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## FEDERAL COURT Attorney says defendant was 'patsy'

# First trial gets under way in Mutual Benefits scandal

by John Pacenti  
jpacenti@alm.com



Defense attorney Joel Hirschhorn said his client never knew the three brothers who ran Mutual Benefits were using it as their "own piggy bank."

Two Fort Lauderdale attorneys had stellar reputations before they hooked their wagon to the star of Mutual Benefits Corp., a pioneer in betting on the death of seniors and terminally ill people for profit.

Attorney Anthony Livoti Jr. served as the trustee for the viatical purveyor, while Michael J. McNerney handled all legal services for Mutual Benefits, which became the most lucrative clients for his defunct law firm, McNerney, Morgan, Solomon & Tatum.

McNerney was sentenced to five years in prison for his role in what turned into an alleged \$830 million scam. He has been named as a defense witness for Livoti, the first Mutual Benefits defendant to go to trial. Opening statements were offered to the jury Monday in

SEE MUTUAL, PAGE A4

## BUSINESS OF LAW 'The Biff factor'

# GrayRobinson enjoys bump in revenue, lawyers

by Julie Kay  
jkay@alm.com

GrayRobinson, continuing its growth trajectory, is reporting a 4 percent increase in revenue in the latest fiscal year.

The Orlando-based law firm is the first major Florida law firm to report annual figures. In the year ended Aug. 31, GrayRobinson's revenues rose to \$138 million from \$133 million, while the number of attorneys jumped to 283 from 275, said Byrd "Biff" Marshall, firm president and managing director.

He said he was pleased with the results even though they reflect slower growth than in previous years. The firm reported a revenue increase of 9.5 percent and an 8 percent jump in attorneys the previous year. GrayRobinson has not yet computed its profits per partner or other financial data.

### GRAYROBINSON

Headquarters: Orlando

Founded: 1970

Attorneys: 283

Offices: Boca Raton, Fort Lauderdale, Jacksonville, Key West, Lakeland, Melbourne, Miami, Naples, Orlando, Tallahassee and Tampa

President and managing director: Byrd "Biff" Marshall

"It's slightly slower, but we're happy with the growth," Marshall said. "The growth has accelerated in real estate, bankruptcy has been steady, and I would say corporate is still muddling along and still has not

SEE GRAYROBINSON, A5

## ON APPEAL

# Hollywood firm wants Greenberg suit reinstated

by Adolfo Pesquera  
apesquera@alm.com

A Hollywood real estate company seeking \$10 million in damages from Greenberg Traurig for alleged malicious prosecution asked the Third District Court of Appeal on Monday to reverse a Miami-Dade circuit judge's dismissal of its claim.

Recognizing the tide of recent case law is not on its side, the attorney for American Federated Title Corp. also asked the court to consider certifying a question to the Florida Supreme Court in the hope of carving out an exception.

American Federated claims

SEE GREENBERG, PAGE A5



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**Governor calls off alligator hunt campaign fundraiser:** Golfing weekends, concerts and deep-sea fishing fundraisers are common in Florida politics, but a gator hunt was such an anomaly that it made major news among bloggers and political websites.



**Man convicted of sex with a Land Rover:** Daniel Cooper was convicted of indecent exposure after allegedly getting naked and attempting sex with a Land Rover.



**'Upskirt' corporate counsel gets six-month suspension:** Clayton W. Boulware, a corporate counsel for Resources for Human Development, is suspended after being convicted of invasion of privacy for covertly filming up the skirts of two females, one of whom was a minor, in a public place.

## MOST-READ STORIES ONLINE

- 1. Judicial Profile:** Judge Rodolfo Ruiz packs lot of experience in few years
- 2. Fort Lauderdale attorneys sanctioned for frivolous Lennar action:** A state appellate court ordered sanctions against two Fort Lauderdale attorneys for filing a frivolous action tied to a stipulated \$584 million judgment for Miami-based home-builder Lennar Corp. in its fraud lawsuit against convicted swindler Barry Minkow.
- 3. CABA delegation takes trip to Washington:** CABA is ratcheting up its political focus with a trip to Washington to meet with members of Congress and possibly President Barack Obama and Secretary of State John Kerry.
- 4. Federal magistrate recommends dismissal of class action against David Stern:** A class action lawsuit brought by investors in foreclosure titan David Stern's DJSP Enterprises could be dismissed a second time if a federal judge agrees with the recommendation of U.S. Magistrate Judge Patrick M. Hunt.
- 5. Justice Watch:** Software a new frontier in IP law

## SECURITIES

# Jackson System settles charges

by **Adolfo Pesquera**  
apesquera@alm.com

The Public Health Trust of Miami-Dade County, which operates the public hospital system, has agreed to settle the federal securities charges with a cease-and-desist order.

The Securities and Exchange Commission charged Jackson Health System's governing authority with misleading investors about how bad the hospital's deteriorating finances were just before an \$83 million bond offering in 2009.

The reality of long-term hospital financing may have played a role in the timing of the settlement. The county wants voter approval for an \$830 million bond issue benefiting the trust in November.

In statements accompanying the 2009 capital improvement offering covered by the consent decree, the Public Health Trust projected non-operating losses of \$56 million for the fiscal year ended in 2009. Actual losses totaled \$244 million.

The SEC found the Public Health Trust misstated current and future revenue due to breakdowns in a new billing system that inaccurately recorded revenue and patient accounts receivable.

The SEC also found the trust failed to properly account for a 2008 arbitration award that hurt patient account receivables. The arbitration award required the trust to pay a third-party receivables company \$3.9 million cash and transfer \$610

million in existing and future accounts receivables.

The trust "failed to apply accurate collection rates to the calculation rates to the calculation of patient revenue and accounts receivable in its new billing system, resulting in an overstatement of accounts receivable and an inaccurate projected loss" in documents distributed to potential investors, the consent decree said.

The trust failed to perform an analysis to determine the value of the replacement accounts receivable awarded to the third-party company, the SEC charged.

"The Public Health Trust fell short in its obligation to maintain adequate accounting systems and controls that ensure truthful disclosures to investors," said Eric I. Bustillo, director of the SEC's Miami regional office.

Mark Zehner, deputy chief of the SEC enforcement division's municipal securities and public pensions unit, said, "Investors must be able to rely on the financial information accompanying municipal bond offerings."

Jackson spokeswoman Jennifer Piedra said in a statement Monday that the hospital system "has taken positive steps to correct problems" found by the SEC.

"Jackson acknowledged that certain financial information furnished by former employees was not accurate or properly reported. Neither the SEC nor Jackson has found an intent to mislead," she said.

**Adolfo Pesquera can be reached at (954) 468-2616.**

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# FLORIDA LAW REVIEW

## Secretary of state embarks on voter purge tour



Florida Secretary of State Ken Detzner is holding meetings in five cities beginning in Jacksonville.

by Dara Kam  
News Service of Florida

Providing supervisors of elections with the documentation they want before removing potential noncitizens from the voting rolls shouldn't be a problem, Florida Secretary of State Ken Detzner said Monday.

Detzner will be traveling the state next month to meet with local elections officials before resuming a controversial voter purge that spawned lawsuits and sparked an outcry from civil and voting rights groups because the majority of the flagged voters were minorities.

Detzner announced last week that he is holding meetings in five cities beginning in Jacksonville on Oct. 3 to get their input on what he calls "Project Integrity." The voter purge tour and the chat with supervisors is part of preparing for the 2014 elections, Detzner said Monday.

The supervisors, the only ones who have the authority to remove voters from the rolls, have said they won't participate unless the state provides documentation

that the voters are not citizens and therefore not eligible to vote. They want the same back-up the Division of Elections sends regarding voters who have been convicted of felonies, found mentally incompetent by a court or have died.

Detzner noted that state law requires the division to provide "credible and reliable" information to supervisors when voters are targeted for removal "and if they want documentation I'll need to provide that."

Florida's access to the Department of Homeland Security's Systematic Alien Verification for Entitlements, or "SAVE," database, will make that easier, Detzner said.

"I don't know why we couldn't provide them any documentation," Detzner said. "I think we'll be able to give them validation through the SAVE database and something in writing."

Detzner was appointed by Governor Rick Scott, who has pushed for the non-citizen purge.

Last year, Detzner's office sent supervisors a list of 2,600 potential non-citi-

zens registered to vote. His department sent the supervisors spreadsheets with the names of the voters and instructed them to send letters to the flagged voters telling them they had to prove they were citizens if they wanted to vote in the November election.

Supervisors dropped the purge after discovering that many of the targeted voters on Detzner's list, generated by matching voter lists and driver's license records, were naturalized citizens. Some were even born in the United States.

Of the 2,600 targeted voters, 85 were found to be ineligible to vote and dropped from the rolls. After the U.S. Department of Justice sued Scott over the purge, Scott took the Obama administration to court to get access to the database. A deal between the state and DHS was struck last year.

Advancement Project and other groups representing Hispanic voters sent a letter to the state's 67 supervisors last week asking them to reject the purge and raised concerns about the accuracy of the SAVE database.

## Killer gets maximum resentence for attempted murder of tourist

by Margie Menzel  
News Service of Florida

Twenty years almost to the day after a shocking attack on two British tourists at a Florida rest stop, the survivor returned to face the man who killed her boyfriend and watched as a judge shut down his chance of getting out of prison early.

Margaret Jagger traveled from England to rural Jefferson County for the resentencing of Aundra Akins, who fired the shot that killed her longtime partner, Gary Colley, in an attempted robbery on Sept. 14, 1993.

Colley died at the scene, in Jagger's arms, and she was shot at point-blank range. They had been together 14 years and were travelling on I-10 when they stopped at a rest area to nap.

Akins was one of four Monticello teens found guilty of planning and committing the crimes, which drew international attention. Colley's was the ninth murder of a foreign tourist in Florida within a year, causing a 20 percent drop in the

state's tourism revenue. Then-Governor Lawton Chiles ordered law enforcement agencies to guard all interstate rest stops.

In 1995, Akins was sentenced to 27 years for murder and 27 years for attempted felony murder, to run concurrently. In 1997, after the Florida Supreme Court ruled that the crime of attempted felony murder did not exist, he appealed his sentence for shooting Jagger, was convicted and sentenced to a term of life with no possibility of parole.



Akins

Friday's resentencing came after a ruling last year by the First District Court of Appeal in Tallahassee, which found that sentence to be unconstitutional because he was 14 at the time of the crime.

It was up to Circuit Judge Karen Gievers to decide, in a non-jury trial, whether Akins would be given a new sentence for shooting Jagger and whether he would serve it concurrently or con-

secutively with the 27 years he is serving for the murder of Colley.

She gave him the maximum, 40 years to be served consecutively, making him eligible for release in 2025 with good behavior.

Jagger, who had corresponded with Akins several times over the years, said after the hearing she hoped he could turn his life around. "He will, hopefully, be able to come out in about 12 years with good behavior," she said. "If he'll just keep out of trouble in prison, then he'll have another life ahead of him outside of prison."

The other defendants in the case are all in Florida prisons. John "Billy Jo" Crumitie, 16 at the time of the murder, was sentenced to life in 1995 and will serve at least 25 years before he is eligible for release. Deron Spear, also 16 at the time, was sentenced to eight years on charges of conspiracy to commit armed

robbery and as an accessory after the fact.

He is serving a life sentence for a 1999 armed robbery. And Spear's half-brother, Cedric Green, then 13, was sentenced as a juvenile. He went to prison for armed robbery in 1999 and is due to be released on Oct. 17.

According to court documents, Akins and Crumitie approached the sleeping couple, while Spear and Green waited in a stolen vehicle positioned to block their intended victims' escape. Akins fired the .38 shot that killed Colley.

Colley was 34, the age Akins is now. Assistant State Attorney Eddie Evans, who argued Friday for Akins to receive the maximum resentence, pointed to his lengthy rap sheet before the rest-stop murder - including grand theft, petty theft, criminal mischief and sexual battery.

He quoted a caseworker who had worked with Akins as saying, "This defendant has the most horrendous of juvenile records."

## Cruise employee wins \$2.5M verdict

by John Pacenti  
jpacenti@alm.com

A Miami-Dade jury has awarded \$2.5 million to a former employee of Miami-based Celebrity Cruises for injuries he suffered when he was attacked by a fellow crew member in a fight over cabin linens.

Vincent J. Fernandes suffered a fractured leg when he was thrown into a trolley by the irate crew member in September 2009, according to the negligence lawsuit. The crew member was angry because Fernandes was getting linen as his job required as an assistant stateroom attendant.

Celebrity "created a hostile working

environment by failing to have enough linens," the complaint stated. The situation caused workers "to compete for necessary linens before they ran out."

The jury on Friday awarded Fernandes \$1.75 million in damages plus \$750,000 for medical expenses and lost wages.

Fernandes was represented by Ervin A. Gonzalez and Christopher Drury of Colson Hicks Eidson in Coral Gables and Tonya Meister of Meister Law in Miami.

Celebrity was represented by David Horr and Eduardo Hernandez of Horr, Novak & Skipp in Miami.

John Pacenti can be reached at (305) 347-6638.

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## THE FIRM

## Morgan Lewis awaits judge's approval of settlement

by Sara Randazzo  
srandazzo@alm.com

Morgan, Lewis & Bockius and the bankruptcy trustee for the defunct Howrey law firm outlined a \$1.15 million settlement to resolve so-called unfinished business claims.

The settlement amount, which needs a judge's approval, stems from about \$12.8 million that Morgan Lewis took in from 96 hourly matters and one contingency fee assignment that originated at Howrey with seven of its former attorneys, according to papers filed in U.S. Bankruptcy Court in San Francisco.

Morgan Lewis hired at least 11 lawyers from Howrey in January and February 2011. The seven whose work is involved in the settlement are partners David Clough, Kenneth

Kliebard, Scott Schutte, Jason White and Romeo Quinto in Chicago and Scott Garner and Robert Gooding in Irvine, California.

All of the Morgan Lewis hires departed several weeks before the foundering Howrey officially dissolved March 15, 2011, which the Howrey trustee said in filings would have become a point of contention if the issue had been litigated.

Howrey's trustee, Allan Diamond, has been pursuing 71 firms that hired Howrey lawyers, claiming that all of them owe money for work initiated before the firm dissolved based on controversial legal precedent established through the 1984 California case known as *Jewel v. Boxer*. So far, a handful of firms have already agreed to settle the claims, and several others are teaming up to jointly

The settlement amount stems from about \$12.8 million that Morgan Lewis took in from 96 hourly matters and one contingency fee assignment that originated at Howrey.

defend against them.

The Morgan Lewis deal is "one of the largest unfinished business settlements received by the estate," Diamond said in his motion seeking approval of the agreement.

The firm's contribution is eclipsed by a deal struck with Baker & Hostetler that will see the firm pay \$41 million for two successful contingency fee

cases that originated at Howrey.

Diamond first began negotiating with Morgan Lewis in March and concluded after an Aug. 15 settlement conference, the filings show. The settlement total represents about 9 percent of the gross revenue Morgan Lewis has received from the nearly 100 matters in question, an amount Diamond calls "a slight discount" over what they were seeking.

Morgan Lewis is already quite familiar with unfinished business suits in law firm bankruptcies. In June 2012, it settled with the Thelen estate for work taken by 17 energy lawyers it hired in New York as the firm dissolved in 2008. The specific amount of Morgan Lewis's contribution wasn't detailed in court documents, though Thelen's trustee disclosed that the firm, along with

five others, kicked in a total of \$703,336.

More significantly, Morgan Lewis agreed in 2004 to pay \$10.2 million to settle claims in the Brobeck, Phleger & Harrison bankruptcy stemming from its hiring of about 60 Brobeck partners before that firm's 2003 collapse.

A Morgan Lewis spokesman had no comment on the Howrey settlement.

Diamond, a partner at Texas firm Diamond McCarthy, said via email that he continues to "try and reach amicable resolutions of estate claims with as many firms and people as possible and this settlement was the result of good faith, amicable discussions with Morgan Lewis throughout the process."

**Sara Randazzo reports for the National Law Journal, an ALM affiliate of the Daily Business Review.**

## FIRM BRIEFS

## SEDGWICK MOVES MIAMI OFFICE TO ONE BISCAYNE TOWER

The new Miami office of Sedgwick, a San Francisco-based law firm, and Veritext Legal Solutions, a deposition and litigation support firm, are moving to One Biscayne Tower in downtown Miami.

The 10-year leases at 15,000 square feet for Sedgwick and 12,000 square feet for Veritext have a combined value of \$9 million.

Sedgwick acquired the Miami law firm of Abadin Cook earlier this year, making Miami its 16th office worldwide and its second in South Florida. The firm had an existing office in Fort Lauderdale.

Veritext has five South Florida offices and is expanding.

These two deals are the fourth and fifth major deals at the 29-floor tower at 2 S. Biscayne Blvd. in recent months. Other new tenants include Northwestern Mutual

and law firms Peretz Chesal Herrman and Young, Bill, Roubos & Boles.

Ryan Holtzman of Taylor & Mathis is the building's leasing director.

Catarina Jimenez of Jones Lang LaSalle represented Sedgwick, while Ryan Ackerman of CBRE represented Veritext. **(Julie Kay)**

## SLIP IN CONFIDENCE FEEDS LAW FIRM CAUTION

Confidence among law firm leaders slipped in the third quarter, according to a recent poll by Citi Private Bank's Law Firm Group, landing at what law firm group chairman Dan DiPietro calls a neutral-to-sanguine level.

"There's still a lot of caution in the market," DiPietro said. "I think there's a growing understanding that what the environment was the last couple years will probably be the environment we're stuck with for the

foreseeable future. Firms frankly are not depressed about that. ... I just think it's a sober and clear-eyed look at what market conditions are."

The latest industry pulse comes from Citi's quarterly Law Watch Managing Partner Confidence Index, which plots responses from a series of questions on a 200-point index, with 100 representing a neutral opinion and 200 representing absolute confidence.

This time around, the bank surveyed 72 firms, including 27 in The Am Law 100, another 21 in The Am Law Second Hundred, 22 firms that Citi describe as niche and a pair of firms in the United Kingdom. **(The American Lawyer)**

## THREE MAJOR FIRMS PLAY ROLE IN CHICAGO SCANDAL

Three major law firms are playing roles in a Chicago political scandal centered on

accusations that former city comptroller Amer Ahmad operated a kickback scheme during a previous stint as deputy Ohio state treasurer.

A team of Porter Wright Morris & Arthur attorneys is representing Ahmad, who pleaded not guilty to federal charges of bribery, conspiracy, fraud and money laundering as part of the alleged scheme, which authorities say unfolded from 2009 to 2011.

The indictment charges Ahmad used his job to steer government investment contracts to a broker who funneled more than \$500,000 back to Ahmad and two associates also facing criminal charges.

Chicago Mayor Rahm Emanuel and Mayer Brown, which vetted Ahmad on behalf of the mayor in 2011 for his appointment as comptroller, have come under fire for ignoring supposed warning signs about Ahmad. **(The American Lawyer)**

FROM PAGE A1

## MUTUAL: Prosecutor says attorney was face of company

the trial before U.S. District Judge Robert Scola in Miami.

Viatical companies purchase insurance policies from seniors and terminally ill people for a set fee and then cash them in for a profit when policyholders die.

The problem for Fort Lauderdale-based Mutual Benefits, which was founded in the mid-1990s, was that many policyholders outlived their life expectancies with help from breakthroughs in the treatment of HIV and AIDS, according to regulators and prosecutors.

Assistant U.S. Attorney Roger Cruz told jurors this put Livoti in a precarious position as trustee of the company's accounts. To pay premiums on thousands of policies, Livoti used incoming money from new investors, thus creating a Ponzi scheme.

Defense attorney Joel Hirschhorn said

his client was allowed under the contract investors signed with Mutual Benefits to use money from other accounts to pay policy premiums.

Hirschhorn of Hirschhorn & Bieber in Coral Gables also told jurors that Livoti never knew the three brothers who ran the company were using it as their "own piggy bank" and claimed his client was a patsy.

"The people who worked at Mutual Benefits were very greedy," Hirschhorn said.

Mutual Benefits was founded by Joel Steinger, Leslie Steinger and Steven Steiner.

Cruz said Mutual Benefits traded on Livoti's reputation because founder Joel Steinger was an ex-convict. "Somebody had to act as the face of the company," he said.

Leslie Steinger died in 2008, and Steven Steiner pleaded guilty to fraud

earlier this month after receiving a 15-year sentence in a related scam.

Joel Steinger was severed as Livoti's co-defendant because of a medical issue. Livoti's trial is expected to take several weeks.

Hirschhorn spent a lot of time in his opening statement talking about McNerney, saying his client relied explicitly on his advice. He said while Livoti was paid a salary of \$10,000 a month, it paled in comparison to the millions of dollars earned by McNerney and the brothers.

"Greed and lucre jaded Mr. McNerney from giving objective legal advice," Hirschhorn said.

He said government witnesses include convicted perjurers and former Mutual Benefits executives who have cut deals in hopes of lighter prison sentences.

Some ex-employees impersonated Livoti in calls to investors.

Both defense and prosecution invoked the name of McNerney's former law partners, Harris Solomon and W. Michael Brinkley.

Cruz said Solomon warned Livoti that his commingling of funds was resulting in a Ponzi scheme. Hirschhorn produced a memo from Brinkley to McNerney expressing concern with the firm's "excessive risk" with Mutual Benefits.

Regulators took over Mutual Benefits in 2006 when the Securities and Exchange Commission filed a complaint alleging it was a fraud.

Cruz also told jurors Livoti lied to insurance companies by listing himself as a friend rather than an attorney when policyholders assigned their life insurance to him. Cruz said investors were unaware insurance companies could void the policy if they discovered Livoti had been untruthful.

**John Pacenti can be reached at (305) 347-6638.**



Scola

FROM PAGE A1

# GRAYROBINSON: President's quick decisions cited as a plus

come back.”

GrayRobinson's governmental and land-use group also is a growth area. Always strong in its home base of Central Florida, the practice is picking up in South Florida, where Gray has 10 government and land-use attorneys and has picked up contracts with Doral, Marathon and Hollywood.

GrayRobinson added some new practice groups in the last year with the addition of shareholders Joseph T. Ducanis Jr. in Fort Lauderdale and Michelle Tanzer in Boca Raton last week.

Ducanis, who came from Fowler White Boggs, is leading a trust and estate practice, while Tanzer, a longtime partner at Holland & Knight, heads a residential, resort and club group.

GrayRobinson lost a number of shareholders in the last year, but nearly all to positions in government.

The firm also announced six shareholder promotions, including three in South Florida. Miami associate Terrance

“TW” Anderson Jr. and Fort Lauderdale associate Ronald Tomassi Jr. were promoted to shareholder, as was Fort Lauderdale of counsel Paul Minoff.

Last year, the firm also added a Boca Raton office with the addition of a small firm. Next on GrayRobinson's wish list is an office in West Palm Beach, but Marshall said he's still scouting for the right opportunity.

GrayRobinson also may have new digs in downtown Miami soon. The firm is expected to announce within a week whether it will stay at 1221 Brickell Ave. or move downtown to the Wells Fargo Center, where it would have Greenberg Traurig as a neighbor.

“We're still negotiating,” Marshall said. “We need about 40,000 square feet.”

Abbe Bunt, a legal recruiter with Bunt Legal Search of Hollywood, said she's not surprised by GrayRobinson's continued success and attributes it to Marshall's leadership —



J. ALBERT DIAZ

President Byrd “Biff” Marshall said GrayRobinson's growth was “slightly slower” than last year, “but we're happy with the growth.”

what she calls “the Biff factor.”

“They don't have the same bureaucracy that big law firms have,” she said. “Biff is a hands-on administrator and makes a quick turnaround on decision-making ... such as doing lateral hiring without lengthy question-

naires. They don't get bogged down in minutia and are able to keep their momentum going that way.”

Peter Quinter, a Fort Lauderdale shareholder at Gray who chairs the customs and international trade law group,

also applauded Marshall's leadership. He joined GrayRobinson 1½ years ago from Becker & Poliakoff.

“I'm delighted I made the choice to switch,” he said. “It's nice being at a law firm that keeps growing and keeps adding people. And virtually no one leaves the law firm. That's one of the reasons I joined. Biff hires shareholders who know how to make money and practice law, and he doesn't interfere.”

Quinter was one of 183 equity and non-equity shareholders to receive a gold coin at the firm's annual retreat last month. It's a tradition Marshall began 22 years ago to commemorate a not-so-good year when no bonuses were distributed. Gold coins were handed out as a consolation.

“When I started this, gold coins were \$200,” he noted with a laugh. “Now they cost \$1,400. Should we go to silver instead? Maybe.”

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

FROM PAGE A1

# GREENBERG: Attorney wants question sent to high court

Moshe Lehrfield, a Greenberg attorney in Miami, acted in concert with a client, GFI Acquisitions and its related entities, to deliberately delay the scheduled closing on the sale of four apartment complexes in 2008. The closing never occurred.

GFI sued American Federated for fraud, claiming mortgage payoff restrictions were not disclosed and sought to recover its \$2.6 million deposit.

The lawsuit started in Miami-Dade Circuit Court, but GFI had the litigation moved to its bankruptcy case in New York.

American Federated tried to prove it made all the proper disclosures during seven months of negotiations.

American Federated sought GFI's email correspondence through discovery. GFI's New York attorneys at Goldberg Weprin Finkel Goldstein insisted there was none until a GFI employee deposition revealed the company was deleting email. The bankruptcy judge threatened to dismiss the case. Suddenly, 10,000 emails were produced, and they ultimately proved American Federated was in the right. The bankruptcy judge sanctioned GFI and its New York attorneys.

The bankruptcy judge let American Federated keep the deposit and entered judgment in its favor for \$7.5 million. But the GFI companies were without assets, and American Federated couldn't collect.

With the bankruptcy adju-



J. ALBERT DIAZ

American Federated's attorney, Frank Zemel of Arnstein & Lehr in Fort Lauderdale, told the court he was aware that precedent was against him.

icated, American Federated filed a lawsuit in 2010 against Greenberg.

Miami-Dade Circuit Judge Marc Schumacher decided in 2011 that American Federated had no case because the bankruptcy court did not sanction Greenberg.

The bankruptcy judge determined the law firm wasn't subject to any discovery sanctions “because it did not intentionally withhold or destroy evidence,” Schumacher said in his order. “In addition, the court found there was not a failure on the part of (Greenberg) to obey any orders.”

American Federated's attorney, Frank Zemel of Arnstein & Lehr in Fort Lauderdale, said in the appellate briefs that it would not be accurate to say Greenberg prevailed on the

sanctions because American Federated did not seek sanctions against Greenberg and the bankruptcy court didn't make the determination Schumacher said it did.

During oral arguments, Fourth District Judge Ivan Fernandez asked Zemel why sanctions were not sought.

“I can't go to bankruptcy court and say, ‘Sanction a law firm who is no longer in the case,’ ” Zemel said.

## WOLFE AT THE DOOR

For Zemel, argument was conducted under a dark cloud. He came to the podium aware that precedent was against him and thanked the court for scheduling his case first because he said, “I hate to be late for my own execution.”

He then said he would not

re-argue *Wolfe v. Foreman*.

“That might be your only hope,” presiding Judge Leslie Rothenberg answered. “It's not yet final.”

Schumacher's other reason for dismissing the case was that Greenberg's actions were part of a judicial proceeding, and Greenberg enjoyed immunity under the litigation privilege rule if there was any wrongdoing.

On July 17, while Zemel's case was pending, the Third District issued *Wolfe*. In that case, West Palm Beach attorney Harold E. Wolfe Jr. sued Miami attorney Jeffrey T. Foreman and others for abuse of process and malicious prosecution, the same causes of action Zemel is using.

The Third District ruled both are barred by the litigation privilege. Rothenberg told Zemel the court struggled with its decision because no other case law applied to malicious prosecution.

Zemel said the court's result was right for *Wolfe*. But that case was a dispute over attorney fees. He argued there should be a distinction between that and a case where one party maliciously sued another and froze properties once valued at \$41.5 million. With the passage of time, American Federated maintained the complexes were in such disrepair that there were thousands of code violations and it took a fortune to fix them.

The *Wolfe* decision did not pose a question for the Supreme Court, and Zemel argued the

## TIME LINE

**Nov. 15, 2010:** American Federated Title sues Greenberg Traurig

**Oct. 28, 2011:** The lawsuit is dismissed in Miami-Dade Circuit Court.

**Sept. 16, 2013:** Third District Court of Appeal hears oral arguments.

high court has a tendency to make overbroad rules and allow exceptions to over time.

“You're asking us to certify it so the Florida Supreme Court has a chance to rethink it?” Rothenberg asked.

“Exactly,” Zemel said.

Rothenberg expressed reluctance, noting it has tried that on other issues only to be told by the court that it meant what it said.

Greenberg attorney Lauri Waldman Ross of Ross & Girten in Miami noted the bankruptcy judge said GFI knew about the emails, but there was no evidence Greenberg knew.

On the litigation privilege issue, she said the rule has changed very little in 33 years.

The only exception was in a recent case that dealt with ex parte interviews outside of judicial proceedings, Ross said.

On rebuttal, Zemel asked again for certification.

“Don't let it end here,” he said.

Adolfo Pesquera can be reached at (954) 468-2616.

## PEOPLE

**Joseph T. Ducanis Jr.** has joined the Fort Lauderdale office of GrayRobinson as a shareholder. He has a law degree from the University of Florida and a bachelor degree from the Wharton School at the University of Pennsylvania.

Partner **Brian K. Gart** of Berger Singerman has been appointed to the board of directors for the Kozyak Minority Mentoring Program. Gart has bachelor and law degrees from the University of Miami.

**Matthew D. Katz**, managing partner of the Fort Lauderdale office of Katz, Barron, Squitiero, Faust, Friedberg, English & Allen, has been appointed to the board of directors of the Humane Society of Broward County and to the Tocqueville Society Steering Committee of the United Way of Broward County. Katz has a bachelor degree from the University of Florida and law degree from the University of Miami.

**Angela Prudenti** and **Tereina Walk** have joined



Gart



Katz



Prudenti



Walk



Feldman



Diner

Sachs Sax Caplan in the firm's Boca Raton office. Prudenti was chief of the white-collar crime unit at the Palm Beach County State Attorney's Office in West Palm Beach. Prudenti has a bachelor degree from American University and law degree from Temple University. Walk worked at Nason Yeager White & Lioce. Walk has a bachelor degree from St. Bonaventure University, law degree from Ohio Northern University and masters in law from the University of Miami.

**Jonathan S. Feldman**, an associate in the bank-

ruptcy department of Miami law firm Meland Russin & Budwick, has been selected as co-chair of the Dade County Bar Association's bankruptcy law committee.

**Jesse H. Diner**, shareholder at Fowler White Boggs in Fort Lauderdale, has been elected to the firm's the board of directors. **Rhea F. Law** will continue to serve as the firm's CEO and chair of the board of directors. The other directors are **C. Joseph Coleman**, president of the firm, and **Jeffrey C. Shannon**.

## LEGAL EVENTS

**Today**  
**Higer Lichter & Givner, Legal Services of Greater Miami and History Miami:** Second annual Constitution Day, recognizing American citizens and honoring rights and liberties granted and protected by the Constitution, 5:30 p.m., Freedom Tower, 600 Biscayne Blvd., Miami. Free. RSVP: mcasares@hlglawyers.com

**Sept. 18**  
**Family Court Services:** Lunch and Learn, effects of trauma on family court cases, "What is trauma and why we must address it?" noon, 11th floor conference area, Courthouse Center, 175 NW First Ave., Miami. Continuing education credit for judiciary, attorneys, mental health professionals and mediators. RSVP: http://fclslunchandlearn-sept2013.eventbrite.com

**Sept. 19**  
**International Law Section of the Florida Bar and Northern Trust:** Cocktail reception and presentation, "Onshoring the wealth: Strategies and solutions; attorneys and CPAs and wealth management professionals," 6 p.m., Northern Trust, 700 Brickell Ave., Miami. RSVP by Sept. 13: Diane Cruz at (305) 789-1185 or DadeRSVP@ntrs.com

**Broward County Bar Association Young Lawyers Section:** H. Mark Purdy speaks on the recovery of attorney fees, Noon, Tower Club, 100 SE 3rd Ave., 28th Floor, Fort Lauderdale. Cost: \$25. RSVP: http://www.browardbar.org/september-2013-bcba-young-lawyers-section-

cle-luncheon/  
**Palm Beach County Medical Society:** Guest speaker U.S. Attorney Wilfredo Ferrer, 6 p.m., Airport Hilton, 150 Australian Ave., West Palm Beach. Cost: free for members, \$35 nonmembers, spouses and guests. Register at www.pbcms.org or call (561) 433-3940.

**Sept. 20**  
**South Florida Group of Regional Counsel:** Daylong seminar, "Cutting-Edge Tools for In-House Counsel Doing Business in Latin America," 8 a.m., JW Marriott Hotel, 1109 Brickell Ave., Miami. Topics include social media in the workplace; data privacy trends; diversity and inclusion; risk management and safety programs; ethical challenges in international litigation; labor and employment; general counsel roundtable. Cost: \$400 members, \$500 guests. Registration: www.morganlewis.com/regional-counsel.

**Dade County Bar Association bankruptcy committee:** Bankruptcy with the Experts panel discussion, 8:30 a.m., Hyatt Regency, 400 SE Second Ave., Miami. Cost: \$55 members, \$75 nonmembers, \$100 at door. Registration: https://dadedcountybar.org/092013bcs.php  
**Broward County Women Lawyers' Association:** Annual installation of officers and board of directors with U.S. District Judge Laurel M. Isicoff administering the oath, 11:30 a.m., Renaissance Hotel, 17th Street Causeway, Fort Lauderdale. Cost: \$35 members, \$40 nonmembers, \$30 judiciary, \$45 after Sept. 19. RSVP:

rsvp@bcwla.com, email: lzeldis@zeldislaw.com  
**Dade County Bar Association:** Foreclosure mock trial and appeal, opening, closing, direct and cross, 2 p.m., Hyatt Regency, 400 SE Second Ave., Miami. First 50 DCBA members to register \$55, first 50 non-members to register \$75. CLE pending Florida Bar approval. Call (305) 371-2220.

**Sept. 24**  
**South Florida Paralegal Association:** CLE dinner, "Asset protection planning," speaker Phillip B. Rarick of Barakat Legal, 6 p.m., 255 Alhambra Circle, Suite 900, Coral Gables. Cost: \$15 members, \$25 nonmembers. RSVP to vfusc@sfa.info.

**Sept. 26**  
**Florida Association for Women Lawyers, Miami-Dade chapter:** Pay disparity seminar discussing myths and realities of pay disparity between men and women in the law, 11:30 a.m., JW Marriott Marquis, 255 Biscayne Blvd. Way, Miami. Cost: \$55 members, \$60 government employees, \$65 non-members. Contact Sherril Colombo, sherril.colombo@wilsonelser.com, (305) 341-2298 or register at www.mdfawl.org.  
**Hunton & Williams:** Focus on Latin America webinar, "Recent developments in international arbitration," noon. Registration Link: http://info.hunton.com/s/7740b7fd146fece16556fd271ba17f0581cdf092/h=ff00121aa849c052b6b8d2fb364aae2eb65df319

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# FOCUS LATIN AMERICA

## Chileans sue Swedish mining firm over toxic waste

The Associated Press

A group of 707 Chileans sued Swedish mining company Boliden, demanding \$13.9 million in compensation for health problems allegedly caused by toxic waste

the company dumped in northern Chile.

The lawsuit filed Monday with a Swedish district court claims Boliden exported 20,000 tons of mining waste to the Chilean town of Arica in the mid-1980s, despite knowing it was highly

toxic and could not be handled safely at the site.

Citizens in a residential area called Polygono claim the waste includes high levels of arsenic, lead and quicksilver, and that it has given them health problems

such as cancer, aching bones, breathing difficulties, rashes and miscarriages.

Attorney Johan Oberg, who represents the victims, says Boliden was an expert in the field and well aware of the dangers of handling the waste.



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# My life in limbo waiting for California law license

Commentary by Sergio C. Garcia

*Editor's note: After this essay was completed, the California Legislature passed AB 1024, which enables undocumented immigrants to obtain law licenses. The California Supreme Court, which holds the power to grant law licenses, will have to determine whether the new law allows it to admit Sergio Garcia to the State Bar of California.*

Like a gladiator walking into a modern-day arena, I confidently entered the California Supreme Court chambers on Sept. 4 ready to fight for my dream. However, I was not facing another fighter, but a piece of law signed by former President Bill Clinton — specifically, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It is a law that, in my opinion, never had the intention of depriving hard-working members of society from fulfilling their dreams.

Now, this same law is the only thing that keeps me away from mine — becoming a licensed attorney.

The faith I had placed in the system that I fight to be a part of quickly vanished when I saw the response of the court.

It is hard to believe this dream started back when I was a 10-year-old child. Now, 26 years later and with scars from many battles, I am stronger and more

committed to that innocent dream of working as a lawyer in America. I arrived in this great nation at age 17, and my father, who is now a U.S. citizen, applied to adjust my status on Nov. 18, 1994. That application was approved just two months later.

And yet, here I remain, still waiting for that elusive green card that will permit me to become a practicing attorney. I am standing in a line, which moves at a turtle's pace, for a green card designed for those 21 and over — a wait that is likely to take six more years before reaching the finish line. But I will not give up.

On my day in court earlier this month, the lawyers fighting my cause were quickly cut down by the tough questions, launched at them like arrows, from the justices. Reading between the lines, I soon realized that this court did not believe it had the authority to provide the signature that would allow me to fulfill my lifetime dream of becoming an attorney, even though failing to do so would have a chilling effect on our youth's desire to reach their own dreams.

Due to the strict rules of court and limited time, I did not have the opportunity to argue my own case. (I would've had only 10 minutes to develop my argument, and I deferred to counsel to use that time.)

However, I was determined to have my day in court, even if that court was the one of public opinion and not of law. Disappointed, but unfazed, I met

the news media outside the courthouse. One of the reporters asked, "How did you feel in there?" to which I replied, "It was a tough crowd, but nothing we were not prepared for."

But the reality was that I'd had much higher expectations of this court. I always say, "Hope for the best, but prepare for the worst," and that is exactly what I had done.

If I'd had the opportunity to speak to the justices, I would have argued that the spirit of the law in question, the true

intent, was never to deprive someone like me of my dream. Instead, it was meant to prevent people from becoming

a burden on the state. Having never received any type of financial aid from the government, I can never fall within the intent of said law. Quite the contrary, I am an entrepreneur, a job creator, a tax-paying member of society. But the court was not interested in my story. There was no room for the human factor in their chambers. I guess it is always easier to make a decision if you do not have to consider that someone's life is actually being affected by it.

I have complied with every requirement under the law. I have spent a lifetime educating myself, believing in an implied contract met by my performance — getting and paying for my education, passing the California bar exam on the first try and being ready, willing and able to contribute to this great country.

And even after seeing the court's response to my application for admission, I remain optimistic that the justices will make a decision based on what is right.

But I'm not taking any chances; instead, I will help them by securing the support of the California Legislature for legislation establishing that one's undocumented status does not block admission to the bar. It is an option expressly authorized and acknowledged by the U.S. Department of Justice, which nevertheless opposes my obtaining a law license.

With every challenge, we have an opportunity to grow and become stronger. This experience has allowed me to realize that there is no barrier, no opposition strong enough to keep me away from my dream.

I have waited nearly 19 years, living in limbo, a prisoner of an immigration system that only works for those profiting from it, a system that trades human suffering for dollars.

I will one day be sworn in, either by legislative enactment, by fighting at the U.S. Supreme Court or simply waiting for my priority date to arrive. The only constant and certain thing in this David-versus-Goliath battle is my unwavering commitment to protecting the American Dream for generations to come.

**Sergio C. Garcia was born in Villa Jimenez, Michoacan, Mexico, and received his law degree in 2009 from Cal Northern School of Law in Chico. He passed the California bar examination that same year. This column first appeared in the National Law Journal, an ALM affiliate of the Daily Business Review.**



Garcia

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**Price:** \$2.25 million, or \$119.98 per square foot  
**Seller:** M.J.M.B. Enterprises Inc., Miguel Franquiz, president  
**Buyer:** Vaxtronic LLC, Ariel Savransky, manager  
**Past sale:** \$1.03 million in December 2006

### Retail building bought for \$2.17 million

**Address:** 8800 SW 56th St., Miami-Dade County  
**Property type:** 9,527-square-foot retail building completed in 1971 on 1.87 acres  
**Price:** \$2.17 million, or \$227.77 per square foot  
**Seller:** La Aurora Management Inc., Pedro Marquez, president  
**Buyer:** Tapa Properties LLC, Gerardo Arquero-Pereda, manager

### DEAL OF THE DAY

## Owner of Pompano Beach hotel gets \$4 million loan

The owner of a Pompano Beach hotel added \$4 million to an existing loan.

**Address:** 1208 N. Ocean Blvd., Pompano Beach  
**Property type:** 110-room hotel on 2.82 acres  
**Loan value:** \$34 million  
**Lender:** PNC Bank  
**Borrower:** UH-Pompano LLC, David King, managed by The Carlyle Group



MELANIE BELL

**Past sale:** \$1.2 million in March 2000

### Retail building picked up for \$2.15 million

**Address:** 5096 Forest Hill Blvd., Palm Beach County  
**Property type:** 17,009-square-foot retail building completed in 2008 on 1.93 acres  
**Price:** \$2.15 million, or \$126.40 per square foot

**Seller:** Forest Hill Partners LLC, Patrick DiSalvo, manager  
**Buyer:** James Batmasian

### Sale of Delray Beach office building tops \$1M

**Address:** 4665 W. Atlantic Ave., Delray Beach  
**Property type:** 7,306-square-foot office building completed in 1976 on 1.22 acres  
**Price:** \$1.2 million, or \$164.25

per square foot  
**Seller:** Julemma LLC, Myles Spodak, manager  
**Buyer:** Balshi Realty LLC, Thomas Balshi, managing member

### Two Jupiter medical condos acquired for nearly \$714,000

**Address:** 224 Chimney Corner Lane, Jupiter  
**Property type:** Two medical

condominiums built in 2011 totaling 2,887 square feet  
**Price:** \$713,810, or \$247.25 per square foot  
**Seller:** Abacoa Realty Partners LLC, Josh Smith, managing member  
**Buyer:** IKID Real Estate LLC, Alexander Katz, managing member

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.

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## COMMERCIAL REAL ESTATE

# Westfield sells 7 U.S. malls for \$1.6 billion

by Nichola Saminather  
Bloomberg News

Westfield Group, the world's biggest shopping-center operator by assets, will sell seven malls in the United States for \$1.6 billion to an affiliate of Starwood Capital Group LLC as the company consolidates its U.S. portfolio to fund higher-return activities.

Westfield is divesting malls to redeploy capital into planned development projects, the Sydney-based company said in a statement to the Australian stock exchange. It will retain a 10 percent interest in the shopping centers, which will be managed by Starwood, it said.

Westfield, founded by billionaire Frank Lowy, is exiting properties in the United States with lower productivity and fewer redevelopment opportunities, mostly in the Midwest and Northwest, to reinvest in higher-return assets and projects both in the country and overseas. It divested seven U.S. malls in April 2012 to Starwood for \$1 billion and sold half stakes in six Florida malls to O'Connor Capital Partners for about \$700 million in March, while maintaining management rights.

"Westfield have well flagged their intention to concentrate their U.S. portfolio," Louise Mylott, executive director for specialist sales, and Lou Pirenc, REIT analyst, at Morgan Stanley, wrote in an emailed note. With this transaction, Westfield "has exited all of its Midwest assets outside the Chicago area and all non-core West-Coast assets."

## SALES BOOST

Westfield will own and operate 40 malls in the United States following the sale, and average annual specialty sales at its malls there will increase by 3.8 percent to \$513 per square foot following the disposal, it said Monday.

The company has started work on the retail part of the World Trade Center in New York, in which it invested \$612.5 million in a joint venture with the Port Authority of



EMILE WAMSTEKER/BLOOMBERG NEWS

Westfield Group is undertaking \$240 million of redevelopments at Garden State Plaza in New Jersey.

New York and New Jersey in July 2011. It is also undertaking \$240 million of redevelopments at Garden State Plaza in New Jersey and Montgomery in Maryland, it said in August.

Westfield shares on Monday closed 1.1 percent higher at \$10.22 in Sydney, extending gains this year to 3.8 percent. That compares with a 13 percent increase in the benchmark S&P/ASX 200 Index this year.

## DEVELOPMENT PROJECTS

The malls Westfield is selling include three properties in Ohio, two in California and one each in Indiana and Washington state, it said. The deal is in line with the assets' book value as of June 30, and \$120 million below their Dec. 31 value, the company said.

"They're remixing the remaining portfolio based on their views about where the best value is going forward," said Winston Sammut, Sydney-based managing director of Maxim Asset Management. "This is part and parcel of their strategy, not a change in strategy or outcome."

Retail sales in the United States rose 0.2 percent in August from the previous month, less than forecast and the smallest gain in four months, the Commerce Department said Friday. Higher payroll taxes, limited job opportunities and restrained income growth are moderating consumers' interest in shopping.

Westfield reported comparable net operating income growth of 4.3 percent in the United States in the six months to June 30, compared with 1.8 percent in Australia and New Zealand, and 0.2 percent in the U.K. The company had debt of \$12.2 billion as of June 30, representing 36 percent of total assets, it said in its earnings statement.

## MORE DEVELOPMENTS

Perceptions of Westfield's credit risk have improved, with the cost of protecting the company's debt against non-payment dropping relative to other Australian companies. Credit-default swaps on the mall owner have fallen 51 basis points to 106 over the past year.

The CDS were 9 points below the benchmark Markit iTraxx Australia index at the end of last week, having traded at a 22 basis point spread above the average a year earlier. Westfield is the fifth best performer in the 25-member gauge over the past 12 months.

Australia's biggest publicly traded property trust has focused on boosting developments and fund management income since it spun off the domestically focused, more conservative Westfield Retail Trust in 2010. The change in strategy followed Frank Lowy's decision to hand day-to-day control of the company he founded in 1959 to his sons Peter and Steven Lowy.

Frank Lowy emigrated to Australia in 1952 after fleeing the Nazis in Hungary and fighting as a commando in Palestine. He built up Westfield into the world's biggest shopping-center operator by assets with properties in Australia, New Zealand, the United States and U.K. The company has since expanded into Italy and Brazil.

Westfield is moving forward

on \$2.61 billion worth of higher-return development projects in cities including London, New York and Los Angeles, the company said at its first-half results announcement last month. It also has a further \$11.2 billion of projects planned, including a mall in Milan that it is developing in partnership with Italian firm Gruppo Stilo.

"Today's announcement continues the implementation of our strategic plan which positions Westfield to generate greater shareholder value," Westfield's co-chief executive officer Peter Lowy said in the statement. "We are focused on redeploying our capital into superior retail destinations in major cities through divesting non-core assets and introducing joint venture partners."

At Westfield London, Westfield is proceeding with an expansion after receiving approval for more than 500,000 square feet of additional space and 1,500 apartments, it said last month.

## OPERATIONS FUNDS

While the sale to Starwood, the investment firm led by Barry Sternlicht, will dilute annualized funds from operations by 4.5 cents a share, this will be mitigated when it reinvests the funds and by its share buyback program, it said.

The sale won't affect forecast funds from operations of 66.5 cents a share for the year ending Dec. 31, Westfield said. The deal is expected to close by the end of 2013, it said.

"For this to be the source of capital as they expand into mega-centers is a whole lot more refreshing than coming to investors asking for more money," said Stuart Cartledge, managing director of Melbourne-based Phoenix Portfolios. "It would be interesting to see for how long they have to maintain their 10 percent stake, because clearly they're not a long-term holder of passive stakes in assets they don't even manage."

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## Arbitration & Mediation



### A DEAL IS A DEAL

A look at the U.S. Supreme Court ruling that the Federal Arbitration Act mandates enforcement of arbitration agreements according to their original terms.

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- Restricting the economic loss rule to product liability cases
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## BANKING / FINANCE

# Withdrawal of Fed candidacy followed unprecedented campaign

by Julianna Goldman,  
Cheyenne Hopkins  
and Phil Mattingly  
Bloomberg News

Lawrence Summers' withdrawal as a candidate for Federal Reserve chairman came after an unprecedented campaign to stop a Fed nominee even before he was announced, spearheaded by Democratic senators who took on a president of their own party.

The decision by Summers, the former Treasury secretary and economic adviser to President Barack Obama, followed Democrats on the Senate Banking Committee publicly and privately signaling their concerns about Summers to the White House.

Several Democratic senators, including Jeff Merkley of Oregon and Sherrod Brown of Ohio, mounted a sustained lobbying campaign, pressing colleagues in their own party to oppose Summers on the grounds that he was too lax on financial regulation. They pressed forward as the White House was focused on building support for a military strike in Syria.

"Any possible confirmation process for me would be acrimonious and would not serve the interests of the Federal Reserve, the administration, or ultimately, the interests of the nation's ongoing recovery," Summers wrote in a letter Sunday to Obama.

People close to the process said Summers was Obama's top pick all along, even though White House officials late last week insisted the president had yet to make a decision.

## LEADING CANDIDATES

Summers, 58, and Fed vice chairman Janet Yellen, 67, were reported to be the leading candidates. Obama also has said he interviewed Donald Kohn, 70, a former Fed vice chairman. Former Treasury Secretary Timothy Geithner isn't interested in the job, even after Summers' withdrawal, said a person familiar with Geithner's thinking.

Investors are debating the speed at which the Fed will taper its \$85 billion in monthly bond purchases. Traders had speculated that, given Summers' past questioning of the effectiveness of quantitative easing, he may have pulled back stimulus faster than other candidates such as Yellen. Stocks rose and the dollar fell Monday.

The U.S. currency weakened against 15 of 16 major currencies tracked by Bloomberg. It fell 0.4 percent against the pound and 0.6 percent versus the euro. Treasuries rose, pushing the 10-year yield down 8 basis points to 2.81 percent.

The Stoxx Europe 600



PHOTOS BY CHRIS RATCLIFFE/BLOOMBERG NEWS

Lawrence Summers, the former Treasury secretary and economic adviser to President Barack Obama, withdrew his candidacy for Federal Reserve chairman after several Democratic senators pressed colleagues in their own party to oppose Summers on the grounds that he was too lax on financial regulation.

Index advanced 0.8 percent to a five-year high and the MSCI Asia Pacific Excluding Japan Index added 1.6 percent with Japanese markets closed.

## TESTER'S ANNOUNCEMENT

Democratic opposition to Summers' possible nomination had been building, spurred in part by the efforts of Merkley and Brown, who placed calls to advocacy groups and used weekly caucus lunches to lobby fellow lawmakers to oppose Summers.

On Friday, Montana Senator Jon Tester, a Democrat, announced he would oppose Summers, bringing the number of "no" votes on the Senate Banking Committee to three, including Merkley and Brown.

The pitch from Merkley and Brown to fellow Democrats was this, according to Senate Democratic aides: if you think you're going to vote against Summers, speak up now, because it's less embarrassing to Obama to stop Summers before he's nominated than after a messy confirmation fight.

Senator Elizabeth Warren, a Massachusetts Democrat and critic of Wall Street, also was involved. She informed the White House last week she would oppose Summers, according to a person familiar with the matter.

"Larry was not my first choice for Federal Reserve chair," Warren said in an interview Monday with Peter Cook on Bloomberg TV.

## YELLEN 'FAN'

"I'm a big fan of Janet Yellen," Warren said Monday. "I think she's terrific. She's got the right experience and I think she'd make a terrific Federal Reserve chair."



ANDREW HARRER/BLOOMBERG NEWS

Fed vice chairman Janet Yellen, above, was viewed more favorably as a candidate among investors, with 60 percent of respondents holding a positive view, compared with 37 percent for Summers.

Her vote would have meant at least four Democrats on the banking committee were opposed to Summers. The White House would have had to rely on several Republican votes to get him out of the 22-member committee.

The Democratic effort spilled into the open when a senator off-handedly acknowledged in late July the existence of a letter of support for Yellen. That letter, drafted and circulated by Brown, was signed by 20 senators.

The letter touched a nerve in the White House, and with Obama himself. He defended Summers days later in a closed-door meeting with Democrats on Capitol Hill, while mentioning that Kohn also was under consideration.

As Democratic opposition grew, Summers' supporters say the White House didn't effectively push back. Summers was left vulnerable to what some called a "perfect storm" of

events: the delay in his formal nomination, the debate raging over Syria, and the upcoming budget fights with Congress, according to a person familiar with the matter.

In late August, the White House sanctioned former administration officials Stephanie Cutter and Jim Messina to work to counter anti-Summers reporting without ever marshaling current administration officials, many of whom, including most of the economic team, supported Summers, according to people familiar with the situation.

A tight circle of the president's advisers, convened to weigh various Fed candidates, stopped meeting once Syria dominated the agenda and Obama's attention turned to the divisive debate of whether to begin a military strike in response to the Aug. 21 chemical weapon attack that killed more than 1,400 people.

While Obama's aides in-

sisted that the Fed chairman's confirmation process wouldn't get wrapped up in the budget fights set to start in September, Summers was emerging as collateral damage, the person familiar with the situation said.

Obama, in a statement Sunday, called Summers "a critical member of my team as we faced down the worst economic crisis since the Great Depression." He touted Summers's "expertise, wisdom and leadership" for helping guide the crisis response and nascent recovery.

Since June, when Obama in an interview with Charlie Rose indicated he wouldn't appoint Ben S. Bernanke to another term, intrigue over whether the president would pick Summers or Yellen turned into a political process that Fed watchers called unprecedented.

The central bank is considering whether to begin to reduce the unprecedented bond purchases that have fueled a four-year market rally. Bernanke's term ends Jan. 31.

As signs over the past few months continued to point to Summers as the leading candidate, 40 percent of investors, analysts and traders who are Bloomberg subscribers saw Summers getting the job, according to a Bloomberg Global Poll.

Still, Yellen was viewed more favorably among investors, with 60 percent of respondents holding a positive view, compared with 37 percent for Summers. Thirty-five percent had a negative view of Summers, compared with 15 percent for Yellen.

## CLINTON RECORD

Summers was pegged by his opponents as a deregulator for his support of loosened rules on the financial industry during President Bill Clinton's administration.

In 1998, Summers, then-Fed Chairman Alan Greenspan and Treasury Secretary Robert Rubin, blocked efforts by Brooksley Born, then-chairman of the Commodity Futures Trading Commission, to regulate the derivatives market. It later expanded to include the toxic instruments that led to the 2008 financial market crisis.

Summers also sought repeal of the Glass-Steagall Act, the Depression-era law separating commercial and investment banking.

"If you nominate someone who is a life-committed deregulator to be in a regulatory position, and if you believe regulation is necessary to prevent fraud, abuse, manipulation and so forth, then there's a lot of questions to be asked: Why is this person appropriate?" Merkley said in a July interview

## PEOPLE

**Marissa Abreu** has joined Witkin Hults Design Group in Hollywood as an associate. Abreu has master's and bachelor's degrees from Florida International University.

**Michael Mogensen** has joined Nardello & Co. as a managing director in Miami, where he will lead the firm's Latin America practice. Mogensen was senior business manager for HSBC's business intelligence unit. He has a bachelor degree from New York University and a master's degree from American University.

**Howard Pincus**, an eight-year resident of the Clematis District, has been appointed chairman of the West Palm Beach Downtown Development Authority board of directors for the 2013-14 term. Pincus has served as vice-chairman since 2011 and served on the DDA's seven-member board for five years.

**Darling J. Lie-Nielsen** of Northwestern Mutual has qualified for and achieved the company's distinguished accolade of "Forum," a professional accomplishment reserved for financial representatives with top production. Since the founding



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of the Northwestern Mutual Forum recognition in 1998, Lie-Nielsen is the second woman to achieve this distinction in the South Florida group.

Esslinger-Wooten-Maxwell Realty International has added nine associates to the company's Coral Gables-South Miami office: **Verania Belausteguigoitia, Daniel Cabrera, Odalys Diaz, Marian Iglesias, Linda San Martin, Vivian Serralta, Ani Sierra, Farideh Shantiai and Jesse Vazquez.**

Belausteguigoitia, originally from Mexico City,

has 12 years of real estate experience.

Cabrera was a home inspector for Florida Building Inspections in Miami.

Diaz, who attended Florida International University and the University of Miami, owned an eyewear company and served as the vice president of product and merchandising.

Iglesias was managing director at KIWI Branding & Communications in Coral Gables. She attended Barry University.

San Martin was a registered nurse circulator for Doctors Hospital and has 14 years of real estate

experience.

Serralta is a Realtor associate with 18 years of industry experience.

Sierra was an insurance analyst for BMI Cos. in Miami. She studied at Stonehill College.

Shantiai owned Design by Fari, an interior decorating and design consulting company. She studied at Florida International University and Miami Dade College.

Vazquez was an account manager for Cruz Group in Coconut Grove and brings three years of real estate experience to EWM.

## BUSINESS EVENTS

### Today

**IberiaBank and Small Business Development Center at Palm Beach State College:** Retirement planning options including 401ks, SEPs, IRAs and more, speakers: Ted Kramer, regional director for the SBDC, and Laura Hollister of Iberia Financial Services, 5:30 p.m., IberiaBank, 1101 Congress Ave., Boynton Beach. To register, call Kim Ficker at (561) 653-5078 or email at [Kim.Ficker@iberiabank.com](mailto:Kim.Ficker@iberiabank.com).

### Sept. 18

**Greater Miami Chamber of Commerce:** Health and technology converge with health care and technology industry leaders, 8:30 a.m., Greater Miami Chamber of Commerce, 1601 Biscayne Blvd., Ballroom Level, Miami. Cost: \$35 members, \$45 nonmembers, \$50 on-site. Go to [www.MiamiChamber.com](http://www.MiamiChamber.com) or contact Tania Valenzuela at (305) 577-5491 or [tvalenzuela@miamichamber.com](mailto:tvalenzuela@miamichamber.com).

**South Florida Association for Financial Professionals:** Luncheon with Glenn S. Gordon, associate regional director, Securities and Exchange Commission, 11:45 a.m., Bankers' Club in Downtown Miami. More info and registration at [www.sfafp.org](http://www.sfafp.org)

### Sept. 19

**Greater Miami Chamber of Commerce:** Bagels with the boss, with Chamber president/CEO Barry Johnson, 8 a.m., Greater Miami Chamber of Commerce 1601 Biscayne Blvd., Ballroom Level, Miami. Complimentary registration. Register online at [www.MiamiChamber.com](http://www.MiamiChamber.com) or contact Malissa Morgan at (305) 577-5467 or [mmorgan@miamichamber.com](mailto:mmorgan@miamichamber.com)

### Sept. 20

**U.S. Green Building Council, South Florida chapter:** Tropical green all-day conference, "Floresta Urbana and tropical architecture" with speaker Bruno Stagno, 7:30 a.m., Hyatt Pier 66, Fort Lauderdale. Cost: \$175. Go to [www.usgbc.org/tropicalgreen](http://www.usgbc.org/tropicalgreen), email [info@usgbc.org](mailto:info@usgbc.org) or call (561) 373-7367. Group discounts available [www.usgbc.org/tropicalgreen](http://www.usgbc.org/tropicalgreen)

**Miami Finance Forum:** CFO Power Breakfast, panel discussion with Betty Sanchez of Goldman Sachs, Frances Sevilla-Sacasa of Banco Itau, Jocelyn Cortez-Young of Minerva Capital, Alex Sink of Hyde Park Capital and Mary Carroll of Akerman Senterfitt, 7:30 a.m., Conrad Hotel Miami. Cost: \$25 for members, \$55 for nonmembers. Register at [www.miamifinanceforum.com/upcoming-events/9-20-2013/](http://www.miamifinanceforum.com/upcoming-events/9-20-2013/)

**Crittenden Real Estate Finance Conference:** "How to succeed as a private developer" with Seth Gadinsky of Gadinsky Real Estate LLC, 10:15

a.m., Ritz Carlton South Beach, 1 Lincoln Road, Miami Beach. Go to [CrittendenRealEstateFinance.com](http://CrittendenRealEstateFinance.com) or call (800) 211-1697.

**United Way of Broward County:** Rock united — an epic battle of the bands, 6 p.m., Revolution Live, 100 SW Third Ave., Fort Lauderdale. Cost: \$15 individual tickets, \$1,000 band fee. Call (954) 462-4850.

### Sept. 21

**U.S. Green Building Council South Florida chapter:** Fourth annual GalaVerde: 2013 LEEDership and Green Awards Program, "Fantastic Future of Sustainability" with speaker John Picard, 6:30 p.m., Hyatt Regency Pier 66, Fort Lauderdale. Cost: \$125 members, \$150 nonmembers. Go to [www.usgbc.org/galaverde2013](http://www.usgbc.org/galaverde2013).

### Sept. 24

**IberiaBank and Small Business Development Center at Palm Beach State College:** Retirement planning options including 401ks, SEPs, IRAs and more, speakers: Suzanne Mulvehill, a business owner and SBDC counselor, and Laura Hollister of Iberia Financial Services, 5:30 p.m., IberiaBank, 1315 West Indiantown Road, Jupiter. To register, call Kim Ficker at (561) 653-5078 or email at [Kim.Ficker@iberiabank.com](mailto:Kim.Ficker@iberiabank.com).

### Sept. 25

**Greater Miami Chamber of Commerce:** Update on consent decree, upgrades to Miami-Dade County's three water treatment plants and aging infrastructure, Miami-Dade County's bond capacity and water rate increases, and public-private partnerships, 8:30 a.m., Hampton Inn & Suites Miami Brickell Downtown, 50 SW 12th St., Miami. Cost: \$35 members, \$45 nonmembers, \$50 on site. RSVP at [www.MiamiChamber.com](http://www.MiamiChamber.com). Contact Cornelia Pereira at (305) 577-5432 or [cpereira@miamichamber.com](mailto:cpereira@miamichamber.com).

### Sept. 25

**Greater Miami Chamber of Commerce:** Speed business networking event, cheers with the chairs, HYPE Miami kicks off the 2013-14, 5:30 p.m., MPP Brickell Restaurant, 141 SW Seventh St., Miami. Cost: \$20 members, \$30 nonmembers, \$30 on site. RSVP at [www.MiamiChamber.com](http://www.MiamiChamber.com). Contact Elise Lebron (305) 577-5430 or [elebron@miamichamber.com](mailto:elebron@miamichamber.com)

### Sept. 27

**Greater Miami Chamber of Commerce:** Banking & Finance CRA Roundtable, 8:30 a.m., Greater Miami Chamber of Commerce, 1601 Biscayne Blvd., Ballroom Level, Miami. Cost: \$35 person, \$50 on site. RSVP at [www.MiamiChamber.com](http://www.MiamiChamber.com). Contact Cornelia Pereira at (305) 577-5432 or [cpereira@miamichamber.com](mailto:cpereira@miamichamber.com)

### Oct. 3-4

**Greater Miami Chamber of Commerce and Florida Council:** Nuts & Bolts of P3 Projects in Florida, conference on public private partnerships, Miami Dade College Wolfson Campus, Chapman Center, 300 NE Second Ave., Miami. Cost: Advance registration \$195 members, \$295 nonmembers. RSVP at [www.MiamiChamber.com](http://www.MiamiChamber.com). Contact Daniel Tapia at (305) 577-5469 or [dtapia@miamichamber.com](mailto:dtapia@miamichamber.com).

### Oct. 4

**LeTip East Broward:** Business professionals networking opportunity, breakfast meeting, 7:16 am sharp, Sheraton Fort Lauderdale Airport, 1825 Griffin Road, Dania Beach. Call (954)764-8550.

### Oct. 8

**CBRE:** Multi-Housing Summit Florida, 7:30 a.m., Four Seasons Miami, 1435 Brickell Ave., Miami. Cost: Early registration (before Sept. 12) \$399, full rate \$699. Call Scott Milliken (646) 862-9912.

### Oct. 9

**Closed-End Fund Association:** Free seminar, "Managing retirement income: The advantage of closed-end funds," Boca Raton Resort and Club, event accepted for 3½ CE credit hours. Register at [www.cefa.com](http://www.cefa.com)

### Oct. 11

**LeTip East Broward:** Business professionals networking opportunity, breakfast meeting, 7:16 am sharp, Sheraton Fort Lauderdale Airport, 1825 Griffin Road, Dania Beach. Call (954)764-8550.

### Oct. 16

**Business & Professional Division of the Jewish Federation of South Palm Beach County:** Industry icon series with Lewis Katz, former principal owner of the New Jersey Nets and the New Jersey Devils, 8 a.m., Zinman Hall, Federation Campus, 9901 Donna Klein Blvd., Boca Raton. Cost: \$36 per person. Go to [www.jewishboca.org/](http://www.jewishboca.org/) icon or contact Sonni Simon at (561) 852-3128 or [sonnis@bocafed.org](mailto:sonnis@bocafed.org).

### Oct. 18

**LeTip East Broward:** Business professionals networking opportunity, breakfast meeting, 7:16 am sharp, Sheraton Fort Lauderdale Airport, 1825 Griffin Road, Dania Beach. Call (954)764-8550.

**Urban League of Palm Beach County:** Youth empowerment luncheon — building on the dream, speaker Toure, 11:30 a.m., Palm Beach County Convention Center, 650 Okeechobee Blvd., West Palm Beach. Call (561) 833-1461 ext. 3002 or go to [www.ulpbc.org](http://www.ulpbc.org).

### Oct. 19

**Big Brothers Big Sisters:** Annual déjà vu fundraiser, "Magic of Motown," Hard Rock Live at the

Seminole Hard Rock Hotel & Casino, 1 Seminole Way, Hollywood. Email: [anac@bbbsbroward.org](mailto:anac@bbbsbroward.org)

### Oct. 22

**Jewish Federation of South Palm Beach County:** Professional Advisory Committee kickoff & membership drive cocktail reception, 5:30 p.m., Woodfield Country Club, 3650 Club Place, Boca Raton. Cost: \$36 per person. Go to [www.jewishboca.org/packickoff](http://www.jewishboca.org/packickoff) or email [kristylo@bocafed.org](mailto:kristylo@bocafed.org).

### Oct. 23

**United Way of Broward County, the Community Foundation of Broward and the Jewish Community Foundation:** 12th annual Joint Tax and Estate Planning Seminar, co-chairs include Peter Anderson of United Capital, Alan Cohn of Greenspoon Marder and Christine Lambertus of Lambertus & Lambertus, 7:30 a.m., Nova Southeastern University's Rose and Alfred Miniaci Theater. Costs: \$50. Register at [www.jewishbroward.org/jointtaxseminar](http://www.jewishbroward.org/jointtaxseminar). Call United Way of Broward County at (954) 462-4850.

### Oct. 25

**LeTip East Broward:** Business professionals networking opportunity, breakfast meeting, 7:16 am sharp, Sheraton Fort Lauderdale Airport, 1825 Griffin Road, Dania Beach. Call (954)764-8550.

### Oct. 26

**United Way of Broward County:** Mayors' Gala, 6 p.m., Greater Fort Lauderdale/Broward County Convention Center. Costs: Ticket prices start at \$250 for an individual ticket or \$2,500 for a table. Go to [www.UnitedWayBroward.org/mayorsgala](http://www.UnitedWayBroward.org/mayorsgala).

### Nov. 12

**Organization of Women in International Trade, South Florida chapter:** 12th annual awards, celebrating women in international trade, 11:30 a.m., Rusty Pelican, 3201 Rickenbacker Causeway, Key Biscayne. Email [Connie.Reatti@owit.sflorida@gmail.com](mailto:Connie.Reatti@owit.sflorida@gmail.com).

### Nov. 16-19

**Florida International Bankers Association:** FELABAN assembly forum, 9 a.m., InterContinental Hotel, 100 Chopin Plaza, Miami. Cost: \$1,025 after May 15, \$1,125 after Aug. 15, \$1,200 at the door. Email: [belkis@fiba.net](mailto:belkis@fiba.net).

### Nov. 20-21

**Terrapinn:** Seventh annual "Private banking Latin America — Americas family office forum," 8 a.m., Trump International Beach Resort, 18001 Collins Ave., Sunny Isles Beach. Call (212) 379-6320 or (877) 336-4264.

Submit information about upcoming events to [DBRCalendar@alm.com](mailto:DBRCalendar@alm.com).

## BUSINESS BRIEFS

## IP CAPITAL PARTNERS RAISES MORE THAN \$22 MILLION

A Boca Raton-based real estate investment and asset management firm has raised more than \$22 million with hopes of leveraging the equity into \$375 million in acquisitions.

IP Capital Partners LLC on Monday announced the closing of its IPCP Florida Realty Value Fund I LP. The money is to be used to purchase office, retail and industrial properties in South Florida, Jacksonville, Orlando and Tampa. The fund is targeting institutional-quality properties with value-add and recapitalization potential.

IP Capital launched the fund during the first quarter with a goal of raising \$25 million by year's end.

"We are pleased with our initial fundraising effort and anticipate a subsequent closing that will bring the fund's total equity capitalization to \$30 million," IP co-founding partner and president Jason Isaacson said in a statement. **(Eric Kalis)**

IP principals have completed more than \$5 billion in commercial real estate transactions in more than 25 years of combined investment and operations.

## JETBLUE TO ADD SERVICE TO TRINIDAD AND TOBAGO

JetBlue plans to start a new nonstop flight service to Port of Spain in Trinidad and Tobago from Fort Lauderdale/Hollywood International Airport starting May 1, 2014.



The airline said Monday that it will also start nonstop service once a day to Port of Spain, Trinidad's cap-

itol airport, from JFK International Airport in New York beginning Feb. 24, 2014.

Destinations in Latin America and the Caribbean now comprise nearly one-third of JetBlue Airways Corp.'s route network.

JetBlue also announced that it is adding twice daily nonstop flights to Savannah/Hilton Head from JFK International. The service will start on Feb. 13, 2014.

JetBlue shares are down 11 percent from their 52-week high of \$7.28 in April. They traded as low as \$4.76 last September. **(The Associated Press)**

## SHIPWRECKED CONCORDIA WRESTED OFF ITALIAN REEF

Using a vast system of steel cables and pulleys, maritime engineers on Monday gingerly winched the massive hull of the Costa Concordia off the Italian reef the cruise ship had struck in January 2012.

But progress in pulling the heavily listing luxury liner to an upright position was going much slower than expected. Delays meant the delicate operation — originally scheduled from dawn to dusk Monday — was not expected to be completed before Tuesday morning.

"Things are going like they should, but on a timetable that is dragging out," Franco Gabrielli, head of Italy's Civil Protection Agency, said Monday evening.

Never before has such an enormous cruise ship been righted. Salvage workers struggled to overcome obstacle after obstacle as they slowly inched toward their goal of raising the crippled ship 65 degrees to the upright position.

An early morning storm delayed the salvage command barge from getting into place for several hours. Later, some of the cables dragging the ship's hull upright went slack, forcing engineers to climb the hull to fix them.

The Concordia itself didn't budge for the

first three hours after the operation began, engineer Sergio Girotto told reporters.

The initial operation to lift the ship moved it just 3 degrees toward vertical. After 10 hours, the crippled ship had edged upward by just under 13 degrees, a fraction of what had been expected.

Still, the top engineers were staying positive.

"Even if it's 15 to 18 hours, we're OK with that. We are happy with the way things are going," Girotto said.

After some 6,000 tons of force were applied — using a complex system of pulleys and counterweights — Girotto said "we saw the detachment" of the ship's hull from the reef thanks to undersea cameras.

At the waterline, a few feet of slime-covered ship that had been underwater slowly became visible. **(The Associated Press)**

## FINNISH CRUISE LINER YARD TO SHUT, 700 JOBS CUT

Ship builder STX Finland says it will shut down the yard where some of the world's largest cruise liners were built as the weak global economy continues to hit the European industry.



Citing low profits and a lack of orders, the company says it will close the Rauma yard during 2014

with some 700 job cuts. Some operations will be moved to its nearby Turku shipyard.

STX Finland deputy chief Jari Anttila said Monday the closure is necessary to make the company profitable.

In 2011, Royal Caribbean Cruise Lines took delivery from STX Finland of what were then two of the world's largest cruise liners, each costing \$1.5 billion. The ships span 1,200 feet and can accommodate 8,500 people.

STX Finland is part of the STX Europe Group. **(The Associated Press)**

## FACTORY OUTPUT UP 0.7 OF A PERCENT

U.S. factories increased output in August by the most in eight months, helped by a robust month at auto plants. The gains are a hopeful sign that manufacturing could help boost economic growth in the second half of the year.

Manufacturing production rose 0.7 percent last month from July, the Federal Reserve said Monday. That's the biggest increase since December. It followed a 0.4 percent decline in July.

Automakers increased production 5.2 percent, after a 4.5 percent decline in July. And factories stepped up production of other goods, including computers and



electronics, furniture and business equipment.

Overall industrial production rose 0.4 per-

cent in August following no change in July. Mining, which includes oil production, increased but output at utilities fell for a fifth month.

Factory output is the largest component of industrial production. The strong gain adds to other signs that manufacturing could be rebounding from a weak start this year.

Paul Dales, senior U.S. economist at Capital Economics, said U.S. manufacturers were benefiting from stronger growth overseas. **(The Associated Press)**

## SHERWIN-WILLIAMS COMPLETES COMEX TRANSACTION

Sherwin-Williams has completed its acquisition of the U.S. and Canadian business of privately held Mexican paint company Consorcio Comex.

Sherwin-Williams will pay \$90 million in cash and assume debt of about \$75 million. The company is currently working on getting regulatory approval from the Federal Competition of Mexico in order to complete its buyout of Comex's Mexican operations.

The transaction was announced in November 2012.

Consorcio Comex SA de CV sells paints and coatings under several brands in the United States and Canada, and it sells architectural and industrial coatings in Mexico. It has company-operated stores and also works with independent paint dealers.

Sherwin-Williams Co., based in Cleveland, has brands including Dutch Boy, Minwax, Krylon and its namesake paints. **(The Associated Press)**

## TURKEY TALK LINE TO HAVE FIRST MALE SPOKESMAN

This year if you call Butterball's Turkey Talk Line for some cooking advice, you might get a male voice on the line.

For the first time, Butterball is enlisting the help of men as well as women for its Turkey Talk Line during the holidays. And the turkey seller is seeking the first male talk-line spokesman this year as well.

The talk line, which is 32 years old this year, has long offered advice to anyone overwhelmed by making the perfect turkey for Thanksgiving Day and the rest of the year-end holiday season.



It has been improving its services, last year launching a smartphone app, Facebook live chats, Pinterest posts and

other social media tools.

But the line, which has grown from six operators to about 60 since it launched in 1981, has never hired men before. The company says it wasn't specifically excluding men, but it usually relied on word-of-mouth to hire its talk line operators and its hires were always women.

Now, it's taking a more active approach. "It's the perfect time, because we have seen more and more men involved in Thanksgiving dinner," said Mary Clingman, director of the Butterball Turkey line. When the talk line started, only about 9 percent of calls that came in were from men. But now, about one in every four calls are from men, she says.

Butterball, based in Garner, North Carolina, will offer an online application for men age 25 and up to apply to be the spokesman for the line or one of the operators, via its Facebook page. The spokesman, who will man the help line and offer turkey tips via media appearances, can be based anywhere, but hot line operators should live near Chicago, where the hot line is operated.

The online application will be available until Oct. 20.

Most operators have a background in food or nutrition and have culinary degrees or are dietitians, food stylists or scientists. They all take a crash course in turkey making at the Butterball University training program, as well. **(The Associated Press)**

## ALLEGHENY SELLS TUNGSTEN MATERIALS UNIT FOR \$605M

Metals maker Allegheny Technologies Inc. plans to sell its tungsten materials business for \$605 million to Kennametal Inc.

The Pittsburgh company said Monday that the deal gives it better financial flexibility as Allegheny Technologies, or ATI, focuses on growth opportunities in its high-performance metals and flat-rolled products segments.

ATI said the tungsten materials business generated about \$338.6 million in revenue



last year and \$37.2 million in operating earnings. It employs about 1,175

people and makes tungsten powder, tungsten heavy alloys and carbide materials and carbide cutting tools.

Kennametal, based in Latrobe, Pennsylvania, said the deal will help it expand its presence in the aerospace and energy markets.

The acquisition will accelerate its previously announced plans to expand capacity and develop an advanced tungsten carbide recycling facility in the U.S. to serve global markets, Kennametal said. In addition, the company said it will be able to shave \$30 million to \$35 million from its planned capital spending as a result. **(The Associated Press)**

## CONAGRA SELLS LIGHTLIFE BRAND TO EQUITY FIRM

Packaged food company ConAgra Foods is selling off its Lightlife line of meatless products to a private equity firm.

ConAgra, which makes Chef Boyardee, Banquet, Healthy Choice and other branded foods, didn't disclose the terms of the sale to Brynwood Partners.

But Lightlife's line of vegetarian burgers, hot dogs and other products were described as one of Omaha-based ConAgra's smaller brands.

The companies said Brynwood will also acquire Lightlife's manufacturing plant in Turners Falls, Massachusetts, in the deal.

Brynwood appointed two new executives to lead Lightlife who have experience running other food companies for Brynwood.

Brynwood specializes in investing in branded foods and products. It owns Pearson Candy Co., which makes Salted Nut Rolls and other candy, and the DeMet Candy Co., which makes Flipz brands of snacks. **(The Associated Press)**

## POST BUYING DAKOTA GROWERS PASTA FROM VITERRA

Post Holdings Inc. said Monday that it is buying Dakota Growers Pasta Inc. from Viterra Inc. for \$370 million to expand its food offerings.

The deal adds to the cereal maker's list of recent acquisitions. It acquired nutritional supplement maker Premier Nutrition Corp. in August and the cereal, granola and snacks business of Hearthside Food Solutions in May.

Post, based in St. Louis, makes cereals such as Grape-Nuts, Great Grains and Honeycomb. Dakota Growers, based in Carrington, North Dakota, sells private label pasta. It also has production capabilities in New Hope, Minnesota.

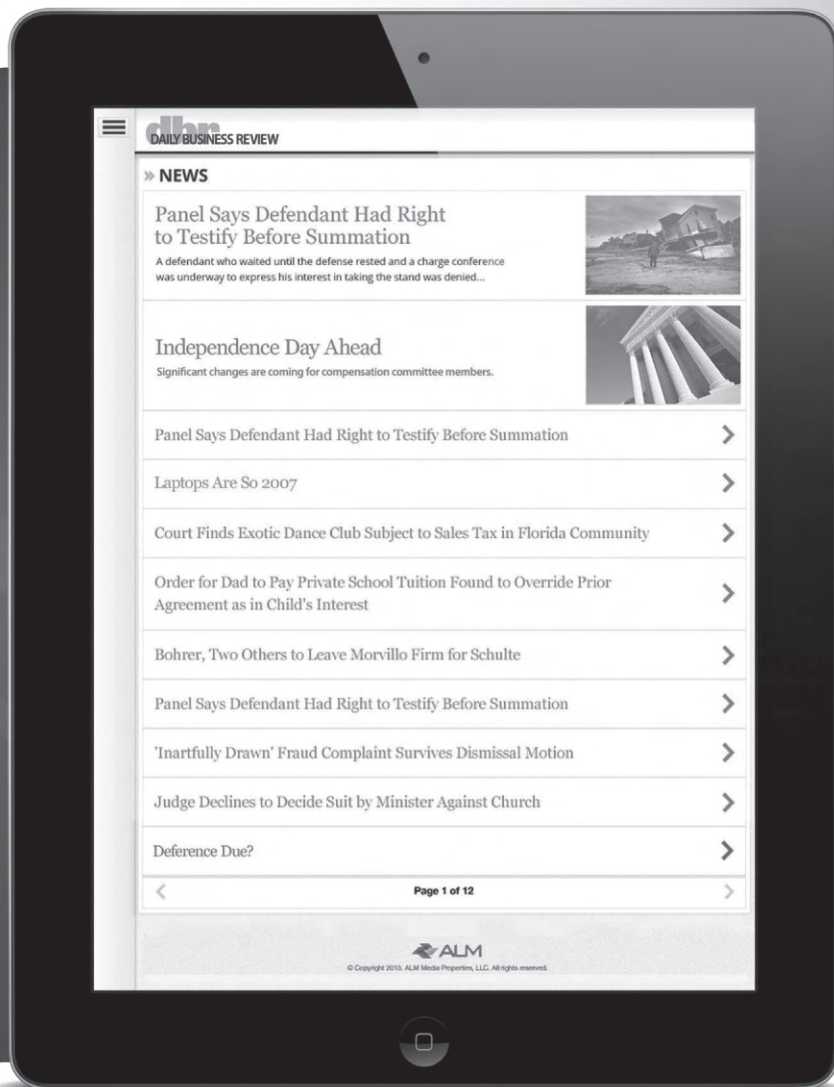
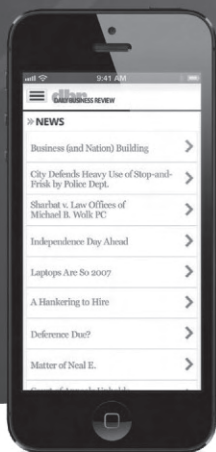
Company chairman and CEO William Stiritz said that the deal will further expand Post's portfolio into segments of the food industry where it sees opportunities to grow. **(The Associated Press)**

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## Fourth DCA allows lawyer-turned-witness to continue handling trial on behalf of client

They agreed on at least one point — it's rarely proper to call opposing counsel as a witness — but the certainty ended there in a case where a lawyer-turned-witness was disqualified for what he heard during his pre-suit investigation.

Attorneys on each side of a lawsuit never agree on everything. It's the nature of the adversarial system. Less often will a successor trial judge significantly deviate from the course charted by a predecessor. If it does happen, odds are it won't be on the court's own motion.

Same goes for an appellate court that effectively reverses itself, first denying a petition for certiorari, only to grant a motion for rehearing less than two months later.

It all happened in Phyllis Steinberg's case.

She sued Winn-Dixie Stores Inc. in 2009 after breaking her tibia and shoulder outside of one of its supermarkets. She claimed she tripped and fell on an access ramp on holes left exposed when a wobbly railing was removed.

Steinberg also sued the property owner, G&I VI South Florida Portfolio SPE LLC, and the property manager, Equity One Realty & Management FL Inc. Winn-Dixie filed cross-claims against G&I.

The details of who removed the rail, when it was removed and who was informed about its removal are in dispute — details critical for a jury to apportion fault among the defendants upon finding negligence.

Steinberg retained Fort Lauderdale attorney Alan C. Anchell. The former defense lawyer hired an architect, his brother Bruce Anchell, to investigate the case before filing suit. They visited the store a few days after the incident to inspect the property. Store manager Reggie Rigaud spoke with Alan Anchell while Bruce Anchell took notes.

During their depositions, Rigaud and Bruce Anchell offered different versions of the conversation. Alan Anchell indicated he was present when Rigaud made the unfavorable statements that his brother described during deposition.

The previous judge allowed the defendants, over objection, to take Alan Anchell's deposition but denied Winn-Dixie's motion to disqualify him from representing Steinberg.

In October 2011, the case was designated complex and transferred to a new division where the successor judge revisited the disqualification issue at two hearings. When trial counsel for G&I and Equity One indicated Alan Anchell would be called as a witness, Winn-Dixie's argued to exclude his testimony.

The pivotal order came in January. "He cannot argue his own credibility issues before the finder of fact and at the same time represent his client under rules promulgated by The Florida Bar. As distasteful as it is for Mr. Anchell to be disqualified, it is equally distasteful for the court to have to enter this order.



MELANIE BELL

In the end, a three-judge panel ruled it did not see Alan C. Anchell's anticipated testimony as sufficiently adverse to his client's interests.

The orderly administration of justice always has to prevail."

The order allowed Anchell to stay on the case but disqualified him from participating in the trial.

At that point, he brought in Burlington & Rockenbach. Partner Bard D. Rockenbach and associate Adam J. Richardson were successful in persuading the Fourth DCA to quash the disqualification order.

Rockenbach said: "The relationship between a client and an attorney is very personal, and Florida courts will protect that relationship absent very extraordinary circumstances. Those circumstances did not exist in this case."

Richardson added, "The Fourth District has ensured that an attorney's decision to investigate his client's case can't be used by the other party for mere

tactical benefit."

On appeal, Winn-Dixie responded to the petition with a confession of error, leaving the heavy lifting to Helen Ann Hauser, a partner with Restani, Dittmar & Hauser in Coral Gables.

One of her arguments relied on the tipsy coachman rule, providing the court with an option to deny the petition under a different rationale than the trial court's.

While Steinberg's attorney focused on a Bar rule dealing "where 'the lawyer is likely to be a necessary witness on behalf of the client,' an even more compelling basis for Anchell's disqualification was the longstanding principle that, where the attorney will be a witness at trial on a significant issue and his testimony is likely to be adverse to the client's position, disqualification is mandated," Hauser argued in her response brief.

### PHYLLIS STEINBERG V. WINN-DIXIE STORES

Case No.: 4D13-619

Date: Aug. 28, 2013

Case type: Civil practice, appeals, torts

Court: Fourth District Court of Appeal

Author of opinion: Judge Carole Y. Taylor

Lawyers for petitioner: Bard D. Rockenbach and Adam J. Richardson, Burlington & Rockenbach, West Palm Beach, and Alan C. Anchell, Law Offices of Alan C. Anchell, Fort Lauderdale

Lawyers for respondents: Helen Ann Hauser, Restani, Dittmar & Hauser, Coral Gables, and James Henry Wyman, Hinshaw & Culbertson, Coral Gables

Panel: Judges Taylor, Robert M. Gross, Melanie G. May

The Fourth DCA denied Steinberg's petition without explanation June 7.

Steinberg asked for rehearing. Her attorneys suggested the court misapprehended two points of law limiting the circumstances in which a trial court can disqualify: when the lawyer is likely to be a necessary witness on behalf of the client and when the lawyer is likely to provide testimony that is adverse to the client.

Taylor wrote, "Steinberg does not intend to call her trial counsel as a witness on her behalf. Moreover, he is not a necessary witness. Essentially, the same facts can be elicited at trial from the testimony of the private investigator, who was present when the store manager was interviewed."

Likewise, the court did not see Anchell's anticipated testimony as sufficiently adverse to his client's interests. G&I and Equity One argued his testimony would establish Winn-Dixie's primary responsibility, undermining Steinberg's negligence allegations against them.

With the disqualification question resolved, the case comes alive again in Broward Circuit Court. Much of the discovery is complete, but no trial date has been set. Hauser said G&I and Equity One still intend to call Anchell as a witness when the time comes.

Anchell hopes the clarification in the law sends a message.

"It's important for lawyers on both sides to go out there and investigate their cases as quickly as possible and understand the implications of inspections," he said.

That's squares with the Florida Supreme Court's comment on the rule requiring meritorious claims and contentions.

"What is required of lawyers ... is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions."



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incident to inspect the property. Store manager Reggie Rigaud spoke with Alan Anchell while