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Anthropologist Sues Penn, News Outlets For Defamation

BY ALEEZA FURMAN
Of the Legal Staff

An anthropologist and former Penn Museum curator who was the subject of media reports alleging she mishandled the remains of 1985 MOVE bombing victims has sued over 30 defendants, including the University of Pennsylvania and a number of publications, for defamation. The suit was removed to federal court July 27.

Plaintiff Janet Monge said she was demoted and her reputation was irreparably destroyed by the fallout from snowballing reports saying she acted unethically in her handling of the remains.

The lawsuit was surfaced by Law.com Radar.

According to Alan Epstein of Spector Gadon Rosen Vinci, Monge's lawyer, the widespread national coverage criticizing

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Stradley Ronon Duo Jumps to Armstrong Teasdale's IP Group

BY JUSTIN HENRY
Of the Legal Staff

A pair of life sciences-focused patent attorneys have left Stradley Ronon Stevens & Young for Am Law 200 firm Armstrong Teasdale, aiming to reap the benefits of the larger firm's recent investments in its intellectual property practice.

Bringing decades of experience and advanced degrees in chemistry and microbiology, partners Joseph Rossi and Paul Legaard said they relocated to the Philadelphia office of the St. Louis-based firm to capitalize on its name recognition and greater critical mass of IP professionals. Such benefits, they said, will deal them a better hand in recruiting and delivering enhanced services for clients.

The joint move has cost Stradley Ronon an IP practice co-chair in Rossi, who started in Armstrong Teasdale's Philadelphia office Aug. 1 with partner and longtime friend Legaard. In a statement, a spokesperson for Stradley Ronon said Kevin Casey will

ROSSI

LEGAARD

continue as co-chair of the IP group and will be joined by Elizabeth O'Donoghue as co-chair.

"We thank Joe Rossi and Paul Legaard for their contributions to the firm and wish them well," the spokesperson said on behalf of co-chairman and managing partner Jeffrey Lutsky.

Two more colleagues from Stradley Ronon—a counsel and a scientific adviser—have resigned from the firm and are slated to join in the coming weeks, Rossi and Legaard said in an interview Monday morning.

Armstrong Teasdale *continues on* **11**

Alleged Union Tactics Could Be Extortion Under RICO: 3rd Circ.

BY COLLEEN MURPHY
New Jersey Law Journal

The U.S. Court of Appeals for the Third Circuit reversed a New Jersey federal judge's finding that no evidence existed to support claims of extortion against a group of labor union defendants.

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Why M&A Leaders Aren't Sweating Declining GDP, Rising Interest Rates

BY DAN ROE
The American Lawyer

On the tail end of a decisive week for Wall Street and the U.S. economy as a whole, mergers and acquisitions and private equity practice leaders are feeling cautiously optimistic as they predict slower but sustained demand in the second half of 2022.

The week could have gone worse, the partners said July 29, despite the Department of Commerce reporting a second consecutive quarter of declining gross domestic product and the Federal Reserve announcing another 0.75% interest rate hike, not to mention mixed earnings reports from the country's largest corporations.

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PEOPLE IN THE NEWS

ELECTED AND APPOINTED

TOLAND

Post & Schell announced that workers' compensation principal **Patrice A. Toland** has been elected as a fellow of the **College of Workers' Compensation Lawyers** (CWCL).

The CWCL is a national, nonprofit organization established to honor those attorneys who have distinguished themselves in their practice in the field of workers' compensation.

Fellows are nominated for their expertise, ethics and workers' compensation practice of 20 years or longer, representing plaintiffs, defendants, serving as judges, or acting for the benefit of all in education, overseeing agencies, and developing legislation.

Toland dedicates her practice to the defense of employers in workers' compensation cases in Pennsylvania.

In addition to litigating claims, she assists her clients in developing best practices to prevent liability and reach favorable resolutions when necessary.

Her client base includes large international corporations in the health care, maintenance, retail and transportation industries.

Toland earned her J.D. from **New England School of Law**, and she earned her B.A. in criminal justice from the **University of Delaware**.

SPEAKERS

Patricia Hamill and **Lorie Dakessian**, both **Conrad O'Brien** partners and co-chairs of the firm's Title IX and campus discipline practice, presented a CLE titled "The Title IX Landscape: Where are We Now and Where are We Going?" to the **Pennsylvania Association of Criminal Defense Lawyers** (PACDL) on July 26.

They discussed defending college students in campus disciplinary proceedings under the forthcoming regulations as compared with current Title IX law.

Hamill has years of experience representing clients spanning matters including complex commercial litigation, Title IX litigation, receiverships, insurance, securities, consumer class actions, government investigations and e-rate compliance.

Her clients are in a range of industries, including technology, insurance and securities.

In addition to her practice, Hamill is also a member of the firm's three-person executive committee that manages and oversees the firm.

She earned her J.D. from the **University of Maryland Law Schoo**l and her B.A. from **Bryn Mawr College**.

Dakessian represents clients in several practice areas, including campus disciplinary cases and Title IX litigation, white collar and internal investigations and legal and medical malpractice matters.

She represents college students and faculty members nationwide who are under investigation or who have been disciplined by their colleges or universities for alleged violations of sexual harassment and misconduct policies following campus disciplinary proceedings, or complainants who raise and pursue sexual assault or harassment claims within universities.

Dakessian works with her clients to ensure that they understand the university's process, seek procedural safeguards, and are afforded a fair hearing.

She helps students and their families understand and fully prepare for investigations and hearings and, where appropriate, helps clients who are seeking informal resolutions with the school while navigating the complicated issues accompanying mediation.

In addition to her practice, Dakessian oversees the firm's associate attorney recruitment and management.

She earned her J.D. from **Boston College Law School** and her B.A. from the **University of Michigan**. •

All potential items for People in the News should be addressed to
Victoria Pfefferle-Gillot at The Legal Intelligencer, **vpgillot@alm.com**

REGIONAL NEWS

Will Courts Accept COVID as Defense for Debtors' Nonpayment?

BY CHARLES TOUTANT
New Jersey Law Journal

As a litigator representing banks and other creditors, Dafney Dubuisson Stokes of Wong Fleming in Princeton, New Jersey, is on the front lines of a battle with an ever-growing number of defaulting debtors.

Stokes is keeping tabs on the emergence of a novel claim: businesses in default are asking to be excused from debts on the premise that the pandemic was a natural disaster that prevented them from paying.

Defenses of "impossibility of performance" or "frustration of purpose" based on COVID-19 are being raised in a handful of breach-of-contract suits, and Stokes says she expects the use of such defenses will expand in coming years.

Stokes began her legal career after working nearly a decade in social services, supervising specialized foster care placements for children with ADHD and mental health issues. She lacked the masters in social work that would have helped her move ahead in that field, but instead of pursuing that degree she decided to shift focus and attend law school. She initially planned to study family law but after becoming immersed in her studies, she found that her favorite subject was contracts.

Dafney Dubuisson Stokes, a partner with Wong Fleming.

Stokes answered questions about practice trends and what she sees coming in the near future. Here are her answers, edited for length and news style.

What sort of matters do you generally deal with in your practice?

Generally, I deal with commercial matters involving payment disputes between banks and commercial companies. I also deal often with credit disputes between consumers and finance/credit card companies.

What are the most significant trends you see developing in litigation right now?

I think there was a time where many big businesses were afraid of being sued and would generally settle a matter in order to make it go away and prevent bad press; so there developed a culture of consumers suing a big company and getting a quick settlement out of it. However, I am seeing more and more that many companies, now used to being sued often and the novelty having been worn off, have taken the stance that if they have done nothing wrong, they, too, want their day in court to prove their compliance and their innocence.

Do you have any predictions for litigation trends in the remainder of 2022?

I see an increase in FCRA [Fair Credit Reporting Act] and FDCPA [Fair Debt Collection Practices Act] litigation and litigation related to the financial implications of the COVID pandemic. In the COVID cases, the uppermost question is whether the loss of income and the subsequent payment/contract defaults that have occurred as a result can be excused as "impossibility of performance."

Right now, many of the protections put in place for COVID are ending. However, the financial implications of such a severe economic downturn are becoming obvious and business are finding it difficult to keep up with their financial obligations. As a result, we're seeing an uptick in payment defaults, bankruptcy filings and suits alleging breach of contract. Businesses are fighting back by claiming "impossibility of performance" or "frustration of purpose." Essentially, that the COVID event was a "natural disaster" that prevented them, through no fault of their own, from performing on their contractual obligations. Under both defenses, if successful, the default is excused and the contract is terminated. Although not directly correlated, this can also be seen to a lesser extent in the FCRA and FDCPA litigation as well. Namely, when a default occurred, whether it can be classified as a default, whether it was excused or forgiven and the larger collection and credit implications as a result.

We're already seeing some minor litigation on this and I think it will explode in the next couple of years.

Have the outlooks of jurors changed over the past few years?

I think the outlooks of jurors has changed a bit over the years as the makeup of jurors has changed. Now, more than any other time, you see that younger, more diverse cast of people civically engaged more so than before. With that new mindset, I think juries are leaning more consumer friendly and less likely to side with bigger companies and organizations over the "little guy."

Nonpayment *continues on* **11**

NATIONAL NEWS

Congressmen Can't Dodge Fines for Bypassing Security: Judge

BY BRAD KUTNER
The National Law Journal

Photo by Diego M. Radzinschi

Congressman Louie Gohmert, R-Texas.

Conservative House members failed to convince a federal judge they shouldn't have to go through a security checkpoint or pay fines for violating rules passed in the wake of the attack on the Capitol.

Congressmen Andrew Clyde, Louie Gohmert and Lloyd Smucker all argued the mandatory screening implemented after the Jan. 6, 2021, riot at the Capitol violated rules that bar arresting representatives unless they commit treason.

But U.S. District Judge Tim Kelly of the District of Columbia said the dispute arose from a legislative act and was therefore barred by the Speech and Debate Clause of the U.S. Constitution. The security checkpoint rule was approved by the House less than a month after the riot. It allowed the House sergeant at arms to impose a security screening on members before they enter the chamber. It also allows fines to be imposed on those who violate the rule.

All three members had broken the rule and were facing fines, with Clyde's combined fines totaling $15,000.

"Here, each challenged act of the House Officers qualifies as a legislative act," wrote Kelly in an opinion released Monday evening. The ruling notes that the Speech or Debate Clause deprives the plaintiffs of standing, precluding the judge from ruling on such issues entirely.

Ken Cuccinelli, a former senior Homeland Security official during the Trump administration who represented the lawmakers, criticized Kelly for taking 11 months to issue his opinion. Earl N. Mayfield with the Virginia-based law firm Juris Day also represented the lawmakers.

"It is disappointing to see the judge take almost 11 months to issue such a weak 11-page ruling," said Cuccinelli, who is also the former state attorney general for Virginia. "Our expectation all along is that this case would be taken to the appellate level by whichever side lost. While we are still analyzing the ruling, that is our starting position. The constitutional issues in this case are novel and important, and relate to the constitutional restraints on abuse by the majority—any majority—in the House of Representatives."

Gohmert and Clyde filed the complaint last summer and alleged House officials violated their rights under Article I of the Constitution and the 27th Amendment "by selectively and punitively enforcing a House rule against only Republican representatives, and engaging in a constitutionally-prohibited reduction of plaintiffs' congressional salaries as a means of harassing democratically-elected representatives who are members of the opposition party in the House of Representatives."

The two congressmen were the first members to be fined for bypassing the security measures while entering the House floor. Smucker was added to the suit a month later after he too violated security measures when he tried to skip the screening because he was late for a vote. All three members appealed their fines to the House Ethics Committee, which upheld the penalties.

U.S. House of Representatives general counsel Douglas Letter represented William Walker, the sergeant at arms for the House.

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Business Affairs Head At J.J. Abrams' Bad Robot to Also Be GC

BY JESSICA MACH
Corporate Counsel

The head of business affairs at Bad Robot, a production company co-led by "Lost" and "Felicity" creator J.J. Abrams, has been promoted so that her role also includes general counsel.

In her new role, Grace Del Val will oversee and set legal strategy for the company. As the Santa Monica, California-based company's key corporate counsel, she will also assume an executive role, according to Deadline.

Del Val joined Bad Robot as head of business affairs in 2020, helping the company launch its audio division and navigating its partnership with RCA Records. She has held numerous in-house counsel roles at production and entertainment companies, including Alcon Television Group, A&E Television and Sony Pictures Entertainment.

She was previously an entertainment attorney at Abrams Garfinkel Margolis Bergson, which has offices in California and New York, and an associate at Skadden, Arps, Slate, Meagher & Flom.

Bad Robot's president and chief operating officer, Brian Weinstein, told Deadline that Del Val's "unique blend of entertainment, business, and legal expertise has guided us through the ever-changing media landscape as we continue to expand our core business and delve into new ventures."

Del Val did not immediately respond to a request for comment.

Jessica Mach can be contacted at jmach@alm.com. •

IN-HOUSE COUNSEL

20 Years Later: Sarbanes-Oxley's Lasting Impact on Corporate Counsel

BY MICHAEL W. PEREGRINE
Corporate Counsel

July 30th marks the 20th anniversary of the Sarbanes-Oxley Act, offering an opportunity for reflection by corporate lawyers on how their practice has been influenced—and altered—by this seminal corporate responsibility legislation.

Such reflection should extend not only to the law itself, but also to the abuses and practices it was intended to address and to the changes it prompted to the role attorneys are expected to play in connection with the corporate client, and its governance.

The act was the byproduct of a bipartisan congressional effort to respond strongly to widespread accounting scandals and notorious incidents of corporate fraud in 2000-2001. This fraud prompted several economy-shaking bankruptcies (including Enron and WorldCom) and significantly undermined public confidence in corporate financial statements.

The act sought to address the root causes of the financial scandals that had arisen in Enron and the other companies, which were disquietly similar in nature. These included inadequate corporate disclosures; misaligned executive compensation incentives; intricate business models that frustrated external monitoring; confusingly complex financial statements; highly aggressive revenue recognition practices; speculative special-purpose entities and the management conflicts they presented; and governance structures that limited the ability to effectively monitor the business and its financial practices.

MICHAEL W. PEREGRINE, *a partner at McDermott Will & Emery, advises corporations, officers and directors on matters relating to corporate governance, fiduciary duties and officer and director liability issues. His views do not necessarily reflect the views of the firm or its clients.*

Since its enactment, many corporate counsel have focused a significant portion of their practice on its major themes, including aspects of the auditor/client relationship; the accuracy and transparency of financial statements; enhanced financial and transaction disclosure obligations; the role of the audit committee; and executive responsibility with respect to the audit process, financial statement preparation and disclosure.

In addition, many white-collar counsel have come to focus a portion of their practice on compliance with the act's provisions that prohibit the destruction, alteration, concealment or falsification of financial records; retaliation against a corporate whistleblower; and the failure of an executive to certify financial reports as required by the act.

But perhaps the act's overarching legacy for the legal profession is the extent to which it prompted foundational changes in the lawyer's relationship to the corporation as the client, and more particularly to the lawyer's support of effective corporate governance.

A consistent element in many of the key corporate scandals was the presence of an overly aggressive corporate culture that placed little value on ethics and compliance, and worked to marginalize the role of the corporate legal function. Of related importance were concerns with the manner in which counsel was engaging with their corporate clients.

Despite many subsequent actions by Congress, the Securities and Exchange Commission and other regulatory bodies, Sarbanes-Oxley remains one of the most consequential corporate governance and finance developments in history.

Indeed, a seminal report prepared at the time by the American Bar Association cited attorney self-interest as a contributing cause to many of the era's abuses. "The competition to acquire or keep client business, or the desire to advance within the corporate executive structure, may induce lawyers to seek to please the corporate officials with whom they deal rather than to focus on the long-term interest of their client, the corporation."

As a result, the act indirectly prompted significant revisions to state rules of professional responsibility (and certain federal securities rules) with respect to corporate counsel's role in facilitating the flow of information and analysis within organizational clients (including the obligation to report wrongdoing to higher authority in the client). It also addressed limited exceptions to the treatment of the attorney-client privilege, permitting disclosures in order to prevent the lawyer's services from being used in the commission of a crime or fraud.

A further indirect application of the act was the ABA's recommendation of a series of governance practices intended to enhance

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SECURITIES LAW

A Busy Summer: Breaking Down the SEC's Recent Rule Changes

BY KATAYUN I. JAFFARI AND PAUL D. HALLGREN
Special to the Legal

Since grabbing headlines in the spring with its proposed rule on climate disclosures, the SEC has stayed engaged this summer.

If anybody expected the U.S. Securities and Exchange Commission (SEC) to take a summer vacation after making news with its proposed rule on climate disclosures published this spring, they were mistaken. Though the rule changes of summer 2022 may not be quite as bold, they certainly are worth examining. This article summarizes three of those finalized and proposed rule changes.

NEW EDGAR FILING REQUIREMENTS FOR CERTAIN DOCUMENTS

On June 2, the SEC adopted new rules that require filers to electronically file or submit certain documents that have historically been permitted to be filed in paper format rather than through the SEC's EDGAR system. These documents include the "glossy" annual reports, Forms 144, Forms 6-K, notices of exempt solicitations and exempt preliminary roll-up communications, and annual reports of employee stock purchase plans, savings plans, and similar plans on Form 11-K, among others. The new rules also mandate the use of Inline eXtensible Business Reporting Language for the filing of financial statements and accompanying notes to financial statements filed on Form 11-K.

JAFFARI

HALLGREN

KATAYUN I. JAFFARI *is chair of the corporate governance group and co-chair of the capital markets and securities group and ESG group at Cozen O'Connor. She counsels public and private companies in the areas of corporate governance and securities law and compliance, including capital-raising transactions and reporting requirements under SEC, NYSE and Nasdaq regulations, as well as providing general corporate advice and execution with respect to executive compensation, mergers and acquisitions transactions and board and business counseling, including with respect to ESG and DEI matters. She can be reached at kjaffari@cozen.com or 215-665-4622.*

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As background, when the SEC adopted Regulation S-T (the rules related to submitting electronic filings through EDGAR) in 1993, it did not mandate electronic filing for all documents that are required to be filed or submitted under the federal securities laws. Rule 101(b) of Regulation S-T identified a number of documents that filers could choose to submit electronically through EDGAR, though they were not required to do so. As a result, interested parties would need to go to the SEC's reference room or utilize the services of a third party vendor in order to view paper submissions validly filed under Rule 101(b) of Regulation S-T. This process has become problematic since the onset of the COVID-19 pandemic; the SEC had attempted to address the matter through no-action relief.

If the rules are adopted as proposed, it is possible that we see a shift in the number of shareholder proposals included in issuers' proxy statements.

Requiring electronic filing of documents under the new rules is an attempt by the SEC to create a more comprehensive framework and update its rules. As a result, the SEC withdrew its prior guidance that companies may post their annual reports on their website for one year rather than mailing paper copies or submitting on EDGAR. Similarly, the SEC rescinded the rule that required filers to send Form 144 notices to the principal exchange (if any) on which an issuer's securities trade. The new rules also led to the SEC's withdrawal of its no-action relief allowing submission of Form 144 in PDF form by email, rather than in paper form.

The final rules became effective as of July 11. Therefore, this is a reminder to filers and issuers to electronically submit the referenced documents.

AMENDMENTS TO PROXY VOTING ADVICE RULES

On July 13, the SEC adopted amendments to the rules related to proxy advisory

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the role of the general counsel. These included board approval of the hiring, firing and compensation of the general counsel; a formal and regular executive session practice between the general counsel and the independent members of the board; and assurances that all reporting relationships of outside counsel to the corporation run through the general counsel.

Despite many subsequent actions by Congress, the Securities and Exchange Commission and other regulatory bodies, Sarbanes-Oxley remains one of the most consequential corporate governance and finance developments in history. Its implications continue to impact the C-suites and boardrooms of both public (and, indirectly) private companies—and their corporate counsel.

The occasion of the act's 20th anniversary offers a teaching moment for corporate counsel, especially those who were not in practice in 2002 and are unfamiliar with its development, its specific provisions, and with its lasting impact on corporate law and governance.

This article first appeared in Corporate Counsel, an ALM affiliate. •

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firms (2022 amendments). As a reminder, back in July 2020, the SEC adopted rules (2020 rules) governing proxy solicitations in the hopes of facilitating the flow of more transparent, accurate, and complete information to investors relying on voting advice from proxy advisory firms. The 2020 rules added conditions to the availability of certain existing exemptions commonly used by proxy advisory firms from the information and filing requirements of the proxy rules. For example, the conditions required compliance with disclosure and procedural requirements, including conflicts of interest disclosures by proxy advisory firms. In addition, the 2020 rules codified the SEC's interpretation that proxy voting advice constitutes a "solicitation" within the meaning of Section 14(a) of the Securities Exchange Act of 1934, as amended (Exchange Act).

Finally, the 2020 rules clarify when the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the antifraud provision of the proxy rules, depending on the particular facts and circumstances.

The 2022 amendments from this year pulled back certain of the conditions from the 2020 rules. For example, under the 2022 amendments, the SEC rescinded the following conditions that it previously adopted under the 2020 rules:

• Issuers that are the subject of proxy voting advice must have such advice made available to them at or prior to the time such advice is disseminated to the clients of proxy advisory firms.

• Proxy advisory firms must provide their clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding proxy voting advice by issuers that are the subject of such advice in a timely manner before the security holder meeting.

The 2022 amendments also rescinded Note (e) to Rule 14a-9 of the Exchange Act, which was the antifraud rule, added under the 2020 rules to include examples of material misstatements or omissions related to proxy voting advice. In particular, Note (e) provided that the failure to disclose material information regarding proxy voting advice, such as methodology, sources of information, or conflicts of interest, may, depending upon particular facts and circumstances, be misleading within the meaning of the rule. In making this change, the SEC tipped its hat to market concerns that Note (e) heightened the litigation risk for proxy advisory firms, thus impairing their independence and their ability to provide sound voting advice. Finally, the SEC also rescinded certain guidance from its 2020 rules that recommended that investment advisers consider discussing their use of automated voting services and how they manage automated voting when they become aware that an issuer intends to make additional solicitation materials available prior to a vote. The SEC agreed with a number of commenters stating that this guidance was sufficiently covered by existing guidance and that these circumstances fall within an investment adviser's fiduciary duty to conduct a reasonable investigation into an investment and not to base its advice on materially inaccurate or incomplete information.

Under the 2022 amendments, proxy advisory firms will continue to be subject to conflicts of interest disclosures pursuant to Rule 14a-2(b)(9), which were adopted at the time of the 2020 rules, despite the rescission of the foregoing conditions and related safe harbors and exclusions. The 2022 amendments will become effective Sept. 19.

SHAREHOLDER PROPOSALS

On July 13, the SEC proposed rules that would amend certain substantive bases for exclusion of shareholder proposals under Rule 14a-8 of the Exchange Act. The proposed amendments would change the "substantial implementation" exclusion to specify that a proposal may be excluded if the company has already implemented the essential elements of the proposal. The proposed amendments also specify when a proposal substantially duplicates another proposal for purposes of the "duplication" exclusion. Finally, the SEC further proposed to amend the "resubmission" exclusion to provide that a proposal constitutes a resubmission if it substantially duplicates another proposal. Under the proposed amendments, a shareholder proposal would substantially duplicate another proposal if it addresses the same subject matter and seeks the same objective by the same means, either at the same meeting in the case of the "duplication" exclusion, or at a prior meeting in the case of the "resubmission" exclusion. If the rules are adopted as proposed, it is possible that we see a shift in the number of shareholder proposals included in issuers' proxy statements. The comment period for the shareholder proposal amendments will close 30 days after publication in the Federal Register or Sept. 12, whichever is later. •

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Monge's work began with one local story based on an untrue premise.

In her complaint, Monge said the actions of a disgruntled graduate student, Paul Mitchell, sparked the controversy. The complaint alleges the student prompted his then-girlfriend, a reporter at Philadelphia publication Billy Penn, to "write an article containing malicious, sensationalized allegations of racial bias … based entirely on false and misleading statements." According to the plaintiff, the student was retaliating against Monge for a series of altercations involving misconduct claims against him.

Mitchell is currently listed as a student at the University of Pennsylvania.

On April 21, 2021, Billy Penn, whose parent organization is the public radio and television station WHYY, published the article "Remains of children killed in MOVE bombing sat in a box at Penn Museum for decades," and The Philadelphia Inquirer ran an opinion article titled "Penn Museum owes reparations for previously holding remains of a MOVE bombing victim." From there, a host of national publications picked up the story.

The stories center on the long stretch of time the museum has possessed the remains and Monge's use of several bone fragments as teaching aides in an online course. The Billy Penn article said the treatment of the remains fit into a larger history of Penn Museum keeping Black persons' remains without consent.

Amid the scrutiny, the University of Pennsylvania issued statements that condemned Monge's actions, and she ultimately lost her positions as adjunct professor and associate curator and was demoted to museum keeper, the complaint said. The Penn Department of Anthropology currently displays a statement on its website that says, "These egregious and unethical actions were the result of bad decisions on the part of one adjunct faculty member and a former faculty member who left the department in 2001."

According to the complaint, Monge worked for 26 years to identify bone fragments recovered from the site of the 1985 MOVE bombing, in which the city of Philadelphia destroyed the residence of the natural-living communal organization MOVE, modeled in part on the Black Panthers, and a portion of the surrounding neighborhood and killed six adults and five children.

A major point of contention in the complaint is that many of the reports criticizing Monge and Penn say the bone fragments in question belong to Katricia and Delisha Africa, who were respectively 14 and 12 when they died.

"To this day nobody can assert that," said Epstein. The complaint says the fragments kept at the museum are still unidentified and that Monge had made significant efforts to determine the correct identity and return the remains to the victims' families.

Among the many defendants the complaint names are Penn faculty, an extensive list of publications and reporters,

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and two Black anthropologist organizations that issued a statement condemning Monge.

Nora McGreevy, an independent reporter who wrote an article about the remains in Smithsonian Magazine, is among the defendants. Her lawyer, Michael Baughman of Troutman Pepper Hamilton Sanders, removed the defamation suit to the U.S. District Court for the Eastern District of Pennsylvania on July 27.

Baughman did not respond to requests for comment, but according to Epstein, the removal was based on the question of whether McGreevy could rely on immunities that protect the Smithsonian as a federal agency. Epstein said the move was the appropriate course to address the question and that whether or not those protections will apply to McGreevy will depend on her role with the publication and "what controls they had and whether or not she fits the profile that is required for immunity."

The suit, captioned *Monge v. University of Pennsylvania*, was initially filed in Philadelphia Court of Common Pleas in April.

Big Law attorneys have entered appearances in the case.

Attorneys with Gordon Rees Scully Mansukhani are representing Billy Penn and did not respond to requests for comment. Michael Banks of Morgan, Lewis & Bockius, representing the University of Pennsylvania, declined to comment. Michael Galey and Todd Ewan of Fisher & Phillips are representing Mitchell and could not immediately be reached for comment.

Aleeza Furman can be contacted at afurman@alm.com. •

M&A Leaders

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"The other GDP indicators are extremely positive—you've seen [Fed Chair] Jerome Powell's remarks," said Sidley Austin global private equity co-lead Mehdi Khodadad. Consumer spending continued to increase in the second quarter as the U.S. continued to add jobs at a steady rate, Powell said at a July 27 press conference on the rate hikes, adding that there are "too many areas of the economy that are performing too well" for the country to be in a recession.

Powell also alluded to less aggressive rate hikes in the future. The message, combined with better-than-expected earnings reports from companies such as Pfizer, Apple and Amazon that tampered missed earnings targets from Microsoft, Alphabet, and Meta, helped stocks rally on July 29. By Friday afternoon, analysts confirmed the best month for the S&P 500 since November 2020.

So although the outlook is less rosy than it was several months ago, M&A leaders said they feel there's plenty of liquidity and opportunism to keep them busy.

"Many of the large corporates, with their healthy financial profiles, and many of the robustly funded private equity firms, will continue forward with dealmaking as they leverage the uncertainties of the moment to acquire assets and talent at a discount and reshape their balance sheets ahead of their competitors," said Bill Curtin, head of global M&A at Hogan Lovells.

STRATEGIC BUYERS LOOK TO CAPITALIZE ON SMALLER DEALS

Sullivan & Cromwell global M&A head Melissa Sawyer said the number and pace of deals will likely decline during the fall as buyer confidence remains shaky and sellers hesitate to reset their pricing expectations. "However, this is ultimately going to be a great time for opportunistic strategic buyers looking to scoop up attractive targets while taking advantage of a less competitive dealmaking environment."

At Simpson Thacher & Bartlett, M&A practice co-head Eric Swedenburg predicted steady deal flow in private equity as sponsors have funds they must invest and will find opportunity in lower valuations. "That holds true for strategic acquisitions as well—M&A remains one of the most effective ways to achieve growth beyond what companies can achieve organically," Swedenburg said.

Smaller deals may lead the way, said Khodadad. "We think there's liquidity in the market and within potential buyers, although inflation is causing them to pause on executing on larger investments," he said. "In the second half, with the disruption of capital markets, we're going to see more take-private activity with the disruption in valuations, but we need credit markets to stabilize first."

M&A DEMAND EXPECTED TO PERSIST

While the M&A partners acknowledged that deal work has slowed from its record-setting pace of 2021, they also said the buying activity of their clients is keeping their practices busy despite economic uncertainty.

Looking back at the 2008 financial crisis, Curtin said executives will recall opportunities seized and missed. "The lessons learned during 2008 and 2009 serve as reminders to the C-suite and to deal principals that moments of reduced economic predictability can be turned to their advantage," Curtin said.

In the coming weeks and months, the partners said that they'll be judging the strength of M&A by inflation and its impact on credit markets, the cost of capital, the overall mood of certainty versus uncertainty, and the plans of corporate executives.

"The leading indicator for me is what's happening in the boardroom," Sawyer said, as many boards will discuss budgets and forecasts at annual strategic meetings in the next two months. "The extent to which M&A features in those strategic plans—whether buy side or sell side—is going to have a huge impact on what happens to dealmaking over the next 12 to 24 months."

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Union

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Two nursing home and assisted-living management companies alleged violations of the Racketeer Influenced and Corrupt Organizations Act against several labor unions following a long history of conflict and animosity culminating in a strike, according to a precedential Third Circuit opinion.

Care One Management and HealthBridge Facilities sued the United Healthcare Workers East SEIU 1199, New England Health Care Employees Union District 1199, and the Service Employees International Union in U.S. District Court for the District of New Jersey for damages following a breakdown in negotiations over a collective bargaining agreement, according to the opinion.

According to the opinion, between 2010 and 2011, the unions filed charges against Care One before the National Labor Relations Board alleging improper termination, threatening employees, and improper benefit termination. The NLRB sided with the unions, charging Care One with "interfering with rights guaranteed by the National Labor Relations Act[,] including the refusal to bargain in good faith."

In January 2011, Care One and the NEHCEU were negotiating the renewal of a collective bargaining agreement for facilities located in Connecticut. When negotiations were stalled, a strike was called. The night before the strike was to begin, vandalization and sabotage took place at the facilities in Connecticut. Patient records and identifications were mixed up, patient records altered, and equipment was vandalized, according to the opinion.

The incidents were investigated by the Connecticut Attorney General's Office, but there were no suspects identified or charges filed, the opinion said.

Discovery later revealed documents showing the unions intended to "inspire" workers to "become angry about their working conditions" and to become "more militant," the opinion said.

According to the opinion, the SEIU, with help from the other two unions, launched a marketing campaign attacking Care One, according to the opinion. The campaign included websites, print materials, radio advertisements, flyers, and billboards. The billboards questioned things such as the level of care loved ones were receiving at the facilities and whether the facilities were overbilling.

The unions filed objections when the facilities attempted to apply to the Massachusetts Department of Health for a capital improvement project, delaying approval for a year. The unions then involved U.S. Sen, Richard Blumenthal of Connecticut by requesting he investigate billing practices at the facilities.

In Care One's suit against the unions, the company alleged that this pattern of behavior amounted to violations of RICO and was extortionate, according to the opinion.

The district court dismissed the complaint and granted summary judgment for the unions.

"The court held that no reasonable juror could conclude that the vandalism underlying Care One's claims could be attributed to union members, much less the unions themselves," stated Third Circuit Judge Theodore McKee in his written opinion for the court.

"It also concluded that other actions the unions undertook to exert pressure on Care One—including the advertisements, picketing, and attempts to invoke regulatory and legal processes—were not extortionate," stated McKee. "The court also found that defendants lacked the specific intent to deceive and were therefore entitled to summary judgment on the mail and wire fraud claims."

Care One that the district court erred in granting summary judgment because the facts on record are sufficient to allow a jury to conclude the unions committed violations of RICO on mail fraud, wire fraud, and extortion through sabotage and fear of economic loss.

McKee stated that the mail and wire fraud claims are based on the advertising campaign against Care One by the unions. "Here, the unions' affidavits provide sufficient evidence that the affiants believed that all the material in the advertisements was truthful and accurate," stated McKee. "None of the portions of the record Care One relies on raises a genuine issue of disputed fact sufficient to defeat the unions' motion for summary judgment.

"However, it is neither realistic nor legally required that either side of a labor dispute will present a balanced view in advertisements about the other side arising from the dispute," stated McKee. "Moreover, speakers in the public square 'have no legal obligation' to ensure that their statements are balanced."

McKee agreed with Care One's contention that, based on the timing of the sabotage acts, a reasonable jury could conclude the unions were responsible for those acts and therefore vacated the district court ruling on the claims of extortion through sabotage. The court further agreed with Care One that a jury could conclude the unions had authorized that action.

"This evidence includes the unions' prior statements, the coordinated timing of the acts of sabotage, and subsequent actions that could be interpreted as obfuscation by the unions," stated McKee. "It is undisputed that, the night before multiple union-organized strikes were scheduled to begin, acts of sabotage simultaneously occurred at three Care One facilities.

"A jury could conclude that was not just a serendipitous coincidence," concluded McKee.

"Although it is a very close call, we conclude that the undisputed facts viewed in the light most favorable to Care One could be viewed as clear proof that the unions ratified the sabotage," stated McKee in holding that the district court erred in its ruling on the issue.

"We are aware that there is also evidence that the unions outright condemned this behavior, rather than ratified it," stated McKee.

On the final issue examined by the court, McKee stated that the district court was correct in its grant of summary judgment in favor of the unions on the claim of extortion through fear of economic loss.

"Clearly, Care One has no categorical right to pursue its business interests free of the fear that the unions could use the regulatory and criminal processes as these processes can hold individuals and entities accountable for violating laws and regulations," said McKee.

Union *continues on* **11**

Union

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"Additionally, Care One did not have a limitless right to pursue its business interests free of the fear that the unions could use negative advertising campaigns."

Judges Kent A. Jordan and Marjorie Rendell joined McKee in the conclusion that the district court erred "in deciding that this record could not support a finding that the unions authorized or ratified conduct that could constitute extortion or that they wrongfully exploited threats of economic harm."

"We will affirm the District Court's grant of summary judgment in favor of the unions on the remaining claims of RICO liability and remand for further proceedings consistent with this opinion," stated McKee.

Counsel for Care One and the other nursing home and assisted-living management companies, Rosemary Alito of K&L Gates, could not be immediately reached for comment. Likewise, counsel for United Healthcare Workers East and the other unions, Leon Dayan of Bredhoff & Kaiser, could not be reached for comment.

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Armstrong Teasdale

continued from **1**

Rossi and Legaard said the move was driven by clients seeking greater bench strength at a firm whose 50 patent attorneys outnumber the IP team at Stradley Ronon. Stradley Ronon's website listed nine IP professionals at the time of Rossi and Legaard's departure Monday.

"This move was really driven by our need for bigger bench strength and credibility and to better support our pharmaceutical and life sciences work," said Rossi, who has served as co-chair of Stradley Ronon's IP group for the last four years. He joined the firm in 2008.

Rossi said their clients' legal needs have grown in proportion to their businesses' growth in recent years.

"We're coming from a rather small IP group, and Armstrong has over 50 registered patent attorneys for us to rely on for support," Rossi said. "Our clients have more work to give us but were hesitant because of the bandwidth."

To have a successful IP practice, Legaard said a firm needs to have a critical mass of patent agents. This fact is not lost on leadership at Armstrong Teasdale, due to managing partner Patrick Rasche's own expertise as an IP lawyer, Legaard said.

"There's a certain amount of critical mass that Armstrong provides that we can [use to] expand opportunities within our own client base and tap into subject areas that we can't currently tap into," said Legaard, who joined Stradley Ronon in 2017.

"We expect to be able to broaden horizons of clients we're bringing in as well as potential clients we have on our radar, but we didn't have the critical mass to fulfill the clients' needs," Legaard added.

He described IP legal work for life sciences clients as a "square peg in a round hole," in the context of a general practice firm's other areas, because of its distinct docketing system requirements, advanced scientific knowledge and greater number of support professionals than other practices.

"If you don't have a good appreciation of those needs, it can be a difficult path," Legaard said. "Because of Armstrong's leadership, they completely understand it."

The pair, whose clientele includes Fortune 500 and midsize pharmaceutical and biotech companies, estimated 90-95% of their clients are following them to Armstrong Teasdale. A small contingent, who have established relationships with Stradley Ronon based on trademark legal needs, will stay in place, they said.

Having talked with multiple general practice law firms about joining, Rossi and Legaard said they turned down other opportunities in favor of Armstrong because of the firm's rate structure. Unlike other firms they spoke to, Rossi said Armstrong "is not a firm that's trying to drive patent prosecution rates at $1,000 an hour."

"They have the infrastructure set up from the patent paralegals, patent agents, associates and partners that allow us to provide more economic efficiencies for our clients," he said.

Rossi and Legaard bring to Armstrong Teasdale advanced degrees in scientific fields that reflect their current specialization as lawyers.

Rossi has a master's in organic chemistry, leading him to be "more on the chemical side" of the duo's practice; Legaard's Ph.D. in molecular microbiology and immunology has led to his focus on pharmaceutical clients in need of medical device and biotech patent services.

They join at a time of investment for Armstrong Teasdale's IP bench, which now spans multiple continents. Legaard said his new firm isn't alone in this push. He said "pretty much every IP group in the country is looking to expand their life sciences [capabilities] because that's where a lot of technology is being driven."

In a statement Monday, Rasche said, "As part of our firm's strategic plan, we have set aggressive growth goals, and in the intellectual property space, we are attracting top talent with technical backgrounds across a variety of disciplines, heavily weighted in biotech and pharmaceuticals. This has long been an area of focus at Armstrong Teasdale, and we plan to continue to grow so we can address our clients' current and anticipated future needs."

Armstrong Teasdale also announced an overseas expansion on Monday, acquiring the four IP lawyers who formerly composed English patent and trademark firm Phillips & Leigh, along with their support professionals. The firm first established a presence in London in February 2021, when it combined with Kerman & Co.

Leaders said in a statement Monday that the latest additions in London speak to the firm's strategy to "capitalize on an existing depth of experience in the intellectual property space and create a stronger foothold in the European market."

"The experience of this team is impressive," Rasche said. "The lawyers have acted for clients across a wide range of technical disciplines, and their varied backgrounds enable them to quickly and efficiently serve clients from startups to multinational companies. The IP market in the U.K. and Europe is competitive, and we're fortunate to have top talent at Armstrong Teasdale."

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Nonpayment

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What are some of the biggest obstacles you've faced in your career, and how did you handle them?

Shockingly, I think the biggest obstacle I've faced in my career came from within the legal profession itself and was primarily based on the fact that I am a woman, an African American woman as well, in a very white, male-dominated field. I have often felt that I've needed to prove that I was just as smart, just as savvy, just as talented as many of the people in my field and that I deserved a place at the table. I've also had some very unpleasant interactions with some counsel that felt that I was "forgetting my place" in some instances. Unfortunately, this has happened more times than I care to admit. I have been screamed and yelled at by opposing counsel, belittled, condescended to and outright insulted. More often though, I get the "I have been practicing law for X years more than you and therefore am smarter, know more and you should just do what I say and not argue with me."

It can be demoralizing and exhausting having to deal with those types of attitudes and I can't say that I wasn't affected. Overall, though, I believe that type of adversity has helped me become a better, more tactical and vocal advocate.

What types of interactions are you talking about?

I have literally been told that I overstepped and need to remember my place. This came from a senior partner who felt that I was not showing enough deference to his position and expertise because I disagreed with his opinion. I have been mistaken for a secretary and had fingers snapped in my face from other associates who felt that I was ignoring them because I didn't answer to "hey you!"

During a job interview when I asked a senior partner about the work/life balance at the firm, I was told flat out that I could choose the "mommy track" or the "partner track" but that I could not have both. Also, I had opposing counsel keep emailing Dan [Fleming, vice president of Wong Fleming] instead of me if he had a question, even though he knew I was the attorney of record, or counsel who would go running to tell on me to Dan if he didn't like my response to a settlement offer or legal argument.

Is there any aspect of your work that is particularly satisfying to you?

I enjoy critically engaging with other professionals in my field. Despite some negative interactions with opposing counsel as I mentioned previously, I have also had the pleasure of engaging in truly vigorous, intellectually stimulating and, at times, even aggressive discourse with opposing counsel in my cases. All of this was done with the goal of vigorously representing our clients. However, we all remained professional and cordial. It made the litigation more productive in the long run and I can say that I made some good contacts and friends along the way.

Who had the greatest influence in your career that helped propel you to your present role?

The biggest influence on my career and the people who helped me propel into my present role have to be the partners at my firm, Daniel Fleming, Linda Wong and James Haney. Dan has been in my corner since I joined the firm and my biggest supporter. He told me from almost the start of my career at Wong Fleming that he saw potential in me and that I would be a partner here one day. At first, I thought, he must say that to all the young associates, but as the years progressed, it became obvious that he meant it.

Dan empowered me early on to manage my caseload independently and make the decisions I believed were in the best interest of our clients. He gave me advice when I needed it but also knew when to step aside and let me handle something. It gave me the confidence to speak up, share my opinions and take ownership of my cases and my role at the firm. Without fail, he backed me publicly whenever there was an issue or a hiccup but made sure to counsel me privately if needed. I appreciate all of the support he and the firm have provided me over the years and would not be where I am now without it.

Linda has always been welcoming, friendly and incredibly supportive of my role as a wife and mother and my life outside of the firm. Her support and understanding allowed me to be the best version of myself for both my family and the firm.

Finally, Jim patiently answered any and all questions I had about the law, professionalism, and law firm management and never made me feel as though any of my questions were dumb or unwanted.

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