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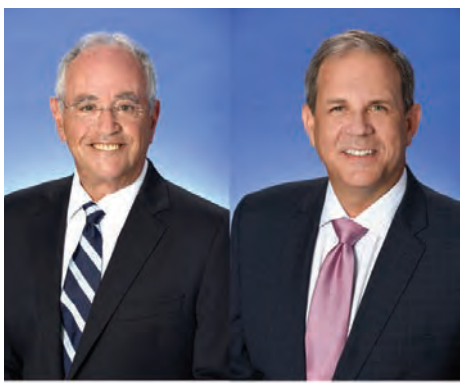
Two Attorneys Join Genovese Joblove & Battista



John Arrastia and Dan Zabludowski join Genovese Joblove & Battitsta.

by Monika Gonzalez Mesa
mgmesa@alm.com

Miami-based Genovese Joblove & Battista has hired two attorneys with significant international practice experience.

John Arrastia, former managing partner of Arrastia Capote Partners, and Dan Zabludowski, former partner of Hinshaw & Culbertson, joined the firm's Miami office in July. Genovese Joblove & Battista has 40 attorneys in Miami and Fort Lauderdale and 10 at an affiliate by the same name in Caracas, Venezuela.

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PUBLIC NOTICES & THE COURTS

Public notices, court information and business leads, including foreclosures, bid notices and court calendars. **B1**

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Florida Bar Files Complaints Against 2 Lawyers in Miccosukee Tribe Saga

by Celia Ampel
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The Florida Bar filed formal complaints against two Miami lawyers who represented the Miccosukee tribe, alleging they knowingly made false and frivolous claims against former counsel for the tribe.

The complaints against Bernardo Roman III and Jose "Pepe" Herrera ask the Florida Supreme Court to consider disciplining the attorneys for pursuing meritless claims, withholding evidence and even making a false 911 call during litigation against Miami lawyers Guy Lewis and Michael Tein and their firm, Lewis Tein.

The Thursday filings are the latest development in a nasty saga that led to the tribe agreeing in May to pay $4 million to cover Lewis and Tein's attorney fees in three racketeering and malpractice lawsuits Roman pursued. The tribe cut ties with Roman last year.

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J. ALBERT DIAZ

The Florida Bar filed formal complaints against two attorneys including Bernardo Roman III for pursuing frivolous claims on behalf of the Miccosukee tribe.

DOJ, HSBC Bank Challenge Judge Who Unsealed Compliance Monitor's Report

by Rebekah Mintzer
rmintzer@alm.com

Prosecutors and big banks may often disagree, but the U.S. Department of Justice and HSBC Bank have found common ground in urging a federal appeals court to keep private a report from a corporate monitor assigned to oversee the bank's compliance with anti-money laundering and sanctions laws.

The Justice Department and lawyers for the bank on Thursday asked the U.S. Court of Appeals for the Second Circuit to overturn a Brooklyn federal judge who, in January, ordered the public disclosure of the monitor's 1,000-plus page report. The two sides argue the release of the report would violate confidentiality rules and endanger the monitor's work—making regulators less inclined, for instance, to share information.

HSBC was assigned former New York prosecutor Michael Cherkasky as its monitor as part of a five-year deferred prosecution agreement with the Justice Department in 2012. HSBC admitted violations of the Bank Secrecy Act, the International Emergency Economic Powers Act and the Trading With the Enemy Act.

Under the agreement, which also included $1.9 billion in forfeitures and

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HSBC bank said that as a matter of public policy, disclosing monitor reports, even in a redacted form, would make it harder for monitors and the government to conduct their supervisory work.

Wal-Mart Defeats Shareholder Suit Over Mexico Bribery Scandal

by Zoe Tillman
ztillman@alm.com

Wal-Mart scored another win against shareholders seeking to hold the retail giant liable for an alleged bribery scheme in Mexico involving one of the company's subsidiaries.

The U.S. Court of Appeals for the Eighth Circuit upheld an Arkansas federal judge's dismissal of the shareholder class action. The shareholders failed to show that it would have been futile to first ask Wal-Mart's board of directors to pursue legal action, as is required in these types of cases, Chief Judge William Riley wrote for the three-judge appeals panel.

Wal-Mart earlier this year won the dismissal of a similar shareholder case in Delaware. The Delaware Court of Chancery, citing the Arkansas judge's

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GENOVESE

Arrastia's practice focuses on domestic and international complex commercial and business litigation and arbitration. Arrastia, who joins as a partner, also serves as an arbitrator and has arbitrated more than 75 commercial matters and several hundred consumer disputes.

Zabludowski, who joins the firm as of counsel, has 30 years experience and represents domestic and international clients in commercial transactions and real estate, loan transactions, bankruptcy and creditors' rights, and the structuring and forming of domestic and offshore corporations.

He also advises clients in planning issues, including reorganizations, buyouts, loan restructurings and workouts, as well as purchasing ownership interest in distressed companies. He has a large number of international clients—many from Canada.

Monika Gonzalez Mesa can be reached at 305-347-6657.

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WAL-MART

April 2015 dismissal order, said the plaintiffs in Delaware couldn't relitigate the case.

Gibson, Dunn & Crutcher partner Theodore Boutrous Jr. argued for Wal-Mart in the Eighth Circuit. Boutrous said in an email that the court "got it exactly right."

"As we've said all along, Delaware law gives the board of directors — not an individual shareholder — the authority to address and manage corporate matters like these," said Boutrous, co-chair of the firm's litigation practice.

Judith Scolnick, a partner at Scott + Scott in New York, argued for the shareholders. She did not immediately return requests for comment.

The alleged bribery scheme dated to the early 2000s, according to court papers. A whistleblower at Wal-Mart de Mexico, referred to by the Eighth Circuit as Wal-Mex, told an in-house lawyer in 2005 that Wal-Mex for years had been bribing Mexican officials. A preliminary internal investigation found evidence to support those accusations, but the inquiry was transferred to Wal-Mex in 2006 and closed with no further action.

DIEGO M. RADZINSCHI

Wal-Mart argued that the shareholders failed to show that the other seven knew about the alleged Wal-Mex bribery and cover-up and could be liable for any misleading statements to shareholders.

In 2011, after learning that The New York Times was investigating the Wal-Mex bribery allegations and how the company handled the investigation, Wal-Mart revived an internal investigation and notified the U.S. Department of Justice and Securities and Exchange Commission. The Times published an exposé in April 2012.

Shareholder lawsuits filed after the Times' article came out were consolidated in the U.S. District Court for the Western District of Arkansas; Wal-Mart's headquarters are in Bentonville, Arkansas. The plaintiffs claimed the company made false statements to shareholders about the "integrity" of corporate directors.

Under federal court rules, the shareholders were supposed to ask the board to enforce the company's rights and pursue claims before they could file their own case. The shareholders argued that such an effort would have been futile because the board couldn't be impartial — there were current board members who were serving when the original internal Wal-Mex probe took place. Wal-Mart agreed that there could be a potential issue with two members, but argued that the shareholders failed to show that the other seven knew about the alleged Wal-Mex bribery and cover-up and could be liable for any misleading statements to shareholders.

The Eighth Circuit sided with Wal-Mart, finding that the shareholders didn't present evidence that Wal-Mart employees and board members who knew about the Wal-Mex investigation told the board. The shareholders' theories — including that the Wal-Mex bribery presented such a threat to Wal-Mart that the board must have known about it — were not "persuasive," Riley wrote.

Riley was joined by judges Roger Wollman and Diana Murphy.

Zoe Tillman reports for National Law Journal, an ALM affiliate of the Daily Business Review.

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HSBC

penalties, the monitor would ensure that HSBC carries out the terms of the agreement and implements proper anti-money laundering and sanctions controls, policies and procedures.

Reports by corporate monitors on companies' compliance progress have historically been kept confidential, but after a request from Hubert Dean Moore Jr., an HSBC customer who's suing the bank, U.S. District Judge John Gleeson of the Eastern District of New York ordered the report unsealed. (Gleeson has since left the bench for Debevoise & Plimpton.)

Attorneys for HSBC—represented by Bancroft's Paul Clement and a team from Sullivan & Cromwell—were not immediately reached for comment Friday. The Justice Department also wasn't immediately reached for comment.

Lawyers for both sides in their court papers criticized Gleeson's decision to unseal the monitor's report. They claim the judge wrongfully treated the monitor's report as a "judicial document" to which a First Amendment right of public access could apply.

The bank and the government argue the report is an executive document that was part of an agreement implemented by members of the executive branch with prosecutorial discretion. DOJ and the bank contend the report is protected by a higher confidentiality standard.

"The district court's remarkable assertion of authority is incompatible with settled principles of prosecutorial discretion and separation of powers," HSBC's attorneys wrote in their opening brief.

HSBC's lawyers called Gleeson's decision to unseal a "bait-and-switch on top of a usurpation." The deferred prosecution agreement, which Gleeson had already approved, contained language designating compliance reports as "non-public," the bank's lawyers argued.

"Ordering the release of highly confidential banking information that the parties agreed to keep secret would inflict unjustified harm on HSBC and its customers, and on broader efforts to enforce compliance with global banking laws through monitorships and DPAs," HSBC's lawyers wrote. "Whether by appeal or mandamus, the district court's unprecedented orders should be vacated."

Both the bank and the government also said that as a matter of public policy, disclosing monitor reports, even in a redacted form, would make it harder for monitors and the government to conduct their supervisory work.

"Specifically, if foreign regulators and private citizens see that portions of a monitor's work can become public, they may decline to share information with monitors because they want to ensure the information's ongoing confidentiality," Justice Department lawyers wrote in their brief.

Moore's lawyers from Levine Sullivan Koch & Schulz declined to comment.

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MICCOSUKEE

"Each court that has examined this issue has determined that Roman's actions resulted from the bad blood, or personal animosity, held by Roman and the new tribal leadership against the former tribal administration and its associates, including Lewis and Tein," states one of the complaints filed by Florida Bar lawyer Jennifer Falcone in Miami.

Roman declined to comment. Herrera referred a request to comment to his lawyer, Herman Russomanno of Russomanno & Borrello in Miami.

"Mr. Herrera maintains his innocence and intends to defend the bar's complaint through the trial and appellate process if necessary," Russomanno said in an email.

The litigation against Lewis and Tein came after a $2.9 million judgment was entered in a drunken-driving wrongful death case against their clients, two members of the Miccosukee tribe. When the defendants couldn't pay the full amount, plaintiffs lawyer Ramon Rodriguez pushed to recover money from the tribe itself.

Tein told the court his clients were responsible for attorney fees in the case. Roman then gave Rodriguez dozens of checks showing the tribe had paid legal fees to Lewis Tein, even though those checks helped Rodriguez win a $7 million judgment against the tribe, according to the bar complaint.

Lewis and Tein said the tribe was loaning money to the two defendants and then deducting it from the regular distributions of tribal funds they received, meaning the defendants were ultimately paying the fees.

Rodriguez litigated the issue for two years, during which time Roman filed an affidavit saying there were no loan documents to back up Lewis and Tein's version of the story — even though Roman had such documents all along, according to the complaint.

Herrera also knew of and had access to the documents, according to the complaint. The bar also alleges Herrera did not give the court a sworn statement in which one of the defendants in the drunken-driving case said he was responsible for his own attorney fees, not the tribe.

Miami-Dade Circuit Judge Ronald Dresnick found no evidence Lewis and Tein had committed perjury or fraud on the court. The Florida Bar is investigating Rodriguez's conduct during the case, but no formal complaint has been filed against him.

Roman also filed three lawsuits in state and federal court against Lewis and Tein, claiming the lawyers overbilled the Miccosukee tribe as part of a kickback scheme allegedly involving the tribe's former chairman.

The state court judges, Miami-Dade Circuit Judges John Thornton and Jennifer Bailey, and the federal judge, U.S. District Judge Marcia Cooke, each found the allegations were unfounded.

Cooke granted $1 million in sanctions against the tribe and Roman. The tribe settled, but Roman has appealed the order to the U.S. Circuit Court of Appeals for the Eleventh Circuit.

Lewis and Tein declined to comment, citing the pending appeal.

The complaint against Roman also outlines a bizarre 911 call he allegedly made after his assistant had to leave a deposition to go to urgent care because of an allergic reaction to pistachios set out in the conference room by the judge.

More than an hour after the assistant left, Roman called the police, claiming Lewis and Tein's lawyer had thrust pistachios in her face and put them in her lunch.

The bar contends the lawyer, Paul Calli of Calli Law in Miami, was merely eating pistachios from the bowl. After the assistant attested that she left before lunch and that Calli never put pistachios in her face, Roman fired her, according to the bar.

A.M. HOLT

The litigation against Michael Tein and Guy Lewis came after a $2.9 million judgment was entered in a drunken-driving wrongful death case against their clients, two members of the Miccosukee tribe.

"When the police arrived to investigate the allegations, they separated Mr. Calli and would have arrested him but for the intervention of" two judges, according to the complaint.

Calli declined to comment.

Celia Ampel can be reached at 305-347-6672.

FLORIDA LAW REVIEW

Florida's Jobs Agency Gives Checks to Departing Employees

by Gary Fineout
Associated Press

Amid a major shake-up pushed by Gov. Rick Scott, the Florida agency responsible for luring jobs to the state is paying nearly $500,000 to departing employees.

Florida taxpayers are picking up the majority of the cost for severance payments and payouts for unused leave. Records requested by the Associated Press show that 10 departing employees at Enterprise Florida are receiving more than $430,000.

Rank-and-file state workers are not allowed to receive severance payments, but employees at Enterprise Florida aren't considered state workers even though taxpayers pick up most of the tab for the economic development organization.

Many Enterprise Florida employees, including the president and CEO, have resigned or were forced out as part of an overhaul initiated by Scott, who also serves as the chairman of the Enterprise Florida board.

Scott and the board agreed earlier this month to streamline the operations of the 20-year outfit, including eliminating jobs, shuttering international offices and canceling contracts with outside consultants. The cuts are expected to save about $6 million.

JILL LAHN

Gov. Rick Scott and the Enterprise Florida board agreed earlier this month to streamline the operations of the 20-year outfit to save about $6 million.

"EFI is currently undergoing a restructuring of its core functions to ensure our personnel contacts are the most cost-effective," said Mike Grissom, a senior vice president with Enterprise Florida.

But those employees who are leaving had contracts that guaranteed them severance payments.

Bill Johnson, the head of the organization who appears to have been forced to resign earlier this year, received a severance check of $132,500 and he also was paid more than $14,000 for unused leave. Grissom said that private donations were used to pay Johnson.

Johnson took over the post in 2015 at the start of Scott's second term. But he wound up clashing several times with the Florida Legislature over the amount of money needed to lure new companies to the state.

Scott wanted legislators this year to set aside $250 million for a new fund that would be used for business incentives. But legislators rejected the entire request and some top Republicans such as incoming House Speaker Richard Corcoran contend that the incentives are a form of "corporate welfare."

Nine other employees at Enterprise Florida, ranging from an office manager to a senior vice president, received severance payments paid from public money that ranged from $5,000 to $60,000. Two senior vice presidents were given nearly $30,000 in lump-sum payments for unused leave.

So far, Scott and Enterprise Florida officials have not said what they will do with the roughly $6 million cut from the budget of the organization. Enterprise Florida can't legally direct it to the programs that the Legislature refused to fund. Grissom said the board will discuss in September what it plans to do with the savings generated from the cuts.

First Home Delivery of Medical Marijuana Made in Florida

by Joe Reedy
Associated Press

The first organization authorized to dispense medical marijuana in Florida has made its first home delivery.

Kim Rivers, CEO of Trulieve, said Saturday that the company has delivered low-THC medical cannabis to a patient in Hudson who is suffering from dystonia, a condition characterized by chronic muscle spasms and seizures. Hudson is in Pasco County, near Tampa.

Trulieve and Hackney Nursery, which is the dispensing organization for Northwest Florida, received processing and dispensing authorization from the state Department of Health on Tuesday. Trulieve plans to begin in-store sales at a dispensary in Tallahassee on Tuesday.

Patients suffering from cancer, epilepsy, chronic seizures and chronic muscle spasms can order medical marijuana by contacting their physician, as long as both are listed in a state registry. Department of Health spokeswoman Mara Gambineri said only 15 doctors are currently in the state's registry.

The legislature gave limited approval to medical marijuana in 2014 with many expecting it to be available early in 2015. The process, though, got bogged down by legal challenges and administrative delays.

ISTOCK

The dispensing and delivery of medical marijuana is coming as voters will consider a proposed constitutional amendment legalizing marijuana for medical purposes in November's general election.

Christian Bax, director of the Office of Compassionate Use, told the Florida Senate's Regulated Industries subcommittee during a hearing that he expected medical marijuana to be available in September. Some of the distributing organizations were optimistic that they could have it ready by midsummer.

Dispensing organizations can do home delivery throughout the state. Six approved organizations have received cultivation authorization but Trulieve is the only one that has received dispensing authorization. According to an Office of Compassionate Use webinar held last month, dispensaries are expected to be in 18 cities by the time all organizations are up and running.

Trulieve will have medical marijuana initially available in a concentrated oil, tinctures, gel capsules and vape cartridges. By law, the marijuana must be low in tetrahydrocannabinol (THC), which produces the euphoric state for users, but is high in cannabidiol (CBD) which has been effective in preventing seizures.

In March, the legislature approved an extension of the Right to Try law, allowing patients with terminal conditions to receive high-THC cannabis. Rivers said Trulieve expects to have that available next month.

Alpha-Surterra, the dispensing organization for Southwest Florida, completed a harvest of its medical marijuana plants last week and is awaiting dispensing authorization.

The dispensing and delivery of medical marijuana is coming as voters will consider a proposed constitutional amendment legalizing marijuana for medical purposes in November's general election. A similar measure was on the ballot in 2014 and received 58 percent approval, 2 percent shy of what was needed for passage.

FROM THE COURTS

Clinton VP Pick Kaine Earns Cheers for $100M Redlining Verdict

by Jennifer Henderson
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Hillary Clinton's choice for presidential running mate, Virginia Sen. Tim Kaine, is a Harvard Law grad who cut his teeth as a young lawyer fighting for fair housing issues, winning a $100 million jury verdict against Nationwide Insurance over allegedly discriminatory lending practices.

Clinton and the former Virginia governor made their first appearance together on Saturday at a rally in Miami, where Kaine described his past work as a "civil rights lawyer."

"I brought dozens of lawsuits when I was in private practice, battling banks, landlords, real estate firms, insurance companies and even local governments that had treated people unfairly," Kaine said to cheers.

Kaine graduated from Harvard in 1983, a decade after Clinton earned her own law degree from Yale. He took nearly a year off before graduating to work as a missionary in Honduras. Unlike many in his class who vaulted into Big Law careers, Kaine joined a small firm in Richmond, now called McCandlish Holton, where he focused largely on fair housing matters.

Kaine's most high-profile case was brought on behalf of a local nonprofit, Housing Opportunities Made Equal (HOME), which alleged that Nationwide Mutual Insurance Co. had discriminated against African-American neighborhoods through the practice known as redlining.

The case went to trial in 1998, after Kaine had become Richmond's mayor. The jury sided with HOME and returned a $100 million verdict against Nationwide. The verdict was later overturned by Virginia's highest court, which sided with lawyers for the insurer at Kirkland & Ellis.

DIEGO M. RADZINSCHI

"I brought dozens of lawsuits when I was in private practice, battling banks, landlords, real estate firms, insurance companies and even local governments that had treated people unfairly," Virginia Sen. Tim Kaine, Hillary Clinton's choice for presidential running mate, told an audience at a rally in Miami over the weekend.

HOME later reached a $17.5 million settlement with Nationwide, earning Kaine's law firm $5.8 million in fees.

"At the time I won that case, it was the biggest jury verdict ever in a civil rights case in American history," Kaine said at Saturday's rally. "I like to fight for right."

Kaine left his legal career behind in 2001, the year he was elected lieutenant governor of Virginia. Now 58, he served as the state's governor from 2006 to 2010, and was first elected to the U.S. Senate in 2012.

Tysons Corner-based Venable partner Lawrence Roberts has worked closely with Kaine throughout his political career, holding posts as campaign chairman for Kaine's gubernatorial and Senate runs.

James Hamilton, a Washington, D.C.-based criminal and civil litigation partner at Morgan Lewis & Bockius, handled the vetting process for Clinton's vice presidential candidates.

Jennifer Henderson reports for the American Lawyer, an ALM affiliate of the Daily Business Review.

Law Students Help Transgender Clients With Name Changes

by Karen Sloan
ksloan@alm.com

Kelly Lindstrom was entering a Chicago courthouse July 18 with several of the students she supervises in John Marshall Law School's pro bono clinic when their client, a transgender women filing paperwork to legally change her name, tensed up.

The security lines were divided by gender, and the client, who was born male, warned Lindstrom that things could get awkward.

The client ultimately entered the courthouse through the female security line without incident, but her momentary fear offered Lindstrom a glimpse into the daily struggles transgender people face.

"She said, 'I really just avoid going to places where I have to show my ID,'" Lindstrom said.

"There are so many places where you have to show your ID: Bars, security lines at the courthouse or the airport. Anywhere you have to show ID can turn into a potentially awkward and humiliating situation if your ID doesn't reflect your true identity, who you are, and how you look."

The law clinic's new Gender Marker and Name Change Project, launched in June, seeks to address that disconnect by helping transgender clients legally change their names and update all their official documentation to reflect the gender they live as.

Third-year John Marshall law student Madeline Chopski said the project is giving her skills she can use to represent pro bono clients after graduation, and that she plans to continue helping the transgender community.

"This can be a really difficult process for some clients," Chopski said. "We're there not only as legal representation to guide them through the process but as a support system."

DIEGO M. RADZINSCHI

John Marshall Law School's pro bono clinic's new Gender Marker and Name Change Project seeks to help transgender clients legally change their names and update all their official documentation to reflect the gender they live as.

According to a 2011 study by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, one-third of the transgender survey respondents had not updated any identification documents to reflect their new gender, and just one-fifth had updated all their documents.

And the gender listed on official identification matters, the survey found. Among respondents, 40 percent said they were harassed after presenting an identification that did not match their new gender, while 3 percent said they had been attacked or assaulted as a result.

John Marshall law students, after screening clients through an intake process, help them file the necessary paperwork to apply for a legal name change, and accompany them to court for a hearing.

Once a judge signs off on the new name, the clinic helps clients navigate myriad government agencies to update the name and gender listed on identification, including driver's licenses, passports, Social Security cards and birth certificates. Each of those identifications requires dealing with a different agency.

The legal name change process takes about two months, but submitting all the paperwork for updated identifications can take far longer and tends to be more complicated, said second-year John Marshall student Declan Cleary, who is working in the clinic this summer.

"The biggest frustration clients have with the process is that it's intimidating," said Cleary, a North Carolina native who said he wanted to work on the name change project in part because transgender rights have become such a contentious issue in his home state, where legislators in May passed the so-called Bathroom Bill, which allows local governments to force transgender people to use restrooms that correspond to their birth gender. "There are so many forms to fill out and fees they have to pay. It's very helpful to be able to act as a guide and go with them into court."

The project is a partnership with Equality Illinois, a Chicago-based nonprofit that advocates for the civil rights of gay, lesbian, bisexual and transgender Illinois residents. The group created a 39-page handbook on name and gender marker changes in 2014, but doesn't directly assist people, said director of public policy Michael Ziri.

"It's difficult to navigate this process without legal guidance," said Ziri, whose organization is referring potential clients to John Marshall's clinic. "We thought this would be a great opportunity for law students to learn how a name change and gender marker change can change someone's life. It's a matter of dignity for a transgender person to have their official documents reflect their authentic gender identity."

Karen Sloan reports for the National Law Journal, an ALM affiliate of the Daily Business Review.

THE FIRM

As China's Economy Slows, Asia-Based M&A Partners Going Home

by Anna Zhang
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Paul Strecker, the head of Shearman & Sterling's M&A group in Asia, will relocate to London this fall. Skadden, Arps, Slate, Meagher & Flom's M&A partner John Adebiyi moved from Hong Kong back to London in July. And Vinson & Elkins' partners James Cuclis and David Lang, who until recently advised clients on complex transactions from Hong Kong, returned to Houston earlier this year.

As China's economy slows and Asian clients look to increase investments in Europe and the U.S., several law firms are moving partners out of Asia. Those lawyers are still working with Asian clients, but their work is focusing on acquisitions that those clients are making outside of Asia.

Shearman & Sterling's Strecker, for example, will continue to advise Asian clients. But by moving back to London, he expects to be able to respond to the increasing flow of outbound Asian investments into Europe and the U.S.

"With me in London, we will be able to globalize our Asian client relationships," he said. "We represent them in Asia, now we want to make sure that we represent them in other markets as well."

Xiao Yong, Vinson & Elkins' Hong Kong partner and head of the firm's China practice, also said that, having senior, Asia-focused partners such as Cuclis and Lang in Houston helps the firm capture outbound work in the U.S. "In the energy space, there was more work in developing counties a few years ago," he said. "But lately, we are seeing more companies, including private equity firms and private sector investors, interested in oil and gas assets in North America."

Xiao said that there had already been several deals where the firm's representation of Chinese buyers was led by a U.S.-based team and supported by a China-based team.

Recently, the firm's Houston team, which has no less than 10 Mandarin-speaking lawyers, according to Xiao, closed a deal advising a large Chinese conglomerate on a shale oil asset acquisition in the U.S.

"For this client, we helped them open a Houston office two years ago in preparation for the acquisitions," Xiao said. "This model is more effective when the client already has an established office on the ground."

V&E's Houston office has done several such deals for Chinese investors, Xiao said.

Shearman's Strecker also has found that outbound acquisitions can sometimes be done more easily when the Asian client is established overseas. One of his clients, Singapore sovereign wealth fund Temasek, opened offices in both London and New York in 2014. Earlier this year, banking on the British education sector, Temasek bought a portfolio of student accommodation properties in the U.K. for $546 million.

But Strecker says even Asian companies without a U.S. or London base are actively looking at acquisitions overseas. The first six months of this year saw deals from Greater China contributing to 65.7 percent of the M&A transactions in the Asia Pacific region, according to Bloomberg data. Announced in February, China National Chemical Corp. or ChemChina's $46.3 billion offer to buy Swiss chemical company Syngenta A.G. is the largest-ever overseas acquisition by a Chinese company.

China has focused on outbound acquisitions before: A big-ticket outbound wave took place four-to-five years ago. Back then, though, the deals were mostly from China's state-owned energy sector, largely initiated by the Big Three oil companies: China Petrochemical Corp., China National Petroleum Corp. and China National Offshore Oil Corp.

That deal flow soon hit pause—first following a country-wide anti-graft campaign in China during which several top officials and decision makers at the Big Three oil companies were arrested for corruption; then, the 2014 global oil price drop followed, which further discouraged M&A activities in the oil and gas sector.

Strecker said this time things are different: The universe of Chinese buyers has expanded beyond state-owned enterprises to the private sector. And the industries involved have become more diverse.

So far this year, in addition to the Syngenta deal, Chinese aviation conglomerate HNA Group announced it is buying California-based electronics distributor Ingram Micro for $6 billion; developer Dalian Wanda is acquiring American movie studio Legendary Entertainment for $3.5 billion; insurance group Anbang is taking over Chicago-based hospitality REIT Strategic Hotels & Resorts for $6.5 billion; and home appliance manufacturers Haier and Midea are both making acquisitions worth more than $4 billion.

"We don't think this is a 12-month trend; we believe this is going to be a long and sustained fundamental shift in capital outflows from China," said Strecker.

The decisions to move away from Asia also inevitably have to do with a slowing Chinese economy. Strecker said that the changing economic fundamentals were part of the reason why he was moving. "You've got slowing GDP growth, continued volatility in the A-share market, and the renminbi devaluation that will create more incentives [for investors] to acquire more dollar or euro denominated assets."

V&E's China practice has changed considerably over the past five years. In 2012, The American Lawyer reported that the firm, riding the state-owned enterprise outbound wave, had handled more cross-border China M&As than any firm anywhere in the previous two years. The firm has since closed its Shanghai office, and former Shanghai partner David Blumental left to join Latham & Watkins in Hong Kong; then Beijing partner Paul Deemer relocated to London in 2013.

Xiao said since last month, energy work has started to pick up again; he also observed more work coming from the private sector. His firm has helped Chinese private equity clients scout overseas energy assets, for example. But Xiao said for some Chinese clients, especially the state-owned enterprises, it is still key to have people on the ground in China. "It all depends on who makes the decision," he said.

The lawyers are still working with Asian clients, but their work is focusing on acquisitions that those clients are making outside of Asia.

In addition to Xiao, who splits his time between Hong Kong and Beijing, V&E partners Jay Kolb and Nicholas Song in Beijing are also active on M&A deals.

At Shearman, the team is also getting leaner. Hong Kong high-yield partner Won Lee is moving back to New York, filling a void in the practice after partner Michael Benjamin left to join Latham & Watkins in May. Meanwhile, investigations partner Brian Burke, who is now based in Hong Kong and Shanghai, will also spend time in New York. But Strecker said he would make quarterly trips to Asia once settled in London. And Singapore partner Sidharth Bhasin, Hong Kong partner Stephanie Tang, Beijing partner Lee Edwards and Hong Kong counsel Wayne Lee also work on Asia M&As.

And despite the moves, Strecker said the firm is not reducing its presence in Asia. In fact, it will continue to increase its head count in the region, he said. Shearman had 87 lawyers in Asia in 2014, according to the most recent Asia 100 survey—in corporate, regulatory and disputes practice.

Anna Zhang reports for the Asian Lawyer, an ALM affiliate of the Daily Business Review.

Investment Bank's Malpractice Suit Against MoFo Dismissed

by Christine Simmons
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A judge has dismissed an investment bank's malpractice suit against Morrison & Foerster claiming the law firm failed to conduct due diligence that would have uncovered fraud in a public offering.

Manhattan Supreme Court Justice Saliann Scarpulla found that because Macquarie Capital had the same information in a Kroll investigation report as MoFo, it couldn't claim the law firm's failures were the cause of the bank's damages.

"The relevant evidence here was available," the judge said, "specifically the Kroll report, and was indisputably possessed by Macquarie prior to the closing."

Scarpulla's decision in *Macquarie Capital v. Morrison & Foerster*, issued Thursday, might affect a second malpractice suit pending against MoFo, brought by another investment bank, Brean Murray, Carret & Co., over the same allegations.

Puda Coal, which conducted two public offerings in 2010 without disclosing a change in its ownership structure, raised millions of dollars from investors selling shares in what was essentially an empty shell company.

Puda Coal conducted its operations in China through Shanxi Puda Coal Group Co. Puda reported in public filings that it owned a 90 percent interest in Shanxi Coal.

In the fall of 2010, Puda hired Macquarie Capital USA Inc. as an underwriter for a public offering of stock for December 2010.

Macquarie said it hired as counsel Morrison & Foerster, which calls itself MoFo. The law firm was to conduct due diligence for the transaction and to gain a full understanding of the operating and ownership structure of Puda and its subsidiaries, according to Macquarie.

Macquarie also hired private investigation firm Kroll Inc. to investigate the character, integrity and reputation of the individuals at Puda.

Kroll issued a report on Dec. 2, 2010, which disclosed that Puda did not own a 90 percent interest in Shanxi Coal, contradicting Puda's public representations and reports.

In fact, in September 2009, Puda's 90 percent ownership in Shanxi Coal had been transferred to Ming Zhao, who was chairman of Puda's board of directors, a major Puda shareholder and an 8 percent owner of Shanxi Coal, according to Scarpulla's decision.

Kroll provided its report to Macquarie through William Fang, an associate at the bank who emailed the report to other members of the Macquarie deal team. Fang also emailed it to MoFo with a cover email that indicated "no red flags were identified."

Neither Macquarie nor MoFo picked up on the finding in the Kroll report that Puda did not own a 90 percent interest in Shanxi Coal. Further, on Dec. 13, 2010, MoFo issued a letter confirming its due diligence findings and indicating that "nothing has come to our attention" that caused the law firm to believe that the offering documents contained false or misleading statements.

In spring 2011, Puda's fraud was uncovered and made public by the media, and the company was removed from the New York Stock Exchange.

In March 2015, Macquarie agreed to pay $15 million to settle Securities and Exchange Commission charges that it repeated false statements even though it had obtained the Kroll report.

Christine Simmons reports for the New York Law Journal, an ALM affiliate of the Daily Business Review.

IN BRIEF

JONES DAY PLAYS ROLE IN LATIN AMERICAN LOAN DEAL

A subsidiary of the Chilean state-owned company Empresa Nacional del Petroleo, a leading oil and gas exploration and production company in Latin America, has taken a $150 million loan to expand offshore oil and gas work in Argentina.

Jones Day advised Citibank N.A. and Spain's second largest bank, Banco Bilbao Vizcaya Argentaria, along with some affiliates, as lenders to the multi-draw term loan to the subsidiary, Enap Sipetrol Argentina S.A.

The loan money will be used to pay for capital expenses related to offshore oil and gas exploration and production facilities owned by Enap and YPF S.A., according to Jones Day.

YPF is an Argentine energy company. Enap is Argentina's principal offshore operator. Last month the two companies announced a joint project to expand production of natural gas by 60 percent and crude oil by 25 percent. The plans would require an investment of $165 million. Enap Sipetrol Argentina's sites are along the country's southern Atlantic coast. They include Argentina's oldest oil site and Argentina's currently largest offshore operation, which opened production in 1994.

The Jones Day team advising the banks was led by partners Maria Luisa Canovas and Robert da Silva Ashley of New York and included associate Danielle Villoch of Miami and law clerk Lina Velez of New York. **(Monika Gonzalez Mesa)**

THE FIRM

Will Cybersecurity Costs Force Small Firms to Merge?

by Lizzy McLellan
lmclellan@alm.com

Small firms have smaller staffs and smaller budgets, but their cybersecurity risk may not be proportional. One small boutique recently dealt with that problem by merging with a large firm, but industry watchers said there are ways for firms to manage cyberrisk while remaining small.

Consultants said discussion about cyberrisks is increasing overall in the legal community, but many firms haven't firmed up their cybersecurity strategies. And small firms, they said, may not even be aware of their need for protection.

"There's awareness of the fact that we need to talk about it and think about it," said Marcie Borgal Shunk, a consultant with LawVision Group. "How to approach it and how to invest is still fuzzy."

Robert J. Henderson of RJH Consulting in Jackson Hole, Wyoming, said most small law firms are "behind-the-curve" on protecting themselves from cyberthreats. And getting the right kind of protection is an expensive endeavor, he said.

"It would be the rare small firm that would spend a lot of time really seriously on cybersecurity, but they should," Henderson said. "They're frequently sending sensitive information, and most of them don't have more than standard security programs."

But not all small firms are behind the curve. Francine Friedman Griesing, founder and managing member at Griesing Law, said cybersecurity is a high priority at her firm and she is satisfied with the investment.

"Technology and security expenses are substantial," Griesing said. "I think it would be a hardship for many small firms."

John Mullen, chair of the data privacy and network security practice at Lewis Brisbois Bisgaard & Smith, said most small law firms have done nothing to tackle security issues because they don't want to use the resources. They see it as spending money on a problem that doesn't exist, he said, until there is a breach.

"We see law firm breaches all the time, big and small," Mullen said. "Firms that haven't yet really focused on it are extremely vulnerable and do so at their own risk."

MAJOR INVESTMENT

Griesing said she has put tens of thousands of dollars into protecting her firm's data each year from the beginning, the total depending on the systems and updates required in any given year. Her firm, which she founded in 2010, has grown from two lawyers to 13.

"We use what a law firm with 1,000 lawyers would use," Griesing said. "We've invested substantial amounts of resources in dealing with it."

But it's worth the cost, she said. The firm has clients in the Fortune 500, among other high-profile companies or clients in sensitive industries, who require specific cybersecurity protections. If her firm hadn't made that investment early on, Griesing said, it would have lost out on those clients.

The concerns about cybersecurity played a role in one Los Angeles family law boutique, Phillips Lerner, joining Blank Rome last month.

Stacy Phillips, whose firm has represented a number of celebrities including Britney Spears, said the costs and worries about protecting client data had become overwhelming. The solution: joining a larger firm with the resources to invest in cybersecurity.

"It was getting to the point where I couldn't sleep at night," said Phillips about the seminars and tutorials she was attending and receiving about protecting her small firm's confidential files. "And I like sleeping at night."

For small firms, the cost of keeping information secure can grow to be a large portion of the firm's budget. And, Henderson noted, a lot of those small firms are managed exclusively by lawyers who are also practicing law.

"There is an ability to gain efficiencies by being larger and being able to build the infrastructure," Borgal Shunk said.

Mark Greisiger, president of NetDiligence, agreed. NetDiligence provides a cyberrisk assessment and data breach services for a variety of businesses, including law firms.

Large law firms simply have a larger budget for information technology, Greisiger said, and sometimes they have a designated security specialist. But smaller firms typically have only one person focused on technology.

"If you have a limited IT budget, limited IT staff, its challenging just to stay on top of the daily issues," Greisiger said.

Larger operations also have larger associated risks, Borgal Shunk said. Firms dealing with high-end mergers and acquisitions, investments, tax law and international clients are in possession of data that is more likely to attract foul play.

But, Greisiger said, firms of all sizes have a lot to lose. He said the law firms he deals with are usually large. But hackers are not just going after the biggest firms, he said.

"It doesn't matter these days if you're large or small. Bad guys are doing a lot of automatic or robotic hacking," Greisiger said. "They're sweeping the whole internet."

In addition to the trade secrets, merger information and patents that some firms have to protect, he said, almost any firm has the health information and personal identifying information, like Social Security numbers, of employees and clients to keep in mind.

The cost of protecting that information depends on the amount of data, and the number of locations a law firm has, Mullen said. The cost is not always proportional to the size of the firm or the number of lawyers, he said.

MAKING IT MANAGEABLE

Small firms can avoid the risks without having to close up shop or be absorbed.

Greisiger said IT is generally 10 to 20 percent of an operating budget at any given business. Using some of that budget to outsource security may not net savings for a small firm, he said, but it will usually offer better security than a small law firm can do for itself with a one-person IT staff. Greisiger said a lot of the cloud companies "get it right" because just one security breach would kill the whole business.

Mullen agreed, and said working with an outside technology company is usually less expensive than hiring someone to handle cybersecurity internally. Buying cyberinsurance is another important precaution, he added.

"If I started a firm tomorrow I would outsource much of the IT stuff to experts," Mullen said. "IT's not cheap, period, but it's cheaper to farm it out."

Griesing said her firm has outsourced IT to the same person, Mark Patlove at Integrated Micro Systems, since the law firm opened. The firm may eventually need a dedicated IT staffer, Griesing said, but she would still contract with Patlove, who is available to the firm at all times.

Griesing Law hasn't gone to the cloud yet. Griesing said she made the decision last year to keep the data on in-house hardware, even though that's a costlier option, because she wasn't comfortable with making the move to the cloud.

Still, Griesing said, the expense of protecting data and outsourcing cybersecurity services is not to be taken lightly.

"We certainly felt the impact of doing that. It impacts your bottom line," Griesing said. "But the alternative is worse. A mistake or a breach could be a disaster."

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FOCUS LATIN AMERICA

Mexican Drug Lord Denies He's Back in Business, Report Says

by Mark Stevenson
Associated Press

ASSOCIATED PRESS

Fugitive drug lord Rafael Caro Quintero, seen here in 2005, was released from prison by mistake in 2013 after serving 28 years of a 40-year sentence in the 1985 kidnapping, torture and murder of U.S. DEA agent Enrique "Kiki" Camarena.

Fugitive drug lord Rafael Caro Quintero denied in a recent interview that he is getting back into the drug trade or trying to muscle in on the Sinaloa cartel's operations.

Caro Quintero is a fugitive with a $5 million reward on his head after being erroneously released from prison in 2013, where he had served 28 years of a 40-year sentence in the 1985 kidnapping, torture and murder of U.S. DEA agent Enrique "Kiki" Camarena.

He has since been ordered recaptured, but was interviewed while on the run by the news magazine Proceso.

Caro Quintero said was "very worried" about reports he was in a dispute with the Sinaloa cartel.

"I don't have problems with any cartel," said the drug lord, who appeared simply dressed and was interviewed in a humble shack.

Jorge Gonzalez, the attorney general of the northern state of Chihuahua, said earlier this month there was evidence that Caro Quintero may be trying to muscle in on the Sinaloa cartel's operations. The area on the border between Sinaloa and Chihuahua states has seen an upsurge in violence in recent weeks.

Believed to be around 63, Caro Quintero said, "I was a drug trafficker 31 years ago," but said that stopped in 1984 with a raid on a massive marijuana ranch he ran. "I have stopped being a drug trafficker and I repeat, please, leave me in peace."

That kind of disavowal may not convince many people.

"Caro Quintero will deny anything and everything," said Mike Vigil, a former chief of international operations for the U.S. Drug Enforcement Administration, said. "But Caro Quintero knows that for him to survive being on the run, now that they're looking for him again, he needs money … he's got to get involved in the drug trade."

"What he's doing is denying that he's trying to carve out a piece of territory where he can traffic … but right now he is going to deny because he is not anywhere near powerful enough to take on in a frontal assault the Sinaloa cartel."

Caro Quintero said that after he was released he had a friendly meeting with now-imprisoned drug lord Joaquin "El Chapo" Guzman.

"He came to greet me," Caro Quintero said. The two men ate breakfast together and Caro Quintero said, "I told him I didn't want to have anything to do with illegal activities."

He said he had a similar meeting with Ismael "El Mayo" Zambada, another top Sinaloa cartel leader.

Caro Quintero walked free in 2013 after a three-judge appeals court in the western state of Jalisco ordered him released on procedural grounds after 28 years behind bars, saying he should have originally been prosecuted in a state court instead of federal court.

Mexico's Supreme Court later annulled the order, saying Camarena was a registered U.S. government agent and therefore his killing was a federal crime. An arrest warrant was issued for Caro Quintero, but he had gone underground after his release.

Caro Quintero was a founding member of one of Mexico's earliest and biggest drug gangs, the Guadalajara cartel. He helped establish a powerful cartel based in the northwestern Mexican state of Sinaloa that later split into some of Mexico's largest drug organizations, including the Sinaloa and Juarez cartels.

In the interview, he denied involvement in the Camarena killing; the DEA has issued a $5 million reward for his rearrest.

"I didn't organize or kidnap or kill Mr. Camarena," he said. "I was in the wrong place."

Still, he asked forgiveness from Camarena's family, saying "I am very repentant, if I made some mistake I ask forgiveness."

Vigil said "we have a lot of witnesses who say that Caro Quintero was high on coke, he went in there and struck Kiki Camarena on the head with a blunt instrument" as the agent was dying.

A Mexican official said Saturday that the government is studying a request to place another drug lord convicted in Camarena's death under house arrest because of his age and illnesses.

Imprisoned 86-year-old drug lord Ernesto Fonseca Carrillo also was serving a 40-year sentence. Mexican courts have said Fonseca Carrillo is eligible for the program, as are other aged or ill inmates.

Another aging drug lord, Miguel Angel Felix Gallardo, remains in prison in the case.

PRACTICE FOCUS / INTELLECTUAL PROPERTY

Protecting Athletes' Brands Off the Court Takes Defense and Offense

Commentary by Robert Suarez

"What can I do about all these people profiting off of my name?"

Suarez

This concern was expressed to me by a professional athlete, just days before he was to negotiate the biggest contract of his career.

What was the trigger? T-shirts. Specifically, T-shirts bearing his name.

Fans connect with his underdog story and meteoric rise, so they rush out to purchase the latest "lifestyle Ts" bearing his name. Like many professional athletes, this rising star has worked hard to make a name for himself — only to see others profit from it.

Fueled by a $24 million jump in the salary cap, this year's National Basketball Association free agency period produced some of the most expensive player contracts that the league has ever seen. Players in free agency are going from league minimums to $100 million or more, maximum contracts. Even with astronomical player contracts such as these, athletes are concerned about protecting their personal brands, now more than ever.

While these "on the court" deals represent more money than these players have ever seen before, every athlete knows that the Holy Grail of sports contracts come from "off the court" deals. Revenue from endorsement deals and other business opportunities can quickly overshadow even the most lucrative of player contracts.

In 1997, George Foreman lost the heavyweight title in his last professional fight. Devastated by the loss, Foreman returned to the locker room only to be presented with a $1 million check from Salton for his George Foreman Grill. In total, Foreman has received around $200 million for the licensing of his name and likeness.

More recently, LeBron James's annual salary of $22.9 million is eclipsed by the revenue he receives from his business empire, including a lifetime endorsement deal with Nike reportedly valued at $1 billion.

While these examples represent the pinnacle of endorsements, even modest deals involving small brands and local businesses can add up for athletes. Many athletes believe that their agents are handling this aspect of their careers, but often the agent's focus is on the player contract. Many agents, while skilled at negotiating player contracts, may not be able to properly advise an athlete about creating and protecting their personal brands and subsequently entering into lucrative "off the court" deals. Even though agents are counseling and representing their clients in contractual matters, they are often not lawyers.

BOARD OF CONTRIBUTORS

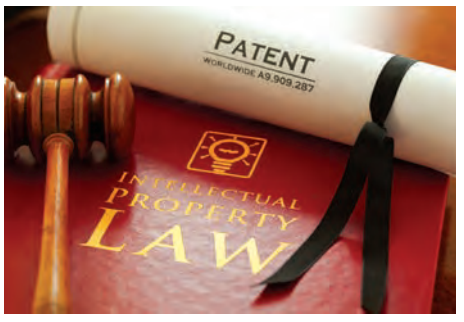
TEAM BUILDING

So how can athletes look out for their personal brands? What about the player that is concerned about "all of these people profiting off of my name?"

Business-savvy athletes build a team. The athlete is the cornerstone and is supported by his agent. A certified public accountant, certified financial planner or other qualified financial professional can offer an assist with the athlete's finances. An often overlooked member of the athlete's team, however, is the intellectual property attorney.

With respect to an athlete's brand, there is both a defensive and offensive component. To start with, the professional athlete can certainly take a defensive position and assert his rights of publicity, which is generally, the right of a person to control the use of his identity for commercial gain and to prevent others from using his identity for commercial purposes without his permission. There is no federal right of publicity, and the laws governing rights of publicity vary from state to state. This is where an IP attorney can advise the athlete on the best approach. When it comes to asserting an athlete's right of publicity, the athlete needs to walk a fine line between protecting his brand, and potentially alienating the very fan base that he is cultivating.

The other half of the strategy is offense — the identification, creation and protection of intellectual property assets that the athlete can monetize. One of the most business-savvy athletes in history, Muhammad Ali, made extensive use of his trademarks. "Float Like A Butterfly, Sting Like A Bee" and "Greatest of All Time" are extensively licensed trademarks that generate revenue.



ISTOCK

The monetization of trademarks through licensing is a key part of an athlete's branding strategy. Federally registered trademarks create property rights that are capable of being monetized through licensing, are owned by the athlete and can create value for the athlete — even before the big endorsement deal is signed.

Professional athletes put in a lot of work to earn their player contracts, and that work on the court also reflects off the court in the form of public awareness of their personal brand. Athletes can play defense in combatting those who profit off of their name, but they can also be proactive and create an intellectual property portfolio that can be monetized and used as leverage when negotiating endorsement deals.

Business-savvy athletes, like Ali and James, illustrate the importance of controlling their personal brand and maneuvering them into lucrative deals.

Robert Suarez is a partner with the Miami intellectual property law firm of Espinosa Trueba Martinez. His practice focuses on the identification, creation and protection of IP rights for athletes, corporations and entrepreneurs. He may be reached at rsuarez@etlaw.com.

COMMERCIAL REAL ESTATE

SOUTH FLORIDA TRANSACTIONS

DEAL OF THE DAY

Miami CVS Store Goes for $13 Million

Address: 1177 SW Eighth St., Miami
Property type: 22,335-square-foot retail outlet built in 2012 on a 2.2-acre lot
Price: $13.1 million
Seller: Mother Queen Inc.
Buyer: 976 Miami Re LLC, linked to CVS Caremark Corp. in Rhode Island
Past sale: $12.12 million in December 2012

GOOGLE

Lauderdale Store Goes for $1 Million

Address: 5121 Powerline Road, Fort Lauderdale
Property type: 6,784-square-foot store on a 1.2-acre lot
Price: $1.1 million
Seller: Dapper Properties III LLC and Autopar Remainder III LLC, linked to U.S. Realty Advisors LLC in New York
Buyer: Spirit Master Funding X LLC

Parkland Land Sells for $1.6M

Address: 10452 N. Barnsley Drive, Parkland
Property type: 22,083 square feet of vacant land
Price: $1.55 million
Seller: Toll FL V LLC
Buyer: Louis and Angela Avvento

Lauderdale Storage Trades for $900,000

Address: 700 NW 57th St., Fort Lauderdale
Property type: 1.4 acres used as open storage
Price: $900,000
Seller: Darling Ingredients Inc.
Buyer: Nationwide Haul LLC and Nationwide Haul Leasing LLC

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

The Mall of the Future Will Offer Dinner, Movies and a Colonoscopy

by Patrick Clark
Bloomberg News

The Runway at Playa Vista in Los Angeles recently added a Whole Foods, a movie theater and upscale shops and restaurants—retail center staples intended to attract affluent shoppers, condo-buyers and tech companies to the mixed-use development. The next big tenant slated to move in, however, is a little different: A 32,000-square-foot doctors' office, where the Cedars-Sinai Health System plans to house outpatient services, including cardiology and orthopedics.

While urgent care centers have been strip-mall staples for decades, the chance to catch dinner, a movie and a surgical procedure under the same roof is new—and coming soon to a mall near you. The reason is commerce: Mall operators are looking for tenants that trade in entertainment and services to replace the brick-and-mortar retailers slowly being strangled by Amazon.com and its online competitors. Rents, particularly at older malls, are a bargain.

The health care industry, meanwhile, is moving away from centralized campuses to bring services closer to patients at a time when two key demographics are entering prime years for consumption. Boomers are hitting an age when they can expect to use more health care services; millennials are starting families and beginning to make doctors appointments for their kids.

Put those factors together and voila: You can get your blood pressure checked just steps from the steakhouse.

Chris Isola, vice president in the health care service group for CBRE, says the idea of putting medical clinics in malls is one that landlords are just starting to come around to. "I think from Cedars' perspective, that's how you capture the younger demographic," he explained. "The challenge is convincing the landlord of a highly desirable center that there should be a medical clinic. It's like, 'This is why you should put Cedars here and not break up the space for five or six boutiques.'"

Gauging just how rapidly health care companies are absorbing retail space is difficult, because the industry is composed of regional and local players, many of which are using only small amounts of space. CoStar, a commercial real estate data and analytics firm, has begun tracking health care companies as retail tenants only in recent years, making it hard to measure the industry's footprint. But the consensus among observers is that it's the wave of the future.

"It's a big part of demand growth for retail space," said Hans Nordby, managing director for Portfolio Strategy at CoStar. "Ten years from now we aren't going to think anything about it. It will be like, I went to the strip mall, I saw the doctor, and then I bought a pair of shoes."

Cedars-Sinai isn't the only healthcare provider to take a large space in a retail mall. Others include the Prime Healthcare, which operates a 23,500-square-foot ambulatory care facility at the Plymouth Meeting Mall outside Philadelphia. Last year, UCLA Health put a dozen doctors in a new medical office at the Village at Westfield Topanga, a high-end mall in Woodland Hills, Calif.

Then there's Vanderbilt University Medical Group, which occupies the entire second level at the 100 Oaks Mall in Nashville, Tennessee, where patients can pick up a pager when they check in at a clinic, then browse the outlet shops on the lower level while they wait. It used to be that only restaurants would give you a pager to let you know when your table was ready. Now it means the results of your CT scan are in.

As this transformation has begun to take shape, strip malls seem to be more popular than traditional malls because they offer medical tenants an appealing prospect: parking spaces directly in front of their stores so the elderly and infirm don't need to cover large distances, let alone navigate stairs or escalators.

While outpatient facilities and doctors offices make the move from hospitals and medical suites to the mall, about one-third of the 7,200 urgent care centers in the U.S. are already there, said Steve Sellars, president of the Urgent Care Association of America. The industry is adding a few hundred new urgent care centers a year, leading operators to try out new locations. Care Here!, a Brentwood, Tennessee-based health and wellness company, even opened a walk-in clinic in the Nashville airport.

For the health care companies, softness in the retail market has helped them negotiate favorable leases, including improvement allowances. Medical facilities also look good financially as tenants, with credit profiles that stack up well compared with nail salons and fast food restaurants.

Still, there's a learning curve on both sides, said Sarah Bader, leader of the global health and wellness practice at the architecture firm Gensler. Many landlords are still coming to grips with the idea that medical clinics won't scare off other businesses. And health care companies are just learning how to use retail space to build stronger relationships with their customers.

"When you go to Starbucks, you know it's a Starbucks," she said. "It's been a challenge, because health care systems aren't particularly brand-savvy clients." Bader has been working with such companies as Chicago's Northwestern Memorial Hospital to create a design manifesto for its growing retail footprint. "You want people to know that whether they're having an operation or going to the pediatrician, they're in the same health system."

BANKING/ FINANCE

Oil Bulls Headed Over Demand Cliff as Refinery Shutdowns Loom

by Mark Shenk
Bloomberg News

Beware, oil bulls: Just as U.S. oil production sinks low enough to drain supplies, demand is about to fall off a cliff.

American gasoline consumption typically ebbs in August and September as vacationers return home, and refiners use that dip to shut for seasonal maintenance. Over the past five years, refiners' thirst for oil has dropped an average of 1.2 million barrels a day from July to October.

"People are looking ahead to the fall and are worried," said Michael Lynch, president of Strategic Energy & Economic Research in Winchester, Massachusetts. "There's more and more talk of prices going south of $40 and as a result people are going short."

Money managers added the most bets in a year on falling West Texas Intermediate crude prices during the week ended July 19, according to Commodity Futures Trading Commission data. That pulled their net-long position to the lowest since March. WTI dropped 4.6 percent to $44.65 a barrel in the report week. Futures touched $42.97 on Monday, the lowest price since April 26.

"People are looking ahead to the fall and are worried," said Michael Lynch, president of Strategic Energy & Economic Research in Winchester, Massachusetts. "There's more and more talk of prices going south of $40 and as a result people are going short."

AMPLE STOCKPILES

With weekly Energy Information Administration data showing U.S. gasoline stockpiles at the highest seasonal level since at least 1990, refiners may shut sooner and for longer ahead of the Labor Day holiday in early September, the end of the driving season.

"With gasoline supplies the highest since April, refiners may pull some projects forward," said Tim Evans, an energy analyst at Citi Futures Perspective in New York. "This will take more support away from the market and add to the broader problem of excess supply."

The global oil market is "severely oversupplied" with gasoline, which will weigh on crude prices, according to Morgan Stanley analysts led by Adam Longson. Refineries have been processing too much gasoline in recent months, according to the report published Sunday. Faced with the need to cut back operations to protect profit margins, refiners are set to reduce crude purchases and drag prices lower, the analysts say.

Hedge funds' net-long position in WTI fell by 23,665 futures and options combined to 156,804, CFTC data show. Shorts surged 24 percent, while longs, or bets on rising prices, increased 1.4 percent.

In the Brent market, money managers trimmed bullish bets by 5,763 contracts in the week, according to data from ICE Futures Europe. Bets that prices will rise outnumbered short positions by 297,608 lots, the least since February, the London-based exchange said.

GASOLINE WAGERS

In other markets, net-bullish bets on Nymex gasoline dropped 18 percent to 1,020 contracts, the lowest since November. Gasoline futures fell 3.8 percent in the report week. Net-long wagers on U.S. ultra low sulfur diesel decreased 19 percent to 16,640 contracts. Futures slipped 5.4 percent.

"If we've gone through the bulk of the summer driving season and haven't done much damage to gasoline supply, refiners are going to react," said Michael D. Cohen, an analyst at Barclays Plc in New York. "It will be hard to find investors that are willing to go long."

OPEC PRODUCTION

The Organization of Petroleum Exporting Countries boosted production 0.7 percent to 32.9 million barrels a day in June, according to estimates compiled by Bloomberg. Russian output will climb by 590,000 barrels a day over the next three years to exceed the former Soviet record, Goldman Sachs Group Inc. said last week.

Even as U.S. crude stockpiles have dropped nine straight weeks amid supply disruptions in Canada and Nigeria, the longest streak in EIA data going back to 1982, the seeds of higher future output are being sown. Drillers targeting crude in the U.S. added 41 rigs over the past four weeks, Baker Hughes Inc. data show.

"What's striking about the nine-week streak is its consistency, not its overall size," Citi's Evans said. "Back in May when the disruptions in Canada and Nigeria were at their peak, there were estimates that inventories would drop an additional 10 to 20 million barrels on top of the normal seasonal drop. Stockpiles are actually down a little less than is normal."

Florida-Based NextEra Pulls Out of Hawaii Energy Projects

by Cathy Bussewitz
Associated Press

Florida-based NextEra Energy is further cutting its ties with Hawaii after ending its plans to merge with Hawaiian Electric.

The company pulled out of several projects including a study exploring the possibility of an undersea power cable between Oahu and Maui, which could—if eventually built—help the state meet its renewable energy goals.

They also pulled out of a proposed wind farm on Lanai that has stalled in recent years.

Hawaiian Electric hasn't pulled out of any of the plans, which are mostly in the conceptual phase, said spokesman Darren Pai. The study of the possible undersea cable is ongoing, he said.

NextEra's departure from the solar and undersea cable discussions won't have a negative impact on the state's ability to meet its goal of generating 100 percent renewable energy by 2045, said Randy Iwase, chairman of the Public Utilities Commission, on Thursday.

"There are other projects out there that continue to be approved," Iwase said. "It's not a setback. We just keep going."

Meanwhile, Hawaiian Electric is moving on with its own plans to build a 20-megawatt solar facility at Joint Base Pearl Harbor-Hickam, which will generate electricity for customers on- and off-base.

"This is a win-win for our customers and all around," Pai said.

Hawaiian Electric plans to build, own and operate the facility, and hopes it will be operational by 2018. But the project has not yet been approved by the Public Utilities Commission, so an operational date will depend on how long it takes to get approval, he said.

If approved, it would be the second-largest solar farm in development on Oahu, after a project in Waianae, he said.

Critics would rather see Hawaiian Electric buy power from outside companies instead of building its own power facilities, so the company doesn't favor its power facility over others, said Henry Curtis, executive director of Life of the Land.

"The utility should move toward transmission only and they should get out of generation," Curtis said.

NextEra also pulled out of a regulatory proceeding to review Hawaiian Electric's "Power Supply Improvement Plan," a review that some describe as planning the energy infrastructure for the state.

That withdrawal was expected after the failed merger, but it's significant because NextEra would have had a lot of influence over the way things were built out in Hawaii, said state Rep. Chris Lee.

"The plan's been criticized in the past because it relied very heavily on maintaining the fossil fuel generation fleet for considerable amount of time, instead of focusing on leveraging new technology and new rate designs to much more cheaply move toward renewable power here in Hawaii," Lee said.

NextEra spokesman Rob Gould declined to comment.

Saudi Group Signs Deal Aiming to End Biggest Mideast Default

by Stefania Bianchi
Bloomberg News

Ahmad Hamad Algosaibi & Brothers Co. signed a deal with a majority of its creditor banks to restructure about $6 billion of debt, taking the Saudi conglomerate one step closer to ending a seven-year impasse over the Middle East's biggest default.

The agreement with a five-member committee representing about 80 banks, which include BNP Paribas SA and Standard Chartered Plc, formally commits Algosaibi and the lenders "to support the implementation of the agreed settlement terms," the Saudi Arabian company said in emailed statement on Monday. About 90 percent of the creditors, accounting for 56 percent of the value of the debt, have signed the deal, and the remaining lenders will be asked to sign in the next few weeks, Algosaibi said.

Algosaibi and billionaire Maan al-Sanea's Saad Group, two family holding companies related by marital ties, defaulted on at least $15.7 billion in 2009 as the global economic crisis froze credit markets and asset prices slumped. The companies have been locked in legal disputes ever since. The restructuring talks involved local and international lenders including U.S. hedge fund Fortress Investment Group LLC.

Algosaibi, which has interests ranging from construction to shipping, made an improved offer to banks last year, guaranteeing they would recover at least 40 percent on the debt. Algosaibi plans to pay creditors at least 28 cents on the dollar using a share portfolio, $906 million of real estate assets and a minority stake in an operating business valued at $80 million. Depending on asset recovery and litigation, it will also pay an additional $1.6 billion.

'BEST SOLUTION'

"This is the best solution to reach a comprehensive agreement that maximizes recoveries for all claimants," Stephen Jenkins of Bahrain's Arab Banking Corp., a member of the committee, said in the statement. "We now look to the full claimant group to do the same."

The restructuring plan also needs the approval of a three-judge panel at a court in Khobar, in eastern Saudi Arabia, which has been appointed to oversee the claims against Algosaibi.

BANKING/ FINANCE

Yellen Still Waiting for Overwhelming Evidence to Warrant Hike

by Craig Torres
Bloomberg News

MANUEL BALCE CENETA/ASSOCIATED PRESS

Federal Reserve Chairwoman Janet Yellen doesn't seem too impressed that June's employment report, retail sales, housing starts, capacity utilization, and a gauge of service industries all beat economists' expectations.

For Federal Reserve officials, getting better never seems to rise to good enough.

Since the policy-setting Federal Open Market Committee last gathered six weeks ago, economic reports have shown one example of U.S. resilience after another following a slow first quarter. When the monetary policy panel meets on Tuesday and Wednesday, a majority of investors expect them to do what they have done at every meeting this year: nothing.

Indicators such as the June employment report, retail sales, housing starts, capacity utilization, and a gauge of service industries have all beat economists' expectations. Still, 2016 has defined Chairwoman Janet Yellen's approach to policy, which might be summed up as a doctrine of waiting for overwhelming evidence.

The strategy is aimed at nursing the economy through the uncertainties of various global shocks while puzzling over head-scratchers that include low productivity and how much support is Fed policy really providing to growth. At the same time, it can seem a highly discretionary, less systematic approach that puts a lot of weight on possible risks that are hard to define or just fade away.

"Upside surprises affect the committee less than downside surprises," said former Fed governor Laurence Meyer, who now runs a Washington policy analysis firm that bears his name. "There is not a chance that they are going to go at this meeting."

Investors see only an 8 percent probability of a move being announced when the FOMC releases its policy statement at 2 p.m. on Wednesday, according to pricing in federal funds futures contracts, though recent remarks by policy makers signals that they think the economy remains on track.

There are a host of reasons why Fed officials may feel justified in skipping a rate hike for the fifth straight meeting.

The Brexit vote was June 23, so U.S. data for last month may not capture the full impact on corporate or consumer sentiment of the U.K.'s decision to quit the European Union. U.S. stocks have recovered their losses since the referendum and advanced on Friday to another record high. But it will still take months, if not years, to understand the full impact of the departure.

Measures of inflation remain low. The Fed's preferred inflation benchmark, minus food and energy, rose 1.62 percent for the year ending May. The target is 2 percent for the full index, which is rising at less than half the desired pace due to weak oil prices.

The committee has only had one jobs report to study since its June 14-15 meeting. True, that reading was strong and suggests the deceleration in hiring from March to May could prove temporary. But with July's payroll report due on Aug. 5, waiting for more evidence could prove an appealing option.

Finally, the risks of moving too quickly are asymmetric, as Fed officials noted in the minutes of the June meeting. Their current target range for the benchmark policy rate of 0.25 percent to 0.5 percent is just one cut away from zero. The committee wants to be confident that when it hikes again the economy and inflation won't falter, forcing it to backtrack.

On the other hand, for the first time since the Fed raised interest rates in December, the chance of an acceleration in growth is looking as real as the downside risks that "several" FOMC participants fretted over in June.

One reason: an unexpected ease in U.S. financial conditions after the Brexit vote is providing the economy with a supporting tailwind.

The Bloomberg index, which takes its readings from spreads on investment-grade, high-yield, and municipal bonds over Treasuries, among other signals, shows financial conditions have eased considerably since the immediate aftermath of the Brexit vote.

The more-favorable credit costs for everything from home mortgages to corporate bonds have been so dramatic that BNP Paribas shifted its projection from no hikes for the next two years to one or possibly two increases in 2016.

"The downside risks have retreated, second-quarter data have been better, and financial conditions have eased," said Laura Rosner, senior U.S. economist at BNP Paribas in New York. "These conditions will prompt them to start talking about rate hikes."

As a result, investors will pay close scrutiny to any changes in the language of the statement's first paragraph, which describes the state of the economy since the last meeting, for hints of a shift.

"They are going to try and do things that make September a live meeting," said Vincent Reinhart, chief economist at Standish Mellon Asset Management Co. The FOMC will "talk up the data, both in terms of the characterization of the labor market and signal economic momentum has gained better footing."

However, Reinhart said the committee will reach a compromise and not hike in September as Yellen exercises her preference to allow the economy to run hot. If September is skipped and FOMC participants still forecast one hike in 2016, that's akin to telling the public that an increase will come at its meeting either in November or December, the ex-Fed official said.

Investors Want to Have Their Corporate Bonds and Eat Them Too

by Tracy Alloway
Bloomberg News

On the increasingly meager menu of yield-generating investments, bonds sold by U.S. companies with stronger balance sheets are looking more and more like the cake that everyone wants a piece of.

Or to put it another way, as strategists at Bank of America Merrill Lynch did in a recent note, U.S. high-grade debt is "the only game in town," featuring a heady mix of investment-grade credit ratings, yield and size.

"For global high-grade broad market investors by now there is only one market that offers both yield and size—namely the U.S. high-grade corporate bond market," write BofAML strategists led by Hans Mikkelsen. "In other words global high-grade investors that can buy sovereigns, supranationals, agencies, mortgages and corporate bonds are forced to flock to U.S. high-grade corporate bonds and drive credit spreads tighter."

The trend is playing out in recent data showing that yield-starved foreign investors, notably in Japan and Europe, have been snapping up U.S. assets with gusto. Analysts at Deutsche Bank AG reported "strong" demand for the nation's corporate debt in May, their last available data, with foreigners purchasing a net $12.7 billion worth of U.S. corporate bonds that month.

Companies keen to capitalize on unfettered demand for corporate debt can serve it up to hungry investors but they face a calculation in doing so, as too much issuance will weaken their respective balance sheets. Rising corporate indebtedness is fine as long as investors are willing to overlook it, but it's far from certain this dynamic can continue in the face of a slowing global economy, a U.S. earnings recession, and nervous stock market investors.

"Equity investors eventually get what they ask for, and they are asking companies to stop adding leverage," the BofAML strategists write. The trend started to play out in the first quarter, as the sum of buyback and acquisition volumes declined, and they expect the trend to continue.

That "eventually—as we have worked our way through the pipeline of M&A deals that have been announced but have yet to close—leads to lower leverage on high-grade corporate balance sheets."

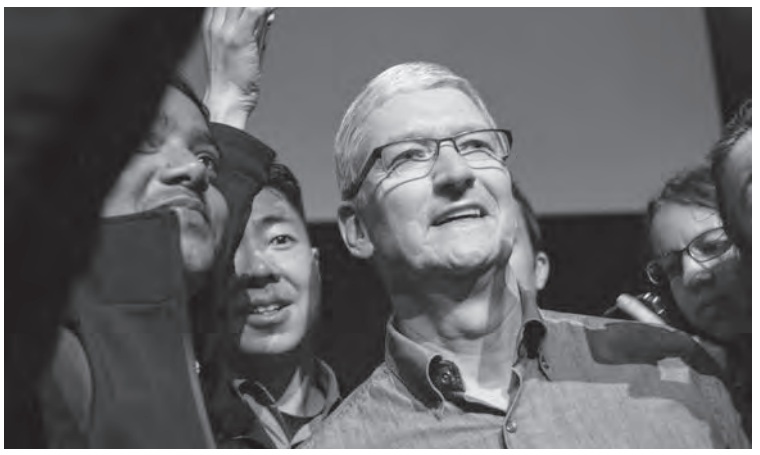
That might be good news for those worried about deteriorating fundamentals in corporate credit, but bad news for the many investors who need fresh issuance more than ever to make up for a paucity of yield. It's doubtful that companies can continue to sell new debt in the face of rising opposition to adding leverage.

After all, you can't bake a delicious yield cake without breaking a few eggs.

BANKING/ FINANCE

Apple's China Problem Is That Local Phones Are Good—and Cheap

by Alex Webb
Bloomberg News



CHRISTOPH DERNBACH/ASSOCIATED PRESS

After forecasting a second consecutive quarterly sales tumble in April, Apple CEO Tim Cook will reveal the extent of the decline when he reports earnings Tuesday.

For Beijing resident Nie Miao, spending $749 on a new iPhone 6S from Apple Inc. "just isn't an option."

That's because the lion's share of his $1,050 monthly pay goes toward the mortgage on the downtown apartment he bought last year. And he's perfectly happy with the $300 handset he got from Huawei Technologies Co.

The 29-year-old embodies the challenges in China for Apple, which has lost ground to local competitors. It's been almost two years since the Cupertino, California-based company revamped the iPhone for the sixth generation. In the meantime, such rivals as Huawei and Xiaomi Corp. have developed their own cheaper products with similar specifications, while the relative success of the iPhone 6 has made it harder for Apple to sustain its growth rates.

After forecasting a second consecutive quarterly sales tumble in April, Chief Executive Officer Tim Cook will reveal the extent of the decline when he reports earnings Tuesday. China generates about a quarter of Apple's revenue, and deterioration there accounted for much of the sales drop.

Huawei supplied one in four new phones in the three months through May, leapfrogging Apple to become the biggest phonemaker by market share in urban China, according to a Kantar Group study published this month. Guangdong Oppo Electronics Co.'s share meanwhile jumped fourfold to 8 percent of the total.

"It's a function of cheaper phones becoming good enough," said Abhey Lamba, a San Francisco-based analyst at Mizuho Securities who recommends buying Apple shares. "Apple has done well at the upper end, but there's not much more growth at the upper end of the market."

The cheaper iPhone SE, which Apple started selling in March, was partially aimed at securing new customers in emerging markets such as China. So far, it has failed to meet those expectations, even as sales have exceeded forecasts in developed economies, Lamba said.

Apple may boost its China sales when the new iPhone arrives later this year, aided by the growing popularity of the App Store and customers' tendency to upgrade their handsets every two years. That's one reason why Huawei and Oppo introduced their flagship phones earlier this year—to get a head start on Apple.

After last year's surge in Chinese phone sales, Apple has reaped the benefit in its App Store, with China overtaking Japan to become the second-biggest source of spending in the shop for mobile games, services, music and more, according to researcher AppAnnie. Once customers have paid to download programs from the marketplace, they are more likely to continue to buy Apple hardware to preserve those purchases. The iPhone 6S, released in September, came too soon after the original iPhone 6 model in 2014 to encourage upgrades.

"In China it's about a two-year upgrade cycle," said Lauren Guenveur, an analyst at Kantar. "They will probably upgrade with the new iPhone 7 where they didn't with the 6S and 6S Plus."

Cost, however, is a mounting issue. While a 16 gigabyte iPhone 6S starts at $790, Huawei's top-of-the-range P9 costs $550, and includes 64 GB of storage, a fingerprint scanner and front and rear cameras.

"It is a fairly premium phone compared to the other models but it is a relatively lower price compared to the iPhone," said Guenveur. "There is also a sense of pride of being a Chinese phone user and owning a Chinese phone."

'REALLY GOOD'

The smartphone market has fundamentally changed since the iPhone was first introduced in 2007. Back then, Apple marketed the device as a lifestyle accessory, but as smartphones have become ubiquitous, consumers' focus has increasingly shifted to the features on offer.

"If you look at Huawei phones, or Xiaomi phones, it's like 'Wow they're really good'," said John Butler, a Bloomberg Intelligence analyst. "They've got great battery life, the screens are really sharp, the features are great."

Apple more than doubled its Chinese revenue between 2013 and 2015 to $59 billion, expanding aggressively: it had 35 stores in the region by the end of March, up from 21 a year earlier, and aimed to add another five by the end of June. Apple has made efforts to remain on good terms with the Chinese government, including a visit by Cook in May that coincided with a $1 billion investment in the country's biggest car-sharing service, Didi Chuxing Technology Co.

And yet sales in Greater China, which comprises the mainland, Taiwan and Hong Kong, fell 26 percent in the fiscal second quarter, accounting in large part for Apple's 13 percent sales tumble. Analysts expect total revenue to decline by a further 15 percent in the three months through June compared with a year earlier.

Cook attributed the fall primarily to the strength of the Hong Kong dollar, which is pegged to its American cousin and made it more expensive for tourists visiting the former British colony to shop. Excluding currency effects, sales in mainland China still fell 7 percent.

"Apple is expecting growth to come from the expansion of the middle class but these people are now choosing the local brands instead," said Nicole Peng, a research analyst at Canalys in Shanghai. "The locals are taking a lot of share in the mid-range segment. Although they are not yet in direct competition, they have certainly taken a lot of potential Apple customers."

Apple's rigidly self-contained iOS mobile operating system, which leaves little space for personalization when compared with Google's Android, has made it harder to attract the sometimes capricious Chinese consumer. Take Zhang Bin, who ditched his iPhone 5S for a handset from Meizu Technology Co. Ltd in 2014 and hasn't looked back.

Ericsson Ousts Vestberg as CEO After Turnaround Plans Stall

by Kim McLaughlin
Bloomberg News

Ericsson AB ousted Chief Executive Officer Hans Vestberg, after revenue and profits sagged and an array of investigations at the Swedish maker of wireless-networking equipment led to growing shareholder unease.

Vestberg, who was CEO for six and a half years, stepped down immediately, according to an Ericsson statement Monday. Chief Financial Officer Jan Frykhammar will be CEO until a replacement is found.

"In the current environment and as the company accelerates its strategy execution, the board of directors has decided that the time is right for a new leader to drive the next phase in Ericsson's development," the company said.

Vestberg's departure caps a turbulent period for Ericsson, which is cutting jobs while battling fierce competition from Huawei Technologies Co. and Nokia Oyj. The company said last week it would accelerate cost cuts after reporting four straight quarters disappointing revenue and profit. Vestberg has faced questions on probes into alleged corruption in Asia and Europe, and last week the company rejected a report in Swedish media that it may be inflating sales by booking revenue before some clients are invoiced.

Ericsson advanced as much as 5.9 percent on the news. The stock was up 2.4 percent during Monday trading in Stockholm. The shares lost about 4 percent during Vestberg's tenure, compared with a more than 90 percent gain for the Stoxx 600 technology index in the period.

The board's decision was unanimous, Chairman Leif Johansson said in an interview.

"This was a discussion that has developed over the past couple of weeks so therefore there was no element of surprise," Johansson said. "We took the initiative to separate."

With much of the so-called fourth-generation networks already built in the U.S. and China, Vestberg had vowed to improve profitability, but the stock has declined since reaching a more than seven-year high in April last year.

Vestberg had carved out new business units targeting media and enterprise customers to get back to growth, while investing in a next generation of so-called 5G wireless technology, which represents the next wave of spending at Ericsson's telecom carrier customers. However, he refrained from big, dramatic moves like Nokia's purchase of Alcatel-Lucent SA, opting instead for a partnership with Cisco Systems Inc. for Internet products like routers.

A new CEO could potentially shift the product strategy and be more aggressive about mergers and acquisitions, Sébastien Sztabowicz, an analyst with Kepler Cheuvreux, said in a research note. Nokia and Huawei "have both engaged toward an end-to-end products portfolio strategy," he said.

Vestberg, a career Ericsson manager who joined the company straight out of business school in 1991, headed its global service division from 2003 to 2007 after having held various positions for the company in China, Sweden, Chile and Brazil. He was named chief financial officer in October 2007 and replaced Carl-Henric Svanberg as CEO at the start of 2010.

Earlier this year, Ericsson's second-biggest shareholder, Industrivaerden AB, was unusually candid in its critique of the mobile-network manufacturer, saying its shares had underperformed in the face of market changes.

Ericsson said in June it was cooperating with U.S. authorities since receiving a March 2013 request to provide information on its operations, and that it is working "diligently" to answer the questions. The questions pertain to the company's anti-corruption program and the U.S. Foreign Corrupt Practices Act. The company also said that month that seven current and former employees were summoned by a Greek prosecutor investigating allegations of possible corruption in the 1999 sale of an airborne radar system used in defense.

Swedish newspaper Svenska Dagbladet in June that the U.S. Securities and Exchange Commission and the U.S. Department of Justice are investigating Ericsson for suspected corruption, including at its operations in China.

Through vote-heavy A shares, Industrivaerden and its associate Svenska Handelsbanken AB control more than 42 percent of the votes in Ericsson together with largest shareholder Investor AB, the holding company of Sweden's Wallenberg family.

"They needed something to happen," said Mathias Lundberg, an analyst at Swedbank AB in Stockholm.

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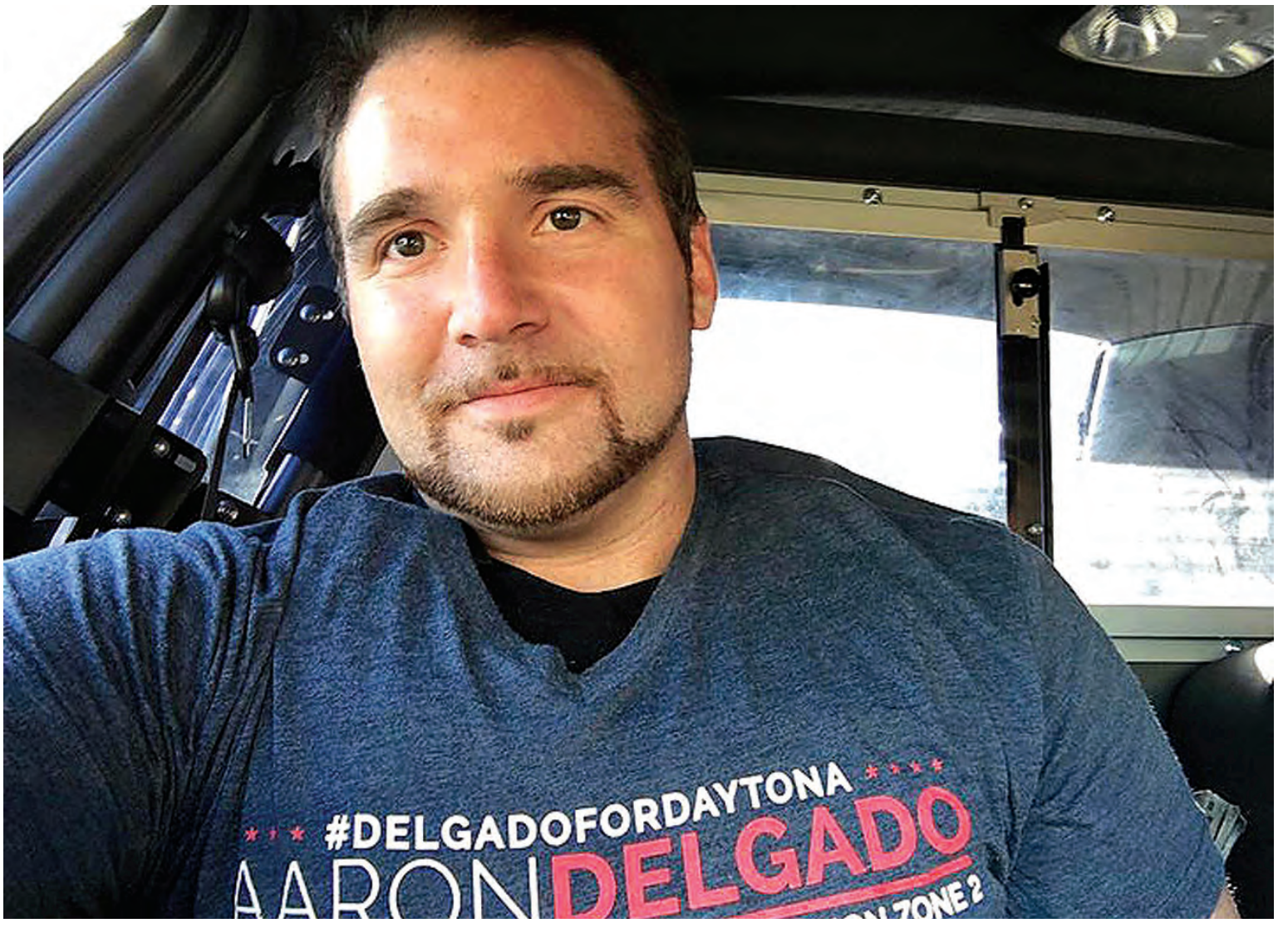
Florida DUI Defense Lawyer Asks What About Pot?



Daytona Beach drunken-driving defense attorney Aaron Delgado said he's pushing for uniformity in the laws governing breath, blood and urine tests.

Florida's first legal medical marijuana dispensary is opening this week in Tallahassee.

Daytona Beach drunken-driving defense attorney Aaron Delgado sees a connection between pot's enhanced profile and a case he just lost in the Florida Supreme Court without even getting a chance to argue.

Bad timing derailed the hearing. The U.S. Supreme Court ruled June 23 that states may sanction drunken-driving suspects who refuse to take breath tests. The court's decision in a Minnesota case stifled Delgado's pending Fourth Amendment challenge to Florida's "refusal to submit" law.

Yet Delgado is asking the Tallahassee court to send his client William Williams's case back to the Fifth District Court of Appeal, where he lost last year.

Why return to the scene of defeat?

Delgado said he's pushing for uniformity in the laws governing breath, blood and urine tests. This affects marijuana because it's detectable in blood and urine, but not breath.

He said Florida law is unclear even after the U.S. Supreme Court addressed breath and blood testing in three consolidated cases from Minnesota and North Dakota.

"Give us instructions on blood, breath and urine so that way we have some guidance," Delgado said.

He's also trying to limit the fallout from the Washington rulings, styled *Birchfield v. North Dakota*.

Warrantless breath testing relies on an exception to the Fourth Amendment's prohibition of unreasonable searches and seizures. The Fifth District announced a rationale for allowing warrantless breath tests that may be broad enough to threaten virtually all testing constraints.

"Before you know it, the exception swallows the rule," said Delgado, who is running for Daytona Beach city commissioner. "It's a dangerous precedent."

WILLIAM WILLIAMS, APPELLANT, V. STATE OF FLORIDA, APPELLEE
Case no.: SC15-1417
Oral argument date: Sept. 1, 2016 (canceled)
Case type: Drunken-driving search and seizure
Court: Florida Supreme Court
Lawyers for petitioner: Aaron G. Delgado and Eric A. Latinsky, Damore, Delgado, Romanik & Rawlins, Daytona Beach
Lawyers for respondent: Pamela Jo Bondi, Attorney general's office, Tallahassee; Kristen L. Davenport and Wesley Heidt, Attorney general's office, Daytona Beach
Author of opinion below: Judge Jay P. Cohen
Originating court: Fifth District Court of Appeal

IT'S REASONABLE

Williams was arrested at about 10:17 p.m. on Oct. 24, 2013, on suspicion of drunken driving. One of his five tickets was for violating Florida Statutes Section 316.1939 (2013), an implied-consent law that says refusing breath, blood or urine tests — if the suspect balked once before and there's probable cause for an arrest— is a misdemeanor.

Delgado filed a motion to dismiss in county court, saying the law is unconstitutional as applied to Williams, and the case flew up to the Fifth District on wings of public importance.

In retrospect, the Fifth District sowed confusion by disagreeing with another state's high court ruling in a case called *Bernard v. Minnesota*. When the U.S. Supreme Court decided Bernard and the other two cases June 23, it said the Minnesota Supreme Court was right: The Fourth Amendment permits warrantless breath tests under an exception for searches incident to drunken-driving arrests.

But on June 25, 2015, the Fifth District said the Minnesota Supreme Court was wrong. The warrant exception based on arrest could only be justified if officers had to act for their own safety or to ensure the suspect didn't destroy evidence, neither of which is true for a breath test, the panel decided.

Ruling on a question of first impression, the court embraced a different rationale for warrantless breath tests: general reasonableness. Judge Jay Cohen wrote, "The touchstone of the Fourth Amendment is reasonableness," quoting from *Maryland v. King*, a 2013 U.S. Supreme Court decision.

"To say that no warrant is required is merely to acknowledge that 'rather than employing a per se rule of unreasonableness, we balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable,' " Cohen continued in his King citation.

He used the new test and found the law constitutional as applied to Williams.

"Balancing Williams' diminished expectation of privacy and the minimal invasiveness of the search against the state's legitimate interest in curbing driving under the influence leads us to conclude that a post-arrest warrantless breath-alcohol test would have been permissible under the Fourth Amendment," Cohen wrote.

Delgado said the court may have arrived at the right destination via the wrong intellectual route, the one implicitly rejected by the U.S. Supreme Court in *Bernard*. He called it an example of the aptly named "tipsy coachman" doctrine.

SOTOMAYOR DISSENTS

Under the Fifth District standard, could warrantless breath, blood or urine tests ever be deemed unreasonable?

Delgado seemed concerned that in the current climate, the answer may be no. "It's just going to be this slow, steady erosion, and one day you wake up and the police can stop you for any reason," he said.

Justice Sonia Sotomayor dissented in *Bernard* and wrote a ringing defense of the warrant requirement for blood and breath tests. Categorical loopholes should always be disfavored, she argued.

"It should go without saying that any analysis of whether to apply a Fourth Amendment warrant exception must necessarily be comparative," Sotomayor wrote. "If a narrower exception to the warrant requirement adequately satisfies the governmental needs asserted, a more sweeping exception will be overbroad and could lead to unnecessary and 'unreasonable searches' under the Fourth Amendment."

In a different context last month in *Utah v. Strieff*, Sotomayor used her dissent to excoriate police for a stop in which an arrest warrant turned up after the fact. They lacked probable cause for the initial detention, however.

She accused the majority of sanctioning police stops that "corrode all our civil liberties and threaten all our lives."

Delgado would like all warrantless tests of breath, blood and urine to be presumed unreasonable.

After its summer break, the Florida Supreme Court will have three options. The justices could cite *Bernard* and affirm the Fifth District decision, remand the case for reconsideration of the general reasonableness standard in light of *Bernard* or interpret the controlling precedent themselves.