Friendly Passages

SUMMER 2018

A PUBLICATION OF THE FRIENDS OF THE RUPERT J. SMITH LAW LIBRARY IN ST. LUCIE, FL

SUPPORTING EQUAL ACCESS TO LAW IN FLORIDA

Welcome

James T. Walker
President
Friends of Rupert J. Smith Law Library

Welcome to Friendly Passages. Pull up a chair. Visit with the law for a little bit. Whether you are a lawyer or non-lawyer, there is something here you will find of interest. Warmest thanks are extended to our contributors. Amy Burns, Esq., Deputy Director, Florida Rural Legal Services, reminds us through the inspiring story of a 90 year old volunteer, Joseph R. Greco, Esq., that the law is "one of the three noble professions in service of others: doctor, lawyer, and clergy."

Sasha Bonna, Esq., practicing in Stuart, writes about the difficult task falling upon the law in balancing competing imperatives in domestic abuse as it balances the interests of victim and accused. Adrienne Naumann, Esq., nationally recognized expert in the field of intellectual property, provides an authoritative introduction to the new federal Defend Trade Secrets Act. Malinda Hayes, Esq., specializing in bankruptcy law, offers a learned discussion of bankruptcy's impact on residential properties. Amanda Forbes, with the Ephraim Projects, presents a detailed, knowledgeable look at the National Vaccine Injury Compensation Program (NVICP).

The Hon. Mark Klingensmith, Judge, 4th District Court of Appeal, acquaints readers with the new Fourth District Court of Appeal Courthouse in West Palm Beach, providing a fascinating tour of its features, including its display of a declaration of the law's proudest ideal: "Equal Before the Law."

"Equal Before the Law" is an ideal well-served by the Rupert J. Smith Law Library (RJSLL), through its mission of making knowledge of the law equally accessible to all, regardless of station in life. Nora Everlove, M.L.S., brings us the highly anticipated news that the RJSLL has expanded its footprint in south county with a new branch facility in Port St. Lucie. This expansion is additionally featured in an article on pg. 19, entitled "Are There Really Elephant Graveyards?" which highlights that the Port St. Lucie branch will be serving over 100,000 residents within a 5-mile radius.

There is a lot to absorb here. Please join us as we take this tour of the law.

Sincerely,

James T. Walker

James T. Walker, Esq.
President, Friends of the RJS Law Library

FRIENDS OF THE
Rupert J. Smith Law Library

We have forgotten the basic SOCIAL CONTRACT of rights and responsibilities that binds us together as a society • Society expects citizens to follow laws it has instituted in order to protect individuals and institutions • Without these laws there would be chaos—the strong would simply take everything they wanted and the rest would have no recourse • In return the social contract guarantees that if people follow these rules or responsibilities they will be guaranteed basic rights—life, liberty and the pursuit of happiness • A guarantee of life ensures they will have access to basic human needs of water, food and shelter needed to live and to support their family • Liberty involves the ability to engage in activities the individual wishes, as long as it does not violate the law • The pursuit of happiness is a guarantee that the laws are meant to be fair and provide an equal playing field for all members of society, so that through hard work and creative enterprise, all law-abiding citizens are free to strive to attain the wants and desires they believe will bring them happiness.

Robert Alan Silverstein

Mr. Silverstein's remarks summarize the essence of law, the rule of law, and the manner in which they intertwine with our democratic values comprising our way of life. It is what we celebrate on that one day of the year where the entire community is invited to briefly pause from the usual pursuits of daily life to reflect on the importance of law.

President Dwight Eisenhower formally declared on February 5, 1958, that henceforth May 1st would be known as Law Day. That was followed up three years later by Congressional adoption of a resolution, now codified at 36 USC sec. 113, which enshrined Law Day as the date to honor our country's commitment to "equality and justice under law." It is an ideal that county law libraries serve by assuring that all members of society enjoy equal access to the law and thus secure equal justice to all citizens through knowledge of their rights, remedies and obligations. That is the task that our Rupert J. Smith Law Library of St. Lucie County so proudly undertakes on the Treasure Coast.

Accordingly the Friends of the Rupert J. Smith Law Library (FRJSLL) annually, in cooperation and partnership with the law library Trustees, the St. Lucie County School Board and the St. Lucie County Bar Association, together with our sponsors, hosts a Law Day Reception and Art Contest. The purpose of this event is two-fold: first, to educate local residents on the importance of law to our way of life and to show them how the law library is available to all as a resource for accessing the law; and, second, to honor those young artists whose art work best exemplifies Law Day's them of justice, as established each year by the American Bar Association. The ABA's theme for 2018 was "Separation of Powers: Framework for Freedom."

PUBLISHER'S COMMENTS

This year's event convened on Tuesday, May 1, 2018, at the RJS Law Library's new south county branch location, housed in the county's Paula A. Lewis Branch Library, at 2950 SW Rosser Blvd., Port St. Lucie. Sponsorship support was gratefully acknowledged on the part of the SLCBA, Chris Searcy and Searcy, Denney, Scarola, Barnhart & Shipley, P.A.; Steve Hoskins and Hoskins, Turco, Lloyd and Lloyd, P.A.; Andrea O'Conner-Hall, Esq.; Kim Cunzo, Esq.; Jason Berger, Esq.; Margaret Reeder, Esq.; and Nora Everlove & Associates. Attendees included members of the local bar, students and their parents, and invited guests from the School Board, and local judiciary. Jim Walker and Carlos Wells served as dual Masters of Ceremony. The Hon. Mark Klingensmith, District Court Judge for the Fourth District Court of Appeals, delivered an exposition on the Pledge of Allegiance and opened proceedings with its invocation.

Hon. Mark Klingensmith

Allison Leffew, Then President of the St. Lucie County Bar Association, introduced our Keynote Speaker, John Stewart, incoming President of The Florida Bar. Mr. Stewart is a shareholder with the firm of Rossway, Swan, Tierney, Barry, Lacey, & Oliver, PL in Vero Beach. Being mindful of the many young students in his audience, Mr. Stewart provided a basic description of our constitutional form of government, and how it is divided into three co-equal branches of government, the legislative, executive and judicial branches. He further described their respective roles and interplay. There was emphasized their related, but separate areas of responsibility, and how each branch must be deferential to the other, while also being jealous of any effort by one branch to preempt the role of another. Reference was made to works of the Founding Fathers, notably James Madison, who provided for such separation of powers as a safeguard for our constitutional liberties.

John Stewart, Esq.

Two very special people were honored this year for their contributions to the rule of law on the Treasure Coast, Al Pigozzi and Sean Boyle. Each was introduced by an individual of sufficient stature so as fairly reflect the gravity and significance of the award. The Hon. Cynthia Cox provided an introduction to Mr. Pigozzi. Judge Cox, Circuit Court Judge, was identified as particularly suited for her role given her own ground-breaking, innovative leadership in helping to establish and nurture several criminal diversion programs, including Veterans Court, Mental Health Court and Drug Court.

Hon. Cynthia Cox

Mr. Pigozzi and his wife, Laurie, were recognized for their work with Plant A Seed Ministries. Judge Cox pointed out that they "started Plant A Seed Ministries back in the early 2000's to help those with addiction issues get their life together. It grew and (they) helped many people from the jail with nowhere to go, help the addicted and mentally ill get their lives together and have been instrumental in our criminal justice system and have put a dent in the needs of the homeless, impoverished, substance abuse and mentally ill individuals in the Circuit." Judge Cox noted that Plant A Seed Ministries maintains as many as thirteen or so residences, with a large, structured faith-based transitional living program. She referred to the many who attribute the Pigozzi ministry to changes in their lives, which permit them to stay off of drugs or alcohol, and out of jail.

Mr. Al Pigozzi, Honoree

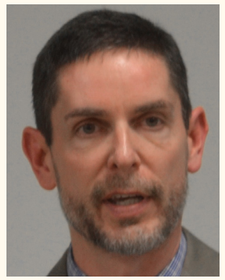
The Hon. Charles Schwab, Circuit Court Judge, introduced Sean Boyle. Judge Schwab himself works extensively with many charitable NGO causes. He is the Chair of the Board of Trustees for the RJS Law Library. In 2017 he received the 19th Judicial Circuit Pro-Bono Outstanding Service Award.

Sean Boyle, who was originally nominated by Kim Cunzo, was honored for his work as Executive Director for the St. Lucie County Children's Services Council, Our County's CSC is one of only eight such organizations in the entire country. Judge Schwab pointed out that Mr. Boyle joined the Council in 2010. The Council was organized in 1990 and works with and funds fifty community programs that provides services to over 40,000 children and their families in St. Lucie County. The breadth of its involvement on behalf of young people is clear when it is understood that there are fewer than 70,000 children in the county altogether. Its services fall within five categories: making sure every baby is a healthy baby; stopping child abuse before it happens; keeping kids off the streets; keeping kids in schools; and keeping kids off drugs, alcohol and other risky behaviors.

Hon. Charles Schwab

Mr. Boyle has himself been directly involved with all aspects of the various programs. Also honored were St. Lucie county school

ART CONTEST WINNERS



Mr. Sean Boyle, Honoree

students, with eligibility extending to all students in public as well as private schools. They compete in an annual Law Day Poster Board Art Contest, chaired and overseen by Kim Cunzo, Esq., a member of the Board of Directors for Friends,to see who can best express the ABA's theme for Law Day. The award ceremony was presided over by Carlos Wells, Esq., another Director for Friends. He welcomed Ms. Donna Mills, Chair of the county Board of Education, who formally introduced Mr. Wayne Gent, County Superintendant of Schools. Mr. Gent actually presented the awards, with assistance from Ms. Cunzo.

Mr. Gent prefaced his presentation with remarks directed to the relationship which exists between law and education. He then kindly conferred the cash awards, on behalf of Friends, upon those students whose submissions best embodied the "Separation of Powers" theme for Law Day. Those students honored were (K-2nd grade) in first place, Olivia Drawdy, in second place, Aria Croce, and, in third place, Isabella Almandarez. In elementary school (3rd – 5th), the first place winner was Jamaris Shelton. Second place went to Gabriella Albritton, while the third place winner was Annabella Hall. In the Middle School category, Ariana Borland won first place. Magan Doe secured second place, and Allyson Navarrete was awarded third place. The High School winner's circle included Anywn Bueno, first place, Mikayla Vega, second place winner, and Anywn Bueno, in third place. All three high school winners came from Lincoln Park Academy, which has traditionally dominated that category.

Ms. Donna Mills

In addition to those participants named above, there were others whose contributions were important to the success of our 2018 Law Day Event. They included the photographers and videographers provided by both the school board and Indian River State College. There were our extraordinary Directors who helped with everything from greeting attendees, serving refreshments, and assisting with planning the ceremonies months in advance, including Nora Everlove, Kim Cunzo, Carolyn Fabrizio, Andrea O'Conner-Hall, Deborah Fromang, George Metcalf, Steve Hoskins, Carlos Wells and Jim Walker. Also to be most respectfully acknowledged and thanked are Tom Genung, Court Administrator, who provided easels for intended display of the art works and who allows posting of our student submittals in the downtown Fort Pierce Courthouse, as well as Kerry Padrick, Chief Communications Officer for the St. Lucie Schools, for assisting in disseminating awareness of the event to local students, and who makes sure everything goes smoothly.

Mr. Wayne Gent

In conclusion, there is recalled a series of questions once posed by one Bernhard Schlink: "What is law? Is it what is on the books, or what is actually enacted and obeyed in a society? Or is it what must be enacted and obeyed, whether or not it is on the books, if things are to go right?" Law Day teaches us to recognize Law in this latter sense, as something that is necessary "if things are to go right." It is the element that binds all of us together in peace and harmony while nevertheless allowing each of us simultaneously to chart our own independent course in life, leading to our own chosen destinies. Friends was privileged to participate in serving that noble ideal and, once again, thanks to the many organizations and individuals which and who came together to make this possible. None express it so well as William Shakespeare: "Thank you and thank you."

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A publication of The Friends of the Rupert J. Smith Law Library in Port St. Lucie Florida, published since September 2011 for the purpose of promoting intelligent education of the Bar and general public about Law as a basis for growth of justice and the common welfare, while combatting the indifference which might hinder such growth.

Credits

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There is gratefully acknowledged the sponsorship and support of Florida Rural Legal Services, Inc., Indian River State College, and the design students of Walt Hines, Associate Professor.

The Rupert J. Smith Law Library Opens in Port St. Lucie

BY NORA J. EVERLOVE

The Board of Trustees for the Rupert J. Smith Law Library is pleased to announce that a new South County Branch of the Law Library opened on November 1, 2017. Five years in the making, the new law library is located within the new Paula Lewis branch of the public library in Port St. Lucie at 2950 SW Rosser Blvd.

The South County Branch is open to the public twenty hours per week but available to all bar members after hours via special access by key card. Please request your key card if you would like to use the library after hours. We will make the same services available in PSL that are available in Fort Pierce including public outreach programs such as the legal clinic designed to help the public. Although the collection is primarily electronic, there are basic Florida materials available in print.

Both libraries, the South County Branch and the main library in Fort Pierce, have brand new computers and photocopiers that are faster and more powerful. Come check it out!

NORA J. EVERLOVE

Nora J. Everlove has a B.A. and an M.L.S. from the University of South Florida. Her career as a law librarian started in high school as a library clerk at the Pinellas County Law Library almost 50 years ago. Nora has been a contract law librarian and owner of Everlove & Associates, Inc. since 1971 and the St. Lucie County Law Librarian since 1991. Over the years, Nora and her staff have worked for hundreds of Florida law firms of all sizes and six county law libraries on a part-time basis and full-time basis. No one has ever loved their work more!

RUPERT J. SMITH

SAFETY FOR VICTIMS OR PROTECTION FOR THEIR ABUSERS

BY SASHA DADAN BONNA

Every year on the Treasure Coast hundreds of petitions for injunctions are filed alleging domestic violence, sexual violence, dating violence, repeat violence, stalking and cyberstalking. Once a petition is filed it is immediately sent to a judge for review who must then determine whether to issue a temporary injunction, set the matter for hearing or dismiss the case before a hearing can be set. Often times the allegations in these petitions are unverified and defaming to the respondent. The contents of these petitions are public records, but new legislation denies access to the public and safeguards the respondent's reputation.

Nowadays, employers, family members, and intimate partners are turning to the internet to conduct background checks only to find that their loved ones or soon to be employees are alleged to have committed an act of violence against another. As a result, the applicant is deemed unhireable or their relationship status quickly deteriorates.

Prior to July 1, 2017, the contents of a petition for injunction could be obtained pursuant to Section 119.07(1), which guarantees every person the right to inspect and copy any state, county, or municipal record unless exempt.

HB 239 was created to protect the respondent. The enactment of HB 239 created an exemption under 119.0714(1)(k), Florida Statutes, which provides that a petition and contents of a petition, for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or a lack of jurisdiction, or is dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued after July 1, 2017 is exempt from public records Under Section 119.07(1), Florida Statutes.

If the petition was dismissed prior to July 1, 2017, the respondent can request that the record by exempt from the public. The request would have to be in writing specifying the case number, case name, document heading and page number. The request must be delivered by mail, fax, electronic transmission, or in person to the clerk of court. A fee may not be charged for the removal.

Once the petition is dismissed the respondent will not receive notification that the petition was filed nor will he or she be able to access the petition's contents. Although, the respondent benefits tremendously by the enactment of HB 239, the petitioner too can be at ease knowing that the respondent never knew they sought an injunction which may avoid potential retaliation by the respondent.

Petitions for injunctions are made available in each county upon request and on the Florida Supreme Court website. The clerk cannot charge a filing fee. SafeSpace a nonprofit organization located in Martin County has attorneys on staff to help victims of domestic violence file their injunctions at no cost. For more information contact 772-288-7023.

SASHA DADAN BONNA

Sasha Dadan Bonna earned her bachelor's degree from Florida Atlantic University and her law degree from Florida A&M University College of Law. She is the owner of Dadan Bonna Law, PLLC and dedicates her practice to criminal law, family law, and personal injury matters. Sasha is a member of the Martin County Bar Association and Florida Association of Women Lawyers. She is Vice President of the Sexual Assault Response Team in Martin County, a former board member of Children's Emergency Resources of Martin County, and former Chair of Lady Lawyers Lunch of Martin County. She resides on the Treasure Coast of Florida.

At long last, the Fourth District Court of Appeal has a new home

BY THE HONORABLE MARK KLINGENSMITH

On January 2, 2018, the court officially relocated to its new building situated between Clematis Street and Datura Street on Tamarind Avenue in West Palm Beach. This ended a three-year planning and construction process largely overseen by Chief Judge Jonathan Gerber, punctuated by a Grand Opening Celebration that took place on January 5, 2018.

The court was originally located in Vero Beach until its relocation to the familiar "red brick building" on Palm Beach Lakes Boulevard in West Palm Beach in 1970. As many people know, a mold infestation forced the courthouse's closure for a short time back in 2013. After it reopened, dehumidifiers had to be run 24/7 in the building to prevent its reoccurrence. Although the most acute issues were eventually remediated, a review of the building also revealed structural problems that made future repairs inevitable. When coupled with ongoing maintenance and security concerns, this meant that the old building was effectively unsalvageable. If the court was to stay at its location, it would need to be rebuilt from the ground up.

Faced with many difficult and immediate choices, and a Legislature wary about funding new courthouse projects, Judge Gerber came up with a relocation plan that would prove to be a win-win-win for all the stakeholders.

First, rather than buy a parcel on the open market, the court could use property that was already owned by the state. Property meeting the court's size and location needs was found adjacent to the Palm Beach County Health Department and the State Regional Service Center across from the West Palm Beach Tri-Rail station. This vacant lot was being used by the Health Department and seven executive branch agencies for parking.

Second, bringing the courthouse to the downtown area near both the Palm Beach County and Federal courthouses could provide an economic boost to the city by bringing more activity to restaurants and other businesses in the area. The city could further its goal of becoming more mass-transit friendly by locating the court across the street from the restored Tri-Rail station and mere blocks from the Brightline depot. And, a new courthouse might generate added interest to the downtown area by attracting new businesses and construction.

Finally, the court's move would obviously benefit the Fourth DCA by upgrading its facilities using 21st century technology, and provide a safe environment for court employees who had been working in an old, moldy building that had begun to show its age in recent

years. Approving a new building would also eliminate the significant expense already being incurred for the patchwork maintenance keeping the dilapidated building functioning.

After getting the green-light for the plan from the Florida Supreme Court, Judge Gerber worked tirelessly along with Senate President Joe Negron and persuaded lawmakers to allocate the needed money for construction of the new courthouse, with the city of West Palm Beach also contributing additional funding for various other improvements.

Finally, on May 26, 2016, Judge Gerber's dream started to become reality when the court broke ground at the construction site that would soon be home to both a new courthouse as well as a 338-space garage to be shared with the Health Department and the seven executive branch agencies.

After eighteen months of actual construction time, and with various delays occasioned by unexpected events that included a hurricane, the new classically-styled building designed by Jacksonville architect Thomas Rensing and built by Weitz Construction was finished—on time, and within budget.

Anyone who has been to this new courthouse can tell you it is dramatically different from the old one. It stands three stories tall and houses 40,495 square feet of space— roughly the same size as the old courthouse, but with space that is more efficiently used. It was also constructed with an eye toward the future; although 12 judges and 70 staffers now work in the courthouse, it was built with the capability of expanding to 100 employees should the future need arise during its expected lifespan of 50 years and beyond.


THE FOURTH DISTRICT COURT OF APPEAL COURTROOM IN WEST PALM BEACH

Because the Fourth DCA now operates in an almost paperless environment, the stacks of papers previously found in the clerk's office are mostly gone. Instead of a library lined with walls of books, that space is now utilized as a multi-purpose room capable of accommodating several meetings at once. Another welcomed addition to the building are the attorney conference rooms where lawyers can meet privately with their clients while at the court for oral arguments.

There is also a markedly different feel when you arrive at the new building. The difference is immediately evident when you walk up the six outdoor steps for the first time past the three-story columns, and under the large pediment that provides the signature look for the building. Visitors to the court enter through the front doors of the building and into a large glass-fronted lobby that faces the train station. Two of the most striking features of the lobby are the large original paintings by local artist Jackie Brice, flanking each side of the courtroom entrance; one titled "Midday in the Everglades," and the other "Early Evening on the Loxahatchee River," a tribute to the northern and southern ends of the Fourth District.

The courtroom in the new building is much larger than the old one, with greater seating capacity, and better and brighter contemporary lighting. In the old Fourth DCA courtroom, only the portraits of deceased judges of the court were displayed; other portraits were hung either in the lawyer's lounge or out of public view in the interior hallways near the judicial chambers. In the new courthouse, the court celebrates its history by making all these portraits visible to the public by placing them on the walls of the courtroom.

Out of the many finishing touches that provide this magnificent edifice with its character, one small detail may also be its most significant. Above the doorway leading into the courtroom, the Fourth District Court of Appeal visibly and permanently affirms its commitment to the guiding principle of the judicial system, prominently placing there the words "Equal Before The Law."

Chief Judge Gerber said it best on the day of the Grand Opening: "It is not our move into this new building that is significant; it is our adherence to that principle, stated in Article I, sec. 2 of the Florida Constitution, that is truly important and which will stand the test of time."


HON. MARK KLINGENSMITH

The Honorable Mark Klingensmith received his J.D. in 1985, from the University of Florida and his LL.M., in 2016, from Duke University. Judge Klingensmith is a judge on Florida's Fourth District Court of Appeal, previously serving as a Circuit Court Judge in the Nineteenth Judicial Circuit.

He is a member of The Florida Bar, the Martin County Bar Association, and the St. Lucie County Bar Association. He was also Florida Bar Board Certified in Civil Trial Law, and AV-rated by Martindale-Hubbell.

Are There Really Elephant Graveyards?

BY JAMES T. WALKER

"Humans love a good treasure story; throughout Europe and the Americas, treasure seekers tell tales of the legendary El Dorado, or city of gold. In parts of Asia and Africa, these tales tell of a mythical elephant graveyard where valuable ivory lies just waiting to be found. According to legend, the elephant knows when the end is near. Rather than trying to stick with the herd and potentially slowing them down, the elephant heads for the elephant graveyard. Here he can not only die in peace, but his descendants can easily find him."

-- Turner, Bambi, HowStuffWorks (online)

There is only one Law Library Left in the Nineteenth Circuit - the Rupert J. Smith Law Library of St. Lucie County!

Twice in recent years, county law libraries here in the Nineteenth Judicial Circuit have beenretired to the Elephant Graveyard, one in Indian River County and another in Martin County. Their remains, for those interested in inspecting the skeletal remnants of what is left, may be found in the general public libraries of those counties.

County law libraries are an endangered species. Only one is now left in the Nineteenth Judicial Circuit, the Rupert J. Smith Law Library of St. Lucie County. Officially, the Florida Commission on Access to Civil Justice reports that thirty remain in Florida. Many, if not most, of those however, are law libraries in name only. At the most recent annual statewide conference of the Florida State Court and County Law Libraries Association, only ten librarians were in attendance. When a law library is closed, it is not usually closed formally. Instead, it is "moved" from its customary location in or near the county courthouse and transferred to the general public library, to a place of peaceful interment.

For those legal professionals and members of the public who might otherwise need the resources of a law library, that is the end of its functional relevance. It loses its identity as a law library. The personnel aren't moved over. It is no longer independently administered. It is merged into the management responsibilities of the general library, which has competing interests. The law library's collection doesn't go over to the general library. The general library has issues of its own with space, and has no room to house the legal collection. Instead, two or three bays of randomly selected books may be designated as the new site of the "law library." The general library is not itself flush with funds. It cannot afford the cost of keeping any print collection of legal materials current. Nor can the general library afford to provide law librarians to staff the location and to assist users. Law libraries have law librarians, trained individuals, many times lawyers or law school graduates, who know what online and print resources, are necessary for research purposes, who understand how to use such resources and who can guide lay individuals in such use. The general public library has neither the interest nor the ability to furnish help of that sort. Thus, in Indian River County, for instance, where the law library is officially housed in the general public library, when someone shows up asking for help in locating the answer to a legal question, he or she is given a form directing that the inquirer travel to St. Lucie County's law library where help can be obtained from one of the librarians at the Rupert J. Smith Law Library.

But in what may be a first nationwide, the Rupert J. Smith Law Library created a satellite facility in a general public library that is keeping its identity as a law library. The new location is an experiment in maximizing the availability of legal resources for the residents of the county.The initiative is driven by the county's changing demographics. Over the past several decades, the population of the City of Fort Pierce, has held more or less steady at 40,000 residents. That is where the county's primary administrative and judicial facilities are located, including the RJSLL. Contrast this with the experience at the south end of the county. In the 1950s, that area was an uninhabited ranch. General Development Corp. bought the River Park Development area, consisting of 40,000 acres along the North Fork of the St. Lucie River. In 1961 there were 250 homes there. Now, according to the State's recent population estimate in 2013, there are 179,413 people living in the area, incorporated as the City of Port St. Lucie. In terms of population, Port St. Lucie is bigger than the City of Fort Lauderdale. That growth looks set to continue. NBC, for example, projects that Port St. Lucie will be among ten population centers in the country expected to grow by more than 80% between 2005 and 2025. Such growth challenges the county to provide the infrastructure necessary to service this population base, including provision of library facilities. With this in mind, several years ago the county purchased from Port St. Lucie a building located on Rosser Road, which used to house a police substation. The building was renovated as the Paula A. Lewis Branch Library. The branch library is intended to serve the 100,000 people who live within a 5 mile radius of it.

The Trustees for the RJSLL approached the county and proposed that a branch of the law library, too, be housed there. The County Commissioners and the RJS Law Library, an independent special district of the State, entered into an agreement whereby the Trustees agreed to contribute $30,000 to the cost of renovation. In exchange, a branch of the law library would be housed in the new general library. The south county law library space is 800 sq. ft. It is staffed with a part-time law librarian, whose schedule will include "after hours" and several hours on Saturday. A separate entrance to the outside permits lawyers to access the facility for after-hours emergency legal research purposes. In addition to several computer terminals accessing Westlaw, there is a basic Florida print collection including Florida Statutes Annotated, Florida Digest 2nd, Florida Jurisprudence, and Florida Case Reports. There are various Florida Bar, pro se and specialty manuals and hornbooks available for both lawyers and the general public. A conference room is available for exclusive use of law library users when the facility is staffed. The ribbon cutting ceremony for the new library complex took place on October 24, 2017. The south county branch law library for the Rupert J. Smith Law Library is now officially open to the public.

RJSLL

The RJSLL branch library is intended to serve the 100,000 people who live within a 5 mile radius.

One of the proudest ideals of American law is that all who approach the bar of justice are welcome on equal terms, without regard to station in life, with none to be accorded greater status or dignity than another, the rights of each to be governed according to the Rule of Law. Such equality of justice is without meaning unless all residents enjoy equal access to the law, each with opportunity to acquire the same knowledge regarding the rights, responsibilities and obligations that every individual within the community is subject to. Our freedom depends on it. On the walls of the Rupert J. Smith Law Library are the engraved words of James Madison who, in a letter to one W.T. Barry on August 4, 1822, wrote: "A popular government, without popular information, or the means of acquiring it is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power which knowledge gives." The RJS Law Library is one of a diminishing number of facilities which carries that tradition forward on behalf of its county residents. So long as such resources are available to the public, there need never be fear for the future of our republican form of government.

JAMES T. WALKER

James T. Walker is a shareholder in Hayskar, Walker, Schwerer, Dundas & McCain, P.A., a Fort Pierce law firm. He joined the firm in 1979. He was twice elected as President of the St. Lucie County Bar Association. He has served as a Trustee for the Rupert J. Smith Law Library since 1982. He is married to Barbara E. Walker, and they have two grown daughters.

Can Bankruptcy Save Your Client's Income Producing Residence?

BY MALINDA HAYES

NAVIGATING THE ANTI-MODIFICATION PROVISIONS OF THE BANKRUPTCY CODE.

For most people, the word "bankruptcy" calls to mind liquidation of assets. Throw in the towel, lose it all and walk away. However, chapters 11, 12 and 13 of the Bankruptcy Code all allow individuals to restructure their debts, reduce monthly payments, and frequently, to save properties that are at risk of being foreclosed.

Chapter 12 is the most unique chapter, available only to family farmers and fishermen, but it provides the greatest ability to modify loans secured by real property. This chapter is designed to save the family farm, and for that reason it is the only reorganization chapter that allows modification of the debtor's home mortgage without any of the restrictions found in chapters 11 and 13. The versatility of chapter 12 makes it an ideal solution for financially strained farmers and fishermen.[1]

Most individuals who can benefit from the loan modification options available in bankruptcy will qualify for chapter 11 or 13, depending on the size of their debts. Chapters 11 and 13 both permit modification of loans secured by commercial real property or residential property used for investment purposes. Conversely, both chapters prohibit the modification of loans secured by the debtor's homestead in almost identical provisions. 11 U.S.C. § 1123(b)(5) and its counter-part § 1322(b)(2), prevent an individual debtor from modifying "a claim secured only by a security interest in real property that is the debtor's principal residence."

This prohibition seems out of sync with the purpose of the reorganization chapters, particularly chapter 13, a central purpose of which is "to allow individual debtors to save their homes."[2] In fact, many people chose to file bankruptcy because they want to save their homes from foreclosure. Several mechanisms are available to debtors in this situation, despite the anti-modification rules. Mortgages that are fully unsecured – meaning junior liens that are not supported by ANY equity in the property – can be removed from a debtor's property.[3] This type of assistance is most helpful to debtors with a HELOC, tax liens, or Association liens on their properties, but it is only available if the value of the property is less than the first mortgage.

When the problem IS the first mortgage, which is subject to the anti-modification provision, there are still a few options. A debtor can "maintain and cure" arrears over the life of the chapter 13 plan. That means they must pay their regular mortgage payment, plus pay off the arrears on the loan over the five-year life of their plan. The lender cannot object to this treatment and it is an absolute right. If a debtor seeks assistance early enough – before the arrears are too large to cure – this can be a good option.

Another way the Code helps is by allowing mortgages that either matured pre-petition or will mature during the five-year plan, to be restructured and repaid in equal monthly installments over the life of the plan. This is useful when the debtor has a HELOC, reverse mortgage, or other small mortgage that is small enough that they can afford to repay the entire amount due over five years. Some judges will allow a balloon payment at the end of the plan, but most require that the full amount of the debt be paid in equal monthly installments.

1 Chapter 12 eligibility is not limited only to individuals. It is available to incorporated businesses who derive the majority of their income from farming, aquaculture and commercial fishing operations. Eligibility is subject to debt limits and other restrictions, but for those who qualify, it is the best tool available to solve financial distress.
2 In re Scantling, 465 B.R. 671, 682 (Bankr. M.D. Fla. 2012).
3 See, e.g. In re Tanner, 217 F.3d 1357 (11th Cir. 2000).

Finally, the most commonly used tool is the Mortgage Modification Mediation ("MMM") program. Although a lender cannot be forced to modify a plan without their consent, the MMM program greatly increases the odds of a modification being approved by creating structure, transparency, and accountability to the lending process. The program is supervised by the courts and lenders are required to consider modifications in good faith.

But what if the property at issue is more than just the Debtor's primary residence? What if the home also serves as the site for the family business, is a duplex, or a motel? What if the building is a commercial building, like a warehouse or office building, and the debtor also resides in the property? In situations where the debtor's home is not only his or her residence, but also serves an investment purpose, the analysis becomes significantly more complex.

On the heels of the real estate crash, a number of real estate investors filed for chapter 11 relief to restructure debt on numerous properties they had bought to lease or sell. Some of these investors ended up living in expensive homes that they had bought for investment purposes, intending to reside in them for a short time, and then to flip or lease them for extra income. With the economic downturn, many of these investors were stuck with over-leveraged homes, burdened with the weight of numerous properties that didn't generate enough income to cover their costs. Chapter 11 provided these investors with a way out by reducing the principal balance down to the property value, and then modifying the loan terms to reach affordable payments. This was very effective, except for situations where the debtors were using one of the investment properties as their residence at the time of filing. A perfect example being that of an owner living in a multi-unit dwelling – a duplex or other property with multiple single-family units on the same lot – where the owner lives in one unit and leases the others.

While the majority of Courts would allow modification under these circumstances, the case law is inconsistent and rapidly evolving. Judicial construction of the statutory prohibition in this context generally falls along one of three lines: 1) a bright line test absolutely allowing modification of a lien where the collateral is not only the debtor's primary residence, but is also used to produce income; 2) a bright line test absolutely prohibiting modification of a lien if the collateral is real property that is also the debtor's primary residence, without regard to any other use of the property; and 3) a case-by-case approach, examining the totality of the circumstances – with much emphasis placed on the parties' intent in entering into the loan transaction.

Most courts, including the First and the Third Circuit Courts of Appeal, have taken the position that "a mortgage secured by property that includes, in addition to the debtor's principal residence, other income-producing rental property is secured by real property other than the debtor's principal residence and, thus, that modification of the mortgage is permitted."[4] Many courts have held that a claim secured by property which has "some inherent income-producing power" is not protected by § 1322(b)(2), even when the debtor resides on some portion of the property.[5]

4 In re Scarborough, 461 F.3d 406, 408 (3d Cir. 2006); See also Lomas Mortg., Inc. v. Louis, 82 F.3d 1, 6 (1st Cir. 1996); In re Moorer, 544 B.R. 702, 705-06 (Bankr. M.D. Ala. (2016); In re Abrego, 506 B.R. 509 (Bankr. N.D. Ill. 2014); In re Lopez, 511 B.R. 517, 519 (Bankr. N.D. Ill. 2014); In re Moore, 441 B.R. 732, 740-41 (Bankr. N.D.N.Y 2010); In re Bulson, 327 B.R. 830, 845-46 (Bankr. W.D. Mich. 2005); In re Kimbell, 247 B.R. 35, 37–38 (Bankr. W.D.N.Y. 2000) (denying modification protection for a mortgage secured by a multi-family structure where the Debtor lived in only one of the units and used the others for rental income); Adebanjo v. Dime Sav. Bank of N.Y., FSB (In re Adebanjo), 165 B.R. 98, 103–04 (Bankr. D. Conn. 1994); In re Ramirez, 62 B.R. 668, 669-70 (Bankr. S.D. Cal. 1986) (determining that, because the debtor's property generated income as a rental property, in addition to being the debtor's residence, the mortgage on the property was modifiable).
5 In re Adebanjo, 165 B.R. 98, 103 (Bankr. D. Conn. 1994).

Can Bankruptcy Save Your Client's Income Producing Residence?

This result is supported by the plain language of § 1123(b)(5) and § 1322(b)(2), as enumerated by the Third Circuit and in numerous bankruptcy opinions.

> That subsection protects claims secured only by a security interest in real property that is the debtor's principal residence, not real property that includes or contains the debtor's principal residence, and not real property on which the debtor resides. The terms "real property" and "principal residence" are thus equated, suggesting that real property which is designed to serve as the principal residence not only for the debtor's family but for other families is not encompassed by the clause. Had Congress intended the protections of § 1322(b)(2) to apply to property which serves as both the debtor's residence and as income-producing rental property, it would have employed words to effect that result.[4]

While the Eleventh Circuit has no established precedent, two Courts in the Southern District of Florida have ruled on this issue, both adopting the totality of the circumstances test to determine whether a debtor may modify a loan on a multi-unit property that also serves as the debtor's residence. 1.) Judges Olson and Ray favor this middle of the road approach, focusing on the intention of the parties at the time they entered into the transaction. 2.) Under very similar fact patterns, involving a duplex, with the debtor residing in one-half of the property while renting the other half to a third party, both judges found in favor of modification, rejecting the bright line approaches in favor of a totality of the circumstances test while focusing on the parties' intent in entering into the transactions.

> The Court must focus on the predominant character of the transaction, and what the lender bargained to be within the scope of its lien. If the transaction was predominantly viewed by the parties as a loan transaction to provide the borrower with a residence, then the antimodification provision will apply. If, on the other hand, the transaction was viewed by the parties as predominantly a commercial loan transaction, then stripdown will be available. Such ruling serves the Congressional intent of encouraging home mortgage lending, as illuminated by the Supreme Court in Nobelman.[5]

Although the lenders argued that modification should be denied under the totality of the circumstances test because the mortgages contained a requirement that the debtors use the property as their primary residence, Judges Ray and Olson found that the 1–4 Family Rider attached to the mortgages explicitly deleted the owner-occupancy requirement. Relying on this provision of the mortgage documents as evidence of the parties' intent that the lenders never required the debtors to occupy the property at all, the Courts determined that "the predominant character of this transaction cannot be 'predominantly viewed by the parties as a loan transaction to provide the borrower with a residence.'" 3.) The debtors were allowed to modify their mortgages despite occupying one of the two units on the property.

The same result is not typically reached where the debtor's home is a single-family residence that is also used for business purposes. Judge Glenn of the Middle district, and Judge Cristol of the Southern District have declined to allow modification of a loan secured by a single-family home that was also used for business purpose.[6]

4 Zaldivar at 390 (citing In re Brunson, 201 B.R. 351, (Bankr.W.D.N.Y. 1996)).
5 Id. at 391 (citing Brunson, 201 B.R. 351, 354 (Bankr. W.D.N.Y. 1996)).
6 In re Cady, No. 3:14-bk-3817-PMG (Bankr. M.D. Fla. Jan. 27, 2015a); In Re Kendle, No. 09-17611-BKC-AJC, 2012 WL 5723088 (Bankr. S.D. Fla. Nov. 15, 2012).
7 Although both Florida cases deal with § 1322(b)(2), the chapter 13 provision is the mirror image of the chapter 11 limitation, and legislative history clearly shows the two statutes are meant to be identical. See Lomas Mortg., Inc. v. Louis, 82 F.3d 1, 6-7 (1st Cir. 1996).
8 In re Ramirez, No. 13-20891-AJC, 2014 WL 1466212, at *1 (Bankr. S.D. Fla. Apr. 7, 2014); In re Zaldivar, 441 B.R. 389, 390-91 (Bankr. S.D. Fla. 2011).
9 Zaldivar at 390 (citing In re Brunson, 201 B.R. 351, (Bankr.W.D.N.Y. 1996)).
10 Id. at 391 (citing Brunson, 201 B.R. 351, 354 (Bankr. W.D.N.Y. 1996)).
11 In re Cady, No. 3:14-bk-3817-PMG (Bankr. M.D. Fla. Jan. 27, 2015); In Re Kendle, No. 09-17611-BKC-AJC, 2012 WL 5723088 (Bankr. S.D. Fla. Nov. 15, 2012).
12 In re Wages, 508 B.R. 161 (B.A.P. 9th Cir. 2014); In re Brooks, 550 B.R. 19, 25 (Bankr. W.D.N.Y. 2016).

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National Vaccine Injury Compensation Program (NVICP) "Vaccine Court" & Its Effectiveness

BY AMANDA FORBES

NVICP

This article will examine what the National Vaccine Injury Compensation Program is, and analyze its effectiveness for current and potential plaintiffs. Part I explains what the National Vaccine Injury Compensation Program is as well as explaining the current procedure for bringing a cause of action using this program. Part II assesses the effectiveness of the "Vaccine Court" also known as the U.S Vaccine Injury Compensation Court. Part III delves into proposed solutions to the current issues with the National Vaccine Injury Compensation Program.

I. WHAT IS THE NATIONAL VACCINE INJURY COMPENSATION PROGRAM?

A. How to bring an action in Vaccine Court

A vaccine injury or death claim starts by the petitioner filing a petition containing information required in 42 USCA § 300aa-11(c) with the U.S Court of Federal Claims after service to the Secretary of Health and Human Services. The case is then assigned to what is called a "special master." This special master is the fact finder for the case. Special masters then determine if there is an injury and if there is evidence presented in the record that demonstrates a causal link under the National Childhood V accine Injury Act. This determination made by the special master usually occurs only when there is an intense disagreement between qualified medical experts that have analyzed the case facts. Special masters are prohibited from diagnosing alleged vaccine injuries. They may, however, select from the given diagnoses for an asserted vaccine injury when: "(1) the petitioner presents diagnoses of the alleged vaccine injury; (2) the experts have "extreme disagreement" as to the malady suffered; and (3) the diagnoses are not along a continuum of similar conditions." When there is no link between the injuries and a vaccine, the petitioner has the burden of proof to demonstrate the presence of at least one recognized and documented vaccine injury.

The requirements of a petition to receive compensation under the National Childhood Vaccine Injury Act are detailed in 42 U.S.C.A. § 300aa-11(c)(1) In relevant part, a petition for compensation under the Program for a vaccine-related injury or death shall contain--
(1) except as provided in paragraph (3), an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died--
(A) received a vaccine set forth in the Vaccine Injury Table or, if such person did not receive such a vaccine, contracted polio, directly or indirectly, from another person who received an oral polio vaccine,
(B)(i) if such person received a vaccine set forth in the Vaccine Injury Table--
(I) received the vaccine in the United States or in its trust territories,
(II) received the vaccine outside the United States or a trust territory and at the time of the vaccination such person was a citizen of the United States serving abroad as a member of the Armed Forces or otherwise as an employee of the United States or a dependent of such a citizen, or
(III) received the vaccine outside the United States or a trust territory and the vaccine was manufactured by a vaccine manufacturer located in the United States and such person returned to the United States not later than 6 months after the date of the vaccination,
(ii) if such person did not receive such a vaccine but contracted polio from another person who received an oral polio vaccine, was a citizen of the United States or a dependent of such a citizen,
(C)(i) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table in association with the vaccine referred to in subparagraph (A) or died from the administration of such vaccine, and the first symptom or manifestation of the onset or of the significant aggravation of any such illness, disability, injury, or condition or the death occurred within the time period after vaccine administration set forth in the Vaccine Injury Table, or
(ii)(I) sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by a vaccine referred to in subparagraph (A), or (II) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine referred to in subparagraph (A),
(D)(i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 6 months after the administration of the vaccine, or (ii) died from the administration of the vaccine, or (iii) suffered such illness, disability,

injury, or condition from the vaccine which resulted in an inpatient hospitalization and surgical intervention, and
(E) has not previously collected an award or settlement of a civil action for damages for such vaccine-related injury or death,
(2) must include all maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre-injury and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results, and
(3) an identification of any records of the type which are unavailable to the petitioner and the reasons for their unavailability.

If a claim is proven to be a vaccine-related injury, the case must be filed in compliance with the National Vaccine Injury Compensation Program. On the other hand, if the claim is not proven to be a vaccine-related injury, it does not need to be in compliance with Program procedures and is free to pursue other causes of action.

B. Why the National Vaccine Injury Compensation Program was Created:
The National Vaccine Injury Compensation Program (NVICP) was created to guarantee that there would be an ample amount of vaccines available to the public in addition to stabilizing the cost of vaccines. In addition, one of the chief concerns was extending an opportunity for individuals that had suffered injuries due to a vaccine to receive compensation that was efficient and effective. The NVICP is an alternative to the conventional tort system. This court is limited to vaccine injury claims. This alternative is a no-fault and is limited in its scope to compensation for injuries suffered due to vaccines.

The goal of this program is to establish a "fair and easily administered program to provide compensation for vaccine-related injuries." The established policy has two elements: (1) accelerate the award of damages (2) in addition to protecting the manufacturers of vaccines from onerous lawsuits.

The NVICP encompasses section two of the National Childhood Vaccine Injury Act. Rules of Practice for the NVICP have been established by the U.S. Court of Federal Claims. The NVICP was created by the National Childhood Vaccine Injury Act of 1986. The NVICP was created by Congress to meet several needs, chief of which was to ease fears that frequent lawsuits against vaccine manufacturers would create. Numerous lawsuits could result in a distrust of vaccines causing the publicto stop getting vaccinated. In addition, the cost of these frequent lawsuits might cause vaccine manufacturers to halt vaccine production.

Therefore, Congress created the NVICP as part of the Department of Health and Human Services in order "to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines." The National Childhood Vaccine Injury Act identifies a "vaccine-related injury or death" as an "illness, injury, condition, or death associated with one or more of the vaccines stated in the Vaccine Injury Table except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to the vaccine."

What qualifies as an "adulterant or contaminant" is not as clear cut. In fact, it has been a point of contention. For instance, the parents of a child with autism have sued the vaccine manufacturer of thimerosal. Thimerosal is a preservative that is present in the manufacturer's vaccines. Thimerosal is mercury-based and mercury is a known neurotoxin. The Appellate Court ruled however that thimerosal is not considered an "adulterant" or "contaminant" under the National Childhood Vaccine Injury Act; therefore the parents cannot receive compensation for their child's injuries.

II. EVALUATING THE EFFECTIVENESS OF THE U.S. VACCINE INJURY COMPENSATION COURT

Often when individuals refuse to get vaccinated or to vaccinate their children it is usually because they doubt that vaccines are safe. For example, they might have heard claims that vaccines can cause autism or that vaccines have been linked to Attention Deficit Hyperactivity Disorder, immune issues or even allergies. Despite these claims and controversies experts have stated that vaccination is most effective in preventing the spread of a wide variety of infectious diseases when most of the population gets vaccinated. To ensure this outcome, states have enacted laws requiring children to be vaccinated as a prerequisite to attending public schools. Therefore because of this there must be some way to manage claims of harm as they occur. Which is what vaccine court seeks to achieve.

While the scientific consensus is that severe medical injuries as a result of immunizations are rare, they do happen. For example, the tetanus vaccine has been linked to brachial neuritis. Branchial neuritis causes inflammation of the brachial plexus nerve which in turn results in sudden-onset shoulder and arm pain, as well as weakness and numbness. The measles vaccine carries with it the risk of developing encephalitis, which is severe swelling and irritation of the brain. Petitioners acquiring a vaccine court judgment will have the financial means to secure therapies to treat medical injuries and afford life-long care should it should it be medically necessary.

A. Vaccine Court Outcomes

While vaccine court is the established authority for petitioners to file their vaccine harm claims it has generated controversy from numerous sides. According to medical experts some compensation awards are too generous while others are not generous enough. In addition, the legal standard of proof is "preponderance of the evidence" because of this standard, compensation may be awarded despite a lack scientific consensus that the petitioners injuries were caused by a vaccine.

This does not mean that every claim that is brought is granted compensation. The special master sometimes determines that there is not enough evidence to support the link from the vaccine to the claimant's medical problem. The success rate of success for claimants in vaccine court is 25% to about 50% of cases receiving compensation for medical injuries. Many claimants' and their attorneys are dissatisfied with these low percentages.

B. Assessing Criticisms of the Vaccine Court

Some criticisms of the system is that it is overly adversarial, there are denials of many claims, and delays in resolving claims. Critics reference these issues as proof that the system is not operating as Congress originally intended. However, advocates for the program insist that overall the program is functioning effectively and as it was designed to. Advocates claim that the alleged adversarial nature of the proceedings is just the nature of the process which requires attorneys and experts, leading to a perceived adverserial nature. However, in order to accurately make a determinations on a claim both are necessary. As far as delays, it is not always due to the program's inability to handle the number of claims. Often, delays stem from both parties wanting to wait until the latest studies relevant to their matter are completed. As for criticism that there are excessive denials, the system would not be effective if all claims were awarded compensation. When there is not sufficient evidence that a vaccine contributed to or was the cause of a claimants' injuries it is appropriate to deny the claim. When a claim is denied it is based on evidentiary grounds. Alternatively, critics of the program have held protests, as well Congressional hearings, and have put forth their own research. Requests to the Government Accountability Office have also been made to analyze the Vaccine Court's rulings.

The fear of some medical professionals regarding measures taken by critics is that they will result in the public not trusting vaccines and therefore not getting vaccinated. This could have devastating implications for the public health. However, research shows that Vaccine Court has actually limited the number of false claims gaining traction, thereby reducing the damages to the public from false claims.

While vaccination continues to be controversial due to the governments involvement in what is a personal decision, the programs advocates reports that overall the initial goal of Congress in creating this program appear to be being met.

III. PROPOSED SOLUTIONS FOR THE VACCINE COMPENSATION PROGRAM

As previously stated the Vaccine Compensation program has overall accomplished many of the goals set by Congress. The program has been particularly successful in affording liability protection for the vaccine manufacturers, the pharmaceutical industry, as well as the health care providers who administer vaccines. The public health goals have largely been achieved as well. This is because there has been a steady supply of vaccines made available to the public. Moreover, the majority of Americans have been receiving these immunizations.

Notwithstanding, Congress' objective that the compensation program work "quickly, easily, and with certainty and generosity" has not been achieved. Below are several proposals to rectify this problem and ensure that this goal is being satisfied.

A. Implement a Legal Standard of Proof that is More Petitioner Friendly

Currently the program requires the claimant prove their case by a "preponderance of the evidence" standard. The problem with this standard is that appears to be conflicting viewpoints on how to implement it. Various Federal Circuit decisions have adopted Congress'compassionate intent and have ruled that "close calls regarding causation" be decided in favor of the claimant.
One viewpoint is that a more lenient standard of proof should be applied like the other injury compensation programs. Firstly, Veterans Benefits Administration ("VBA"). These laws give the claimants the benefit of the doubt in close calls. The VBA claims statute illustrates this standard as follows in relevant part: "When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant." Secondly, The Japanese-American internment compensation law included a "benefit of the doubt" condition that requires compensation when there was "an approximate balance of positive and negative evidence" regarding a petitioner's admissibility.

This lenient standard of proof should also be incorporated with regard to the program. It is reasonable to do so as evidenced by the compassionate intent of Congress in establishing a Vaccine Injury Compensation Program in the first place. A program created to establish a "fair and easily administered program to provide compensation for vaccine-related injuries."

B. Require that All Requirements of the Vaccine Act Be Implemented Liberally

The Vaccine Act has been contradictorily applied in the Federal Circuit. In some court opinions, the Act is thought to have a general compensation standard that should be applied in a lenient manor in favor of petitioners. However, despite their factual similarities, there are other rulings that interpret the Vaccine Act to waive sovereign immunity and the Act is strictly applied in favor of the vaccine manufacturer. There are Federal Circuit decisions that support both interpretations. Because of this confusion, it would be in the best interest of Congress to clarify these inconsistencies. As previously stated, the compassionate intent of this program should be interpreted to mean that the provisions should be more lenient towards petitioners.

C. Revise and Enlarge the Statute of Limitations

Currently the statute of limitations mandates that a petitioner file a claim within three years of the manifestation of medical injuries. Or within two years of a death resulting from medical injuries sustained from a vaccine. In addition, when a petition is filed late, the Federal Circuit court has no jurisdiction to hear it. There are no exceptions made for any failure to meet the filing deadline. Numerous petitions have missed the deadline for a variety of reasonable and justifiable reasons. For instance, a petitioner might be late in filing because they were waiting for medical records to be completed to include in their petition. Or they might be having difficulty finding an attorney to represent them. In light of this, this provision of the Vaccine Act should be revised to lengthen the amount of time a claimant has to file a petition under the Vaccine Program. The Health and Human Services Advisory Committee on Childhood Vaccines advises that the statute of limitation be increased to six years. This change would reflect the "generous" intent of the Vaccine Act. In addition, when the new statute of limitations is adopted the special masters should have the option to review old cases that were denied the option to be heard were denied because a petitioner missed the filing deadline, if the claim would have been heard under the new statute of limitations deadline.

D. Remedy Issues with Attorney Compensation

The Vaccine Act should be revised to include the payment of appropriate market rates for these types of cases. Amending the Vaccine Act to comply with this would result in a final payment procedure being completed quicker and less adversarial, removing the long drawn out process of fee disputes. In addition, this revision would encourage experienced attorneys to agree to represent petitioners in these cases.

F. Increase the Caps on Death Benefits and Pain and Suffering Benefits

The maximum payment from a death caused by a vaccine is $250,000 to be paid in a lump sum. The amount is the same for current and future pain and suffering damages. This amount was set when the Vaccine Act was first enacted in 1989. It is important to note that when inflation is taken into account $250,00 in 1989 is equivalent to $500,000 in 2011. Therefore, the caps on all of these benefits should be raised to account for inflation which would reflect the actual value for this type of compensation. Moreover, this increase in the award amount would better reflect the value of pain and suffering that one may endure when living with a vaccine injury.

G. Allow Family Members the Opportunity to Sue for Injuries Suffered.

Currently the Vaccine Injury Compensation Program does not allow family members to bring a claim under the Act. The Act only allows for the individual that suffered injuries as a direct result of a vaccine to bring a claim for compensation. Because of this, vaccine manufacturer's, administers of vaccines, and physicians that have prescribed the vaccines are not protected under the Act from claims such as loss of consortium and companionship by family-members of an individual that had suffered direct injuries as a result of a vaccine. This could be remedied if the Act were amended to allow family members to bring claims for pain and suffering. The protection for the vaccine manufacturers, administers of vaccines, and physicians would be enforced by insisting that family-members relinquish opportunity to bring a separate civil suit.

CONCLUSION

While the Vaccine Injury Compensation Program is doing a number of things correctly there are a number of things that it does poorly as well. The kinds of cases that the program handles has evolved. Previously, the injuries were analyzed against the Vaccine Injury Table. Now the majority of the cases the program handles involve off-table injuries which are often more complex and require more time and money to be resolved. Therefore modifications need to be made to handle these cases and potential revisions to this program will better reflect Congress' compassionate intent for the petitioners that utilize the program.

The Vaccine Compensation Program has been successful in protecting the welfare of the vaccine manufactures, government agencies involved with immunizations, as well as the physicians and health care providers that administer the vaccines. However, it needs to be significantly reformed in order to provide just compensation for petitioners "quickly, easily, and with certainty and generosity" as Congress had initially intended.

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Don't Let Your Cat or Trade Secrets Out of the Bag

BY ADRIENNE B. NAUMANN

INTRODUCTION

In 2016 Congress passed the Defend Trade Secrets Act which is now codified at 18 U.S.C. 1831 et seq. [hereinafter 'the Act']. The Act provides original jurisdiction in federal courts for civil trade secret misappropriation actions by private parties as well as the attorney general. 18 U.S.C. sections 1836(a), (b) and (c). Formerly, a private party could not access federal courts for civil trade secret misappropriation lawsuits except by diversity jurisdiction. Furthermore, and even with diversity jurisdiction federal courts rely upon applicable state law. Although diversity jurisdiction is no longer the sole option, a trade secret under the Act must be related to a service or product in interstate or international commerce. 18 U.S.C. section 1836(b)(1) The parties may litigate in state courts, but many parties to date have proceeded in federal court and preserve their state law claims under pendant jurisdiction.

A second feature of the Act provides ex parte seizure of misappropriated trade secrets on a physical premise by federal law enforcement officials, but only under extraordinary circumstances. 18 U.S.C. section 1836(b)(2) (A)(i). A third section provides immunity from misappropriation liability where the employees communicate alleged illegal acts related to trade secret and confidential information to the government or their attorneys. 18 U.S.C. 1833(b). The Act does not explicitly adopt the 'inevitable disclosure' of trade secrets doctrine. 18 U.S.C. sections 1839(5) and 1833(b)(3)(A) (i)(l). However, at least one federal district court has apparently observed that 'inevitable disclosure and 'threatened' disclosure" of the Act are equivalent from an evidentiary perspective. See Mickey's Linens v. Fischer, 2017 U.S. Lexis 145513 (N. D. Ill. September 8, 2017).

The effective date of the Act is May 11, 2016 and the Act only applies to misappropriation occurring on or after this date. Defend Trades Secret Act, Section 2(e). With one exception, the Act does not pre-empt civil or criminal remedies for trade secret misappropriation under federal, state or other U.S. laws. 18 U.S.C. sections 1833(b)(5) and 1838.

STATUTORY DEFINITIONS

Under the Act a 'trade secret' includes any kind of business, technical, scientific or financial information that the owner
(i) has taken reasonable measures to preserve as confidential, and
(ii) from which economic value is derived from this confidentiality, and
(iii) from which third parties could derive an economic benefit if they knew of the trade secret. 18 U.S.C. 1839(3). This information should also provide independent economic value from (i) not being generally known or (ii) easily accessible through proper means. Id.

The statutory term 'misappropriation' includes acquisition of another's trade secret when the acquiring person knows or had reason to know that the trade secret was acquired by improper means. 18 U.S.C. section 1839(b)(5)(A). Misappropriation also includes (i)wrongful disclosure or use of a trade secret without the owner's consent, and (ii) where at the time of disclosure or use a person knew or had reason to know that the trade secret originated from someone who used improper means to obtain it. Improper means includes transfer of a trade secret from a person who was legally obligated to the owner to maintain secrecy or otherwise limit use of the trade secret. Id.

Misappropriation also occurs when, prior to relying in good faith upon the trade secret for business activities, a person knew or had reason to know that the trade secret (i) was properly characterized as such, and that (ii) the trade secret was originally obtained by accident or mistake, but (iii) he or she nevertheless appropriated it. 18 U.S.C section 1839(5)(B)(iii). Under the Act, reverse engineering, independent derivation or other lawful means of acquisition do not qualify as misappropriation. 18 U.S.C. section 1839(6).

OBTAINING A CIVIL SEIZURE ORDER UNDER THE ACT

An application for an ex party civil seizure of trade secrets from another entity requires an affidavit or verified complaint. The applicant must always initially demonstrate that the information or subject matter to be seized qualifies as a trade secret. Either the affidavit or verified complaint must provide in detail that extraordinary circumstances exist which merit an ex parte civil seizure under the Act. A showing of extraordinary circumstances requires specific reasons why the adverse party would (i) inevitably hide or destroy evidence of trade secrets, or (ii) otherwise not comply with a court order if notice were given. 18 U.S.C. 1836(b)(2)(A). The applicant must also establish that the person subject to the requested seizure order
(i) misappropriated the trade secret by improper means and/or
(ii) conspired to obtain and use it by improper means. Id.

In addition to the above requirements, the applicant for an ex parte order of civil seizure must demonstrate that a preliminary injunction or temporary restraining order (TRO) under Federal Rule of Civil Procedure 65[hereinafter 'Rule 65'] or other equivalent relief would be inadequate. 18 U.S.C section 1836 (b)(2)(A)(ii)(I). The applicant must also allege that the person or entity who is the subject of the seizure has actual possession of the trade secret within or upon the property to be seized by the federal law enforcement official. The applicant must (i) describe the property that physical incorporates trade secrets to be seized (such as a laptop or pen drive) with reasonable specificity; and (ii) provide a reasonable identification of its location. Finally, the applicant must represent to the court that it has not publicized the requested seizure. 18 U.S.C. 1836 (2) (A)(viii).

THE EX PARTE CIVIL SEIZURE ORDER

If the court grants an applicant's request, then the written seizure order includes findings of fact and conclusions of law. The scope of the seizure order should be as narrow as possible and minimally disrupt the targeted business or residence, as well as the businesses or residences of third parties. 18 U.S.C. section 1836 (b)(2)(B)(i), (ii). The court immediately sets a date for a hearing on the seizure order for both parties no later than seven days after the order is issued. 18 U.S.C. section 1836(b)(2)(B)(v). The applicant posts sufficient security with the court prior to the actual seizure in the event that there is damage from the seizure or the seizure is wrongfully obtained. 18 U.S.C. section 1836 (b)(2)(B)(vi).

ACTUAL PHYSICAL SEIZURE PROCESS

During the actual seizure, there is no access or participation by either the applicant or person who is the subject of the seizure order. The actual seizure occurs exclusively by federal law enforcement officials unless these officials request assistance from local and state law enforcement. There can be no copies created of the seized property until the person who is subject of the order can be heard in court. There must be also guidance to law enforcement officials on whether force is permissible to access locked areas. An unaffiliated technical expert bound by a court approved nondisclosure agreement may participate in the seizure if the court determines that the expert will aid in the physical seizure logistics. 18 U.S.C. 1836(b)(2)(E). The court should also protect the person or entity who is the subject of the seizure from publicity. 18 U.S.C. section 1836(b)(2)(C).

SEIZED MATERIALS IN COURT CUSTODY

The seizure property containing alleged trade secrets must be secured by the custodial court in a suitable storage with (i) protection for confidentiality and (ii) appointment of a special master. A storage medium for the trade secret(s) in judicial custody should not be connected electronically to a network or internet without (i) consent of both parties and (ii) the required post-seizure hearing. The court must protect confidentiality of seized property, and even if portions of this property are unrelated to the trade secrets, such as personal financial information on the laptop. The court also provide protection from publicity of the seized materials that are unrelated to the trade secrets, unless the person who was subject of the seizure consents thereto. 18 U.S.C. section 1836 (b) (2)(D).

POST SEIZURE HEARING

The applicant for the seizure order must establish the factual basis of the seizure order in response to the adverse party's evidence and legal analysis. If the applicant cannot do so, then the court dissolves the original seizure order or modifies it appropriately. The court may provide discovery deadlines under the Federal Rules of Civil Procedure. 18 U.S.C. section 1836(b)(2)(F). The court may also grant an ex parte motion for encryption by any person who claims an interest in the seized or to be seized subject matter, and this motion should designate the preferred encryption method. 18 U.S.C. section 1836(b)(2)(H).

ACTION FOR DAMAGE CAUSED BY WRONGFUL SEIZURE

The Act provides remedies for wrongful seizure and these remedies are identical to relief provided under 15 U.S.C. 1116(d) (11) of the Trademark Act of 1946. 18 U.S.C. 1833 (b)(2) (G). Furthermore, the security that the applicant initially post with the court prior to a seizure does not limit recovery of a third party's damages resulting from the seizure. Id.

CIVIL REMEDIES FOR MISAPPROPRIATION OF A TRADE SECRET

Under the Act the court may grant an injunction to prevent actual or threatened misappropriation. However, the injunction cannot (i) prevent new employment relationships, or (ii) restrict new employment of a defendant unless there is evidence of threatened misappropriation and not merely the existence of a prospective employee's knowledge. 18 U.S.C. section

1833(b)(3) (A)(i)(l). In other words, employment restrictions cannot comprise a remedy unless a person
(i) actually wrongfully transfers this trade secrets to another or (ii) the evidence establishes that he or she will most likely wrongfully transfer and/or disclose the trade secret. An injunction also must not conflict with any applicable state law that prohibits restraint on the practice of a lawful profession, trade or business. 18 U.S.C. section 1836(b)(3)(A)(I) (ll).

An injunction may require a party's affirmative action, but if an injunction would be inequitable then the court may condition future use of the trade secret upon payment of a reasonable royalty. This royalty should be paid for no longer than the time period for which such use of the trade secret could have been prohibited. 18 U.S.C. 1833 (2)(b) (3(A). Financial awards to a prevailing injured party include damages for actual loss caused by misappropriation. The court may award damages for unjust enrichment which were not included within damages for actual loss. Instead of these damages and unjust enrichment awards, financial liability may be based upon a reasonable royalty for the unauthorized disclosure or use. Exemplary damages and attorney fees to the prevailing party are also possible awards for willful misappropriation. 18 U.S.C. section 1836(b)(3) ((B)(C)(D).

Bad faith claims of misappropriation may be established by circumstantial evidence.
A court may grant a motion to terminate an injunction made in bad faith, or a motion to maintain an injunction because it was opposed in bad faith, with attorney fees to the prevailing party. 18 U.S.C. 1836 (b)(2)(D).

WHISTLEBLOWERS PROVISION

Another section of the Act is popularly referenced as the whistleblowers' provision.
18 U.S.C 1833(b). According to this section an individual is not responsible for trade secret misappropriation (i) made in confidence to government officials and/or an attorney and (ii) made solely to report a suspected violation of law. This individual is also immune if the trade secret is disclosed in a complaint or other document filed in a lawsuit or other proceeding if such filing is under seal. 18 U.S.C. section 1833(b)(1).

An individual who files a retaliation lawsuit against an employer, and
(i) where the employer allegedly retaliated because this individual reported a suspected violation of law related to trade secrets,
(ii) may disclose the trade secret to his or her attorney without misappropriation liability.

This individual may also disclose the trade secrets during court proceedings if the individual (i) files documents containing the trade secret under seal and (ii) does not otherwise disclose the trade secret except pursuant to court order. 18 U.S.C. section 1833(b)(2). A notice of this trade secret misappropriation immunity should appear in an employee agreement that governs trade secrets or other confidential information. An employer complies with this notice requirement if
(i) there is a cross-reference to an employee policy document that

(ii) contains the employer's reporting policy for a suspected violation of law.

If an employer does not comply with this notice requirement, then the employer cannot

(iii) receive punitive damages or attorney fees for trade secret misappropriation;

(iv) from an employee to whom notice was not provided
Federal courts interpret the Act

FLORIDA

A recent search indicates that Florida federal district courts have not yet ruled upon whistle blower immunity and ex part seizure orders under the Act. Instead, decisions address conventional questions such as whether the disputed information qualifies as a trade secret under federal and/or state law. SMS Audio, LLC v. Belson, 2017 WL 1533941 (S. D. Fla. March 9, 2017) (the existence of trade secret status is properly left to the jury); M.C. Dean, Inc. v. City of Miami Beach, Florida et al.,199 F. Supp.3d 1349(S.D. Fla. 2016) (there is no trade secret status where the plaintiff did not take reasonable steps to preserve confidentiality). In Grow Financial Credit Union v. GTD Federal Credit Union, 2017 WL 3492707 (M.D. Fla. August 15,2017) (motion to dismiss denied) the plaintiff sufficiently alleged trade secret status in the complaint by designating confidential videos, operating policies, internal procedures, customized reports and other documents.
The court also concluded that the plaintiff had sufficiently alleged preservation of secrecy by computer systems secure programming, testing, auditing, on-going employee education, and each employee's signed acknowledgement of their duty to safeguard this information.

Several decisions address whether a temporary restraining order [TRO], and not the Act's civil ex parte seizure, was sufficient under the facts of each case. In Heralds of the Gospel Foundation, Inc. v. Varela et al., 2017 WL 386842(S. D. Fla June 23, 2017), the magistrate recommended an ex parte emergency TRO that prohibited the defendants from distribution, copying, or destruction of confidential videos and other materials. However, the magistrate explicitly declined to order a defendant to relinquish his laptop to the U.S. Marshall's possession. In Caliber Home Loans v. Mantooth, Jr. and NMF, Inc., 2016 WL 9244730) (M.D. Fla. September 15, 2016) the court denied the plaintiff's request for an ex parte TRO, because an injury did not appear imminent.

In Balearia Caribbean Ltd. Corp. v. Calvo, Case 1:16-cv-23300-KMW (S. D. Fla. August 5, 2016) the court denied an ex parte seizure request under the Act, because the applicant did not demonstrate that the defendant previously concealed evidence or disregarded court orders. However, the court did grant an ex parte TRO which required the defendant to provide his personal laptop for forensic imaging of its hard drive by a court appointed master. According to this order the master would return the laptop and imaged hard drive immediately after completing the imaging process. Thereafter, the newly created image would remain in the master's custody until the scope and terms of the actual image review were resolved. This TRO also restrained the defendant from destroying or modifying the plaintiff's alleged proprietary information on the laptop or other items in his possession, and in all respects to maintain the status quo.

At least one Florida district court concluded that there is a viable misappropriation claim where (i) improper disclosure of the trade secret initially occurred after the Act's effective date, but (ii) the actual wrongful taking occurred prior to this date. Adams Arms, LLC v. Unified Weapons Systems, 2016 U.S. Dist. Lexis 132201 (M.D. Fla. September 27, 2016.) This court concluded that the plaintiff could proceed under a trade secret disclosure theory, but not under a trade secret acquisition theory.

OTHER FEDERAL COURT DECISIONS

Activities occurring after the Act's effective date
Some federal district courts have adopted and even expanded the Adam Arms analysis, so plaintiffs may proceed if they allege an initial wrongful disclosure and/or continuing use of trade secrets occurring after the Act's effective date. For example, in Syntel Sterling Best Shores Mauritius Ltd. v. Trizetto Group, Inc., 2016 U.S. Dist. Lexis 130918 (S.D.N.Y. Sept. 23, 2016), the court found a viable counter-claim where the defendant alleged the plaintiff's wrongful continuing use of the defendant's intellectual property after the Act's effective date. Similarly, in Molon Motor and Coil Corp. v. Nidec Motor Corp., 2017 U.S. Dist. Lexis 71700 (N.D. Ill. May 11, 2017) allegations of the defendant's continuing wrongful use of plaintiff's trade secrets (on his pen drive) occurring after the Act's effective date survived a motion to dismiss where the trade secrets remained valuable into the foreseeable future.

However, not every court is 'on board' with this liberal interpretation of a viable misappropriation claim based upon activities occurring after the Act's effective date. For example, in Avago Tech. United States, Inc. v. NanoPrecision Products, 2017 U.S. Dist. Lexis 13484 (N.D. Cal. Jan. 31, 2017), the court dismissed claims under the Act, because the plaintiff exclusively alleged wrongful taking and disclosure in a defendant's published patent application prior to the Act's effective date. In Search Partners v. MyAlerts, 2017 U.S. Dist. Lexis 102577 (D. Minn. June 30, 2017) dismissed the plaintiff's complaint with prejudice because defendant's alleged wrongful act of hiring plaintiff's former job candidate occurred (i) prior to the Act and (ii) this single hiring transaction was not continuing in nature. The court also dismissed the pendant state claims without prejudice because there was no longer pendant jurisdiction with the dismissed Act's claim.

EX PARTE SEIZURE

Courts have generally denied ex part seizures under the Act, because a TRO under Rule 65 has been sufficient to (i) preserve evidence and/or the status quo and (ii) obtain judicial custody of personal property that most likely contains misappropriated trade secrets. The decisions also provide tips on which kinds of affirmative acts a defendant may expect for either an ex parted TRO or TRO with notice. These decisions further reveal practical tips for successfully obtaining either an TRO or an ex parte seizure order under the Act. For example, in Jones Printing LLC v. Adams Lithographing Co., 1:16-cv-0442 (E.D. Tenn. Nov. 3, 2016) the magistrate recommended denial of an ex part seizure order under the Act without prejudice, because
(i) the plaintiff did not specify why a Rule 65 remedy was inadequate, and where
(ii) a TRO was the preferred remedy under the Act was currently the preferred remedy.

Another court denied a request for the U.S. Marshall to copy allegedly misappropriated digital accounts locate upon the defendant's electronic devices. Instead the court ordered the defendant to preserve these digital accounts in his own custody. However, the court did order the defendant to bring his laptop to the next judicial hearing without further his modification or access thereto. OOO Brunswick Rail Mgt. v. Sultanov, 2017 WL 67119 (N. D. Cal Jan. 6, 2017). In Deep Down, Inc. v. Theobald et al., no. 4:2016-cv-02016 (S. D. Tex. September 27, 2016), the plaintiff did not originally request a seizure order under the Act. Instead the plaintiff requested a TRO, and after notice and a hearing the court granted this request. However, there were no affirmative acts ordered, and the defendants were only restrained from
(i) disclosing, using or accessing the plaintiff's confidential, proprietary or trade secret documents in the defendant's custody; and
(ii) violating or interfering with confidentiality obligations of the original agreement between the parties.
(iii) Similarly, in Earthbound Corporation v. MiTek U.S.C. Inc., 2016 WL 4418013 at 11 (W.D. Wash. August 18, 2016) after notice and a hearing, the court granted a Rule 65 TRO that directed the defendant to provide all its electronic devices for forensic imaging by a neutral third-party expert. The court also ordered the defendant to refrain from destroying evidence and to identify all its cloud based storage accounts. In Panera, LLC v. Nettles and Papa John's International, Inc., 2016 WL 412411 (E.D. Mo. August 3, 2016), after notice to defendants, the court granted plaintiff's requested TRO and ordered the defendant to physically transfer his personal laptop to a third party forensic expert. Another court granted an ex parte Rule 65 TRO which included appointment of a special master to image the defendant's laptop and promptly return it to the defendant. Magnesita Refractories Co. v. Mishra, 2017 WL 365619 at 2(N.D. Ind. Jan. 25, 2017); 2017 WL 655860 (N. D. Ind. Feb. 17, 2017).

Nevertheless, at least one court has allowed a civil ex parte seizure under the Act. In Mission Capital Advisors, LLC v. Romaka, Case no. 16 Civ. 5878 (S. D. N. Y. July 29, 2016) the defendant allegedly disregarded the court's initial TRO (which did not order the seizure of property at the defendant's residence) and its prior order to show cause. The court concluded that a Rule 65 order would be inadequate, because the defendant had apparently evaded service of the rule to show cause order. After notice to the defendant, the court ordered the U.S. Marshall to (i) physically seize the defendant's computer at defendant's residence, (ii) copy designated files onto a suitable storage medium and (iii) thereafter immediately delete these files from these defendant's computers. The storage medium would then be transferred to the court's

custody and thereafter be secured from all physical and electronic access. The Romaka seizure order did not authorize the U.S. Marshall to enter the defendant's residence by force; instead it ordered law enforcement to contact the court if the defendant did not voluntarily provide access to his premises. There was also protection for the defendant because prior to the actual physical seizure the court ordered the applicant to (i) post a $1,000.00 bond (ii) pay a nonrefundable fee of $2,000.00 to the U.S. Marshal, (iii) pay the fee of a neutral technical expert for forensic review, and (iv) prepare a proposed non-disclosure agreement for this technical expert.

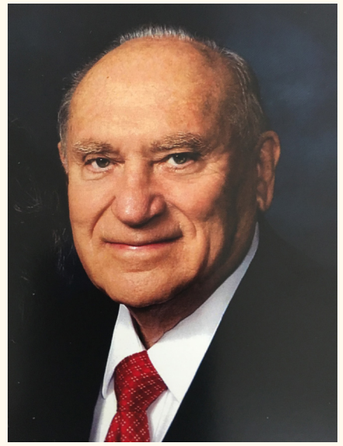
CONCLUSIONS

Motions to dismiss based upon failure to allege misappropriation after the Act's effective date will inevitably dwindle with time. With respect to seizures, to date the Romaka seizure appears to be a last resort because a TRO (i) is less intrusive, (ii) is less likely to disrupt uninvolved third parties and (iii) issues without notice if circumstances so require. It also appears that the Act's whistleblower provision has not as yet been addressed on the merits, although one court has characterized this provision as an affirmative defense. See Unum Group v. Loftus, 2016 WL 7115967 (D. Mass. Dec. 6, 2016). The Loftus court concluded that the Act requires that a lawsuit actually be filed for immunity to exist, but the defendant had not filed a lawsuit. It was also unclear to what extent the defendant had transferred the plaintiff's confidential information to his attorney. Currently, most judicial decisions address former employees and their prospective employers who have electronically misappropriated confidential information from former employers. Hopefully, federal appellate courts will resolve how to distinguish threatened misappropriation from inevitable disclosure, because several courts found them very similar to each other from an evidentiary perspective. Because the Act does not pre-empt state trade secret law plaintiffs may, if possible, select forums where state law imposes liability based upon inevitable disclosure. However, if a claim under the Act is dismissed with prejudice, then at least one court has held that state law claims will be also dismissed, although without prejudice.

Numerous courts rely upon both the federal state trade secret law decisions of the jurisdiction in which they preside. Because of this reliance, interpretation of the Act currently depends upon the jurisdiction of the presiding court. Hopefully practitioners will obtain more predictable guidance after federal appellate courts provide additional decisions which rely upon federal case law as precedent.

ADRIENNE B. NAUMANN

Adrienne B. Naumann has practiced intellectual property law for twenty years in Illinois. She graduated from Chicago-Kent College of Law with high honors. She attended the University of Chicago where she received her bachelor's degree and the University of Illinois where she received her master's degree. She graduated from Chicago-Kent College of Law with high honors. She is rated a SuperLawyer for 2017 and 2018 in the State of Illinois.



Not Your Average Joe

BY AMY MARIE BURNS & PEDRO LOPES

In January 2012, I had the privilege of meeting Joseph Robert Greco "Joe." He responded to a presentation made by Florida Rural Legal Services (FRLS) explaining the need for pro bono attorneys. He joined FRLS as a valuable member of our team volunteering 3 days a week until November 10, 2016, just two months short of five years. Joe is one those rare people who makes everyone he meets feel special. There has never been a time when Joe did not enthusiastically greet me or stop what he was doing to talk with me, always making me feel as if there is nothing else in the world he would rather do than to be with me at that moment. He does that with everyone. When I started to think about Joe, I kept thinking about the line in a poem that says:

> "THE MUSIC IN MY HEART
> I BORE, LONG AFTER
> IT WAS HEARD NO MORE."

That line describes the positive effect Joe has on people. I could not recall the author of the poem so I googled the line and wound up on an essay in a book called "Noble Lives and Noble Deeds, Forty Lessons." This book is a compilation by Various Writers Illustrating, Christian Character, edited by Edward A. Horton. The author of the poem was William Wordworth, the Solitary Reaper. This particular essay was on the virtue of courtesy and discussed how the poet Ralph Waldo Emerson, embodied the virtue Courtesy. One of Emerson's followers used the same quote from the poem to describe his feelings after listening to Emerson preach. Oliver Wendell Holmes, said "what Emerson taught others to be, he was himself." Emerson's schoolmates described him saying "it was impossible that there would be any feeling about him except regard and affection."

That essay was about Emerson, but it could just have as easily been written about Joe. He told me once that he has always believed that law was one of the three noble professions in service of others; doctor, lawyer, and clergy.

On August 11, 1927, Joe was born in New Haven, Connecticut. He was born in a time of great poverty. However, his family was better off than many because his father was employed making fourteen dollars a week with an insurance company. Many other families in his neighborhood struggled with fathers and sons working only a day or two a week, and to survive often growing vegetables and raising pigeons for food. When the war began things improved financially for other families when they started working for Winchester Repeating Arms Company earning over $100 a week.

Sometimes Joe would go to the movies. It would cost him ten cents and he would see how other people lived. He did not want to be poor all of his life and decided education was his opportunity. In 1945 he graduated from Hamden High School in CT. Immediately after graduation, he enlisted in the United States Navy. For the duration of WWII, he served as a Seaman aboard the USS Mercer.

Joe was honorably discharged from the Navy in the Fall of 1946 and was admitted to the University of Miami. Joe took an aptitude test thinking he would be an accountant but his best score was in law. In his first year of Law School, he was disappointed in the grade he received in Contracts. He decided that the aptitude test must have been wrong and thought that he should go back to pursuing accounting in the Fall. During his Summer break, while walking down the street, he ran into the head of his fraternity who was also in his Contracts class. The fraternity brother asked Joe how he did and Joe told him about his grade and that he was not going to continue pursuing the study of law. His friend encouraged him to speak to the professor informing him that the professor gave low grades to those students whose exams he lost in transit. Joe took his advice and met with his professor. Joe left the meeting with the grade he

deserved and a different perspective. He went on to graduate law school with a LLB/JD and on June 10, 1953 he was admitted to the Florida Bar. He wonders what course his life would have taken had he not walked down that street and run into his friend that particular day. He believes it was destiny. He has thoroughly enjoyed the practice of law. Not only did Joe become a lawyer, but two of his children are lawyers and it looks like 6 of his grandchildren will be lawyers. He has also influenced people outside his family to go to law school, including a receptionist at FRLS who is now a practicing attorney.

Immediately upon his admission to the Florida Bar he joined the Law Firm of Turner, Hendrick & Fascell in Coral Gables. He became not only immersed in the general practice of law, but in political matters as well, in that Dave Hendricks was the Mayor of Coral Gables, and Dante Fascell was the only United States Congressman in South Florida. His district was all of Dade County and all of Monroe County.

On October 27, 1951, Joe married Claire Gulotti in Coral Gables. Claire said that in all the time she has known Joe, she has never heard him say a bad word about anyone. Claire is a native of Miami who worked for the FBI and was a part-time student at the University of Miami. There were four children born of the marriage, Lisa Claire of Palm City, who is an attorney, James Joseph of Delray Beach, an attorney and entrepreneur, John Joseph of Huntsville, an orthopedic surgeon, and Suellen Claire of St. Louis, a veterinarian. There are seven grandchildren.

In the Summer of 1955 for the purpose of starting a law firm, Joe and Claire relocated to Hamden, Connecticut, a municipality bordering New Haven which had a population of 55k residents. After passing the Connecticut Bar, Joe joined the law firm of Jim P. Doherty, who became both a mentor and later partner. Joe tells the story of going to Jim Doherty's house one Saturday morning, knocking on his door and asking him for a job. Joe didn't know at the time that Jim usually stayed up late on Fridays and didn't like getting up early in the morning. Mrs. Doherty answered the door, and went to get Mr. Doherty. When Joe saw him it was clear that he had just awakened, still wearing his robe and pajamas. Nevertheless, he invited Joe in for coffee and to hear him out. They talked for an hour and Joe had no idea whether or not he was going to get the job, until Mrs. Doherty came into the kitchen and Jim said, "Mother, this fellow is going to be in the office with me."

In 1957, while still continuously engaged in the general practice of law, he was retained by the municipality to write a retirement plan for its employees. The plan was then enacted into law by the legislative counsel; later that same year, he was appointed to the Hamden Board of Education.

In 1958, Joe was appointed Prosecutor for the municipality and served as such until 1961. In 1967 he was named City Attorney for the Town of Hamden, CT and served as head of the legal department for the municipality until 1973. In 1966, he was appointed Chairman of the Hamden Charter Revision Committee which rewrote the municipal Charter and, saw it become law.

In 1960, his partner Jim Doherty was elevated to the Superior Court Bench (Circuit Court in Florida), the highest court of original jurisdiction in Connecticut, Joe continued to practice until 1985 at which time he transitioned the practice to his two children, who were both lawyers, Lisa and Jim.

For the next five years, Joe and Claire traveled Europe, Asia, and South America extensively. They spent summers in Cannes, France studying French, Perugia, Italy studying Italian, and Salamanca, Spain studying Spanish, as well as spending a memorable month in Paris. During that period they also took trips to Tokyo, Bangkok, Hong Kong and traveled extensively throughout South America.

In 1990, they returned permanently back to Florida, settling in Miami. Joe quickly became bored with retirement and became a certified Circuit Court Mediator. After Hurricane Andrew occurred, he mediated over 200 disputes while working in Homestead for the Florida Department of Insurance. He then went on to be one of the first ten Arbitrators for the Federal District Court for Southern Florida.

In 1997, to escape the increasing traffic in Miami, he retired again to Hutchinson Island and later moved to Palm City. Although not practicing law, he became a member of the Martin County Bar Association and volunteered occasionally in the Law Library.

In the later part of 2011, he became aware of Florida Rural Legal Services and on January 24, 2012, he began volunteering. In the close to five years that Joe volunteered, he became an invaluable member of our team working three days each week in the office, sometimes more. He not only helped hundreds of clients, but he became a mentor to the young attorneys in our office. He modeled for the attorneys that you can zealously advocate for your client, yet still be fair and courteous to opposing counsel. We had one young attorney volunteer who was extremely smart but, not very excited about the prospect of practicing law. When the young lawyer started volunteering, he told us "in my family you have to be a lawyer or a doctor, so I picked lawyer." Joe mentored him and along with Ernesto, a senior paralegal in our office, the three soon became great friends, going to lunch each day and traveling to Miami for baseball games. The fact that the three men were each born decades apart, made no difference, they were kindred spirits. The young attorney now has a successful immigration practice that he started in partnership with Joe.

I asked Joe, how is he able to be so optimistic? He said he has been very fortunate and not been someone who focuses on the negative things in life. When unfortunate things did happen, he always rationalized that "if you wait long enough, it usually comes out alright, and it did."

I have learned so much from Joe, not just about the practice of law, but about life. He has taught me and is still teaching me that the practice of law is a noble profession and we should all act

accordingly. Life is to be enjoyed. Traveling and trying new things are good for your soul, and that when it comes right down to it, nice guys do and should finish first.

Joe's most striking quality is his love for people. He genuinely loves to help and to be around people. At almost 91 he is still going strong as a partner and mentor to the young attorneys because what makes Joe happy is to see others grow and succeed.

When someone accomplishes something, Joe lets out a contagious laugh that starts in a waltz-like cadence and ends in a deep, somewhat high-pitched breath. He grabs your shoulder, looks you in the eye and lets out a genuine "congratulations, I'm glad you were able to do this." He does this whether you've baked a simple cake or won a big case, and he means it.

Joe's professional accomplishments could easily fill up volumes. When you want to describe or define someone, you gravitate to their personal accomplishments because they are easy to see. Joe is not easy to describe because with all of his incredible personal success, much of his success is reflected in how he has built up the lives and success of others.

While in Connecticut, Joe's mentor Jim Dougherty kept odd hours because of a personal matter. The result was that as a brand new attorney Joe had to quickly learn many areas of the law because he was alone handling all cases for the office. Joe helped to grow the practice and was made a partner and his mentor became a judge.

Joe remembers his partner as a great, intelligent man that was an invaluable mentor. His partner pulled himself up by his own bootstraps. To this day, Joe remains in awe of his mentor's incredible ability to persevere through his personal struggle. As the stories flow, a clear picture emerges of Joe's compassion and dedication to helping others succeed.

When Joe discovered that his daughter who worked for him did not enjoy the practice of law, he suggested that she get a job at the courthouse instead, even though he would be losing an important associate at his firm. This advice from her father led to a long and successful career and a happy marriage. Joe's life is full of stories like this – he is a matchmaker, provider, supporter, mentor, and developer. He has built homes, relationships, careers, and millionaires.

Joe celebrated the 65th anniversary of his admission to the Florida Bar on June 10, 2018. His family, friends and co-workers from FRLS celebrated a career and life well lived. Joe continues to volunteer regularly at FRLS.

Joe always remembers three things about any person; their name, their job, and a positive quality. He is a great storyteller and will describe an event, as if it were happening in front of him – whether it happened today or fifty years ago. After he is done telling the story he will let out his characteristic laugh and say something like "isn't that something? Boy I'm really glad for so and so."

Not Your Average Joe!

AMY BURNS

Amy Marie Burns is the Deputy Director at Florida Rural Legal Services. Inc. (FRLS). FRLS is a non-profit law firm serving 13 counties in South Central Florida and assists farmworkers throughout the state.

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PEDRO LOPES

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Friday 9:00 to 4:30

South County Branch:
Located in the Paula A. Lewis Branch Library
2950 SW Rosser Blvd
Port St. Lucie, FL 34953
Telephone: 772-871-6806
Tuesday 9:00 – 2:00
Wednesday 1:30 to 5:30
Thursday 2:00 to 7:00
Friday 1:00 to 5:00
Saturday 10:00 to 2:00

St. Lucie West Branch:
Located in the South County Annex
250 Northwest Country Club Drive
Port St. Lucie, Florida 34986
Monday - Friday 8:30 to 5:00
(unstaffed)

Continuing Legal Education

Please visit www.rjslawlibrary for information on the RJS Law Library and for a schedule of live CLE programs. Programs are held in the main library and begin at noon. CLE programs are available to any member of the Florida Bar for a time period of 7 days. The only cost is your return postage. Please note that we charge a flat rate fine of $20 for overdue CLE's and if a program is not returned you will invoiced for the cost of the program. Below is a list of some of our current CLE programs.

Recorded CLE Programs

Course #	Title	Expiration Date	General Hours	Ethics Hours	Technology Hours
2514	2017 Survey of Florida Law				
	RPPTL Guardianship Seminar 2017:	09/24/2018	14.5	3	2
2300	"Guardian's Island"	10/28/2018	8	0	0
2301	Masters of DUI – 2017	10/28/2018	9	1.5	0
2312	The Ins and Outs of Community Association Law 2017	10/28/2018	7	0	0
2332	2017 Annual Wealth Protection Program	10/07/2018	8	0	0

Friendly Passages

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Call us at: 772-462-2370
or Email: lucielaw@bellsouth.net
rjslawlibrary.org

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