

LEGAL REVIEW

EVENTS

Sept. 21

Economic Forum: Meet and Mingle luncheon with William N. Shepherd, former Florida Statewide Prosecutor, 11:30 a.m., The Kravis Center, Cohen Pavilion, 701 Okeechobee Blvd., West Palm Beach. Cost: \$40 members and guests, \$55 nonmembers. Call (561) 373-5488.

Coral Gables Bar Association: Luncheon and seminar with Amir A. Isaiah of Kaufman Rossin speaking on receiverships and Ned Pope of the Collins Center for Public Policy speaking on topic foreclosure mediation, 11:45 a.m., Fleming's Prime Steakhouse & Wine Bar, 2525 Ponce de Leon Blvd., Coral Gables. Cost: \$30 members, \$40 nonmembers. Email: krg@fowler-white.com.

Dive Bar — Underwater Bar Association: Local dive, 1:30 p.m., Sea Experience, Bahia Mar, 801 Seabreeze Way, Fort Lauderdale. Cost: \$65. Email: kim@thedivebar.org.

Palm Beach County Bar Association Membership Committee: Cocktail reception, 5:30 p.m., B.B. Kings, 550 S. Rosemary Ave., West Palm Beach. Free for new members, \$20 members, free for judges. Call (561) 687-2800.

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PEOPLE



Scherer

Kenneth J. Scherer has joined Greenspoon Marder in West Palm Beach as head of the firm's Central and North Palm Beach and Treasure Coast litigation practice. He was a partner at Cohen Norris Scherer Weinberger & Wolmer. Scherer has law and bachelor's degrees from George Washington University in Washington. The Asian Pacific American Bar Association of South Florida named its executive board:

Stephanie Moot of K&L Gates, president

Stella Chu of Sedgwick, president-elect

Alen Hsu of Sosin and Hsu, vice president of membership

Jim Leano of Leal & Leano, secretary

Lisa Hu Barquist of Payton & Associates, treasurer

Jane Bolin of PeytonBolin, immediate past president

EMBEZZLEMENT

State court sentences ex-receiver to nearly 7 years

Marika Tolz, a former panelist for the U.S. bankruptcy trustee's program, has been sentenced in state court to nearly seven years for embezzling \$550,000 from the estate of three children.



Tolz

The 81-month sentence handed down late Friday by Broward Circuit Judge Matthew Destry will run concurrently with Tolz's federal sentence of eight years, including 1½ years of house arrest.

The Hollywood real estate agent misappropriated \$16 million and stole \$2.6 million of it from accounts under her supervision while serving as a trustee panelist, receiver and guardian of the estate of the late probate case.

James Christenson for nearly a decade in a Broward Circuit Court probate case.

Destry also placed Tolz on probation for 10 years and ordered her to pay \$705,000, including restitution and \$155,000 in attorney fees.

Tolz was one of South Florida's most prolific trustees and receivers. She was hired to safeguard assets for the federal government, including \$1 million in recovered funds that disappeared before it could be distributed to victims of attorney-turned-con artist Scott Rothstein.

Tolz's attorney, Ben Kuehne of Miami, said all of his client's assets have been turned over to the U.S. attorney's office.

— John Pacenti

ON APPEAL Jose Padilla's 17-year term tossed by 11th Circuit

PANEL SAYS JUDGE WENT TOO EASY ON TERRORIST

by John Pacenti
jpacenti@alm.com

In a split decision Monday challenging the sentencing discretion of federal judges, an appellate court tossed out a 17-year prison sentence for Jose Padilla, a Muslim convert who became the face of the early war against terror.

"Padilla's sentence is substantively unreasonable because it does not adequately reflect his criminal history, does not adequately account for his risk of recidivism, was based partly on an impermissible comparison to sentences imposed in other terrorism cases and was based in part on inappropriate factors," said Judge Joel F. Dubina, writing for the 2-1 majority, which included Judge William H. Pryor Jr.



Barkett

In dissent, Judge Rosemary Barkett said the appeals court substituted its decision for the trial judge, U.S. District Judge Marcia Cooke in Miami.

Padilla's sentence imposed in January 2008 was a blow to prosecutors who had sought a life term. His arrest in 2002 at Chicago's O'Hare International Airport was announced by then-U.S. Attorney General John Ashcroft, who publicly declared Padilla plotted to detonate a radiological "dirty bomb." His indictment did not include any such charges.



Cooke

Padilla, a U.S. citizen, was confined at the U.S. Navy base at Guantanamo, Cuba, as a material witness and an enemy combatant before his attorneys took his case to the U.S. Supreme Court, arguing he could not be detained without a charge. The Justice Department avoided the Supreme Court showdown by charging Padilla and two others in Miami with providing material support to terrorists. Padilla was moved to a Navy brig in South Carolina.

He was convicted along with Palestinian computer programmer Ahmad Amin Hassoun and engineer Kifah Wael Jayyousi, who were sentenced to 15 and 12 years, eight months, respectively.

The U.S. attorney's office in Miami had no comment on the decision, citing the order remanding the case for resentencing.

Assistant Federal Defender Michael Caruso, who



Jose Padilla's 17-year sentence in January 2008 was a blow to prosecutors who had sought a life term.

WHAT'S AT STAKE?

The sentencing of terrorist Jose Padilla versus the sentencing discretion federal district judges. The 11th U.S. Circuit Court of Appeals struck down Padilla's 17-year prison sentence, saying the Miami trial judge improperly discounted his criminal history and risk of recidivism. Criminal defense attorneys say the decision flies in the face of a U.S. Supreme Court decision that found federal sentencing guidelines are advisory, not mandatory.

was Padilla's trial attorney, indicated he would take the case to the U.S. Supreme Court, saying his office would seek a review based on Barkett's reasoning.

"We continue to believe that the government introduced improper evidence and violated Jose's rights," Caruso told the Daily Business Review in an e-mail. "Judge Cooke, who presided over Jose's case for years, imposed a fair and reasonable sentence."

Padilla's defense team objected to jurors seeing an

SEE PADILLA, PAGE A4

CIRCUIT COURT Coral Gables attorney wins case against Union Carbide

\$16.5 million awarded to asbestos plaintiff

by Jose Pagliery
jpagliery@alm.com

A Naples man diagnosed with a rare form of cancer and his wife have been awarded \$16.5 million, marking the latest win for an asbestos plaintiff.

Charles Garrison's two-week trial against Dow Chemical subsidiary Union Carbide ended with Broward Circuit Court jurors awarding him \$13.3 million and his wife, Cynthia, \$3.2 million. Garrison sued the company after doctors discovered a cancerous growth in his throat they attributed to asbestos exposure. In trial, the company questioned the assessments of Garrison's doctors.

Garrison's lawyer, Juan Bauta with the Ferraro Law Firm in Coral Gables, said his client was exposed to asbestos while remodeling his uncle's attic in New

Hampshire for four months in 1974. Health problems arose in 2009 when Garrison began having trouble swallowing. Garrison of Naples has received chemotherapy treatment for two years to battle mesothelioma, which Bauta said started in his lungs and spread.



Bauta

+ Bird partner Colin Kelly from Atlanta; Willcox & Savage member Bruce Bishop from Norfolk, Virginia; and Hartline Dacus Barger Dreyer lawyer Michael Terry from Corpus Christi, Texas.

Dow representatives did not respond to requests for comment by deadline. The company's defense team included lawyers from Georgia, Virginia and Texas: Alston



Read the complaint on
DailyBusinessReview.com

Circuit Judge John Murphy III presided over the case where jurors placed 80 percent of the blame on Union Carbide, reducing the \$20.6 million award. The rest was attributed to chemical manufacturer Georgia-Pacific, with whom Garrison settled last month for \$1.5 million, according to court documents.

During closing arguments, Bauta told jurors the companies' negligence hurt Garrison, 61, when he was a college student working with construction material for free room and board.

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FROM PAGE A3

ASBESTOS: Award is largest yet for Coral Gables attorney

"Did his uncle know that he was putting him at risk? Did Mr. Garrison know that? No. Nobody knew that. Nobody knew that except Georgia-Pacific and Union Carbide," Bauta said. "They knew but they had a tension — a tension between wanting to make money and selling a product that they knew was going to kill people."

The company maintained it was not at fault for Garrison's ill health, and its attorney defended the company's use of asbestos.

"We are a chemical company. We sell a number of products that are hazardous," Terry said. "Simply because the product is hazardous does not make it defective."

Bauta asked jurors to place 30 percent of the blame on Georgia-Pacific, the maker of joint wall compound, and the rest on the asbestos supplier, Union

Carbide.

Representing Union Carbide, Terry asked jurors to place the blame in reverse, hitting Georgia-Pacific with "at least 80 percent. They are the ones in charge, they are the ones making the call, they are the ones who decide to put it in, to take it out, and they are the ones who decide to warn or not to warn."

Union Carbide spokesman Scot Wheeler issued a statement Monday saying, "This verdict is grossly excessive and completely unsupported by the facts or applicable law." The company will ask the judge to set aside the verdict or appeal, he said.

The award is the largest so far for Bauta, who has completed two dozen asbestos trials.

Jose Pagliery can be reached at (305) 347-6648.

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EVENTS

Sept. 22

South Florida chapter of the Association of Corporate Counsel: In-house Counsel CLE Conference, 8 a.m., Marriott Hotel North, 6650 N. Andrews Ave., Fort Lauderdale. Cost: \$150 members, \$125 nonmembers. Email: rbrooke@associationsource.com.

Broward County Bar Association West

Broward: Luncheon with Judge Jeffrey Levenson speaking on topic: "Hot Topics in Criminal Law," 11:45 a.m., Plantation Preserve Golf Course, 7050 W. Broward Blvd., Plantation. Cost: \$25 before Sept. 22, \$30 at the door. Call (954) 764-8040.

Broward County Bar Association Young

Lawyers Section: Luncheon with Paula Black speaking on topic: "A Book of Business is ... Power," noon, Tower Club, 100 SE Third Ave., Fort Lauderdale. Cost: \$25. Call (954) 832-3618.

Association of South Florida Mediators & Arbitrators:

Educational event with Judge Linda Vitale speaking on topic: "Mediation — A Perspective from Both Sides of the Fence," 5:30 p.m., Tropical Acres Restaurant, 2500 Griffin Road, Fort Lauderdale. Cost: \$35 members, \$40 nonmembers, \$5 more at the door. Email: as-fma1@gmail.com.

ORT America: Jurisprudence Awards reception, 6 p.m., Jungle Island, Treetop Ballroom, 1111 Parrot Jungle Trail, Miami. Cost: \$85. Call (305) 416-7911.

South Florida Association of Litigation

Support Professionals: Dinner with Clayton Morehead, senior project manager of Ikon Office Solutions, 6 p.m., Sheraton Fort Lauderdale, 1825 Griffin Road, Dania Beach. Cost: \$30 members, \$40 nonmembers. Email: robert.friedman@friedmansmvr.com.

Wilkie D. Ferguson Jr. Bar Association: Fall Networking Mixer, 6 p.m., Mal Tardi, 163 NE 39th St., Miami. Free. Email: vpaschal@carltonfields.com.

Sept. 23

Dade County Bar Association Professionalism Committee: Ethics and Diversity seminar on "Ethics, iMedia & The Facebook Society: Flipping the Switch on your Career," 8:30 a.m., Hyatt Regency, 400 SE Second Ave., Miami. Cost: \$100 members, \$130 nonmembers. Call (305) 371-2220.

Dade County Bar Association: Membership luncheon, 11:30 a.m., Hyatt Regency Miami, 400 SE Second Ave., Miami. Cost: \$45 members, \$55 nonmembers, \$60 at the door. Call (305) 371-2220.

Sept. 24

Asian Pacific American Bar Association of South Florida: Mentoring social for attorneys

and law students, 4:30 p.m., Lucky Strike Lanes, 1691 Michigan Ave., Miami Beach. Free. Call (972) 890-6799.

Coral Gables Bar Association: President's Ball Installation Gala, 6:30 p.m., Coral Gables Country Club, 997 N. Greenway Drive, Coral Gables. Cost: \$125. Call (786) 533-1100.

Sept. 26

Broward County Bar Association Elder Law & Probate Law Sections: CLE Seminar on "Florida's New Power of Attorney Act," 3:30 p.m., Bar Association office, 1052 SE Third Ave., Fort Lauderdale. Cost: \$10 members, \$20 nonmembers. Call (954) 832-3618.

Sept. 27

South Florida Paralegal Association: CLAE seminar — "Social Media and the Paralegal," 8 a.m., Bankers Club, 2. S. Biscayne Blvd., Miami. Cost: \$125 members, \$150 nonmembers. Email: Lnottestad@gmail.com.

Bankruptcy Bar Association of the Southern District of Florida: Cocktails and dinner, 6 p.m., Four Seasons Hotel, 1435 Brickell Ave., Miami. Cost: \$65 members, \$75 nonmembers, \$55 government employees. Email: laura@bbasfdl.org.

Sept. 28

Palm Beach County Bar Association Intellectual Property Committee: Seminar on "Ethical Considerations to Avoid Common Pitfalls — Intellectual Property Issues that Affect your Client," 11:45 a.m., Bar office, 1601 Belvedere Road #302, West Palm Beach. Cost: \$45 members/paralegals, \$85 nonmembers/paralegals, \$15 more after Sept. 21. Call (561) 687-2800.

Sept. 29

'Second Chance' — Sealing and Expungement Program: 4 p.m., Sweet Home Missionary Baptist Church, 10701 SW 184th St., Miami. Free. Call (305) 547-0724.

Oct. 1

Dive Bar — Underwater Bar Association: Destination Dive, 11 a.m., Simonton Court, 320 Simonton St., Key West. Cost varies. Email: kim@thedivebar.org.

The League of Prosecutors: Justice Award Reception honoring Circuit Judge Scott Silverman and recognition of Circuit Judge Robert Pineiro, 7 p.m., Jungle Island, 1111 Parrot Jungle Trail, Miami. Cost: \$100 members, \$120 nonmembers. Email: aloza@orshanlaw.com.

Submit information about upcoming legal events to Deborah España at despana@alm.com.

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Reception: 6 p.m.
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