre)
63 Love: 122 (80 Centre)

MFPKahn: 1127B (111 Centre)
MMSP-1: 1127B (111 Centre)
IDV Dawson: 1604 (100 Centre)

PART 40TR

JUDICIAL MEDIATION

On Rotating Schedule:

Silver 1227 (111 Centre)
Kaplan 422 (60 Centre)
Cannataro

EARLY SETTLEMENT

ESC 1 Vigilante 106(80 Centre)
ESC 2 Wilkenfeld 106 (80 Centre)

JHO/SPECIAL REFEREES 60 Centre Street

80R Edelman: Room 562
80R Galette: Room 240
83R Sambuco: Room 528
85R Shamahs: Room 324
91 Ramos: Room 564

JHO/SPECIAL REFEREES 80 Centre Street

81R Hewitt: Room 321
84R Feinberg: Room 114
87R Burke: Room 238
89R Hoahng: Room 236

SPECIAL REFEREE 71 Thomas Street

MEDIATION-NON-JURY 60 Centre Street

Kern-Rappy: Room 641

SUPREME COURT Motion Calendars Room 130, 9:30 A.M. 60 Centre Street

SUPREME COURT Motion Dispositions from Room 130 60 Centre Street

Calendars in the Motion Submission Part (Room 130) show the index number and caption of each and the disposition thereof as marked on the Room 130 calendars. The calendars in use are a Paper Motions Calendar, E-Filed Motions Calendar, and APB (All Papers By)Calendar setting a date for submission of a missing stipulation or motion paper. With respect to motions filed with Request for Judicial Intervention, counsel in e-filed cases will be notified by e-mail through NYSCEF of the Justice to whom the case has been assigned. In paper cases, counsel should sign up for the E-Texas service to receive e-mail notification of the assignment and other developments and schedules in their cases. Immediately following is a key that explains the markings used by the Clerk in Room 130.

Motion Calendar Key:

ADJ—Adjourned to date indicated in Submission Courtroom (Room 130).
ARG—Scheduled for argument for date and part indicated.
SUB (PT #)—Motion was submitted to part noted.
WDN—Motion was withdrawn on calendar call.
SUB/DEF—Motion was submitted on default to part indicated.
APB (All Papers By)—This motion is adjourned to Room 119 on date indicated, only for submission of papers.
SUBM 3—Adjourned to date indicated in Submission Court Room (Room 130) for affirmation or so ordered stipulation.
S—Stipulation.
C—Consent.
C MOTION—Adjourned to Commercial Motion Part Calendar.
FINAL—Adjournment date is final

SUPREME COURT

Submissions Part

MONDAY, MAY 24

100102/21 Banks v. NYC Financial Information
101588/19 Cortes v. James O'Neill
100090/21 Hooks v. NYC
100391/21 Levine v. NYC Police
100718/16 Rodriguez v. Kalata
100721/20 Sanders v. Anthony Thomas

TUESDAY, MAY 25

580003/21 Briscoe v. Board of Elections

WEDNESDAY, MAY 26

101309/19 Diarra v. Flomenhaft
100443/21 Duran v. Dept. of Health And
100380/21 Feldscher v. NYS Div.
160418/18 Harlem Rlty. Associates v. 108 Lexington Operating LLC
100174/21 Williams v. NYC—9:30 A.M.

Paperless Judge Part

MONDAY, MAY 24

651683/21 140 West Street (ny) Retail v. Rumble Fitness LLC
161092/20 1501 Lex Owner LLC v. Metrokids Cradle (south End)
650238/21 1st Ave. Enterprises LLC v. Love Picin Inc.
151283/21 33/34 West Owner LLC v. Bistro Marketpl. 17 Inc.
150755/21 510 Fifth Ave. LLC v. Yard Inc.
650787/21 555 Housing Group v. Bushwick Economic
159980/20 Abney v. Dept. of Education
655047/20 Alpha Omega Alliance v. Landsman
156061/20 American Transit Ins. v. Hossain
654813/18 Amsterdam Nursing Home Corp. v. Walkin
652454/21 Areit 2019-Cre3 Trust v. Singer
152996/15 Bah v. NYC
652184/21 Berkley Research Group v. Ngbs Mexico
151335/21 Bonanno v. Trip Kosh Properties LLC
656248/20 Bradford Prods. LLC v. Hfz 11 Beach St.
652320/21 Bravia Capital Hong Kong v. Hna Group Co., Ltd.
950670/20 Brown v. Archdiocese of NY
151137/21 Bsrep III Nero LLC v. New Golden Apple Inc.
650890/21 Burlington Ins. v. NY Const.
156729/19 Carasco v. Schlesinger
452025/18 NYC v. Berkeley Educational
450462/20 NYC v. Childrens Community
450802/19 NYC v. Fotinakopoulos
805063/15 Coleman v. Mount Sinai Medical Center
151647/21 Crewfacilities.Com v. NYC Office of
151438/21 Cruz v. Komatsu America Corp.
153998/21 Deng v. Ifresh
151477/21 Diaz v. Champion Parking Corp.
651597/18 Doctors Allergy Formula v. Valeant Pharmaceuticals
159605/15 Downey v. Weisberg
158312/18 Dul v. 63rd & 3rd NYC LLC
155413/20 Fernandez v. Planetary Movers Inc.
653714/20 G&Y Maint. Corp. v. McSam Hotel Group LLC
653432/18 Gerzog v. Goldfarb
155840/19 Gleason v. Tishman Speyer Properties
151425/18 Goldberg v. Torim
152864/21 Gonzalez v. Royal Charter Properties, Inc.
162674/15 Greater NY Mutual v. Cona Electric Inc.
157669/20 Gs 800 6th LLC v. Stafford Franchise Hldgs.
160894/17 Hay v. Harris-Camden Terminal
850029/21 Hilton Resorts Corp. v. Deutsch-Brusky
850023/21 Hilton Resorts Corp. v. Eckhoff
850191/20 Hilton Resorts Corp. v. Skuby And Co.
850017/21 Hilton Resorts Corp. v. Trimarco
850021/21 Hilton Resorts Corp. v. Vance
190355/18 Hoskey v. A.O. Smith Water Prods.
652471/21 in The Matter of The v. Hrusovsky
161253/19 Inga v. Ktistakis
651469/18 J.G. Jewlry Pte. Ltd. v. Tjc Jewelry, Inc.
162011/19 Jones v. Sall Restaurant And Lounge
152213/20 Kasmin v. Josephs
158425/19 Kearns v. Tishman Const.
655473/19 Keybank Nat. v. Stage 2 Networks
656779/20 Kinsella v. Juracich
651581/21 Leanback Digital LLC v. Springserve LLC
150722/21 Leitner v. Black Bear 123
157834/20 Lettire v. Sd Second Ave. Mgr. LLC
158110/19 Levy v. NYC
157644/19 Lewandowski v. Vlachos
153044/20 Maerov v. Long Island Airline
155724/16 Magistro v. 56th And Park (NY) Owner
656287/20 Mallett, Inc. v. Stella McCartney America, Inc.
651008/21 Maple Drake Austell Owner v. Zurich American Ins.
161371/20 Martinez Toribio v. Walter Schik, Inc.
152735/19 Mazzone v. Alonso
153038/17 McNeelege v. One Bryant Park LLC
651070/21 Medallion Financial Corp. v. Aem Transportation Corp.
158746/18 Michaux v. Terence Cardinal Cooke
153171/18 NYCTL 2017-A Trust And The v. 104-106 West 132 St.
653389/20 Omnibuild Const., Inc. v. 76 Eleventh Ave. Prop.
805038/21 Orlowski v. Gupta
154923/18 Perry v. Lighting Group
155081/19 Petrusa v. NYC
653866/18 Pizzarotti LLC v. Bright Window Specialists Inc.
653184/20 Preferred Contractors v. Deep Plumbing Water & Sewer
153464/19 Pv Hldg. Corp. Including v. Bright Star Rehab Physical
651500/20 Rebecca R. Haussmann v. Baumann
650097/21 Red Apple 86 Fleet Pl. v. Hudson Machine Works, Inc.
656069/20 Retail Capital LLC v. Liberty Sbf
650757/21 Reyes v. NYCTA
155294/20 Rivera v. Planetary Movers Inc.
155455/17 Rooplal v. Wells Reit II-222 East
652355/21 Rubberduck Studio Gmbh v. Estey-Hoover, Inc.
152397/21 Rubin v. NYC Police
153149/19 Sacino v. Related Companies
157619/20 Sandoval v. 4 World Trade Center LLC
650998/19 Scottsdale Ins. Co. v. Mt. Hawley Ins. Co.
150506/16 Shelton v. Chelsea Piers
651114/21 Shenzhen Huibao Paper v. Florence Paper Corp.
159698/20 Sos Capital v. Recycling Paper Partners of
650925/19 Structure Tone, Inc. v. Selective Ins. Co.
159089/17 Suarez v. Con Ed Co.
160931/20 Sutton v. Massachusetts Mutual Life
651774/21 System View Consulting LLC v. Dogma Spa LLC
152730/21 Tarantola v. NYCTA
650681/21 Tesis v. Yanko
155930/18 Thacker v. Constantine Cannon
160250/15 Toler v. Jbs Associated
151832/20 Veintimilla Celi v. Maple C 799 B'way. Owner
190468/18 Vose v. Abb Inc., Individually And
153934/21 Wagner v. NYC Dept. of
151437/20 Walker v. NYC
157031/15 West v. Bcre 90 West St.
150694/14 Winkler v. Halmar Int'l
650992/21 Wtc Tower 1 LLC v. Cardstack Syndicate Inc.
650835/21 York Renewable Energy v. Blue Sphere Corp.
157284/14 Zakota v. NYC
652689/21 Zhou v. Liu

TUESDAY, MAY 25

655232/20 100-106 LLC v. Slice & Co
652095/20 105 West 55th St. LLC v. Melohn Foundation, Inc.
655555/20 126-128 West LLC v. Harleysville Worcester
152203/21 3921 108 LLC v. Dept. of Bldgs.

COURT NOTES

OFFICE OF COURT ADMINISTRATION

New Online Form for Making Requests Under The Americans With Disabilities Act (ADA).

The Office of Court Administration has created a new online form for making requests for reasonable accommodations under the Americans with Disabilities Act (ADA). The form is currently being piloted in four locations: Monroe County (all courts); Nassau County (all courts); Suffolk County (all courts); and, New York County (Supreme Court, Civil Term only). In these pilot counties, a court user now has the choice of using the online form to ask for an accommodation before coming to court. The form cannot be used yet in any other jurisdiction.

Here are some simple instructions for accessing the online form:

• Go to: "Local ADA Info by Courthouse" http://ww2.nycourts.gov/accessibility/byCounty.shtml

• Select the pilot County the Court is in (Monroe, Nassau, Suffolk, or New York Counties only).

• Locate the particular Court you will be visiting, and choose the address for that court (some courts may have several locations – be sure to choose the right address).

• A link to the form appears on the individual court page if that Court is participating in the pilot program (in New York County, the link can only be found on the individual pages for the three Supreme Court, Civil Term locations; in the three other pilot counties, the link will be found on the individual pages for every court in that county).

The online form can be used by litigants, attorneys, jurors, witnesses, and spectators, or by someone submitting the request on their behalf.

Please submit the form at least five business days before your court date. To the extent possible, your request and any information submitted in support will be kept confidential.

For questions about the new online form, please e-mail: ADA@nycourts.gov.

For complete information about the courts and ADA, visit: http://ww2.nycourts.gov/Accessibility/index.shtml

U.S. DISTRICT COURT
Southern District

Appointment of New Magistrate Judge

The United States District Court for the Southern District of New York is accepting applications for two full-time Magistrate Judges at New York, NY. The duties of the position are demanding and wide ranging and will include: (1) conduct of preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters, including settlement proceedings, and evidentiary proceedings on delegation from the judges of the district court; (4) trial and disposition of civil cases upon consent of the litigants; (5) inquests and reports and recommendations on dispositive motions on reference from the judges of the district court; and (6) assignment of additional duties not inconsistent with the Constitution and laws of the United States.

The basic jurisdiction of the United States Magistrate Judge is specified in 28 U.S.C., Section 636. To be qualified for appointment, an applicant must: (a) be a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands for at least five years; (b) have been engaged in the active practice of law for a period of at least five years (with some substitutions authorized); (c) be competent to perform all the duties of the office, of good moral character, emotionally stable and mature, committed to equal justice under the law, in good health, patient and courteous, and capable of deliberation and decisiveness; (d) be less than 70 years old; and (e) not be related to a judge of the district court.

A Merit Selection Panel composed of attorneys and other members of the community will review all applications and recommend in confidence to the judges of the district court the six persons whom it considers best qualified. The Court will make the appointment following an FBI and IRS investigation of the appointee. The Court is interested in a diverse applicant pool and encourages all qualified candidates to submit their applications, including women and members of minority groups. The current salary of the position is $201,112 per annum (**effective 1/1/2021).

Candidates should submit applications to:

Edward A. Friedland
District Court Executive
United States Courthouse
500 Pearl Street, Room 820
New York, NY 10007-1312
Tel: 212-805-0500

An original plus fifteen (15) copies of a cover letter, resume and application must be received by September 20, 2021. Application forms are available on the Court's web site: www.nysd.uscourts.gov. (Multiple vacancies may be filled from this posting.)

If you applied to the Magistrate Judge posting dated 1/19/21, your application will be considered for both vacancies and you do not need to reapply.

*****

Application for Position of United States Magistrate Judge - Foley Square, New York

In addition to your resume, please provide the following information on a separate sheet as necessary:

I. Describe representative federal cases for at least the last five years with which you have been involved in terms of:

A. civil or criminal, title and judge assigned;

B. subject matter (e.g., securities, antitrust, personal injury);

C. particular matter litigated (e.g., trial, appeal, discovery issues, motions to dismiss or for summary judgment, etc.);

D. your role (e.g., if case was tried, were you lead counsel? If not, did you examine or cross-examine any witnesses? How long was the trial? Was case tried to verdict? Did you argue motions or evidentiary points, etc.? If case was not tried, did you argue motions? If so, describe. If case was appealed, did you argue the appeal?)

II. If the federal cases in which you have participated do not provide a representative sample of your work, supply the same information with respect to state court cases or administrative matters.

III. List your opposing counsel in the cases described above with addresses and phone numbers.

* * * If the answer to any of the following questions is yes, please give particulars. * * *

IV. Have you ever been convicted of a crime?

V. Have you ever been sued?

VI. Have you ever failed to file federal or state income tax returns?

VII. Are you now or have you ever been delinquent in the payment of taxes?

VIII. Have you ever been the subject of a contempt proceeding?

IX. Have you ever been the subject of Rule 11 sanctions?

X. Have you ever been the subject of a Bar disciplinary proceeding?

XI. Have you ever been investigated by any court-appointed person or committee with respect to any question of ethics?

STATE OF NEW YORK COMMISSION ON JUDICIAL NOMINATION

Commission Releases List of Nominees for the Court of Appeals' Coming Vacancy Created by Judge Paul G. Feinman's Retirement and Subequent Passing.

Under New York's Constitution, the Commission on Judicial Nomination is charged with evaluating, and then recommending to the Governor, candidates to fill vacancies on the State's highest court, the Court of Appeals of the State of New York. The Commission vigorously seeks out, carefully evaluates and then nominates to the Governor well-qualified candidates from the extraordinary, diverse community of lawyers who have been admitted to practice in New York State for at least 10 years.

In connection with the vacancy on the Court created by Associate Judge Paul G. Feinman's unexpected retirement on March 23, 2021, and passing the following week, the Commission today released its Report to the Governor. The Report contains the names of seven candidates who in the Commission's collective judgment are well qualified, by virtue of their character, temperament, professional aptitude, experience, qualifications and fitness for office, to fulfill the duties of that high office.

Given the compressed schedule necessitated by the nature of the vacancy, the Commission's Report follows a concentrated period of outreach efforts that were conducted through public announcements and individual solicitations of applications. The Commission's outreach also included efforts to build on the substantial body of candidates who applied for the Court vacancy recently created by the retirement of Associate Judge Leslie Stein, effective June 4, 2021. These efforts resulted in the Commission's consideration of 75 applications.

The applicant pool was diverse. Of the 75 candidates, 36 (48%) were female and 23 (30%) were of diverse backgrounds. The Commission interviewed 32 candidates (which included interviews of candidates for the Judge Stein vacancy who were also considered for the Judge Feinman vacancy). Of those 32 candidates interviewed by the Commission, 20 (62%) were female and 10 (31%) were ethnic minorities or otherwise diverse.

Judge E. Leo Milonas, Chair of the Commission, stated: "My colleagues on the Commission and I were deeply saddened when we learned of Judge Feinman's passing, and, in his honor and memory, we reached out to the legal community to expeditiously fill his seat. We were impressed by the highly qualified pool of candidates whose applications we have reviewed to fill his seat on the Court — particularly including the seven whose names we are sending to the Governor today. That so many highly qualified candidates were interested in the current vacancy amply demonstrates the remarkable strength and depth of New York's legal community."

The Commission's seven nominees (in alphabetical order) to the Governor are:

• Michael S. Bosworth, Esq., attorney in private practice (Latham & Watkins, LLP);

• Hon. Anthony Cannataro, Citywide Administrative Judge of the Civil Court of the City of New York and a Justice of the Supreme Court;

• Hon. Judith J. Gische, Associate Justice, Appellate Division, First Department;

• Caitlin J. Halligan, Esq., attorney in private practice (Selendy & Gay PLLC);

• Hon. Denise A. Hartman, Judge of the Court of Claims and Acting Justice of the Supreme Court;

• Hon. Erin M. Peradotto, Associate Justice, Appellate Division, Fourth Department; and,

• Hon. Troy Karen Webber, Associate Justice, Appellate Division, First Department.

By law, the Governor is required to make his appointment from among this list no sooner than May 14, 2021 nor later than May 29, 2021. The State Senate then, within 30 days after receipt of the Governor's choice, must confirm or reject the appointment.

The next scheduled vacancy on the Court of Appeals will occur on January 1, 2022, due to Associate Judge Eugene M. Fahey's mandatory retirement by reason of age.

U.S. DISTRICT COURT
Southern District

Candidates Being Sought For Criminal Justice Act Panel

The United States District Court for the Southern District of New York is seeking applicants for the SDNY Criminal Justice Act (CJA) Panel. Applications are available on the court's website at www.nysd.uscourts.gov/cja.php. Completed applications must be addressed to David Patton, Executive Director of the Federal Defenders of New York, and submitted electronically by **May 31, 2021** to karen_van_outryve@fd.org; no paper applications will be accepted.

The CJA Panel is comprised of private attorneys who are authorized to serve as appointed defense counsel pursuant to 18 U.S.C. § 3006A. To qualify for a position on the CJA Panel, attorneys must be

Continued on page 26

Court Calendars Continued On Page 25

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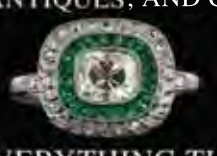

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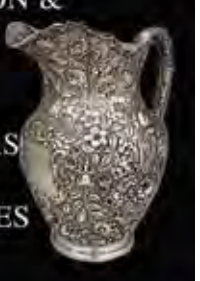

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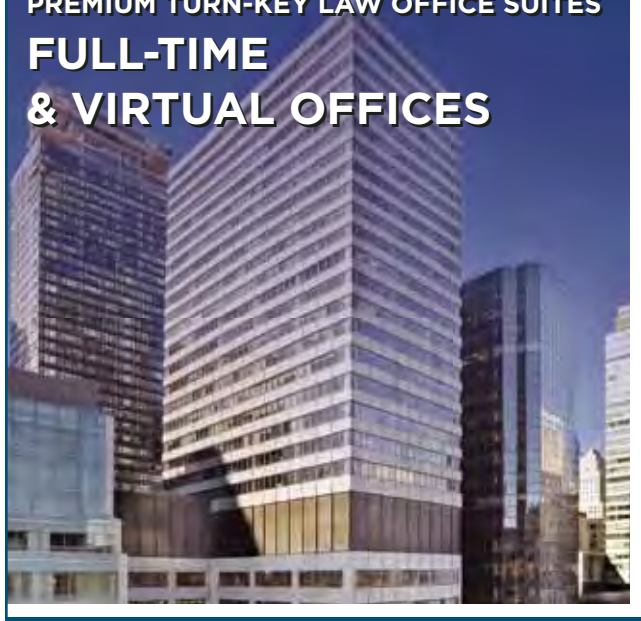

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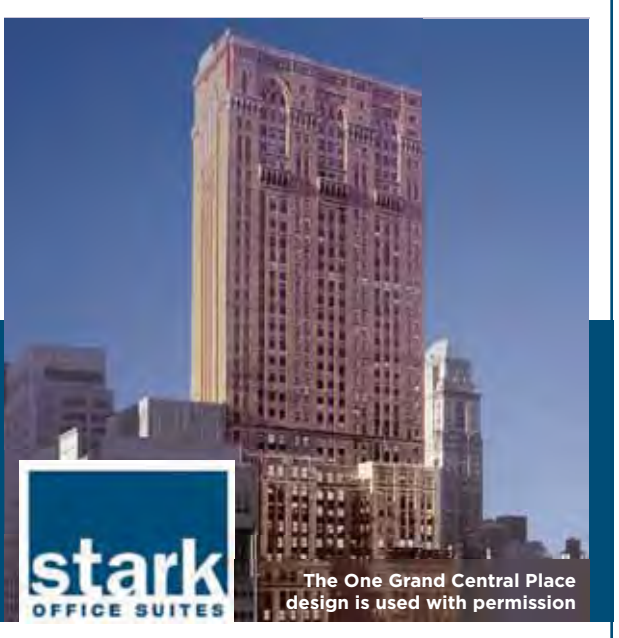

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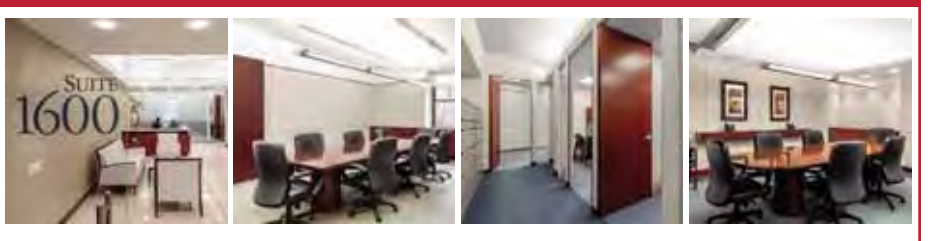

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NOTICE OF QUALIFICATION of ZCG Strategic Equity GP, L.P. Authority filed with NY Secy of State (SSNY) on 3/31/21. Office location: New York County. LP formed in Delaware (DE) on 9/21/20. SSNY is designated as agent of LP upon whom process against it may be served. SSNY shall mail process to: 1330 Ave of the Americas, Fl. 16, NY, NY 10019. DE address of LP: 1209 Orange St, Wilmington, DE 19801. List of names and addresses of all general partners available from SSNY. Cert. of Limited Partnership filed with DE Secy of State, 401 Federal St, Ste 4, Dover, DE 19901. Purpose: any lawful activity.
0000525249 a19-M my24

NOTICE OF QUALIFICATION of ZCG Strategic Equity Fund, L.P. Authority filed with NY Secy of State (SSNY) on 3/31/31. Office location: New York County. LP formed in Delaware (DE) on 9/21/20. SSNY is designated as agent of LP upon whom process against it may be served. SSNY shall mail process to: 1330 Ave of the Americas, Fl. 16, NY, NY 10019. DE address of LP: 1209 Orange St, Wilmington, DE 19801. List of names and addresses of all general partners available from SSNY. Cert. of Limited Partnership filed with DE Secy of State, 401 Federal St, Ste 4, Dover, DE 19901. Purpose: any lawful activity.
0000525248 a19-M my24

NOTICE OF QUALIFICATION of OR OPPORTUNISTIC DL (C), L.P. Authority filed with NY Secy of State (SSNY) on 4/7/21. Office location: New York County. LP formed in Delaware (DE) on 11/24/20. SSNY is designated as agent of LP upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LP: 1209 Orange St, Wilmington, DE 19801. List of names and addresses of all general partners available from SSNY. Cert. of Limited Partnership filed with DE Secy of State, 401 Federal St, Ste 4, Dover, DE 19901. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525244 a19-M my24

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167 Shepherd LLC filed w/ SSNY 4/20/21. Off. in Nassau Co. SSNY desig. as agt. of LLC whom process may be served & shall mail process to the LLC, 11 Hemlock Ln, Roslyn Heights, NY 11577. Any lawful purpose.
0000527329 m3 m j14

AOH Realty LLC filed w/ SSNY 4/22/21. Off. in Nassau Co. SSNY desig. as agt. of LLC whom process may be served & shall mail process to the LLC, 2 Frances Dr, Syosset, NY 11791. Any lawful purpose.
0000527493 m3 m j14

Atkins Trisurg LLC Authority filed SSNY 4/22/21 Office: NY Co LLC formed NJ 2/19/21 exists 101 Old Short Hills Rd Ste PH-1 West Orange, NJ 07052. SSNY design agent upon whom process against the LLC may be served & mail to 101 Old Short Hills Rd #PH-1 West Orange, NJ 07052 Cert of Regis Filed NJ SOS 225 West State St Trenton, NJ 08608. 401 Federal St #4 Dover DE 19901 General Purpose
0000527441 m3 m j14

LIMITED LIABILITY ENTITIES

Beat 2 LLC filed w/ SSNY 4/19/21. Off. in Nassau Co. SSNY desig. as agt. of LLC whom process may be served & shall mail process to the LLC, 98 High Farms Rd, Glen Head, NY 11545. Any lawful purpose.
0000527328 m3 m j14

FIRST PRIDE MOVING AND SHIPPING LLC Art. Of Org. Filed Sec. of State of NY 2/26/2021. Off. Loc. : Bronx Co. SSNY designated as agent upon whom process may be served & shall mail proc.: c/o Nathaniel Dortch, 2761 Sedgwick Avenue, 5K, Bronx, NY 10468. Purpose: Any lawful purpose.
0000527706 M3 M J7

NOTICE OF FORMATION of JYDE LLC, a domestic LLC. Articles of Organization filed with the Secretary of State of New York (SSNY) on February 4, 2021. Office location: BRONX County. SSNY is designated as agent upon whom process against the LLC may be served. SSNY shall mail process to: The LLC, 1048 HUNTINGTON AVE, BRONX, NY 10465. Purpose: Any lawful purpose.
0000526335 a26 m j7

NOTICE OF FORMATION of NY Greenlands LLC. Arts. of Org. filed with Secy. of State of NY (SSNY) on 4/6/21. Office location: Westchester County. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: The LLC, 158 Salem Rd, Pound Ridge, NY 10576. Purpose: any lawful activity.
0000525386 a19 m m24

NOTICE OF FORMATION of Funches Funding LLC. Arts of Org filed with Secy. of State of NY (SSNY) on 3/3/21. Office location: BX County. SSNY designated agent upon whom process may be served and shall mail copy of process against LLC to 3440 Fish Ave. Ste 2A, Bronx, NY 10469. Purpose: any lawful act.
0000523323 A19 M M24

NOTICE OF FORMATION of Made by Mimzy LLC. Arts of Org filed with Secy. of State of NY (SSNY) on 2/12/21. Office location: NY County. SSNY designated as agent upon whom process may be served and shall mail copy of process against LLC to 340 E 80th St, Apt 9F, New York, NY 10075. Purpose: any lawful act.
0000523501 A19 M M24

NOTICE OF FORMATION of AlbaBit Media LLC. Arts of Org filed with Secy. of State of NY (SSNY) on 1/27/21. Office location: NY County. SSNY designated as agent upon whom process may be served and shall mail copy of process against LLC to 120 Vermilyea Ave, Apt E42, New York, NY 10034. Purpose: any lawful act.
0000524901 A19 M M24

NOTICE OF FORMATION of Exairetos LLC. Arts of Org filed with Secy. of State of NY (SSNY) on 10/5/20. Office location: BX County. SSNY designated as agent upon whom process may be served and shall mail copy of process against LLC to 808 Adee Ave, Apt 1M, Bronx, NY 10467. Purpose: any lawful act.
0000522638 A19 M M24

NOTICE OF FORMATION of N'TIFAFA LLC. Arts of Org filed with Secy. of State of NY (SSNY) on 3/29/21. Office location: NY County. SSNY designated as agent upon whom process may be served and shall mail copy of process against LLC to 580 Saint Nicholas Ave, Apt 3L, New York, NY 10030. Purpose: any lawful act.
0000524914 A19 M M24

NOTICE OF FORMATION of Sacred Secrets, LLC. Arts of Org filed with Secy. of State of NY (SSNY) on 3/17/21. Office location: NY County. SSNY designated as agent upon whom process may be served and shall mail copy of process against LLC to 219-24 113th Ave, Queens Village, NY 11429. Purpose: any lawful act.
0000521652 A19 M M24

NOTICE OF FORMATION of Savannah Grassroots LLC. Articles of Organization filed with the Secretary of State of New York (SSNY) on March 24, 2021. Office located in Nassau County. SSNY has been designated for service of process. SSNY shall mail a copy of any process served against the LLC to P.O. Box 245, Valley Stream, NY 11582 Purpose: any lawful purpose.
0000525043 a19 f m24

NOTICE OF FORMATION of Core One Physical Therapy and Chiropractic, PLLC. Arts of Org. filed with New York Secy of State (SSNY) on 4/5/21. Office location: New York County. SSNY is designated as agent of PLLC upon whom process against it may be served. SSNY shall mail process to: 1410 Broadway Ste 606, NY, NY, 10018. Purpose: physical therapy and chiropractic.
0000525250 a19-M my24

SUMMONS

SUPREME COURT OF THE STATE OF NEW YORK - COUNTY OF WESTCHESTER
INDEX # 29233/2009
FILED: 4/27/2021
SUPPLEMENTAL SUMMONS WITH NOTICE AND AMENDED COMPLAINT
MORTGAGED PREMISES: 4 Hampshire Circle, Bronxville, NY 10708. Plaintiff designates WESTCHESTER County as the place of trial based on the location of the mortgaged premises in this action. DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE INDYMAC IMSC MORTGAGE LOAN TRUST 2007-AR1, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2007-AR1 UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2007, Plaintiff, PATRICIA LASPAGNOLETTA, INDIVIDUALLY AND AS HEIR AT LAW AND NEXT OF KIN OF RONALD LASPAGNOLETTA, GIA WALSH HEIR AT LAW AND NEXT OF KIN OF RONALD LASPAGNOLETTA; TARA LASPAGNOLETTA HEIR AT LAW AND NEXT OF KIN OF RONALD LASPAGNOLETTA; "JOHN DOE" AND "JANE DOE" 1 THROUGH 50, INTENDING TO BE THE UNKNOWN HEIRS, DISTRIBUTES, DEVISEES, GRANTEES, TRUSTEES, LIENORS, CREDITORS, AND ASSIGNEES OF THE ESTATE OF RONALD LASPAGNOLETTA, WHO WAS BORN IN 1942 AND DIED ON SEPTEMBER 29, 2011, A RESDIENT OF WESTCHESTER COUNTY, WHOSE LAST KNOWN ADDRESSWAS 4 HAMPSHIRE CIRCLE, BRONXVILLE, NEW YORK 10708, THEIR SUCCESSORS IN INTEREST IF ANY OF THE AFORESAID DEFENDANTS BE DECEASED, THEIR RESPECTIVE HEIRS AT LAW, NEXT OF KIN, AND SUCCESSORS IN INTEREST OF THE AFORESAID CLASSES OF PERSON, IF THEY OR ANY OF THEM BE DEAD, AND THEIR RESPECTIVE HUSBANDS, WIVES OR WIDOWS, IF ANY, ALL OF WHOM AND WHOSE NAMES AND PLACES OF RESIDENCE ARE UNKNOWN TO THE PLAINTIFF; GREENPOINT MORTGAGE FUNDING, INC., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEEFOR LUXURY MORTGAGE CORP.; NEW YORK STATE TAX COMMISSION; ES VENTURES ONE LLC; DAY DORIS; PORTFOLIO RECOVERY ASSOCIATES LLC; DISCOVER BANK; UNITED STATES OF AMERICA O/B/O INTERNAL REVENUE SERVICE; NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, Defendants. TO THE ABOVE--NAMED DEFENDANTS: YOU ARE HEREBY SUMMONED to answer the Complaint in the above entitled action and to serve a copy of your Answer on the Plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. The United States of America, if designated as a Defendant in this action, may answer or appear within sixty (60) days of service hereof. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint. WESTCHESTER County is designated as the place of trial. The basis of venue is the location of the mortgaged premises foreclosed herein. NOTICE YOU ARE IN DANGER OF LOSING YOUR HOME. If you do not respond to this summons and complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home. Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property. Sending a payment to your mortgage company will not stop this foreclosure action. YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT. The above captioned action was commenced to foreclose a mortgage against real property 4 Hampshire Circle, Bronxville, NY 10708 - SBL#: 5 - 5362 - 1.12 and recorded in the Office of the Westchester County Clerk on January 11, 2005, in Control no. 443061101. Dated: August 25, 2020. McCabe, Weisberg & Conway, LLC, Caren Bailey, Esq., Attorneys for Plaintiff, 1 Huntington Quadrangle, Suite 3C20, Melville, NY 11747. (631) 812-4084. (855) 845-2584 facsimile. File # 14-310710. HELP FOR HOMEOWNERS IN FORECLOSURE New York State requires that we send you this notice about the foreclosure process. Please read it carefully. SUMMONS AND COMPLAINT You are in danger of losing your home. If you fail to respond to the Summons and Complaint in this foreclosure action, you may lose your home. Please read the Summons and Complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself. SOURCES OF INFORMATION AND ASSISTANCE The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies, and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process. To locate an entity near you, you may call the toll-free helpline maintained by New York State Department of Financial Services' at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at WWW.BANKING.STATE.NY.US. RIGHTS AND OBLIGATIONS YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. ?You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay your taxes in accordance with state and local law. FORECLOSURE RESCUE SCAMS Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.
0000528978 my17-M ju7

CITATIONS NY

PROBATE CITATION FILE No. 2020-1441 SURROGATE'S COURT- NEW YORK COUNTY CITATION THE PEOPLE OF THE STATE OF NEW YORK, By the Grace of God Free and Independent TO: Public Administrator of the County of New York Judith Abrams Hollier, Peter Abrams, Nancy Abrams Primack, and to Jane Levinson Zinson and Jacob Levinson, if living and if dead, to their heirs at law, next of kin and distributees whose names and places of residences are unknown and if they died subsequent to the decedent herein to their executors, administrators, legatees, devisees, assignees and successors in interest whose names and places of residences are unknown and to all other heirs at law, next of kin and distributees of Judith Kaufman, the decedent herein, whose names and places of residence are unknown and cannot, after diligent inquiry, be ascertained. An amended petition having been duly filed by Suzanne Pascocello, who is domiciled at 400 Second Avenue, Apt. 20C, New York, NY 10010. YOU ARE HEREBY CITED TO SHOW CAUSE before the Surrogate's Court, NEW YORK County, at 31 Chambers Street, New York on June 21st, 2021, at 9:30 o' clock in the Forenoon of that day, why a decree should not be made in estate of Judith Kaufman, also known as Judith L. Kaufman lately domiciled at 20 East 9th Street, Apt. 3E, New York, NY 10003 admitting to probate a Will dated April 17th 2014, a copy of which is attached, as the Will of Judith Kaufman, also known as Judith L. Kaufman deceased, relating to real and personal property, and directing that Letters, Testamentary issue to: Suzanne Pascocello *To persons serving this citation: This citation is to be served in accordance with the Court's order directing alternative service of process *To all Parties: No in person appearances shall be made at the return date. If you wish to object to this matter, you may do so in writing in accordance with the annexed New York County Surrogate's Court Notice to the Cited Parties Dated, Attested and Sealed May 3rd, 2021 HON. Nora S. Anderson Surrogate Chief Clerk - Diane Sanabria. Attorney for Petitioner: Law Offices of Martin W. Ronan, Jr., Address of Attorney: 17 Dante Street, Larchmont, NY 10538 Telephone Number: (914) 834-1052 E-mail Address of Attorney: mwronan@earthlink.net (NOTE: This citation is served upon you as required by law. You are not required to appear. If you fail to appear it will be assumed you do not object to the relief requested. You have a right to have an attorney appear for you.)
0000528903 MY10 M j1

LIMITED LIABILITY ENTITIES

NOTICE OF FORMATION of NYTE IS YOUNG VENTURES LLC. Articles of Organization filed with the Secretary of State of New York (SSNY) on 3/10/2021. Office location: NASSAU. SSNY is designated as agent upon whom process against the LLC may be served. SSNY shall mail process to: The LLC, 2546 Mount Avenue, Oceanside, New York 11572. Reg Agent: U.S. Corp. Agents, Inc. 7014 13th Ave., Ste 202, Brooklyn, NY 11228. Purpose: Any lawful purpose.
0000525015 a26 m j7

NOTICE OF FORMATION of West Chelsea Lantern LLC. Arts of Org. filed with New York Secy of State (SSNY) on 3/23/21. Office location: New York County. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 2960 Alderwood Ln., Wilson, WY 83014. Purpose: any lawful activity.
0000525251 a19-M my24

LIMITED LIABILITY ENTITIES

NOTICE OF QUALIFICATION of Vivvi 5, LLC. Authority filed with NY Secy of State (SSNY) on 3/31/21. Office location: New York County. LLC formed in Delaware (DE) on 3/25/21. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. Purpose: any lawful activity.
0000525247 a19-M my24

NOTICE OF QUALIFICATION of Routematch Software, LLC. Authority filed with NY Secy of State (SSNY) on 4/1/21. Office location: New York County. LLC formed in Georgia (GA) on 1/18/20. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. GA address of LLC: 1230 Peachtree St, NE, Ste 2800, Atlanta, GA 30309. Cert. of Formation filed with GA Secy of State, 1230 Peachtree St, NE, Ste 2800. Atlanta. GA 30309. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525246 a19-M my24

NOTICE OF QUALIFICATION of Otrium LLC. Authority filed with NY Secy of State (SSNY) on 3/19/21. Office location: New York County. LLC formed in Delaware (DE) on 2/10/21. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525245 a19-M my24

NOTICE OF QUALIFICATION of Oprah Daily LLC. Authority filed with NY Secy of State (SSNY) on 4/7/21. Office location: New York County. LLC formed in Delaware (DE) on 3/19/21. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525243 a19-M my24

NOTICE OF QUALIFICATION of NYTCR LLC. Authority filed with NY Secy of State (SSNY) on 3/25/21. Office location: New York County. LLC formed in Delaware (DE) on 11/20/20. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. Purpose: any lawful activity.
0000525242 a19-M my24

NOTICE OF QUALIFICATION of MKD Electric, LLC. Authority filed with NY Secy of State (SSNY) on 3/26/21. Office location: New York County. LLC formed in Delaware (DE) on 1/12/21. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525241 a19-M my24

NOTICE OF FORMATION of Leap Leasing Beta, LLC. Arts of Org. filed with NY Secy of State (SSNY) on 4/7/21. Office location: New York County. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525240 a19-M my24

NOTICE OF QUALIFICATION of Groupon Merchant Services, LLC. Authority filed with NY Secy of State (SSNY) on 4/7/21. Office location: New York County. LLC formed in Virginia (VA) on 6/24/11. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. Princ. address of LLC: 600 W. Chicago Ave, Ste 400, Chicago, IL 60654. Cert. of Formation filed with VA Secy of State, 1300 E. Main St, Fl. 1, Richmond, VA 23219. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525239 a19-M my24

NOTICE OF QUALIFICATION of Curative Talent, LLC. Authoity filed with NY Secy of State (SSNY) on 4/5/21. Office location: New York County. LLC formed in Delaware (DE) on 7/27/09. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525238 a19-M my24

LIMITED LIABILITY ENTITIES

NOTICE OF QUALIFICATION of Certares Real Estate Holdings GP LLC. Authority filed with NY Secy of State (SSNY) on 2/10/21. Office location: New York County. LLC formed in Delaware (DE) on 1/20/21. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 350 Madison Ave, Fl. 8, NY, NY 10017. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. Purpose: any lawful activity.
0000525237 a19-M my24

NOTICE OF QUALIFICATION of CARNAC LLC. Authority filed with NY Secy of State (SSNY) on 4/2/21. Office location: New York County. LLC formed in Delaware (DE) on 3/24/21. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 456 W. 19th St, Apt 8G, NY, NY 10011. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. Purpose: any lawful activity.
0000525236 a19-M my24

NOTICE OF QUALIFICATION of Belflex Staffing Network, LLC. Authority filed with NY Secy of State (SSNY) on 4/6/21. Office location: New York County. LLC formed in Ohio (OH) on 3/13/98. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. OH address of LLC: 1 E. 4th St. Ste 1400, Cincinnati, OH 45202. Cert. of Formation filed with OH Secy of State, 22 N. 4th St, Columbus, OH 43215. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525235 a19-M my24

NOTICE OF QUALIFICATION of AssuredPartners of Alabama, LLC. Authority filed with NY Secy of State (SSNY) on 4/9/21. Office location: New York County. LLC formed in Alabama (AL) on 12/7/17. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. AL address of LLC: 2 N. Jackson St, Ste 605, Montgomery, AL 36104. Cert. of Formation filed with AL Secy of State, 600 Dexter Ave S., 105, Montgomery, AL 36130. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525234 a19-M my24

NOTICE OF QUALIFICATION of 60 NY Avenue Owner LLC. Authority filed with NY Secy of State (SSNY) on 4/9/21. Office location: New York County. LLC formed in Delaware (DE) on 4/6/21. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. Purpose: any lawful activity.
0000525232 a19-M my24

Virrta LLC Authority filed SSNY 1/28/21 Office: NY Co LLC formed DE 12/22/20 exists 1209 Orange St Wilmington, DE 19801. SSNY design agent upon whom process against the LLC may be served & mail to 665 Fifth Ave Fl 6 NY NY 10022. Cert of Regis Filed DE SOS 401 Federal St #4 Dover DE 19901 General Purpose
0000527438 m3 m j14

NOTICE OF QUALIFICATION of Superior Performers, LLC. Authority filed with NY Secy of State (SSNY) on 4/7/21. Office location: Nassau County. LLC formed in Delaware (DE) on 7/2/20. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005. DE address of LLC: 1209 Orange St, Wilmington, DE 19801. Cert. of Formation filed with DE Secy of State, 401 Federal St. Ste 4, Dover, DE 19901. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525231 a19-M my24

LIMITED LIABILITY ENTITIES

NOTICE OF FORMATION of Elana Cairo, P h.D., Psychologist, PLLC. Arts. of Org. filed with Secy. of State of NY (SSNY) on 05/19/20. Office location: NY County. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: Weiss Zarett Brofman Sonnenklar & Levy, P.C., 3333 New Hyde Park Rd., Ste. 211, New Hyde Park, NY 11042. Purpose: to practice the profession of Psychology.
0000525228 a19-M my24

NOTICE OF QUALIFICATION of Zeki Electrical Management Services Limited Liability Company. Authority filed with Secy. of State of NY (SSNY) on 12/15/20. Office location: Bronx County. LLC formed in New Jersey (NJ) on 07/09/13. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 225 Rte. 46 West, Ste 2B, Totowa, NJ 07512, also the principal office address. Arts of Org. filed with Elizabeth Maher Muoio - NJ Dept. of Treasury, 125 W State St, Trenton, NJ 08625. Purpose: any lawful activities.
0000525227 a19-M my24

NOTICE OF FORMATION of ATM HERE LLC. Arts of Org filed with Secy. of State of NY (SSNY) on 2/22/21. Office location: NY County. SSNY designated as agent upon whom process may be served and shall mail copy of process against LLC to 143 West 140 St, #3F, New York, NY 10030. Purpose: any lawful act.
0000524907 A19 M M24

NOTICE OF QUALIFICATION of Volant Securities, LLC. Authority filed with Secy. of State of NY (SSNY) on 03/23/21. Office location: NY County. LLC formed in Delaware (DE) on 02/18/21. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: c/o Corporation Service Company, 80 State St., Albany, NY 12207-2543. Address to be maintained in DE: Corporation Service Company, 251 Little Falls Dr., Wilmington, DE 19808. Arts of Org. filed with Jeffrey W. Bullock, 401 Federal St., Dover, DE 19901. Purpose: any lawful activities.
0000525230 a19-M my24

NOTICE OF QUALIFICATION of Varlebena RE LLC. Authority filed with Secy. of State of NY (SSNY) on 03/24/21. Office location: NY County. LLC formed in Delaware (DE) on 03/09/21. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: Registered Agents Inc. 90 State St., STE 700 Office 40, Albany, NY 12207. Address to be maintained in DE: c/o Harvard Business Services, Inc., 16192 Coastal Hwy., Lewes, DE 19958. Arts of Org. filed with the Secy. of State, 401 Federal St., Ste. 4, Dover, DE 19901. Purpose: any lawful activities.
0000525229 a19-M my24

NOTICE OF QUALIFICATION of AP Design Professionals Insurance Services LLC. Authority filed with NY Secy of State (SSNY) on 4/2/21. Office location: New York County. LLC formed in California (CA) on 12/9/20. SSNY is designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 28 Liberty St, NY, NY 10005 CA address of LLC: 818 W. 7th St, Los Angeles, CA 90017. Cert. of Formation filed with CA Secy of State, 1500 11th St, Sacramento, CA 95814. The name and address of the Reg. Agent is C T Corporation System, 28 Liberty St, NY, NY 10005. Purpose: any lawful activity.
0000525233 a19-M my24

Parallax Insight NY LLC. Arts. of Org. filed with the SSNY on 02/03/21. Office: New York County. SSNY designated as agent of the LLC upon whom process against it may be served. SSNY shall mail copy of process to the LLC, 136 W 111th Street, Apt 5RW, New York, NY 10026. Registered agent address c/o United States Corporation Agents, Inc., 7014 13th Avenue, Suite 202, Brooklyn, NY 11228. Purpose: Any lawful purpose.
0000524703 a19-M my24

See Decisions of Interest only at NYLJ.COM