

IN BRIEF

Sidley Adds to Chicago Skyline in Upcoming ‘Big Deal’ Office Move

Sidley Austin is planning a Chicago move so big that it will add to the city’s skyline.

After a quarter-century in the city’s traditional downtown business district, Sidley will move its office to a new skyscraper in late 2030 in one of Chicago’s ascendant neighborhoods out west. The Windy City-founded firm announced last week it will become the anchor tenant of a new building developed by Related Midwest in the Fulton Market neighborhood, where corporate giants like Google and McDonalds and Am Law 50 firms like Greenberg Traurig and Norton Rose Fulbright also reside.

The firm currently occupies about 544,000 square feet at One South Dearborn, where it has resided since 2005. Sidley executive committee chair Brian Fahrney said in an interview Wednesday that it will take up “about the same” number of square feet once it officially moves to the new building, which will be at 725 W. Randolph.

The Sidley move highlights how Big Law firms have been inking grand real estate plans lately, whether in expanding their space or moving to new space, amid record profits in the legal industry. While law firm leasing activity, nationwide, was technically down in Q1, according to the Savills real estate brokerage, it was more of a cyclical lull, and firms are still in hot pursuit of Class A and trophy space, particularly in top-tier markets like New York, Chicago and Northern California.

The Sidley move will be to a one-million square foot, Class AA building that’s slated for construction starting next year.

Sidley has about 1,500 lawyers in Chicago and requires in-office attendance four days a week, with Friday as a flex day. Fahrney said incentivizing folks to make the trip to be in-person is “absolutely” one of the advantages of getting a new, high-quality space.

The firm has been evolving its real estate portfolio in several markets lately, increasing space in markets like Dallas and New York while moving into new offices in Los Angeles and San Francisco.

It also went from a temporary space to new offices in San Diego and Miami. Fahrney said it’s all part of the same philosophy, though: “high-end” office space that is technologically cutting edge in all of the firm’s key markets. Flexibility is also key, whether that means more or less square footage. “I would say what we’ve been trying to do is maintain flexibility in all of our locations, to toggle up or down as is necessary in the next few years,” he said, adding the firm is not “radically” changing its approach to space.

Still, he said, “helping add a new building and adding that to the skyline is a big deal.”

He said being an anchor tenant allows the firm some influence over the building process, along with signage rights. But as for additional tenants, “that’s not really within our control, or mandate.” Interior design aesthetics are also in motion, and Fahrney said it’s “probably a different kind of footprint than you would’ve seen 30 years ago,” but is more or less “still kind of to-be-determined.”

Fulton Market is a former warehouse area west of the Chicago River and northwest of the more established buildings that populate The Loop, the city’s conventional business region. Over the years, it’s cultivated a reputation as an up-and-coming residential, business and innovation center, adding trendy and upscale restaurants alongside corporate headquarters for companies like Google, Dyson and Chime as well as the global headquarters for McDonald’s.

The city’s elevated trains also have a direct line from the neighborhood to O’Hare International Airport, and law firms like Norton Rose have said their ambition in planting roots there was symbolic of the kinds of cutting-edge clients, talent and transactions they wanted to attract.

Fahrney described the neighborhood as “probably the most vibrant growing area within the city and one of the most vibrant growing areas in the country,” noting that the commuting options also helped

States Increasingly Consider ‘Alternative Pathways’ to the Legal Field »2

Inside the Daily Grind of A Manhattan Public Defender: ‘This Job Is Dealing With A Lot of Emergencies at Once’

BY ZOË ETTINGER

IN LATE March, Mano Raju, chief public defender in San Francisco, was held in contempt and fined \$26,000 because he refused to accept additional felony cases one day a week. A month later, on National Day of Action for Public Defense, public defenders in New York City issued a joint statement of solidarity with Raju. “No attorney can provide meaningful representation when stretched beyond capacity, and no court system committed to the rule of law should demand it,” it read.

The statement also served as a call to action, citing that defend-

ers in New York City “see the same structural inequities every day,” including low pay, erosion of independence and crushing workloads. “These conditions do not just impact public defenders—they undermine fairness, weaken the integrity of our courts, and threaten the rule of law itself.”

To find out whether the situation was as dire as described, I arranged to meet Terra Brockman, a public defender with The Legal Aid Society, on a rainy mid-May morning outside Manhattan criminal court. We’d planned to meet outside, but the unseasonably blustery winds had other plans. “I’m sitting across from the information desk when you get here!” I texted

» Page 8



New York Public Defender **Terra Brockman** in front of 100 Centre St. in Manhattan

Don’t Expect Investor Suits Against Funds to End, Even After SCOTUS Imposition of Curbs

BY ALYSSA AQUINO

ON JUNE 11, the U.S. Supreme Court ruled that private parties can’t sue investment funds to rescind contracts that may violate the Investment Company Act.

The decision restricts a field of litigation that had been growing in popularity among activist investors, including Saba Capital Management, the \$6 billion Boaz

Weinstein-led hedge fund. But attorneys don’t see the ruling as fully closing the door on litigation.

“Activist shareholders aren’t going to say, ‘Oh well, I guess we’re done,’” said Michael de Leeuw, the co-chair of Cozen O’Connor’s business litigation group. “They’ll find a workaround. They always do.”

The case arose out of a boardroom battle between Saba and several closed-end funds, one mirror-

ing the many unfurling across the country between activist investors and companies.

An activist investor, Saba purchases large stakes in low-performing, closed-end funds to influence investing behavior. In defense, a group of targeted funds adopted resolutions opting into the Maryland Control Share Acquisition Act, a measure that limits the voting power of shareholders

» Page 8

Sidley, Fangda Advise Yum China On \$1.2 Billion Pizza Hut China Buyout

BY JESSICA SEAH

SIDLEY Austin and Fangda Partners are representing Yum China Holdings Inc. on its \$1.2 billion agreement to acquire ownership of the Pizza Hut brand in mainland China from Yum! Brands Inc., a transaction that forms part of a broader \$2.7 billion divestiture of the global pizza chain by the U.S.-based restaurant company.

The Sidley team advising Yum China is led by mergers and acquisitions and private equity partners Paul Choi and Scott Williams, together with Chicago partner Mark Kaufmann and Dallas partner Lauren Grau. Fangda Partners is serving as Chinese counsel with partners Claudia Yun, Michael Han, Peng Tan, Jeffrey Ding and Rock Wang leading its advice.



According to Yum China, Pizza Hut is currently the largest casual dining restaurant brand in China.

On the seller side, Yum! Brands is being advised by Weil, Gotshal & Manges and Mayer Brown. LongRange Capital, which agreed to acquire Pizza Hut outside mainland

China for \$1.5 billion, is represented by Paul, Weiss, Rifkind, Wharton & Garrison as lead counsel and Greenberg Traurig as franchise counsel.

» Page 8



Gary Lawrence, Emma Vasta-Kuby and Ron Kuby, in Mineola on Thursday, May 7

‘First Steps, First Words, First Murder Trial’: How A Father-Daughter Duo Beat Back an Unjust Conviction

BY EMILY SAUL

ON MAY 13 in Nassau County, a jury retired to deliberate the fate of Gary Lawrence. One of his attorneys, Emma Vasta-Kuby, remained in the courtroom, doing necessary administrative paperwork. Her co-counsel and father, famed civil rights lawyer Ron Kuby, went to what he called “a very nice little attorney room” and took a nap.

The jury took just 90 minutes to return a not-guilty verdict against their client, a Black man who served an entire sentence of more than 20 years in prison before his conviction was set aside due to unproduced discovery. In the face of what the defense said was exculpatory evidence and a coerced confession, the Nassau

County DA’s Office still opted to retry the matter.

“It was the fastest verdict I’ve ever gotten in any case,” said Kuby, who was admitted to the bar more than 40 years ago.

Both Vasta-Kuby and Kuby were ecstatic. Their client was not only exonerated; the trial held personal significance for them as well. It was Vasta-Kuby’s first trial. And they co-chaired it, as father and daughter.

“I will treasure this memory always,” Kuby said. “First steps, first words, first murder trial; you know, these are the milestones you remember,” he said.

Vasta-Kuby grew up going into the office with her father. She went to court sometimes, as well. Vasta-Kuby said she preferred the office.

» Page 4

NY’s Highest Court Upholds Mandatory Retirement Age for Judges

BY BRIAN LEE

NEW YORK’S highest court reinforced its disfavor of implied repeals on Thursday when it ruled that a 2024 constitutional amendment banning age discrimination does not overrule a constitutional mandate that judges step down at age 70.

Retired Justices Robert J. Miller and Orlando Marrazzo, and Brooklyn state Supreme Court Justice Richard J. Montelione sued the state, arguing statewide voters implicitly repealed the mandatory retirement age of judges when they approved the Equal Rights Act in 2024.

According to the New York Court of Appeals opinion, the ERA’s recent anti-discrimination provisions serve different purposes and can coexist with the judicial mandate.

The ruling noted that a review of Albany lawmakers’ deliberations proves that legislators never intended to repeal the judicial retirement mandate.

At that time, the state Attorney General’s office had issued an opinion letter stating the ERA would have no effect on other provisions of the state constitution, the top court noted.

Additionally, former state Sen. Brad Hoylman-Sigal and

» Page 8

DECISIONS OF INTEREST

First Department

CIVIL PROCEDURE: Disqualification motion denied where defense failed to show misconduct or legal basis. *Cabrera v. Empire State Ambulatory Surgery Center*, Supreme Court, Bronx.

PERSONAL INJURY: Port Authority not liable as out-of-possession landlord in personal injury action. *James v. The Port Authority of New York and New Jersey*, Supreme Court, Bronx.

Second Department

TOXIC TORTS: CERCLA discovery rule preempts New York toxic tort limitations period. *Klaus v. Town of Brookhaven*, App. Div.

CRIMINAL LAW: Motion to set aside sentence denied in Brooklyn stabbing case. *People v. Grey*, Supreme Court, Kings.

LANDLORD-TENANT LAW: Judgment granted where excessive apartment noise interfered with essential residential use. *Brusseau v. 9 Dekalb Fee Owner LLC*, Civil Court, Kings.

LANDLORD-TENANT LAW: Eviction granted, tenant failed to prove substantial forfeiture despite \$200K

renovations. *S&L Star Realty, LLC v. Barkagan*, Civil Court, Kings.

FAMILY LAW: Father’s claims of denied parenting access and child withholding trigger hearing. *ES v. NS*, Supreme Court, Richmond.

U.S. Courts

EMPLOYMENT LITIGATION: Employer wins summary judgment on retaliation claim after job abandonment firing. *DeJesus v. Bon Secours Cmty. Hosp.*, SDNY.

CLASS ACTIONS: FX traders win partial class certification in Currenex market-rigging lawsuit. *Edmar Fin. Co. LLC v. Currenex Inc.*, SDNY.

CIVIL RIGHTS: Former inmate’s delayed-diagnosis claim over prostate cancer heads to trial. *Mallet v. Makram*, SDNY.

CIVIL RIGHTS: Shot arrestee’s claims survive over deliberate indifference, probable cause. *Acevedo v. City of New York*, SDNY.

DECISION SUMMARIES, Page 17
FULL-TEXT DECISIONS, nylj.com

INSIDE LAW JOURNAL

Calendar of Events.....	6
Court Calendars.....	9
Court Notes.....	9
Decisions.....	17
Expert Analysis.....	3
Judicial Ethics Opinions.....	6
Lawyer to Lawyer.....	3
Legal Notices.....	13
Outside Counsel.....	4
Verdicts & Settlements.....	5

See page 2 for complete Inside lineup.

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New York Law Journal Inside

Civil Rights and the Urban Landscape »3 An Invisible Hand Shaping Housing: Foe or Friend? by Chris Dunn	Banking and Finance Law »3 True Lender Doctrine and ‘Opportunity Financial, LLC v. Clothilde Hewlett’ by Jeremy Creelan, Michael Ross, Megan Poetzel and Laurel Loomis Rimón	Outside Counsel »4 ‘Sale Ends Today!’: Looking at the Wave Of Email Marketing Class Actions by Gonzalo Mon	Verdicts & Settlements »5 \$125,000 verdict in a motor vehicle case: Pedestrian Claimed Knee Injuries After Being Hit by Car \$65,000 verdict, \$250,000 actual award in a motor vehicle case: Plaintiff’s Knee and Shoulder Injuries Were Degenerative: Defense ...and more	Judicial Ethics Opinions »6 Judges May Help Organize Their Churches’ Community Programs As Long as They’re Non-Fundraising Calendar of Events »6 Online ➤ Submit a legal notice for publication on nylj.com .	Online ➤ Have you recently been involved in a major verdict or settlement? Contact the Law Journal now, as your verdict, settlement or arbitration award could be entitled to publication in VerdictSearch’s massive database—or further publicity with a front-page article by the Law Journal. Send your submissions to Law Journal bureau chief to verdicts@verdictsearch.com .
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States Increasingly Consider ‘Alternative Pathways’ to the Legal Field, but Not Everyone Wants to Break Ties With the ABA

BY CHRISTINE CHARNOSKY

STATES have increasingly adopted a variety of “alternative pathways” to the legal profession with the intent of expanding access, with a small, but growing, group further focusing their efforts on gaining independence from the American Bar Association.

Accreditation Changes To Gain Independence

While many states have focused their efforts to expand access on adopting measures like allowing graduates of non-ABA-accredited

law schools to sit for the bar, a couple of states have gone a step further by taking over or reassigning law school accrediting authority in the state altogether.

Most recently, the Supreme Court of Ohio announced in May that it had published proposed amendments to the state’s bar regulations, which would change accreditation requirements for bar eligibility, allowing graduates of a program at a law school approved by “an accrediting agency recognized by the United States Department of Education or a state accrediting agency subject to the guidelines established by the Supreme Court of Ohio.”

Additionally, the court has directed administrative director Robert W. Horner, III, to take formal steps to establish an accreditation process administered directly by the State of Ohio and to work with Ohio’s law schools to submit a variance request to the ABA, which would be intended to “relieve the schools of outdated processes and associated costs, while also supporting new initiatives to enhance practice readiness,” according to the court.

The court is seeking public comment on the amendments through July 10.

The proposed changes in Ohio most resemble what was adopted

in Texas, which was the first state to officially break ties with the ABA in January when the Supreme Court of Texas finalized proposed amendments to the Rules Governing Admission to the Bar of Texas that were intended to reduce the state’s reliance on the ABA, placing the court in charge of approving law schools in the state.

Just a few days after Texas, the Florida Supreme Court finalized similar amendments to the state’s bar rules to alter accreditation authority for bar eligibility, redefining what constitutes an accredited law school for bar exam eligibility to include any law school approved by an accrediting agency approved by the U.S. Department of Education and the state Supreme Court.

At the time, the court wrote that it is not in “Floridians’ best interest for the ABA to be the sole gatekeeper deciding which law schools’ graduates are eligible to sit for the state’s General Bar Examination and become licensed attorneys in Florida.” Tennessee, which is one of four

states with a non-ABA-accredited law school, is also weighing options to expand access, with the Tennessee Supreme Court soliciting comments earlier this year regarding whether the court should “modify, reduce or eliminate its reliance on ABA accreditation,” seek practicable alternatives to ABA accreditation, or search for less costly alternatives to the traditional three-year law school curriculum, among other proposals.

The Federal Trade Commission was among the commenters on the proposal, urging the court to open law school accreditation to competition by reducing its reliance on the ABA in “determining which law schools provide sufficient education for their graduates to take the Tennessee bar examination.”

“Allowing the ABA to monopolize the determination of the education requirements for taking the bar examination and practicing law in Tennessee is inimical to the principles on which competition law rests,” the officials wrote in their letter.

The letter goes on to claim that the accreditation group is “dominated by law school faculty and administrators with strong incentives to thwart lower cost alternatives for legal education,” adding that the state’s “reliance on ABA accreditation raises serious competitive risks by broadly delegating to the ABA the state’s authority to set eligibility requirements for admission to the Tennessee bar.”

Expanding Access Beyond the ABA

Beyond taking over accrediting authority, many states have taken steps to expand access by allowing graduates of non-ABA-accredited law schools to sit for the bar.

Among the recent states to adopt this measure is Alabama, which is home to two non-ABA-accredited law schools.

In April, the Supreme Court of Alabama approved amended state bar regulations to expand eligibility to non-ABA-accredited

» Page 7

Access-to-Justice Advocates Hope AI Can Supplement Regulatory Reform Efforts

BY JON CAMPISI

WHEN Utah and Arizona regulators began reshaping the rules governing what sort of entities can practice law in the two states at the start of this decade, with the goal of bridging the access to justice gap, few in the legal world anticipated the AI revolution.

But now, access to justice advocates are optimistic that the booming technology will supplement, rather than supplant, the regulatory reforms that both jurisdictions adopted to help clients who have difficulty finding quality legal representation.

Generative AI may cause courts and legislatures to pivot when looking to roll out new programs, like those in Arizona and Utah, to account for the potential use of newer technologies. Some experts say the issue may also lead judiciaries and lawmakers to revise existing regulatory reform efforts.

In Utah, it’s unclear whether the courts would make any significant changes to the pilot program,

which launched in the summer of 2020, since it is slated to sunset next summer.

“It wasn’t really designed with this level of generative AI in mind,” said Nick Stiles, appellate court administrator for the Utah judiciary. “We have been looking at it, though.”

A court committee report on the sandbox that is scheduled to be released later this summer will address the question, Stiles explained.

Law.com spoke with other sources about the Utah program’s performance, and how AI factors into the goal of reducing the access-to-justice gap, which is often cited as a top reason for ABS programs and other pilot programs that open up the legal market to non-traditional players.

“The way I approach legal services and how we think about how we need to innovate to be able to reach both low-income America and middle-income America is we need a broader, more diverse ecosystem of offerings,” said Hayley Cousin, executive director of Community Justice Advocates of

Utah. “There is certainly promise in AI. We’re definitely not in a place where there’s reliable tools for people impacted by the justice gap to use.”

As time progresses, however, AI will undoubtedly become part of the ecosystem of tools that will be helpful for legal consumers as they try to navigate the court system, Cousin said.

“It definitely did not get pressure tested in the sandbox because ... the timing,” she said.

Cousin called it “unfortunate” that more of a focus on the benefits of AI within legal work was not something considered by the framers of Utah’s pilot program, something she admits may have been hard to forecast when the sandbox was initially created.

Jonathan Mattiello, executive director of the State Justice Institute, which was established by federal law in the early 1980s to award grants to improve the quality of justice in state courts, said to his knowledge, the Utah sandbox currently has no participating fully autonomous AI law firms, which he



Experts say AI’s impact on regulatory innovation is unclear, but growing reliance on the technology is expected to change that.

defined as “high-innovation” entities provided entirely by AI with no human lawyer involvement.

“The sandbox restricts AI to ‘medium-innovation’ models where AI is used in back-end workflows while licensed practitioners retain oversight,” Mattiello said.

But there’s a difference between fully autonomous AI law firms and so-called AI-native law firms, also known as AI-powered or AI-enabled law firms, which some define as firms that structure internal workflows from scratch around the use of AI while still preserving human oversight.

Next Generation of Law Firms

Just this month, AI-native firm Superlegal, which mostly serves the construction industry and certain small and midsize businesses, was approved to operate in Utah. The firm claims it is the first law firm in the U.S. built entirely on AI and authorized to practice law.

Superlegal says it reviews and redlines commercial contracts in under 24 hours for as little as \$117 per contract, with a licensed lawyer signing off on every review, according to a news release.

“We’re the next generation of law firms,” Superlegal CEO and Co-Founder Noory Bechor said in a statement. “We built our AI from the ground up to specialize in legal practice, with an attorney in the loop. The Utah license means a construction firm can hire us, full stop. No traditional firm in the middle.”

Stiles, of the Utah judiciary, confirmed that Superlegal is an approved entity in the sandbox, and that they operate as an ABS with a software-based alternative legal service provider model.

Mattiello, of the State Justice Institute, said he fully supports “the innovative and ethical use of AI to improve access to justice and improve court operations.” He said the SJI assisted with the launch of the Utah sandbox in 2020 through grant support, and the organization feels as though the program has “dramatically expanded legal accessibility with minimal consumer risks.”

Mattiello also noted that the sandbox has since grown from 31 applications and 11 authorized entities in the early days of the program to 105 applications and 51 authorizations by early 2024, although he added that growth was concentrated among low-risk models, with no high-innovation entities approved.

» Page 6

Orrick Secures Dismissal of Class Action Against PayPal Over Subsidiary’s Marketing Claims

BY KAT BLACK

ORRICK, Herrington & Sutcliffe notched its fourth defense win for global fintech giant PayPal Holdings Inc. and its subsidiary, Honey Science LLC, after a California federal judge dismissed a class action accusing the defendants of falsely claiming that the Honey browser extension finds the “best” available discounts for online shoppers.

This marks the third time that District Judge P. Casey Pitts, presiding in the U.S. District Court for the Northern District of California, has granted the defendants’ motions to dismiss the false advertising class action, captioned *Campbell v. Honey Science*. Pitts dismissed the plaintiffs’ third amended complaint, which brought a new invasion of privacy claim alleging that Honey unlawfully tracked plaintiffs’ browsing data, with prejudice and without further leave to amend on June 15.

The class action, backed by the Law Offices of David J. Gallo in Del Mar, California, was originally filed on Feb. 20, 2025, in Santa Clara County Superior Court on behalf of United Kingdom residents—estimated to number in the millions—who downloaded the Honey browser extension in the United Kingdom and used it any time after Jan. 1, 2020.

Pitts held that the plaintiffs



ADOBE STOCK

Honey, acquired by PayPal for \$4 billion in 2020, allegedly misled consumers by claiming it found the best deals while merchants controlled which discounts appeared on the platform.

did not succeed in stating claims under California’s Unfair Competition Law or for unjust enrichment because they “received some benefit from the purchase” and “fail to connect their proposed remedy—‘restitution’ of the commission—to what they actually lost.” The court also ruled that plaintiffs failed to state claims for injunctive relief because they “did not allege that they were currently using the product or planned to do so in the future.”

In addition, Pitts dismissed the plaintiffs’ privacy allegation, finding that “[t]he collection of browsing data, without more detail on why collecting that data could be

intrusive, does not involve conduct that can be deemed ‘highly offensive’ for the purposes of an invasion of privacy claim.”

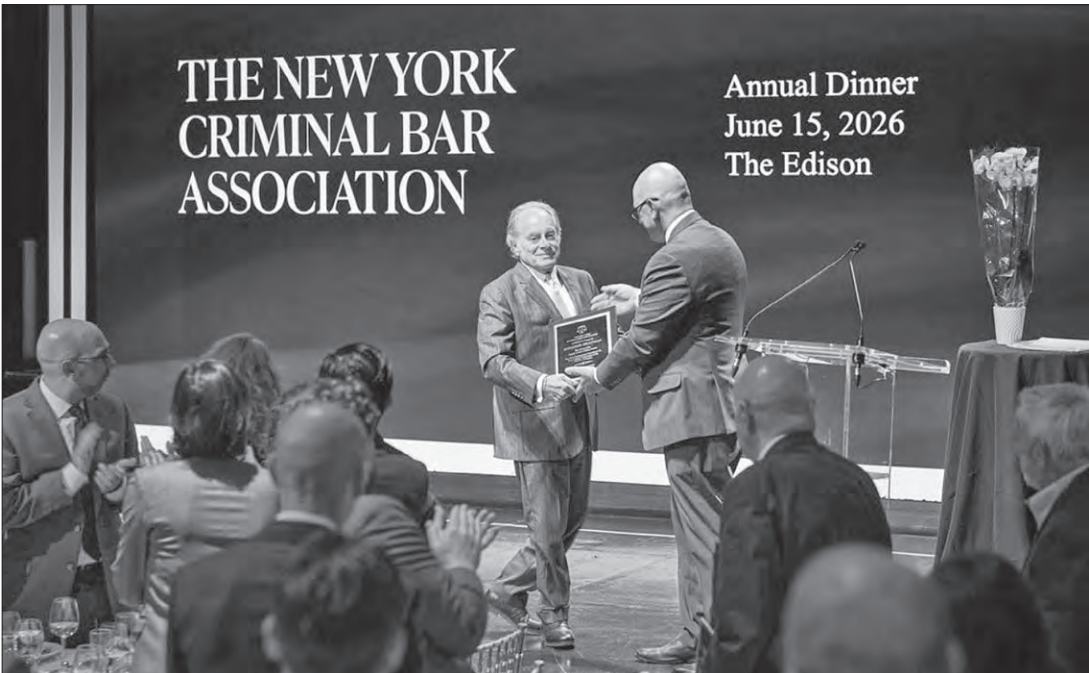
PayPal faces an ongoing similar consumer class action captioned *White v. PayPal Holdings*, which was originally filed by Aylstock, Witkin, Kreis & Overholtz in January 2025 in Florida federal court, but is now being overseen by Judge Pitts in the Northern District of California. Orrick also represents PayPal in the *White* case.

Honey, acquired by PayPal in a \$4 billion deal in 2020, operates an online shopping browser extension that purports to scour the internet for the best coupon codes and most cost effective deals available for online products during the checkout process. Honey was partnered with approximately 30,000 online merchants at the time of its acquisition by PayPal, according to a news release on the PayPal website.

According to the complaint, Honey deliberately used buzzwords on its website such as “best discount codes” and “the biggest savings” to dupe customers into believing its browser extension searches for the lowest publicly available prices on e-commerce websites—despite language in its agreements with vendors suggesting that, in reality, partnered businesses retain total control over which discount codes—which may not include the

» Page 7

PEOPLE AND COMMUNITY



Harlan Protass, right, presents Benjamin Brafman with the NYCBA’s Robert Louis Cohen Award for Professional Excellence.

Benjamin Brafman Receives NYCBA Robert Louis Cohen Award for Professional Excellence

BENJAMIN Brafman, a famed criminal defense attorney with a career spanning more than 40 years, was awarded the New York Criminal Bar Association’s (NYCBA) Robert Louis Cohen Award for Professional Excellence on June 15. Harlan Protass, the new president of the NYCBA, presented Brafman the award, the association’s highest honor, at a dinner it holds annually, this year at The Edison Ballroom on 240 West 47th Street, to recognize recipients.

Brafman, who founded the Manhattan-based law firm Brafman & Associates in 1980, has represented a range of high-profile clients, including Sean Combs, Michael Jackson, Harvey Weinstein and Benjamin Netanyahu.

“The award bestowed upon Ben reflects the enduring legacy of Judge Cohen, who founded the NYCBA more than 50 years ago to ensure that criminal defense lawyers have an equal and respected voice within New York’s criminal

justice system—a mission the Association continues to advance today,” Protass said.

The event’s speaker of honor was Judge Alison J. Nathan of the U.S. Court of Appeals, Second Circuit and she was introduced by Judge J. Paul Oetken of the Southern District of New York. Brafman was introduced by Michael Mukasey, former SDNY Chief Judge and former U.S. Attorney General under President George Bush.

Expert Analysis

CIVIL RIGHTS AND THE URBAN LANDSCAPE

An Invisible Hand Shaping Housing: Foe or Friend?

As in many American communities, New York City’s lack of affordable housing has become a flashpoint, prompting fresh examination of political and legal obstacles attributed to the shortage. Affordability was the central theme of Zohran Mamdani’s successful mayoral campaign, and his November election was paired with voter approval of New York City Charter revisions creating new authority to negate City Council resistance to housing projects.

Notwithstanding these steps, the development of affordable housing faces enormous hurdles, starting with a real-estate industry devoted to market-rate (and often luxury) housing. Another major driver is New York City’s zoning scheme, which dates back to 1916—the first such comprehensive scheme in the United States—and which today is designed to thwart density in much of the city. Zoning schemes were the subject of my March column, which discussed seminal Supreme Court cases going back to the court’s 1926 decision upholding exclusionary single-family zoning.

Beyond zoning, a less visible type of legal restriction can have a major impact on property development: restrictive covenants in deeds through which sellers attempt to limit future use of their property. As with government zoning ordinances, private deed restrictions have spawned significant constitutional challenges, including ones arising from sinister efforts to keep Blacks and other disfavored groups out of communities.

With housing development now receiving intense attention, this is a good time to examine the role and limits of deed restrictions. And a controversial Brooklyn housing project now before the New York City Council provides a good example of the hidden significance of deed restrictions.

Racially Discriminatory Deeds

Any civil-rights discussion of deed restrictions starts with a 1948 Supreme Court case most

By
Chris
Dunn



lawyers read in law school: *Shelley v. Kraemer*, 348 U.S. 1 (1948). 30 years before *Shelley* the Supreme Court had held in *Buchanan v. Warley*, 245 U.S. 60 (1917), that racially discriminatory zoning schemes were unconstitutional (albeit as a violation of the property rights of white sellers). After localities tried for years to evade Buchanan, efforts to exclude Blacks and other racial groups from owning or occupying homes shifted to the pervasive use of deed restrictions, as Richard Rothstein details in his

We hold that in granting judicial enforcement of the restrictive agreements in these cases, the states have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand.

authoritative book *The Color of Law* (Liveright Publishing 2017).

In *Shelley* the Supreme Court confronted—or, given a twist in the case, one should say, “was confronted by”—racially discriminatory restrictions in two deeds. One barred sale of a property for 50 years to “any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race,” while the second deed specified that “[t]his property shall not be used or occupied by any person or persons except those of the Caucasian race.”

In response to lawsuits brought

against Black purchasers Louis and J.D. Shelley and Benjamin Sipes, the Supreme Court of Missouri had upheld judicial enforcement of the first deed, and the Supreme Court of Michigan had done the same with the second.

The United States Supreme Court started its analysis by distinguishing and endorsing deed restrictions limiting the use of properties—such as for residential occupancy—emphasizing that the restrictions before it were categorically different because they “seek to determine who may and who may not own or make use of the properties... defined wholly in terms of race or color.” It also noted that its 1917 decision in *Buchanan* invalidating racially discriminatory zoning was different because the restrictions before the court in *Shelley* “do not involve action by state legislatures or city councils.”

Turning to the central issue whether judicial enforcement of agreements between private property owners amounted to state action so as to subject that enforcement to constitutional scrutiny, the court noted it long had held that actions by courts was a form of state action, though none of those cases involved judicial enforcement of private contracts. The court then contended that the decisions of the Supreme Courts of Missouri and Michigan reflected the “common-law policy” of the two states to support racially discriminatory property restrictions.

Given this, the Supreme Court readily concluded the state court decisions enforcing the racially discriminatory deed restriction violated the Equal Protection Clause, notably invoking a then-recent decision invalidating restrictions on certain land transactions involving buyers of Japanese ancestry:

We hold that in granting judicial enforcement of the restrictive agreements in these cases, the states have denied petitioners the equal protection of the laws and that, therefore, the

» Page 7

CHRIS DUNN is the former legal director of the New York Civil Liberties Union.

BANKING AND FINANCE LAW

True Lender Doctrine and ‘Opportunity Financial, LLC v. Clothilde Hewlett’

BY JEREMY CREELAN,
MICHAEL ROSS,
MEGAN POETZEL
AND LAUREL LOOMIS RIMON

The federal preemption of state usury laws long allowed for arbitrage opportunity. Under the National Bank Act, federally chartered banks may charge the maximum interest rates of their home states regardless of where a borrower lives—an exemption that state-chartered, non-bank lenders do not enjoy. See, e.g., *Pac. Cap. Bank, N.A. v. Conn.*, 542 F.3d 341, 345 (2d Cir. 2008) (citing 12 U.S.C. §85); *Krispin v. May Dept. Stores Co.*, 218 F.3d 919, 922 (8th Cir. 2000).

Non-bank lenders have long sought to capture that exemption through partnerships with banks that originate loans at rates that state usury caps would otherwise prohibit, with the non-bank lender then purchasing or servicing those loans. In the fintech era of recent years, these structures have proliferated as technology companies seek to offer innovative credit products to underserved borrowers at economics that require rate flexibility.

A well-structured bank-nonbank partnership can expand credit access to borrowers excluded from conventional lending. States and courts have analyzed such structuring under the “True Lender” doctrine—a principle that looks past the face of a loan agreement to determine which party actually bears the economic substance of a loan. Several states, including California, have codified the doctrine in statute, see, e.g., Cal. Fin. Code §23037 (West), but judicial application has been inconsistent: courts have weighed the relevant factors differently.

A May 2026 California decision in *Opportunity Financial, LLC v.*

Clothilde Hewlett now provides the most detailed judicial framework to date for evaluating these arrangements. The court’s analysis articulates a concrete set of factors that, taken together, may show when the bank is the lender in substance and not just in name—with direct implications for how bank-nonbank partnerships may be structured going forward to reduce regulatory risk.

The Court’s Reasoning
In the OppFi case

Opportunity Financial (OppFi) is a fintech company that services consumers who lack access to institutional creditors. FinWise Bank (FinWise) is a federally-insured state-chartered bank located in Utah. Finwise funds

Based on all this, the court held that FinWise was the true lender as a matter of law—not a sham conduit for OppFi’s loans.

and underwrites loans marketed as “OppLoans” to consumers through OppFi’s platform. See *Trial Order*, 2023 WL 12255124, at *1 (Cal. Super. Sept. 26, 2023). In 2022, OppFi filed a lawsuit challenging the California Department of Financial Protection and Innovation’s (DFPI) application of the true lender doctrine and its threatened enforcement of state interest-rate caps on loans originated by FinWise.

Shortly thereafter, the DFPI filed its own parallel enforcement action against OppFi in the same court, seeking to compel compliance with California’s usury laws on the ground that OppFi, not FinWise, was the true lender of the OppLoans. *Opportunity Financial, LLC v. Clothilde Hewlett* (OppFi), No. 22STCV08163 (Cal. Super. May 19, 2026) (consolidating both actions). The Los Angeles County Superior Court issued a tentative decision granting OppFi’s motion for summary judgment on Feb. 24, 2026.

On May 19, 2026, the court finalized its decision, finding that contrary to the DFPI Commissioner’s allegations, FinWise was not “merely a dummy” lender and that FinWise was the “true lender” of loans to OppFi’s client base—not OppFi. Drawing on a century-old line of California caselaw, Section 27 of the Federal Deposit Insurance Act (FDIA), and its own earlier October 2023 Preliminary Injunction Order in the same case, the OppFi decision emphasized that determining who the true lender is—and thus whether a loan violates California’s usury laws—depends on the circumstances at the inception of a loan, not how the loan is treated subsequently. See OppFi at 4, 9, 13 (quoting *Sharp v. Mortg. Sec. Corp. of Am.*, 215 Cal. 287, 290 (Cal. 1932)).

The court found that OppFi had met its burden in demonstrating that the bank was the true lender when the loan was originated because, as OppFi proved, the bank (a) was identified as the lender on the face of each promissory note; (b) controlled the loan application and underwriting process; (c) independently underwrote the notes and oversaw its proprietary credit models; (d) used its own funds to originate the loans; (d) retained title to and ownership of the loan; (e) gained a financial benefit from the loans; (f) had material risk of loss from the loans; (g) controlled the marketing of the loans; and (h) oversaw legal compliance of the loans.

In reaching its decision, the court contrasted these facts to those in *Janisse v. Winston Inv. Co.*, 154 Cal. App. 2 580 (Cal. 1957), finding that in that early case the “dummy lender” did not fund the loan using his own money, never had either an “up or downside risk” in the loans made, and had no role in underwriting or approving the loan terms. Further, the court explained that in *Janisse*, the loan amount stated in the promissory note was inconsistent to the loan terms the dummy lender agreed to with plaintiffs.

In contrast, FinWise funded every loan at issue with its own money; retained title to every loan and assumed financial

» Page 7

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JEREMY CREELAN, MICHAEL ROSS, MEGAN POETZEL, and LAUREL LOOMIS RIMON are partners at Jenner & Block. MOLY OBERSTEIN-ALLEN, an associate with the firm, assisted in the preparation of this article.

Off the Front

Duo

« Continued from page 1

"I got sick of the 'Ron Show' in court pretty quickly," she explained.

Kuby said his first memory of bringing his daughter to court, when she was five years old, was when their car had been hit by a city van and he had to leave her in 100 Centre, the criminal court building in lower Manhattan, with a client while he dealt with the police.

The client? A member of the Hells Angels outlaw motorcycle club.

"Assistant district attorney Liz Lederer saw me and commented that most children are away at summer camp," Kuby recalled, referring to a longtime former Manhattan prosecutor who worked in the building.

Growing up around the system, Vasta-Kuby said she'd known for a long time that she wanted to work in criminal justice, but didn't realize she wanted to be an attorney until a stint at the Southern Poverty Law Center after college, while working on a conditions of confinement case.

While her father's work played some part in her interest in criminal justice, Vasta-Kuby said her mother—Marilyn Vasta, a psychotherapist and climate activist—and the environment in which she was raised played a role too.

"I grew up with a lot of people that were formerly incarcerated for political crimes, I mean—for blowing stuff up—but politically motivated crimes," she said.

"I grew up in such a privileged world, and there was the understanding that you pay that forward to the extent that you can," she observed. "You choose a career that's meaningful and that is going to make a positive impact in people's lives."

Vasta-Kuby, who was admitted to the bar in 2020, started lawyering with her father last year after working at the Brooklyn Defenders and the Second Look Project in Washington, D.C.

Over a childhood spent in his office—which he calls the Museum of Lost Causes—Kuby said he would periodically tell Vasta-Kuby "someday this will all be yours." He always wanted to work with her on something, and Lawrence's case, he said, provided the "perfect" opportunity.

Kuby first caught wind of Lawrence's case in the fall of 2025, after Emery Celli Brinckerhoff Abady Ward & Maazel secured the acquittal of a co-defendant at retrial. Kuby was drawn to it for multiple reasons, but he said his primary motivation was that it would be a great first trial for his daughter. While the stakes were high—their client remained convicted of a murder he did not commit—he wouldn't be going back to prison if they lost.

Vasta-Kuby said her father approached her about the case, told her about it, and feigned uncertainty about whether to take it on.

"I think that we both understood, at that point, that he was going to take it," she said. "I decided to work on it with him."

Credibility & Cross

Despite practicing for decades, Kuby said he still had a lot to learn from his daughter, now 34. He admits that his side gig in talk radio has influenced the way he speaks, even in court. Details get whittled down and polished on air, he said.

"The thing becomes a story rather than an actual account of what transpired, and that works fine in talk radio," Kuby, 69, explained. "It does not work well in a trial setting, where your credibility is the only thing you have."

"I think Emma, more than anything else, helped me maintain my credibility in front of the jury," he said, noting her command of the details and facts of the case.

While her father is not the strongest teacher, Vasta-Kuby said, she admits watching him was useful.

"I think I learned a lot about how to conduct an effective cross-examination," she said. "I think Ron's personality came through in a beneficial way on crosses, and it was helpful for me to see that."

They did not hide their relationship or their personalities from the jury, they said. And the jury loved it, they later heard.

"We were able to do the father-daughter thing in front of the jury in a way that was very relatable to the older people on the jury as well as the younger people on the jury," Kuby explained. "It was not contrived, either. It was the natural product of our relationship taking place in the courtroom in front of a jury."

"They told us they loved it," Vasta-Kuby added. "Because we had our own sort of natural dynamic, it was clear to the jury



Ron Kuby, Emma Vasta-Kuby, Marilyn Vasta, and Lily, the late Law Dog



Marilyn, Emma, Ron and Samatha the Law Dog



The team is hard at work.

how authentically we cared about our client and the case itself, and truly, truly believed how absurd this case was."

Three men, including Lawrence, were convicted in the 1990s in the shooting death of Hofstra coach Joseph Healy. Witnesses described two shooters, not three, and Lawrence was not present at the time of the shooting, his lawyers insisted. It was a difficult case to prepare for because of the size of the record, they agreed. Kuby and Vasta-Kuby were dealing with material from the first trials, and the retrial by Emery Celli. Both underlined that they really relied on and built off that firm's work in their own representation.

Vasta-Kuby did the opening statement, while Kuby handled cross.

"I think that the opening statement was something that is pretty fully in your control," she explained of her decision. "When you're cross-examining a witness or interacting with anyone, there's so much uncertainty. This was something that I could figure out how to do: I could practice it, I could memorize it, and I wound up really loving it."

She also handled cross of some "civilian witnesses who are not trained to lie," Kuby said, while he handled what he called "the worst of the lying cops."

Playful Friction

They are both unique personalities and unapologetically themselves. Kuby came up working with the legendary William Kunstler and became an ever-pontyailed pop culture figure in his own right. Vasta-Kuby has the grit of a child who grew up dealing with such a person while charting their own path.

Their dynamic is a character in itself. Kuby first described it as "adorable," later adding: "contentious is the wrong word, but it's not a terribly wrong word." Vasta-Kuby described it as "confrontational" but "playful."

Both of them have strong opinions, the father observed, which he acknowledged may or may not be well-informed. In their 30-year relationship, their argumentative process has become comfortable, he said.

"I'm not an overbearing father," Kuby explained. "I don't demand respect. I think an eye roll is a perfectly proper response to some things that I say. And I have a lot of respect and admiration for my daughter, so when she says things to me, I do tend to take them seriously, even if I don't always ultimately do what she's suggesting I do."

In terms of the trial itself, Kuby said he was "delighted" at how much Nassau County had changed since the 1990s. Vasta-Kuby said it was interesting for her to see that perspective, given how much she "despised" the current DA's office for the decision to retry Lawrence's case.

"Are there not current murders in Nassau County?" she said, eliciting laughs from her father. "This was very much a case about racism, the racism of the '90s and the racism of today."

Kuby, wondering if he was now "too old" to be outraged, said he thought the chief assistant who tried the case acted "very honorably and professionally."

Though they disagree about the prosecution, Vasta-Kuby said she felt they were both at the right place to have this experience together.

"I actually have something to bring, but I also have a lot to learn, and I think that that has been very helpful in our dynamic," she observed. "I think that we both genuinely had a really great time. I think part of that is a level of freedom to enjoy yourself when your client's not facing prison ... The unique stakes here allowed our dynamic to come through, maybe a little bit more naturally than it would have otherwise."

Emily Saul can be reached at emily.saul@alm.com. X: @emily_saul_

Letters Welcome

The Law Journal welcomes letters from its readers for publication. They must contain the names and addresses of correspondents. Letters should be of reasonable length and submitted with the understanding that all correspondence is subject to the editorial judgment of the newspaper in considering duplication, length, relevancy, taste and other criteria. Letters may be e-mailed to:

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Outside Counsel

'Sale Ends Today!': Looking at the Wave Of Email Marketing Class Actions

Washington's Commercial Electronic Mail Act (or CEMA)—one of the first anti-spam laws in the country—was enacted in 1998. Between the date the law was enacted and early 2025, plaintiffs had filed only eight lawsuits alleging violations of CEMA. Between April 2025 and April 2026, in contrast, plaintiffs filed well over 100 lawsuits alleging violations of the law, often with tens of millions of dollars (or more) of alleged damages on the line.

What happened to cause such a dramatic change? And how can companies avoid getting caught up in the growing wave of these lawsuits?

Background

CEMA prohibits companies, in relevant part, from sending a commercial email "to an electronic mail address that the sender knows, or has reason to know, is held by a Washington resident that ... contains false or misleading information in the subject line." See RCW Section 19.190.020(1)(b).

In 2023, consumers filed a class action lawsuit accusing Old Navy of violating CEMA in various email campaigns. See *Brown v. Old Navy*, No. 2:23cv00781 (W.D. Wash. filed May 25, 2023). The plaintiffs alleged, for example, that although some subject lines advertised that sales would end on specific dates, the sales were later extended. Thus, the plaintiffs argued the emails included "false or misleading information in the subject line" in violation of the law.

One of the questions in the case was what type of false or misleading information CEMA is intended to prohibit. Old Navy argued that CEMA is intended to prohibit subject lines that are misleading about the content of the email—in other words, subject lines that would lead consumers to believe emails aren't ads, when they really are.

In a 5-4 decision, the U.S. Supreme Court took a broader view

GONZALO MON is a partner with Kelley Drye & Warren.

By Gonzalo Mon



and held that companies violate the law even when the false or misleading information in the subject line does not deceive consumers into thinking an email isn't an ad. More to the point, CEMA requires companies to "communicate honestly about the terms of a given promotion or sale in the subject line."

A Wave of Class Actions

The *Brown* decision quickly caught the attention of class action attorneys. Why? CEMA provides a

In many companies, the in-house legal team may not actively be involved in reviewing emails before they are sent. That may need to change.

private right of action and statutory damages of \$500 per email—without having to prove damages—and a court may treble those damages. Hoping to make easy money, some firms are actively soliciting plaintiffs on social media and churning out complaints.

Many defendants have filed motions to dismiss in which they've argued that CEMA is preempted by the federal CAN-SPAM Act. So far, the arguments have failed. CAN-SPAM preempts state laws except to the extent they prohibit "falsity or deception in any portion" of an email. See 15 USC Section 7707(b) (1). Courts have held that CEMA's prohibition against false or misleading information in an email's subject line falls squarely within that exception.

Looking at the wave of class actions and realizing the potentially devastating impact that they could have on retailers, various

stakeholders, led by the Washington Retail Association, launched an effort to amend CEMA. The effort yielded results when Washington's governor signed an amendment into law on March 23, 2026.

The amendment makes two key changes to the law: it reduces damages from \$500 per message to \$100 per message, or actual damages, whichever is greater; and it requires plaintiffs to prove that a sender either actually knew what they were sending was false or misleading, or that objective facts show they reasonably should have known.

The changes become effective on June 11, 2026. Although the changes will not do much to stem the tide of frivolous lawsuits or to help retailers get them dismissed early, they may help retailers in later stages of litigation or negotiation. The Washington Retail Association hopes to work toward a more comprehensive long-term solution in 2027.

Unfortunately, Washington isn't the only state that companies need to worry about. Since the *Brown* decision, we've also started to see lawsuits in other states—including California and Maryland—whose anti-spam laws also provide a private right of action. See Cal. Bus. & Prof. Code Section 17529.5 and Md. Commercial Law Code Ann. Section 14-3001.

Trends in Complaints

Like the *Brown* complaint, most of the new complaints allege that the retailers created a false sense of urgency to get people to act quickly by suggesting that a sale or offer was about to end. The plaintiffs claim, though, that the retailers often extended those sales or ran similar ones shortly after the end date. Thus, the subject lines are allegedly misleading.

Newer complaints are casting wider nets. For example, some plaintiffs have argued that subject lines in which the retailers advertised that products are discounted—such as "xx% off"—violate CEMA when the retailers "never or almost never" sold those products at a non-discounted

» Page 6

IN BRIEF

« Continued from page 1

check "a lot of boxes for us."

He said that although the firm does have clients within the vicinity, that wasn't a primary driver of the decision to move there. "But it certainly was noticed by us, when we were doing this search, that some big-name organizations had been moving to this area, including some clients. And we expect more will as it becomes more of a commercial center," he said.

"We started in Chicago and celebrated our 160th birthday this year. And this is sort of a reaffirmation of our strong presence and commitment to the city of Chicago," Fahrney added.

—Andrew Maloney

Freshfields, Slaughter And May and Simpson Lead All-Star Cast on \$14B EQT Take-Private

Freshfields, Simpson Thacher & Bartlett, Linklaters and Clifford Chance are all advising as an EQT-majority owned company makes a \$14.4 billion offer for assurance provider Intertek Group, represented by Slaughter and May.

Freshfields is acting for newly-formed Isotope Bidco on the recommended cash offer. It comes after Freshfields, alongside Clifford Chance, secured spots on EQT's coveted legal panel in 2024. It is the latest example of a U.K.-listed business being taken private by a global PE giant. Simpson Thacher and Swedish firm Vinge are acting as Isotope's regulatory counsel.

The Freshfields team is being led by London managing partner Victoria Sigeti, fellow partners Piers Prichard Jones, Kate Cooper, Mark Brewer, Angus Scott and Lucy Cliff, with support from leveraged finance and capital markets partners Kate Hatcher, Haden Henderson, Carol van der Vorst, Catalina Ford and finance partner James Duncan, with May Smith on tax matters, and Alice Greenwell and Andrew Murphy advising on employment and pensions matters.

Slaughter and May is acting for Intertek, the document shows, with partners David Watkins and Natalie Cook leading, with support from employment

partners phillippa O'Malley and Phil Linnard, competition partner William Turtle, pensions partner Daniel Schaffer and tax partner Sarah Osprey.

Minority shareholders include, among others, Abu Dhabi-based investment firms Luxinva and Mubadala; Linklaters is acting for Luxinva, while Clifford Chance is advising Mubadala, according to the deal document.

Clifford Chance's cross-border team was led by Dubai-based managing partner Mo Al-Shukairy and London partner Katherine Moir, with London partner Ed Page on tax and German partner Dimitri Slobodenjuk leading on antitrust.

Simpson Thacher's team was led by global co-chair of the firm's antitrust and trade regulation practice, Antonio Bavasso and Brussels/London partner, Josh Buckland, advising on U.K. antitrust and international FDI; while U.S. antitrust aspects were led by Washington partners Karen Kazmerzak and Mark Skerry and New York partner Kelly Kapetyan.

Based in Scandinavia, private equity firm EQT is one of the largest alternative asset managers outside the U.S., making it one of the most desirable clients for commercial law firms operating in Europe and Asia.

—Melina Block

Ex-NFL Attorney Saddles Up as New Legal Chief for Horseracing Anti-Doping Authority

The National Football League attorney who footballed the NFL's program to combat performance-enhancing substances now has a different breed of athlete to worry about—one with four legs. Janelle Winston has succeeded Michelle Pujals at the Horseracing Integrity & Welfare Unit. The Kansas City, Missouri-based group, which announced the change Wednesday, was established in 2022 as the enforcement arm of the Horseracing Integrity and Safety Authority.

Pujals had been HIWU's legal chief since July 2022 and before that had served 20 years in the National Basketball Association's legal department. Her roles include overseeing the develop-

ment of the NBA's anti-drug programs.

Pujals was credited for helping form HIWU and its Anti-Doping and Medication Control Program.

Her successor, Winston, joined the NFL in November 2016. Winston also represented the league and its clubs in labor-management disputes and conducted training for coaches and players on the NFL's personal conduct and gambling policies.

"Coming from the NFL, I understand what it means to protect the integrity of a sport that millions of fans hold dear—and I bring that same sense of duty to this new role," Winston said in a statement.

Prior to the NFL, Winston served four years as a senior labor attorney at New York City's Metropolitan Transportation Authority, North America's largest transit system.

Earlier in her career, Winston was assistant district attorney for Bronx County, New York.

For the past 19 years, Winston has served as an adjunct professor at Fordham University School of Law. She earned her law degree from Fordham in 2004.

During her career with the NFL, Winston worked with Drug Free Sport International, the parent of HIWU.

"She brings extensive experience in both anti-doping matters and legal leadership to our team," Ben Mosier, executive director of HIWU, said in a statement. "We are excited for her to dive in and positively affect the future of the program."

Among enforcement actions by HIWU was administratively charging a dozen trainers last year with alleged involvement in the illegal administration of corticosteroids at the Penn National Race Course. The scheme allegedly involved at least 47 horses.

—Chris O'Malley

DECISIONS WANTED!

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

Verdicts&Settlements

MOTOR VEHICLE

Pedestrian Claimed Knee Injuries After Being Hit by Car

Verdict: \$125,000.00

Edward Cohn v. Carolyn J. Vogel, No. 151506/2023

Court: New York Supreme

Plaintiff Attorney(s): · John A. Blyth; Hach & Rose, LLP; New York NY for Edward Cohn
Defense Attorney(s): · Eric Flores; Scahill Law Group P.C.; Bethpage, NY for Carolyn Vogel

Facts: On Dec. 11, 2022, plaintiff Edward Cohn, 64, a lawyer, was walking with his wife through the parking lot at Depot Square in Orangetown. Cohn was struck by a motor vehicle driven by Carolyn Vogel. Cohn claimed bilateral meniscus tears.

Cohn sued Vogel. Cohn alleged that Vogel was negligent in the operation of a motor vehicle.

The court granted Cohn's summary judgment motion on the issue of liability.

The case proceeded to a summary jury trial and only damages were before the court.

Injury: Cohn allegedly suffered a complex and displaced tear of the left medial meniscus and a partially ruptured Baker's cyst. On Jan. 3, 2023, Cohn underwent a partial left medial meniscectomy, partial patellofemoral pain synovectomy of the medial and lateral compartments, and chondroplasty. He also claimed a complex and displaced tear of the right medial meniscus, but did not undergo surgery.

According to plaintiff's counsel, it was uncontested that Cohn was actively treating for a preexisting left knee meniscus injury at the time of the subject accident.

Cohn did not miss work because he was in the process of retiring.

The defense contested injuries. The defense questioned why Cohn had surgery on the left knee if he was struck on the right knee. The defense also claimed Cohn had prior left knee injuries.

The parties negotiated a high/low stipulation: The damages could not exceed \$250,000, but had to equal or exceed \$150,000.

Result: The jury awarded Cohn \$125,000 in damages. Pursuant to a high/low agreement, Cohn was entitled to recover \$150,000.

Trial Information:
Judge: Paul A. Goetz
Demand: None Reported
Offer: \$125,000
Trial Length: 3 days
Trial Deliberations: 0

MOTOR VEHICLE

Plaintiff's Knee and Shoulder Injuries Were Degenerative: Defense

Verdict: \$65,000; Actual Award: \$250,000

Malgorzata Bajorska v. SEBCO Laundry Systems, Inc., and Mansoor Haider, No. 710700/2022

Court: Queens Supreme,

Plaintiff Attorney(s): · Manny Zayrov; Zayrov Law, P.C., Oceanside, NY, trial counsel, Zabokritsky Law Group, P.C.; Forest Hills NY for Malgorzata Bajorska
Defense Attorney(s): · Jerome D. Patterson; Jerome D. Patterson, PC; Bayside, NY for SEBCO Laundry Systems Inc., Mansoor Haider

Facts: On July 30, 2021, plaintiff Malgorzata Bajorska, 69, was a passenger in a vehicle traveling on 89th Street in Queens that was rear-ended by a vehicle being operated by Mansoor Haider. Bajorska claimed neck, back, shoulder and knee injuries.

Bajorska sued Haider and the owner of his vehicle, SEBCO Laundry Systems. Bajorska claimed that Haider was negligent in the operation of his vehicle and that SEBCO was vicariously liable for Haider's actions.

The court granted the plaintiff's motion for summary judgment on liability. The trial addressed causation and damages.

Injury: Bajorska claimed a lateral meniscus tear in her right knee with chondromalacia, derangement and synovitis. She also alleged an anterior cruciate ligament tear in her left knee with edema, derangement and tendinosis.

Bajorska additionally alleged supraspinatus tendon tears in both shoulders and an infraspinatus tendon tear in the right shoulder. Bajorska claimed bilateral shoulder impingement syndrome, as well.

Bajorska was also diagnosed with an L1-2 protrusion along with cervical and lumbar spondylosis and stenosis.

In October 2021, Bajorska underwent arthroscopic right knee surgery that included a synovectomy, debridement, partial meniscectomy and lysis of adhesions. She underwent a second arthroscopic knee surgery two years later.

Bajorska also had right shoulder surgery in January 2022. The arthroscopic procedure included a synovectomy and debridement. Bajorska additionally received conservative treatment, including physical therapy.

Bajorska alleged 20% permanent loss of use of her right arm. She also claimed limitations in both legs. Bajorska sought recovery of \$950,000 in damages for her past pain and suffering and \$650,000 for her future pain and suffering.

The defense conceded that the neck and back injuries were related to the accident. However, the defense argued that the shoulder and knee injuries

were degenerative and preexisting. Defense counsel further contended that the plaintiff's surgeries were unnecessary. The defense recommended an award of \$50,000 for past pain and suffering only.

The parties negotiated a high/low stipulation. Damages could not exceed \$1 million, but they had to equal or exceed \$250,000.

Result: The jury awarded Bajorska \$65,000. She recovered the stipulated minimum: \$250,000.

Trial Information:
Judge: Joseph J. Esposito
Demand: \$1.2 million
Offer: \$250,000
Trial Length: 1 weeks
Trial Deliberations: 5 hours
Jury Vote: 6-0
Jury Composition: 2 male, 4 female

MEDICAL MALPRACTICE

Preexisting Knee Problems, not Negligence, Caused Injury: Defense

Verdict: \$0.00

Mario Osorio and Maria Ortiz v. New York City Health and Hospitals Corporation, David Bressler and John Doe, No. 708187/2014

Court: Queens Supreme

Plaintiff Attorney(s): · John J. Appell; Law Offices of Appell & Parrinelli; New York NY for Mario Osorio,, Maria Ortiz

Defense Attorney(s): · Michael J. Morris; Garson & Jakub LLP; New York, NY for New York City Health and Hospitals Corp., David Bressler M.D.

Facts: On Jan. 3, 2014, plaintiff Mario Osorio, 42, a business owner, went to Dr. David Bressler, a physiatrist at Elmhurst Hospital, for an MRI of his right knee. During an examination, Osorio said he suffered a meniscus tear.

Osorio sued New York City Health and Hospitals Corp. and Bressler. Osorio alleged that Bressler was negligent in performing the procedure and that New York City Health and Hospitals Corp. was vicariously liable.

Ortiz's wife was in the room during the examination and alleged she heard Osorio's knee pop when Bressler pushed it all the way back.

Osorio alleged that Bressler used excessive force on his left knee, causing an oblique tear in the meniscus.

The defense contended that Bressler did not depart from the standard of care and Osorio had preexisting knee problems.

Injury: Osorio claimed he suffered an oblique tear in his left meniscus. He asserted that he has difficulty

being active, limps and will need knee replacement surgery.

Plaintiff's counsel asked the jury to award \$2.5 million. Osorio's wife, Maria Ortiz, sought damages for loss of consortium.

Result: The jury found Bressler departed from the standard of care, but did not cause Osorio's injury. A defense verdict was entered.

Trial Information:
Judge: Robert I. Caloras
Demand: \$1 million
Offer: n/a
Trial Length: 2 weeks
Trial Deliberations: 1 days

MEDICAL MALPRACTICE

Dental Work Performed Properly, per Defense

Verdict: \$0.00

Mark Fitzgerald v. Frederick Marra, DDS and Capital Region Dental Care and Implants, No. 2019-50010

Court: Dutchess Supreme

Plaintiff Attorney(s): · Andrew W. Humphreys; Jon-na Spilbor Law; Poughkeepsie NY for Mark Fitzgerald
Defense Attorney(s): · William S. Spiegel; Rawle & Henderson LLP; New York, NY for Frederick Marra D.D.S., Captal Region Dental Care

Facts: On Feb. 26, 2015 through Aug. 3, 2016, plaintiff Mark Fitzgerald, 61, received various dental care treatments and procedures from Frederick Marra D.D.S., practicing at his dental clinic, Capital Region Complete Dental Care & Implants. The procedures included bone grafting, implants and prosthetics on both upper and lower jaws. Fitzgerald claimed they were all badly performed.

Fitzgerald sued Marra and Capital Region. He alleged dental malpractice, lack of informed consent and breach of contract.

Fitzgerald alleged that the defendants departed from good and accepted dental practice. Fitzgerald claimed there was no preoperative planning and presented expert witness testimony that the implants were poorly placed with reason to believe they would fail in the future due to bone loss. The expert further said that the prosthetics were badly designed and fabricated. The expert concluded that the only reasonable solution was to completely redo

» Page 7

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Off the Front

Brockman

« Continued from page 1
her. Several minutes went by without a reply. Just as I was beginning to worry, she came rushing in. “I’m so sorry—I really hate being late. One of my clients had a crisis,” she said, still catching her breath.

Over the course of the day, it became clear how often Brockman is put in a situation she “really hates.” She’s constantly pushed and pulled between clients’ needs, ranging in severity from mundane to dire, with each resolution expediently replaced with a fresh outcropping. “This job is dealing with a lot of emergencies at once,” she says, somehow, admirably, with a smile.

Like many public defenders, Brockman juggles between 75 and 100 clients at any given time. On the day I shadowed her, she had several active cases appearing in court, including felony cases that had already been indicted and were appearing in Supreme Court, and new ones waiting to be picked up in arraignments.

Brockman has represented indigent clients in New York City for the past four years and handles everything from misdemeanors to class A narcotic felonies. She doesn’t handle homicides, however, as they require an added certification and specialized training. Additionally, Brockman shared that those who handle homicide cases only handle homicide cases. “It takes a particular type of person to do that. I don’t know if that’s me,” she said.

Under Pressure

While her cases may not involve death, it takes a particular kind of person to handle her work too. Many times, the stakes are critically high. One of her pending cases was for an attempted murder charge, with the client facing up to 25 years.

The pressure of a person’s freedom relying on the quality of your work is hard to imagine. And with the number of cases Brockman and defenders like her handle, the stress seems astronomical. But there’s simply no time for these lawyers to get caught up in existential dread—they’re often working within a timeline of just 35 days of receiving initial discovery to begin reviewing materials.

In Brockman’s attempted mur-



One of the most challenging parts of the job, **Terra Brockman** said, comes when a client is close to securing legal status and a criminal disposition threatens to undo years of effort.

der case, she had three hard drives of discovery, amounting to “roughly 40 to 50 hours” of footage to review. “We try to have the opportunity to dive deep into the material ... to make sure that we are getting the best results for our clients,” she said. “Whereas judges are maybe more interested in making sure that a case is moving along and that attorneys aren’t getting stuck on one case for too long.”

The “push and pull between lawyers and judges” as Brockman described it, was evident in the courtrooms. As we waited for Brockman’s cases to be called, which could take between five minutes to an hour or more—they’re often subject to the time spent moving a client from jail—we watched as judges moved through cases as efficiently as they could.

The vast majority of lawyers, Brockman included, were asking for extensions of some kind: time to review discovery, investigate facts or negotiate with prosecutors. By and large, judges granted the extensions, seemingly a concession to the unspoken fact that many of these lawyers are faced with impossible workloads.

Brockman cites the extensions as an essential part of a job that extends beyond the confines of a day and has life-altering consequences for every client. “You want to make sure that you are not sign-

ing up your client for a resolution that you don’t necessarily know is the right decision.”

A Persistent Push and Pull

Finding the right resolution can often be an uphill battle. Brockman’s first client of the day, an unhouseed man, was accused of a class D sex felony at a shelter. Despite having no prior record, prosecutors were recommending incarceration. “There has been a pattern of recommending incarceration for first-time offenders,” Brockman said.

The recommendation made clear one of the greatest challenges defenders face: explaining why their client shouldn’t receive the standard judgment. Prosecutors, Brockman said, are just doing their jobs, just as she does hers. But it was clear that their perspectives diverge sharply.

I saw a clear example of a starkly two-sided view in arraignments. The courtroom was remarkably cold—I wondered if it was purposeful to help move things along faster. As I shivered, Brockman moved swiftly around the room, picking up case files and speaking to court officers. I watched another defender speak to the judge about her client who was accused of shoplifting. The items he stole, which included candy bars and Tylenol, were often put back on the shelves before he left

the store, a harm she described as minimal. Yet the prosecution reminded the court that the man was a chronic offender, having committed the crime in “all boroughs except Staten Island.”

Brockman faces such dilemmas regularly. “Is this really the hill we want to die on?” she often finds herself asking. Other times, she seeks to draw on empathy: “We’re all human beings.”

The human dimension of the job comes into sharp focus when one considers the reality of immigration consequences. “Even something like a petit larceny can be used against a person” seeking to remain in the United States, she said.

One of the most challenging parts of the job, Brockman said, comes when a client is close to securing legal status and a criminal disposition threatens to undo years of effort. “I know that you’ve worked for this...this thing that you’ve spent a lot of time and effort on. And ... this is going to prevent you from actually achieving that,” she said. “Those are definitely the hardest conversations.”

Dire Consequences

While not all her clients are subject to deportation, they all face potentially life-upending consequences. For many, those consequences begin before they have even been convicted. Brockman

estimates between 10% and 15% of her clients are incarcerated pre-trial, sometimes leading to loss of employment and family stability, two crucial factors that reduce an individual’s likelihood to commit a crime. For those who cannot afford bail, like indigents, those issues are exacerbated as they remain in custody for months while the legal process unfolds.

Time, and lack of it, comes into focus for Brockman again as the pressure is on to move these clients’ cases. Although New York law guarantees the right to a speedy trial, generally six months in felony cases, delays are often unavoidable in an overwhelmed system.

Alternative-to-incarceration (ATT) programs offer one pathway to avoid jail, particularly for clients with substance use or mental health needs. These programs can lead to reduced charges or dismissals if completed successfully. But many of these programs leave out a critical population of people: those who have neither substance abuse nor mental health issues.

For those who do qualify for ATT programs, the wait times to be accepted can stretch for months to more than a year. Some clients remain incarcerated while awaiting placement. While they languish, they often lose motivation or opt to resolve their cases, undercutting the purpose of the programs.

Structural Challenges

Another hurdle defenders face is where they present their cases. Brockman represents her clients from arraignment through trial, often before more than one judge. Prosecutors, on the other hand, are typically assigned to specific trial courts and appear before the same judges, which allows them to build relationships over time. That could be a disadvantage, depending on the attorney, and perhaps whether or not one subscribes to the idea that familiarity breeds contempt. Meanwhile, as defenders rotate among courtrooms, they must prove their stock (or not) each time.

While they may face some structural disadvantages, Brockman believes in Legal Aid’s model of representing clients from start to finish. “Everything that we do is client-focused and client-centered,” she said. Maintaining that consistency is what allows her to

foster a sense of trust.

In these particular attorney-client relationships, trust is essential, given the weight of decisions to be made. For those considering accepting pleas tied to ATI programs, for example, the risk is significant: Failure to complete the program can result in years-long prison sentences. Brockman says one of her greatest concerns is making sure her clients fully understand the stakes. “My biggest fear is to sign a client up for something they can’t do.”

‘We’re All Human’

I found myself returning to Brockman’s quote about her clients when considering how she manages the demands of the job. She described night court sessions that stretched past 1 a.m., followed by appearances the next morning at 9:30 a.m. “Unfortunately, I don’t have much of a personal life,” she said, though somehow she found time to run a marathon, by “scheduling runs into [her] work calendar.”

Brockman relies on counseling and meditation to manage the stresses of the job. “I’m a very big advocate for therapy,” she said. “It’s very hard to be able to see a person one day living their life and then the next day, they’re incarcerated,” she said.

That emotional weight was palpable throughout the courthouse. In the hallways, defendants and their families navigated some of the worst moments of their lives. I witnessed crying and yelling as people faced decisions that would shape their futures.

I felt an undeniable sense of relief leaving the building, almost jarring in its contrast. I struggled to imagine what it must be like to return each day, as Brockman does, to face life’s harshest realities.

For Brockman, the reward comes in resolutions that allow a client to move forward. “It’s kind of like a breath of fresh air after holding your breath underwater for so long,” she said. Whether the outcome is a dismissal, a reduced charge or just avoiding incarceration, those moments make her work worth it.

“When I have a client that is just beaming with joy,” she added, “those are the best days for me.”

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Investor Suits

« Continued from page 1
holding a disproportionate number of shares.

Saba went to the Manhattan federal court to rescind those resolutions, suing under Section 47(b) of the Investment Company Act, a provision allowing courts to rescind contracts that violate the ICA. Saba argued the resolutions violated ICA requirements that each stock of an investment company have equal voting rights. The federal court granted the relief, which the U.S. Court of Appeals for the Second Circuit upheld.

But the high court determined 6-3 that Section 47(b) doesn’t implicitly create a private right of action and that only the U.S. Securities and Exchange Commission has the power to enforce that law.

The finding was “a big win for the industry, the entire fund industry,” said Kenneth Burdon, a partner at Simpson Thacher & Bartlett.

Section 47(b) litigation is rare, but Burdon argued the suits posed a special threat to funds, which are externally managed entities that operate through a series of contracts. The Section 47(b) cases went at “the fundamental aspects of how the business is run,” Burdon said.

Now, funds can “be confident that their business arrangements work, and they’re complying with the law,” he said.

“The real important thing for close-end funds is that this type of litigation ... is no longer hanging over their heads,” Burdon said.

But there are still viable pathways to sue, according to Jonathan Gardner, a managing partner at the plaintiffs firm Labaton Keller Sucharow.

“Activist shareholders by definition are going to use whatever tools they have available to them. I think there will be a pivot to them to bring state-based claims in state court,” Gardner said.

While Saba was fighting with the Maryland-incorporated funds in federal court, Saba was suing four Eaton Vance funds in the Massachusetts state court over bylaws that changed the voting standard to win a contested board election. In October 2024, a state judge sided with Eaton Vance and kept the bylaws intact.

The idea that a federal case is the only way to rescind a contract isn’t right, Burdon said.

“It was just the easy way to do it, because the Second Circuit ... appeared to be relatively receptive



Michael de Leeuw, co-chair of Cozen O’Connor’s business litigation group, **Kenneth Burdon**, partner with Simpson Thacher & Bartlett, and **Jonathan Gardner**, managing partner with Labaton Keller Sucharow

to [Saba’s] arguments,” he said.

Burdon added that shareholders could still bring suit under the provisions of the ICA that expressly create private rights. Those provisions allow private suits under the short-swing profits rules and over a breach of fiduciary duty, including excessive advisory fees.

“People have tried to shoehorn a lot of stuff into the excessive advisory fees concept. You can get at different things there—you can get at valuation, liquidity, under a framework of excessive advisory fees,” he said.

De Leeuw separately said that investors could bring claims under another theory but still seek contract rescission.

“The court can still order rescission as part of a remedy,” De Leeuw said. “But private plaintiffs would need an independent cause of action such as a breach of fiduciary duty claim, or a breach of contract claim under state law—or some other cause of action. If a plaintiff has such a cause of action, it could still ask the court for rescission.”

Alternative avenues of relief had been discussed during December oral arguments, with Justice Brett Kavanaugh pressing an attorney on what would happen if an investor asked a state court to rescind a contract. Kavanaugh ultimately joined the majority decision, but revealed during arguments that this was “extremely close.”

De Leeuw admitted that the other pathways aren’t easy, “but plaintiffs’ lawyers and activist investors are a pretty resilient bunch.”

Despite the resiliency credited to his field, Gardner considered the decision an overall loss for shareholder rights.

“It erodes a little bit of shareholder rights, erodes transparency to some degree,” Gardner said.

“Anything that kind of moves the needle away from shareholders and toward corporations ... generally, as a plaintiffs’ shareholder advocate, I think that’s a bad development.”

On the other hand, Gardner acknowledged that Section 47(b) wasn’t widely used among shareholders.

“A federal action to rescind a contract under this section is pretty rare. ... I’ve been practicing in this area for 30 years, and I’ve never brought one,” Gardner said. Instead, he’s focused on bringing cases under the Securities Act or the Securities Exchange Act.

While there were a few private Section 47(b) cases, De Leeuw explained that the litigation was growing, especially among activist shareholders. There had been enough cases for a circuit split, he pointed out.

In briefing to the Supreme Court, the Solicitor General’s Office said that the Second Circuit had split from the Third and Ninth circuits on whether Section 47(b) creates any implied right of action.

“There were more and more cases,” De Leeuw said.

Although experts mostly discussed Section 47(b) with regard to shareholder rights, Gardner noted that the SEC is still free to bring its own Section 47(b) case.

“That might not mean much now, because the current administration does not seem inclined to bring enforcement proceedings like these,” said Gardner. “But under a different administration down the road, that is more interested in regulation and bringing these claims, you might see an uptick in the SEC bringing these proceedings.”

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Retirement

« Continued from page 1
Assemblymember Jeffrey Dinowitz proposed legislation to increase the retirement age of judges to 76, a full two months after state voters approved the ERA, the top court stated.

Had lawmakers intended for the ERA to repeal the retirement mandate, there wouldn’t have been a need for the Albany Democrats’ proposal, the Court of Appeals reasoned.

Judge Shirley Troutman wrote a separate concurrence agreeing that the court couldn’t eliminate an age restriction—such as those setting limits on who may legally vote, drive or consume alcohol—or the judicial retirement age.

Troutman’s concurrence highlighted her concern about the judicial retirement age not necessarily keeping up with the times, given that discrimination against race and sex runs counter “to our ideas of equality.”

Pizza Hut

« Continued from page 1
Weil is advising Yum! Brands with a team led by partners Michael Aiello and Amanda Fenster in New York.

Upon closing, Pizza Hut China will no longer be subject to licensing fees previously paid to Yum! Brands.

According to Yum China, Pizza Hut is currently the largest casual dining restaurant brand in China. The chain operates 4,375 restaurants across more than 1,100 cities. Yum China has said it plans to expand the brand’s footprint to more than 6,000 stores by 2028.

To the extent that supporters of the ERA would likely endorse age restrictions for voting, driving or consuming alcohol, Troutman suggested the case left the court at “an impasse.”

“We should not simply pay lip service to legal doctrines that are more complex than the majority lets on,” the judge wrote. “Doing so fails to take seriously the rights created by the ERA. This case was an opportunity for the Court to state definitively that the ERA amended the Civil Rights Clause to create rights that can be enforced without the need to resort to some other source.”

John M. Leventhal, a retired state Supreme Court Associate Justice of the Appellate Division, Second Department, argued the case on behalf of the judges.

“We respect the opinion of the court, although we’re really disappointed. We’re only heartened by the fact that Troutman talked about the concept of pursuing the law,” said Leventhal, who practices with Aidala Bertuna & Kamins PC.

The New York Civil Liberties Union senior attorney JP Perry issued a statement stating that the decision’s focus on the judicial retirement age — without venturing into broader applicability—made it “a missed opportunity to clarify the ERA’s enforceability once and for all.”

“But, we are confident,” Perry added, “that the next case to come before the New York Court of Appeals will vindicate that the ERA guarantees every New Yorker equal treatment. That is what an overwhelming majority of New Yorkers voted for after the U.S. Supreme Court gutted *Roe v. Wade*.”

Meanwhile, Perry suggested Troutman’s concurrence laid “a pathway for future cases to undeniably conclude the ERA is enforceable.”

Although the state Constitution mandates jurists retire at 70, they can apply for recertification to continue serving until 76.

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Combined, the two deals value the Pizza Hut business at approximately \$2.7 billion.

LongRange’s acquisition covers a business that operates more than 15,500 restaurants across over 100 countries.

Paul Weiss corporate department chair Angelo Bonvino led the firm’s deal team for LongRange, alongside partners Cullen Sinclair and Matthew Benedetto in the U.S.

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