6/24/2003 PALMBCHDBR 1
6/24/2003 Palm Beach Daily Bus. Rev. 1

Palm Beach Daily Business Review
Vol. 49, No. 211

June 24, 2003

Privacy

DRIVEN TO SUE

SUITS IN WEST PALM BEACH ALLEGE PERSONAL INFORMATION ON STATE'S 13 MILLION DRIVERS BEING SOLD UNLAWFULLY

Dan Christensen

Two class-action lawsuits filed in U.S. District Court in West Palm Beach allege that two of the nation's largest information brokers have invaded the privacy of millions of Florida motorists by obtaining sensitive personal data from the state and reselling it.

The suits also accuse the state of Florida of failing to protect its residents from criminal invasions of privacy. They seek billions of dollars in damages.

According to the complaints, filed late last month, ChoicePoint Inc., which has its data mining operations headquartered in Boca Raton, and Reed Elsevier, the parent of Lexis-Nexis, have violated the federal Driver's Privacy Protection Act. They have done so, according to the complaints, by obtaining for resale personal information from Florida state records without the "express consent" of licensed drivers and registered car owners.

The lawsuits are seeking $2,500 in damages per violation, per class member, in addition to unspecified punitive damages. There are more than 13 million licensed drivers in Florida, with more than 15 million registered vehicles. The two cases are assigned to U.S. District Judge Daniel T.K. Hurley. He will decide whether to certify the suits to proceed as class actions.

Both defendant companies say they are protective of the personal privacy of the individuals whose personal information they buy and sell. "We believe the law is very clear in this matter and that we have complied with both the spirit and the letter of the law," said ChoicePoint spokesman Chuck Jones. "We are prepared to vigorously defend ourselves.

While Florida's Department of Highway Safety and Motor Vehicles, which maintains and sells the driver records, is not named as a defendant, the two suits allege that the state has failed to protect Florida citizens from criminals by not shielding "personal information" such as the names, addresses and birth dates of motorists as required by the federal Driver Privacy Protection Act.

"Current Florida law, in direct violation of the DPPA, purports to authorize the sale of personal information from motor vehicle records for the purposes of resale to businesses 'whose primary business interest is to resell or redisclose the personal information,'" the lawsuits say.

The federal law does not allow individuals to sue states for violations. Enforcement is statutorily limited to action by the U.S. attorney general, who may impose a $5,000 per day penalty against any state agency that is not in "substantial compliance," the lawsuits say.

In April, citing concern for the growing problem of identity theft, the American Civil Liberties Union sent a letter to Attorney General John Ashcroft asking him to compel Florida officials to obey the law that keeps driver's license records from getting into the wrong hands. Ashcroft has yet to respond, said ACLU Florida legal director Randall Marshall.

"The attorney general has done nothing, the governor has done nothing and the DMV has done nothing to stop this blatantly illegal practice," said West Palm Beach lawyer James K. Green, who with lawyer David J. Sales filed the twin suits on May 30. "We are in effect acting as private attorneys general. We are using these lawsuits as the enforcement tools that are clearly allowed by the statute."

The sole plaintiff and class representative in both suits is Rabbi Joel Levine of Temple Judea in West Palm Beach. Green, a former president and legal director of the ACLU in Florida, is a solo practitioner. Sales is a partner at Searcy Denney Scarola Barnhart & Shipley in West Palm Beach.

Big state income source

Congress passed the privacy law in 1993 in response to several notorious crimes -- including the 1989 murder of actress Rebecca Schaeffer -- in which perpetrators used information contained in publicly available motor vehicle records to identify, locate and stalk their victims.

Despite the law, the buying and selling of public information is big business in Florida. During fiscal year 2001-2002, the state of Florida collected about $27 million from the sale of driving and motor vehicle registration records stored in its massive data banks, according to an official of the Florida Department of Highway Safety and Motor Vehicles.

Fees charged by the department are set by statute. A three-year history for a single driver, for example, costs $2.10. A list of motor vehicle owners costs a penny a vehicle.

The department sells information to a number of corporations. Two of the largest are ChoicePoint, based in Alpharetta, Ga., and Reed Elsevier, the U.S. holding company for Great Britain's Reed Elsevier PLC and the Dutch Reed Elsevier NV.

ChoicePoint, a publicly traded company with revenues last year of $753 million, describes itself as "the leading provider of identification and credential verification" information to business, government and individuals. Co-defendant ChoicePoint Public Records Inc. in Boca Raton has 300 employees and annual revenues of $50 million.

Reed Elsevier's Lexis-Nexis Group is a global provider of information to government, legal, and academic markets. According to the lawsuit, Lexis-Nexis obtains for resale personal data about millions of Florida drivers and car owners "on a weekly basis." Purchasers in those markets can include insurance firms, auto manufacturers and car rental companies.

Lexis-Nexis spokeswoman Judith Schultz said the company is in the "early stages of investigating the allegations" and declined to comment on the lawsuits.

"The protection of an individual's personal privacy is something Lexis-Nexis takes very seriously," Schultz said in a statement. "Lexis-Nexis requires our customers to declare a permissible purpose before they can run a search and obtain information from motor vehicle records. If the customer does not declare a permissible purpose, they are not permitted to access the motor vehicle records."

Jones called privacy class action lawsuits an "emerging trend" for plaintiff lawyers. "It is unfortunate that in order to provide our valuable services we must deal with those that would attack legitimate services that we and our competitors have offered since the DPPA was passed nearly a decade ago," he said.

Implicit or explicit consent

The way the case plays out may hinge on the court's interpretation of Florida's legal duty regarding the privacy of state records on its citizens. As stated in the complaint, a key question for the court will be whether obtaining personal motor vehicle information for resale is allowed even when the party buying it for resale intends to use it for a purpose specifically authorized in the federal act, such as research activities and court proceedings.

As originally enacted, the Driver Privacy Protection Act made it unlawful in most cases to disclose or obtain personal information from any motor vehicle record unless the subject of the information had authorized such disclosure. Marketers were allowed to use the information as long as states gave licensed drivers and vehicle owners the opportunity to opt out if they wanted their personal data kept confidential, according to the lawsuits.

In 1999, Congress amended the act to eliminate the opt-out provision for marketing to give drivers more control of their personal information. Now, such data can only be obtained if the subjects of that information give their "express consent" to its release, the suits say. The change took effect in June 2000.

In addition, it is unlawful to obtain such information "for the purposes of reselling such information, even if the party engaged in the resale of such information intends that it be resold only for a purpose permitted under the DPPA," the suits say.

The Internet site of the Florida Department of Highway Safety and Motor Vehicles shows that the department requires licensed drivers to apply to the state to have their personal information shielded from release.

State Sen. Jim Sebesta, R-St. Petersburg, proposed legislation earlier this year -- S.B. 2416 -- that would have amended Florida law to comply with the tougher disclosure requirements imposed by the 1999 congressional amendments to the federal driver's privacy act. A statement of public necessity filed with the bill justified it as necessary to protect drivers and car owners from criminals. The bill failed.

Florida Department of Highway Safety and Motor Vehicles spokesman Robert Sanchez acknowledged that state law does not conform to the current federal requirements for disclosure. Asked to explain why not, Sanchez said, "As a state agency, we are bound to comply with Florida statutes, and we do."

Sanchez added that some particularly sensitive personal information, including Social Security numbers, is exempt from release under state law.

Dan Christensen can be reached at dchristensen@floridabiz.com or at (954) 468- 2616.

6/24/2003 PALMBCHDBR 1

END OF DOCUMENT

5/19/2003 PALMBCHDBR 14
5/19/2003 Palm Beach Daily Bus. Rev. 14

Palm Beach Daily Business Review
Vol. 49, No. 186

May 19, 2003

Jury Verdicts

Each Monday, the Daily Business Review publishes jury verdict results from the trial courts in Miami-Dade, Broward and Palm Beach counties. An expanded "Verdict of the Week" is based on large damage awards or issues of public policy interest. The reports are based on research conducted by the Review's law writers. Plaintiff and defense lawyers wishing to notify the Review of case outcomes should contact Matthew Haggman at (305) 347-6649 for Miami-Dade verdicts; Julie Kay at (954) 468-2622 for Broward and Steve Ellman at (561) 820-2060 for Palm Beach County. Information about verdicts from the U.S. Southern District of Florida should be directed to Dan Christensen at (954) 468-2616. For national and state verdicts from American Lawyer Media, visit VerdictSearch.com, or call 1-800-832-1900.

SOUTHERN DISTRICT OF FLORIDA

Case: Jacqueline Page v. D1 Production, LLC and D1 Models & Talent Agency Inc.

Number: 01cv7811

Description: Job discrimination by race

Trial date: April 28, 2003

Filing date: Nov. 29, 2001

Judge: Adalberto Jordan

Plaintiff attorney: Daniel R. Levine of Shapiro Blasi & Wasserman in Boca Raton

Defense attorney: None. Trial on damages only. Default on liability entered earlier.

Jury decision: Compensatory damages for lost wages and emotional pain and mental anguish $4.3 million. Punitive damages $2 million.

MIAMI-DADE CIRCUIT COURT

Case: Christopher Marlowe v. USAA Casualty Insurance Co.

Number: 01-19222-CA-22

Description: Negligence

Trial date: May 9, 2003

Filing date: Aug. 14, 2001

Judge: Roberto M. Pineiro

Plaintiff attorneys: Ervin A. Gonzalez and Deborah J. Gander at Colson Hicks Eidson in Coral Gables

Defense attorneys: Mark M. Carroll at Law Offices of James G. Gilmour in Plantation

Jury decision: $756,000

Comparative liability: 90 percent defendant, 10 percent plaintiff

Case: Barry Sullivan v. City of Miami

Number: 02-31717-CA-22

Description: Negligence

Trial date: May 5, 2003

Filing date: Dec. 19, 2002

Judge: Roberto M. Pineiro

Plaintiff attorney: Mitchell J. Panter at Panter Panter & Sampedro in Miami

Defense attorney: Julie Bru, assistant Miami city attorney

Jury decision: For the defense

Case: Patricia Arostegui, as personal representative of Hector Arostegui v. Burgess Transport Inc.

Case No: 02-9134-CA-22

Description: Wrongful death

Trial date: May 15, 2003

Filing date: April 9, 2002

Judge: Roberto M. Pineiro

Plaintiff attorneys: Stuart N. Ratzan and Jeremy Alters at Ratzan & Alters in Miami and Kimberly Boldt at Angelo Barry & Boldt in Fort Lauderdale

Defense attorneys: Edward R. Nicklaus and Steven W. Hyatt at Nicklaus & Hyatt in Coral Gables

Jury decision: $3 million

BROWARD CIRCUIT COURT

Case: James King v. H. Lamm Industries

Number: 99-012270 (03)

Description: Negligence

Trial date: March 24, 2003

Filing date: July 12, 1999

Judge: Patricia Henning

Plaintiff attorney: Philip Gerson of Gerson & Schwarz in Miami

Defense attorney: Robert Goodrich of Law Office of Alan Landsberg of Hollywood

Jury decision: $229,000

Case: William and Sandra L. Moore v. Home Depot USA Inc.

Number: 97-7022(09)

Description: Negligence action

Trial date: July 17, 2000

Filing date: May 8, 1997

Judge: Robert Lance Andrews

Plaintiff attorney: Scott McCullough of Gaebe & McCullough of Coral Gables

Defense attorney: James Zloch of Wicker Smith O'Hara McCoy Graham & Ford of Fort Lauderdale

Jury decision: For the defense

Case: Liquid Assets of Florida Unlimited Inc. v. ABC Liquors Inc., d.b.a. ABC Fine Wine & Spirits

Number: 99-015373

Description: Other civil

Trial date: Feb. 16, 2001

Filing date: Sept. 1, 1999

Judge: Robert Rosenberg

Plaintiff firm: Moore & Goodman of Fort Lauderdale

Defense attorney: John Bennett of the Fishback Dominick Bennett Stepter Ardaman Ahlers & Bonus of Orlando

Jury decision: $7,051 for defendant

PALM BEACH CIRCUIT COURT

Case: Jane Krikorian v. Columbia Palms West Hospital

Number: 01-07611 AO

Description: Wrongful termination, whistle-blower

Trial date: April 28-May 2, 2003

Filing date: July 24, 2001

Judge: David Crow

Plaintiff attorney: Arthur Schofield of Arthur T. Schofield, P.A., of West Palm Beach

Defense attorney: Alexander del Russo of the West Palm Beach office of Carlton Fields.

Jury decision: $21,120

Case: Wayne Allen v. Board of Trustees of Florida Atlantic University

Number: 00 CA 006273

Description: Wrongful termination, gender discrimination

Trial date: May 5-9, 2003

Filing date: June 29, 2000

Judge: Art Wroble

Plaintiff attorney: Alexander Akpodiete of LawyerAlex, P.A., in Miami

Defense attorney: Joseph Ackerman of Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach

Jury decision: For the defense

Case: Edward C. Jones v. Double D Properties

Number: CL 00-9354 AI

Description: Auto negligence

Trial date: April 29 to May 7, 2003

Filing date: Sept. 25, 2000

Judge: Elizabeth Maass

Plaintiff attorney: Roy W. Jordan of Roy W. Jordan, P.A., West Palm Beach

Defense attorneys: Robin Richards of Allstate Insurance Co., Columbus, Ohio; Kera Hagan of Billings Cochrane Heath Lyles & Mauro in West Palm Beach

Jury decision: $104,851.51

Case: Bernard Bygrave et al. v. Sugar Cane Growers Cooperative of Florida et al.

Number. CL 89-8690 AI

Description: Breach of contract, debt

Trial date: April 21 to May 8, 2003

Filing date: Aug. 25, 1989

Judge: Karen Miller

Plaintiff attorneys: David Gorman of David L. Gorman, P.A., North Palm Beach; James Green of James K. Green, P.A., in West Palm Beach; and Anthony Natale of Anthony J. Natale P.A., in West Palm Beach

Defense attorneys: David Ross and David Poulson of Greenberg Traurig in Miami, and Henry Latimer of the Fort Lauderdale office of Greenberg Traurig

Jury decision: For the defense u

5/19/2003 PALMBCHDBR 14

END OF DOCUMENT

8/2/2002 PALMBCHDBR 1
8/2/2002 Palm Beach Daily Bus. Rev. 1

Palm Beach Daily Business Review
Vol. 48, No. 240

August 2, 2002

Human Rights

COMMAND AND CONTROL

CAREFULLY CRAFTED INSTRUCTION TO JURORS IN WEST PALM BEACH LEADS TO LARGEST-EVER JURY AWARD FOR TORTURE VICTIMS

Steve Ellman

For West Palm Beach attorney James K. Green, the most emotional point of the recent civil trial of two former Salvadoran generals accused of complicity in the torture of civilians in the 1980s was the testimony of one of his clients, plaintiff Neris Gonzalez.

For a full day on July 10, in Judge Daniel T.K. Hurley's federal courtroom in West Palm Beach, Gonzalez poured out her story of how she was kidnapped, gang raped and tortured for two weeks in December 1979 and January 1980 by Salvadoran National Guardsmen under the command of Minister of Defense Jose Guillermo Garcia and National Guard Director Carlos Vides Casanova. The lay church worker, then in her mid-20s, was pregnant at the time. Her son subsequently was born with multiple injuries and died two months later. Jurors wept as Gonzalez described her ordeal.

"I tried to steel myself," says Green, a class-action attorney and past president of the American Civil Liberties Union of Florida. "I've done death penalty cases, class actions with thousands of mental patients abused in institutions," he says. "But I've never had to listen to or present anything like what these plaintiffs went through."

As a result of that and other compelling testimony, on July 23 the three-man, seven-woman jury in Romagoza v. Garcia awarded Gonzalez and fellow torture victims Juan Romagoza Arce, a doctor, and Carlos Mauricio, an agriculture professor, $54.6 million in damages against Garcia and Vides for their role in the brutal treatment of the three plaintiffs during El Salvador's bloody civil war in the 1980s. The award consisted of $14.6 million in compensatory damages and $40 million in punitives.

Romagoza testified that he saw Gen. Garcia in the camp where the torture was conducted.

As co-lead counsel with Peter Stern of San Francisco's Morrison & Foerster, Green won the largest jury award ever in a contested action brought under the U.S. Torture Victims Protection Act of 1991. Larger judgments have been won by default. Many observers said the verdict sent a signal that foreign commanders need to think carefully about their liability under U.S. law before ordering or allowing human rights abuses on their watch.

On the losing side was Coral Gables solo attorney Kurt Klaus Jr., who represented the generals by himself. Klaus was thoroughly outmanned and outspent by the plaintiffs' side, which reportedly spent $500,000 to present the case and which, unlike the defense, was well-equipped with high-tech trial exhibits.

Even though he lost the case, Klaus says that "intellectually and professionally it was extremely rewarding. In fact, it was so much fun that when it was all over, I told my wife I might look for a position with the International Criminal Court."

On Wednesday, Judge Hurley denied Klaus' motion for a new trial. No appeal of the verdict has yet been filed, though Klaus is considering one based on the Torture Victims Protection Act's statute of limitations, which was waived in this case.

He's also considering suing the governments of El Salvador and the United States for indemnification. "My guys did whatever they were told to do by the U.S. advisers," he says. "Anybody who thinks any different is crazy. That government couldn't have stood for five minutes if the U.S. wasn't pumping money into it."

Both Green and Klaus note that the Romagoza case highlights a major inconsistency in U.S. policy concerning legal accountability for human rights abuses. "It's an interesting paradox," Klaus says. "Foreign people can sue foreign people in our courts, but we won't let U.S. citizens face charges in international courts."

Emerging law

For both lawyers, the case presented a rare opportunity to participate in shaping an important and emerging area of international human rights law. The key issue, wrangled over most intensely in the arguments over jury instructions, was how to define the "effective control" element of the doctrine of "command responsibility." As interpreted by the courts, the torture victims law requires that plaintiffs prove that superior officers targeted in such lawsuits be shown to have had command responsibility for and effective control over the torturers.

That command responsibility doctrine, which holds that military leaders have an affirmative obligation to seek out and prevent human rights abuses by their troops, was at the heart of the claims brought against the generals in Romagoza and in another federal lawsuit filed against them in West Palm Beach, Ford v. Garcia. That latter case was filed by the families of four U.S. churchwomen murdered by Salvadoran National Guardsmen in 1980.

In November 2000, the generals were acquitted in Ford because, as the jurors later explained, the plaintiffs' attorneys, Robert Montgomery of West Palm Beach and Robert Kerrigan of Pensacola, failed to prove that the generals had effective control of their troops -- a necessary component of command responsibility. A key fact was that the soldiers who committed the murders were in a remote outpost far from where the generals were located.

Enter Green

Green was asked to take on the Romagoza case in 1999 by Paul Hoffman, legal director of the Southern California ACLU and a former president of Amnesty International USA. "It sounded interesting," says Green, who filed the Romagoza claims shortly after Hoffman contacted him.

Green, who grew up in Spain and still speaks passable Spanish, brought a knowledge of Latin America to the case, having covered the U.S.-assisted military coup against Chilean President Salvador Allende in 1973 as a journalist in Chile. He had some familiarity with military procedures, as well, from his early education at Culver Military Academy in Indiana and through the experiences of his father, an Air Force colonel and Vietnam combat veteran.

Klaus, who has focused on family law and criminal defense in his career, got involved through his Colombian-born wife, Clara, who was a college classmate of Gen. Vides' daughter Marta. As a result of the two women's friendship, he was approached in early 1999 to defend the former Salvadoran generals, first in Ford and later in Romagoza.

Vides and Garcia had emigrated from El Salvador in 1989 and settled in Florida, where they were discovered 10 years later by the New York-based Lawyers Committee for Human Rights. The committee then joined with the families of the slain U.S. churchwomen to file suit against the generals under the U.S. Alien Tort Claims Act of 1789 and the 1991 Torture Victim Protection Act, which provide civil remedies for victims of human rights abuses.

Because Vides lives in the Daytona Beach area and Garcia in Plantation, the courts split the difference and assigned the Ford suit to Judge Hurley in West Palm Beach. Romagoza differed from Ford only in its plaintiffs, who are three Salvadoran survivors of torture by the National Guardsmen. Green did not represent the plaintiffs in the Ford case.

Command responsibility

But both Green and Klaus came into Romagoza with knowledge gained from the Ford lawsuit. They realized that the case would turn on the jury's understanding of command responsibility and the question of effective control.

"I went with the same defense [as in Ford]: We don't know who actually did it or how my guys could have controlled them," says Klaus, whose low-key, Everyman style succeeded in convincing the Ford jurors that the chaos in El Salvador in 1980 prevented the generals from exercising effective control over their troops.

Klaus acknowledges that Green and his clients in Romagoza clearly benefited from the lessons of the Ford case, as well as from the jury instruction guidelines handed down April 30 by the 11th U.S. Circuit Court of Appeals when it ruled on the plaintiffs' appeal in Ford. The appellate court rejected the families' argument that the generals' should bear the burden of proving that they lacked effective control.

"In the [Ford] case, no one knew what the hell the jury instructions were going to be," Klaus says. "That was much more of a crapshoot for everybody. It was an easier case for me."

But in Romagoza, everyone "already knew what the issues were and what the jury instructions were going to be," Klaus explains. "[The plaintiffs] could focus on the question of effective control."

Klaus notes that Green and his co-counsel brought in a military expert on chain of command issues, as well as a historical scholar who testified that communications and transportation in El Salvador were functioning adequately at the time of the plaintiffs' torture experiences, allowing the generals to exercise authority over the Guardsmen.

Unlike in the Ford lawsuit, the Romagoza case also was helped by powerful, graphic testimony from living survivors.

Jury instructions fight

Green agrees that he capitalized on the lessons learned from the previous trial. "Ford showed that command responsibility was difficult to explain legally and factually to the jury," Green says.

As a result of that experience, Green says, he and his co-counsel took great pains to work out the jury instructions on that issue. "This is only the second jury trial where the [command responsibility] doctrine was hammered out as part of the jury instruction," he says. "That took many hours every evening after the jury went home for the day."

Green was particularly pleased that Judge Hurley's jury instructions in Romagoza gave the effective control concept less prominence than in his Ford instructions. In Ford, the term "effective command" is included in two of the three elements of the command responsibility doctrine. In Romagoza, the judge laid out four elements of the command responsibility doctrine, none of which mention effective control; he relegated the concept to a subsidiary paragraph.

Green and his team pressed Hurley for jury instruction language that included a presumption of effective control by the generals. Green's argument to the judge drew on his ACLU experience with police misconduct lawsuits.

In those cases, he had filed suit against police officials for the misdeeds of street officers, which raised many of the same issues of command responsibility and effective control as were raised later in the Salvadoran general cases. Green argues that Hurley and the 11th Circuit should have applied the same doctrine to the Salvadoran military cases that the courts have applied to police cases -- that commanding officers are presumed to have effective control and bear the burden of proving otherwise.

"The official relationship of generals to their troops is enough to make a prima facie case for effective control," Green explains. "If the other side wants to come forward with an affirmative defense to show they lacked effective control, that these were rogue troops, that would be the proper allocation of the burden."

But Klaus says that Judge Hurley was right, based on "common sense," to reject Green's argument. "Whenever you

hold one person responsible for what another person did, that's an affront to my sensibilities," he says. "God gave us free will and gives us responsibility for what we do, not for what others do."

Green and Klaus both feel that the Romagoza case will help clarify the command responsibility doctrine of international human rights law. But both also advocate refinements. For example, both sides in the case proposed to Judge Hurley, unsuccessfully, that the Romagoza jury instructions should include a list of factors for jurors to consider in evaluating the generals' effective control.

Instead of listing factors, Hurley attempted to explain effective control to the jury by coming up with a variety of different phrases for the concept. In Klaus' view, "We just went around in a circle, 'Command means actual control means material ability' and so on."

In the future, he predicts, courts may order jurors to consider the relationship of the commander and torturer, the location of the human rights violation, as well as other factors in deciding whether the commanding officer had control of the troops.

'Torturer's lawyer'

Since the Romagoza verdict, Klaus has accepted another major international human rights case. Last week, he was hired to defend Juan Lopez Grijalba, a former Honduran military chief accused of the murder and torture of Honduran civilians in the 1980s. Grijalba, who has been living in the United States since 1998, was arrested by the U.S. Immigration and Naturalization Service in April, and is being held at Krome Detention Center in Miami awaiting deportation proceedings.

Klaus will defend Grijalba in a Torture Victims Protection Act claim brought on behalf of six former Honduran citizens, four of whom now live in the U.S. The case was filed by the Center for Justice and Accountability, a San Francisco-based human rights organization that aided the plaintiffs in Romagoza. Klaus says he's already busy preparing defenses and motions to dismiss on Grijalba's behalf.

Klaus -- who describes himself as "a liberal guy" who attended a Quaker high school in New Jersey where "it was part of my curriculum to go to peace demonstrations" -- says he's not worried about becoming known as "a torturer's lawyer."

"I'm a very religious person," he says. "I don't feel I need to explain anything to people as long as I'm all right with God."

8/2/2002 PALMBCHDBR 1

END OF DOCUMENT

8/6/2001 PALMBCHDBR 7
8/6/2001 Palm Beach Daily Bus. Rev. 7

Palm Beach Daily Business Review
Vol. 47, No. 241

August 6, 2001

Cover Story

EMPLOYMENT LAW BACKLASH

FORT LAUDERDALE LAWYER FACES PROSPECT OF FOOTING $500,000 DEFENSE BILL FOR BRINGING CASE A JUDGE DEEMED BASELESS AGAINST DENNY'S

Julie Kay

It seemed like a perfect case for Amlong & Amlong, the kind for which the husband-and-wife plaintiff employment law firm in Fort Lauderdale have become renowned throughout the state since they began focusing on employment discrimination and civil rights law in the mid-1980s.

A woman who bused tables at a Denny's restaurant in Miami claimed she was sexually harassed and raped by two managers. The charges were horrific. Floride Norelus complained that she was raped with a hairbrush in the walk-in freezer and forced to perform oral sex on the managers everyday for nearly a year in the men's room of the diner.

But there was a problem with Norelus' federal lawsuit, which accused Denny's, its parent company, the franchisee and the two managers of Title VII sexual harassment and brought common law tort claims for battery and intentional infliction of emotional distress, among other tort claims. In the view of U.S. District Judge Joan Lenard in Miami, who presided over the case, Norelus' story was full of inconsistencies.

From the judge's perspective, what was particularly egregious was that the attorneys at Amlong & Amlong, particularly Karen Amlong, had plenty of evidence that Norelus' allegations were baseless, yet they proceeded with the lawsuit anyway.

In a previously unreported and highly unusual decision in March of last year, Lenard ordered sanctions under 28 USC 1927 against Karen and Bill Amlong and their law firm. She wrote that they demonstrated "bad faith and willful disregard for the judicial process."

For their part, the Amlongs insisted at several evidentiary hearings before U.S. Magistrate Judge Ted Bandstra and in court documents that, while parts of the case were indeed troubling, they believed their client. They noted that the client had passed two polygraph tests administered by noted expert George Slattery.

But last December, U.S. Magistrate Judge John O'Sullivan recommended that the Amlong firm be ordered to pay counsel for the defendants in the Denny's case legal fees that could top $500,000, including interest. Lenard has yet to rule on that recommendation. The defense lawyers in the case are Jon Stage, a partner in Akerman Senterfitt's Fort Lauderdale office; Averill Marcus, a Miami solo practitioner; and Dale L. Friedman, a partner at Conroy Simberg Ganon Krevans & Abel in Hollywood.

The Amlongs declined to comment on the record about the matter. Karen Amlong would say only that "numerous respected plaintiff lawyers have been hit with substantial sanctions, both here and nationally."

Shock waves

Lenard's order and O'Sullivan's recommendation have sent shock waves throughout the South Florida legal community. Employment lawyers call the sanction the stiffest they've ever seen imposed on a law firm, and express astonishment that the action was taken against lawyers of the Amlongs' stature. They say such a sanction would bankrupt most small law firms.

"I've never seen sanctions this high," says Robert Kofman, head of the labor department at Stearns Weaver Miller Weissler Alhadeff & Sitterson in Miami, a defense attorney. "The Amlongs are very good lawyers, the most prominent plaintiffs' lawyers you can find in the state of Florida. I can't explain what happened here. This is a very, very serious situation for the plaintiffs bar."

News of the sanction against the Amlongs comes on the heels of another South Florida federal judge ordering sanctions against a prominent Fort Lauderdale employment lawyer three weeks ago.

In that case, U.S. District Judge Donald M. Middlebrooks slapped Charles Whitelock, managing partner of Whitelock & Associates of Fort Lauderdale, with a Rule 11 sanction, based on the Federal Rules of Civil Procedure, for filing a "baseless" employment discrimination and retaliation suit.

Whitelock was hit with a $8,800 penalty after Middlebrooks ruled that he ignored "objective evidence casting serious [if not fatal] doubt" on his client's allegations. Last week, however, Middlebrooks asked the defense attorney who requested the Rule 11 sanction to respond to new evidence Whitelock has presented in support of his request for reconsideration of the sanctions order.

Employment cases have become the most common type of civil lawsuits filed in federal court, and federal judges are growing increasingly impatient with the glut of cases crowding their dockets, plaintiff employment attorneys say. While sanctions remain rare, judges are becoming more willing to consider them against plaintiff lawyers when they see a case as frivolous, these observers contend. That is prompting some plaintiff lawyers to file their civil rights suits in state court. It's prompting others to get out of the practice of civil rights and employment law entirely.

"There's more skepticism on the part of the judiciary," says Bob Weisberg, a solo employment and civil rights plaintiff lawyer in South Miami. "Judges are getting very experienced at this and can spot something egregious right away."

"The whole point of the Civil Rights Act was to get private attorneys to prosecute civil rights cases," says Miami solo attorney Ira Kurzban. "But I don't do civil rights cases any more because judges are gutting [the law]."

Defense lawyers are using threats of sanctions as a weapon to get plaintiff lawyers to back off, plaintiff lawyers complain. Jon Stage of Akerman Senterfitt effectively used the threat of sanctions against two plaintiff lawyers, including Ellis S. Rubin of Miami, in another discrimination suit against Denny's in 1999. In that case, two minority customers alleged that a Denny's in Cutler Ridge denied them service. Stage issued his threat after discovering a security videotape which he contended disproved the plaintiffs' allegation. Rubin promptly withdrew from the case.

The Amlongs are two of the most prominent employment plaintiff attorneys in Florida. Bill Amlong successfully argued a landmark employment discrimination case before the U.S. Supreme Court in March 1998. In that case, Faragher v. the City of Boca Raton, the high court held that an employer is liable for sexual harassment charges directed against a supervisor in cases of tangible job detriment.

But the Amlongs aren't the only prominent lawyers to be sanctioned. Neil Chonin, a respected civil rights lawyer, was sanctioned by U.S. District Judge Kenneth Ryskamp in 1998 during a racial discrimination suit he brought against Subway, the sandwich chain. Chonin and co-counsel Marilyn Sher were sanctioned to the tune of $187,000. The Miami solo attorney calls the experience "the worst thing that happened to me in my 39 years of practicing law. It was a nightmare."

"Defense lawyers are trying to wipe us out," he says. "They are targeting prominent civil rights lawyers."

Special interest in Denny's

Judge Lenard's sanction order against the Amlongs grew out of a lawsuit filed in Miami federal court by Norelus, a Haitian immigrant, in December 1994. Besides Denny's, the named defendants were parent company T.W. Services Inc., franchisee Meos Corp., and Asif Jawaid and Raheel Hameed, the two managers accused of wrongdoing. Norelus sought damages for common law battery, invasion of privacy, false imprisonment, intentional and negligent training, retention and supervision. She also complained of unequal pay.

Norelus' original lawyers were Joseph Chambrot and Debra Valladares, solo practitioners in Miami. The two were inexperienced in employment and civil rights law and knew Karen Amlong was handling another sexual harassment case against Denny's. About five months into the case, the Amlong firm took over. Karen Amlong and Christopher Sharp, then an associate with her firm, filed an amended complaint on July 27, 1995, as well as the second amended complaint. While Karen Amlong served as lead counsel, some pleadings were filed by her husband, Bill.

Karen Amlong had a special interest in pursuing Denny's, she later told Magistrate Judge Bandstra at a 1997 evidentiary hearing on the sanction issue. Amlong had settled a previous case against Denny's the night before trial and was not altogether happy with the outcome. "Quite frankly, I wanted to chew on Denny's a little bit more," she admitted to Bandstra. "I felt that they had some employment practices that really bothered me, from my perspective, where I was coming from as an employee advocate and, particularly, a woman advocate."

Norelus was first deposed in August of 1995, and again was questioned in January and February of 1996. Major discrepancies emerged in the various accounts Norelus gave of key events. For instance, she first claimed that oral, vaginal and anal intercourse occurred in a walk-in freezer, then later stated that "no sex occurred in the walk-in cooler or freezer."

After a deposition, attorneys have the right to file a corrections and clarifications document, known as an errata sheet, to amend their clients' testimony. Usually, say lawyers, the errata sheet is a few pages long.

On June 14, 1996, the Amlongs filed an errata sheet 63 pages long, including 868 changes in Norelus' sworn testimony. "That was the longest errata sheet I've ever seen," Stage says. "I couldn't believe it."

Some of the corrections were minor and irrelevant to the case. But others went to the heart of the lawsuit and concerned what happened during an alleged attack by Asif. For example, Norelus, who claimed she was forcibly taken to the homes of Asif and Hameed and then raped, was repeatedly asked whether she remembered anything about their cars or the routes they took to their homes.

During deposition, she said she did not. In the errata sheet, however, she provided great detail about their cars and the exact route Hameed took to his house. Lenard found this to be a powerful reason to doubt Norelus' deposition testimony.

During the evidentiary hearings on the matter of sanctions, Karen Amlong argued that the numerous mistakes and extensive corrections were due to the fact that their client primarily spoke Creole and that her English was poor. They noted that she indicated more than 500 times during the depositions that she didn't understand a question.

But Lenard was not persuaded, writing: "The court finds that the errata sheet was used to bolster plaintiff's case and recitation of facts as alleged in the complaints, not simply to correct inaccuracies or mistakes."

"From the outset," Lenard concluded, "plaintiff's testimony and conduct called into question the validity of her claims. Plaintiff not only forgot key details set forth in the complaints but provided several inconsistent versions of the events or outright falsehoods."

Lenard criticized Karen Amlong for failing to interview any of the witnesses Norelus listed in her complaint before filing the action or during discovery. When they eventually were deposed, Lenard wrote, "none of these witnesses knew anything about the allegations or could lend support to the claims." In fact, when Amlong agreed to become lead counsel, no lawyer at the Amlongs' firm interviewed Norelus herself.

At the evidentiary hearing, Valladares testified that before filing the lawsuit, she spoke with Norelus, her two brothers and David Hill, a manager at Denny's. But she did not speak with any of the people Norelus claimed saw her being dragged into the men's room and freezer by the two managers.

When the witnesses finally were deposed, however, not only did they not support Norelus' allegations, but they stated that Norelus joked about having sex at work, Lenard wrote.

At the conclusion of the depositions, Lenard said, it became clear to the Amlongs that their client's claims "lacked credibility." The errata sheet, Lenard contended, was simply Karen Amlong's effort to "repair the damage."

On Aug. 1, 1996, the attorneys for the defendants filed a motion to dismiss and requested sanctions against the Amlong firm. On Aug. 26, 1996, Lenard denied the motion to dismiss and ordered the deposition reopened at Norelus' expense. She also ordered the plaintiff to file an appendix identifying the errata changes and the reasons for them, and ordered that the plaintiff or her attorneys pay the defense costs associated with the reopened deposition within 10 days.

But Norelus never filed the appendix or paid the fees. In her objection, Karen Amlong stated that Norelus had no money to pay and that not filing the appendix was her way of getting the case dismissed. But Lenard wasn't pleased. She dismissed the case on Dec. 11, 1996, citing the lawyers' "willful contempt for the judicial process."

The defense attorneys, who had put in several thousand of hours on the case, were unwilling to let the matter drop so readily. Contending that plaintiff's counsel had failed to conduct a proper factual investigation prior to filing the complaint and had ignored evidence demonstrating that the plaintiff's claims were baseless, defense counsel on Jan. 10, 1997, filed motions to recover attorney fees from the Amlongs. The fees dated back three years and included the bills for lawyers from three law firms - Stage, Averill Marcus for Meos Corp. and Dale Friedman for the two Denny's managers.

On Jan. 24, 1997, Lenard referred the motions for attorney fees to Bandstra. After conducting several evidentiary hearings, Bandstra determined in late 1997 that the plaintiff's case "always lacked credible evidence" and was frivolous. However, he found no evidence of "willful abuse of the judicial process" or "reckless disregard of duty" by the Amlongs that would justify sanctions. Therefore he ruled that Norelus - but not the Amlongs - should pay the defense attorney's fees.

Lenard disagreed. In a harshly worded opinion on March 21, 2000, she said Karen Amlong's behavior was "vexatious and contrary."

"Attorneys are not only responsible for investigating the claims of a lawsuit prior to filing, but have a continuing obligation throughout the pendency of the action," she stated. "If evidence becomes known that is contrary to the asserted claim or if it becomes clear that the claim is baseless, attorneys have an obligation to seek voluntary dismissal."

Lenard placed the blame squarely on Karen Amlong, saying that the other lawyers had little or no experience in workplace harassment cases. She chastised both Karen and Bill Amlong for failing to read a single deposition of a single witness during discovery and for using the errata sheet to "provide factual support to an otherwise meritless case."

"The record demonstrates that reasonable investigation, once counsel was aware of the 'inconsistencies' of the deposition, would have made any reasonable attorney aware of the frivolity of the case," Lenard wrote. She ordered the Amlongs and their firm to pay all costs and attorneys' fees associated with reopening the deposition - with back interest of 10 percent annually starting from October of 1996.

After hearing testimony on legal fees, Magistrate O'Sullivan ruled last December that Stage should recover $160,490, based on 1,220 hours of attorney and paralegal time; Marcus, $109,254 for 668 hours; and Friedman, $114,580 for 974 hours. That does not include the interest, which could put the total past the half-million dollar

mark, the Amlongs say.

Lenard, who was busy until recently with the months-long Cuban spy trial, has yet to make a final ruling on the fees.

Meanwhile, the sanction ruling against the Amlongs has resonated throughout the South Florida legal community. At Gunster Yoakley in West Palm Beach, which conducts a sizable practice defending employers against employment suits, partner Bob Turk has circulated it to all the employment lawyers in the firm. "This is a caution for every attorney," he says. "We've reinforced that you have to do due diligence."

Some plaintiff lawyers have gotten the message. On July 20, in a speech at an ACLU conference in Key West, West Palm Beach solo practitioner James K. Green warned civil rights attorneys to take greater precautions to avoid sanctions. Topping his list of advice: "Be wary of clients or claims that sound too good to be true."

8/6/2001 PALMBCHDBR 7

END OF DOCUMENT

4/28/2000 PALMBCHDBR 10
4/28/2000 Palm Beach Daily Bus. Rev. 10

Palm Beach Daily Business Review
Vol. 46, No. 174

April 28, 2000

FIGHTING FOR THE FORGOTTEN

LAWYER JAMES GREEN IS FINALLY ABOUT TO SEE DRAMATIC RESULTS OF A LENGTHY CRUSADE TO SHUT DOWN ONE OF THE STATE'S MOST NOTORIOUS MENTAL HOSPITALS

Carol Marbin Miller
Review Staff

It was just before Christmas in 1985 when West Palm Beach attorney James K. Green first heard the name G. Pierce Wood Memorial Hospital.

That's when Green received a call from Jim Mensing, a staff lawyer for Florida Rural Legal Services, who had driven his Harley Davidson to the Arcadia state mental hospital hoping to visit several patients. But when he arrived, he was turned away. All hospital residents, he was told, were locked down.

Mensing contacted Green, who had made a name for himself by successfully challenging conditions at several South Florida jails. "Can they do that?" Mensing asked. "These are mental patients, not criminals."

At first, Green's mission was to open the hospital, so that the 450 residents then being held there against their will had some of the same freedoms other people enjoyed. But he soon discovered that the lockdowns weren't the only problem. More problematic was the lax supervision: One man who had cut himself twice previously, for example, was allowed to work in a hospital cafeteria, where he used a kitchen knife to stab himself 16 times.

Now Green, 47, may be about to accomplish something never before done in Florida: closing a state psychiatric hospital.

"These institutions are dinosaurs," Green says. "But there was not enough political will on the part of [former Gov. Lawton] Chiles or the Legislature to do anything about it."

Earlier this year, officials with the state Department of Children and Families began making plans to close the hospital, which now has 350 beds. The closure, which was approved by the state Senate last week, probably would take about two years if passed by the full Legislature.

The lawsuit Green filed 13 years ago to reform the facility most likely will remain in place until lawyers are assured all current and former residents - a class of more than 5,000 people - are well cared-for.

"This is a totally disenfranchised population," says Steve Hanlon, the probono partner for Holland & Knight who helped Green litigate the case against the hospital. "They don't vote. They don't contribute to political elections. They don't lick stamps. They're out of the process. Essentially, Jim Green was the only thing that stood between these people and oblivion."

A one-time assistant public defender in Palm Beach County, Green had been out of law school only about three years when he took on his first county sheriff. Green was disturbed by what he saw every time he entered the county jail, and he quit the public defender's office and began investigating a possible suit to clean up the detention center.

Eventually, he would be the lead attorney in about 10 jail suits, and assisted in the prosecution of a couple more. Included in his suits were the Palm Beach County Jail, the West Palm Beach city jail, the Palm Beach County Stockade, the Martin County Jail, the St. Lucie County Jail, and the Fort Pierce city jail.

When Mensing first approached him about conditions at G. Pierce Wood, Green assumed his jail reform experience would offer useful insight into the case. The hospital, he figured, didn't seem that much different from the jails he had worked so hard to improve.

Green flew to Washington and consulted with lawyers at the Mental Health Law Project. Susan Stefan, a University of Miami law professor who once worked as a staff lawyer for the advocacy group, remembers the day Green appeared at the group's office - deeply tanned, extremely fit and wearing a Hawaiian-print shirt. "We kind of looked at him and thought: Is he a lawyer or a surfer?"

Moreover, Green had no experience whatsoever with mental health litigation. The Washington lawyers were skeptical, but agreed to help. "We thought this was a really serious problem," Stefan said. "But we did have our doubts about this one lawyer with just a prison and jail background being able to pull this off."

The Law Project warned Green about what he was taking on. It could take decades, they said, to bring about reform at a state psychiatric hospital. Green figured he could do it more quickly.

"Little did I know we'd be pushing 20 years in this case," Green said last week. "These institutional reform cases become a part of your life."

Since the dispute began, lawyers on both sides of the case have filed more than 12,000 pleadings into the court record, which is held in about 30 volumes in Tampa. Under a 1989 court order, Green has successfully billed the state about a half-million dollars for the case. He's still owed about $300,000 more.

Green actually has devoted an entire room in his West Palm Beach office to G. Pierce Wood documents, which take up three, floor-to-ceiling file cabinets.

Looking back, Stefan said, she can't help but admire Green for his tenacity.

"Governors come and go. State attorneys come and go," she said. "There have been four heads of that hospital. And the only constant is, basically, Jim and the people he recruits to help him out."

Says Hanlon, "This may be Jim Green's most important case, though up until recently Jim would tell you it was his most important failure."

In 1987, Green filed suit in U.S. District Court in Tampa, arguing that the civil rights of mentally ill people under civil commitment to the rural DeSoto County hospital were routinely being trampled. Residents of G. Pierce Wood, he charged, were being locked down sometimes for 24 hours at a time.

The key to the case, which is pending, was a 1989 consent decree between lawyers for G. Pierce Wood residents and the state. In it, the state agreed to reduce the number of beds at the hospital from a high of more than 1,000 to less than 400, to reduce the use of physical restraints, improve the hospital's buildings, provide recreation and beef up services for the mentally ill in their own communities.

The consent decree was one of the last to be modeled after a similar document created by legendary civil rights attorney Tobias Simon in his efforts to reform the Florida prison system, said Hanlon. It gave the federal judge broad leeway to interpret the state's compliance with a host of goals, and established a court-appointed monitor to evaluate the state's progress.

"This is the only institutional consent decree in the country that gives patients the right to visitation by their pets," says Stefan, with a laugh. "That's Jim in a nutshell."

The lawsuit has changed through the years, as lawyers pressed first, for greater freedom for residents, and then for greater protection as evidence mounted that patients were at risk of physical harm. Though Green won battles along the way - such as the change in policy to forbid locking residents in their rooms for hours on end - critics continued to warn that residents were not safe there.

Much of the lawsuit's lifespan was spent trying to hold the state to its promises, though. In 1995, the Department of Children and Families' inspector general released a scathing report on the hospital, concluding that management and staff "failures" at G. Pierce Wood may have contributed to 10 deaths.

Two patients had died after choking on food they were forbidden to eat, the report stated. In other cases, patients who were supposed to be in "constant eye contact" were allowed to wander off, injure themselves or even attempt suicide. In three cases, the report said, staff members did not learn it was their job to monitor a resident until after the patient died.

The hospital's two top administrators were fired, and officials announced a "major overhaul" of the facility. (The current hospital administrator, Mike Murphy, was out this past week and could not be reached for comment.)

The next year, lawyers at the U.S. Department of Justice filed suit against the state, asking U.S. District Judge Susan C. Bucklew for permission to intervene on behalf of G. Pierce Wood residents. In its July 1996 request, which Bucklew granted, the Justice Department suggested patients at the hospital were at "serious risk of harm, including death."

In a recent review of the hospital, a New York psychologist hired by hospital residents reported an "overwhelming pattern of chaotic and purposeless activity in the name of rehabilitation that effectively resulted in rampant neglect of the rehabilitation needs of the residents."

To make matters worse, state officials have acknowledged that fighting the lawsuit had badly eroded their efforts to improve the hospital, which has a $44 million-a-year operating budget. In testimony before the state Senate last month, the Department of Children and Families' mental health administrator, John Bryant, said the agency paid a Philadelphia law firm $500,000 last year to fight the suit - and the Justice Department.

"Those are direct client services dollars that we had to use," Bryant said.

With little hope for dramatic improvement, state officials sought to simply close the facility. The hospital's closure already has passed the Senate. The House is still considering the closure, along with a proposal that the hospital be turned over to private management.

In the end, Green came to believe that only closing the rural hospital could improve the lives of its residents.

"Part of me wanted to believe in the 19th century libertarian idea of sanctuary or asylum," Green said. "As utopian an ideal as it was, it couldn't work - it wouldn't work - in Arcadia, Florida, in a place like G. Pierce Wood. The problem was its isolation and segregation. But it took me a long time to come to that conclusion."

"I learned," Green said, "that mental hospitals are not much safer - and are sometimes more dangerous - than prisons."

Marcia Beach, a longtime mental-health advocate who has lobbied for a decade or more to close the state's institutions, hailed the possible closure of G. Pierce Wood. "I think it's very important, a very important step to take, a giant step."

Beach, a Broward judicial candidate who formerly headed the state Advocacy Center for Persons with Disabilities, says Green must remain vigilant to make sure the patients discharged from the Arcadia hospital don't end up living in boxes on the street, or in county jails.

"Jim," she says, "needs to keep his teeth bared."

4/28/2000 PALMBCHDBR 10

END OF DOCUMENT

9/8/1999 PALMBCHDBR 2
9/8/1999 Palm Beach Daily Bus. Rev. 2

Palm Beach Daily Business Review
Vol. 46, No. 12

September 8, 1999

RULING ON CEMETERY CHALLENGES RELIGIOUS FREEDOM RESTORATION ACT

Carol Marbin Miller
Review Staff

Several Boca Raton families who asked a federal judge to declare unconstitutional the rules governing a publicly run cemetery knew in March that U.S. District Judge Kenneth L. Ryskamp had decided against them.

But last week, the families were dealt an additional blow: Not only will they lose the right to erect vertical monuments to their loved ones, the families also will be forbidden to seek temporary exceptions to the rule.

In a 49-page ruling that is the first to explore Florida's recently enacted Religious Freedom Restoration Act, Ryskamp held that the city of Boca Raton did not substantially burden the free exercise of religion by banning vertical headstones from its municipal cemetery. Ryskamp's opinion may now set the tone for a contentious debate that is brewing over the 1998 state law.

Ryskamp's ruling may come into play in a pending suit pitting two Orthodox Jewish synagogues against the tiny Miami-Dade town of Surfside. The synagogues claim the town's zoning code makes it impossible for them to worship within their own neighborhoods. Fort Lauderdale lawyer Bruce Rogow, who represents the city of Boca Raton in the cemetery case, represents the city in that case, as well.

In a footnote that bodes well for Surfside, Ryskamp suggests the Religious Freedom Restoration Act may well be unconstitutional.

"The statute, which operates to exempt religious but not secular conduct from compliance with neutral laws of general applicability, evidences a preference for religion which arguably runs afoul of the Establishment Clause of the First Amendment," Ryskamp wrote.

Ryskamp had telegraphed his cemetery ruling in March when he announced from the bench that he would side with the city. His opinion explains at great length, and in scholarly prose, the reasons for his ruling.

"His ruling from the bench told us the outcome," said Rogow, who, with colleague Beverly Pohl, represents the city. "This decision provides the legal framework for analysis."

James K. Green, a West Palm Beach lawyer who represents the plaintiffs, is on vacation and could not be reached for comment. Nor could any of his clients.

Since 1944, Boca Raton has operated a 21.5-acre municipal cemetery south of Palmetto Park Road and Fourth Avenue. Residents can buy cemetery plots but are required to abide by several regulations. Among them is the requirement, enacted in November 1982, that grave markers be horizontal and flush to the ground.

The style, commonly known as a "memorial garden," is considered an industry standard for modern cemeteries, and is intended, in part, to make it easier and safer to maintain the cemetery grounds, Ryskamp wrote.

The 11 plaintiffs in the lawsuit all bought plots from the city and, between 1984 and 1996, decorated the graves with standing statues, mostly crosses and Stars of David. Some placed ground cover or edging stones around each site in an effort to prevent the graves from being trampled.

They claim the city's ordinance infringes upon their ability to exercise their religion.

Ryskamp, however, ruled that the decorations amounted to a personal preference, and not some "tenet, practice or custom of a larger system of religious beliefs." Florida's Religious Freedom Restoration Act requires that the belief be a central tenet of the faith in order for it to trigger the act's protections.

Accepting the families' arguments, Ryskamp wrote, "would lead to cemetery anarchy. For example, reasonable size and height limitations on grave decorations would have to yield to sincerely held religious beliefs that grave decorations should be larger than the prescribed limitations.

"Moreover, the cemetery's operating hours would have to yield to sincerely held religious beliefs that grave sites should be visited outside the cemetery's operating hours. The court does not believe that the Florida Legislature intended such a result," Ryskamp wrote.

Ryskamp also struck down a provision of the ordinance which allowed the cemetery manager to make temporary exceptions to the requirement. The provision, Ryskamp said, provided the manager too much discretion, which would enable him to discriminate between plot-holders.

9/8/1999 PALMBCHDBR 2

END OF DOCUMENT

4/22/1999 PALMBCHDBR 1
4/22/1999 Palm Beach Daily Bus. Rev. 1

Palm Beach Daily Business Review
Vol. 45, No. 168

April 22, 1999

From the Courts

LAWYER FOR CANE CUTTERS REJECTS PLAYING TO JURORS' EMOTIONS

Stephanie Smith
Review Staff

Even his colleagues at the plaintiffs' table were pleading with David Gorman.

"Everyone wants me to be more exciting," Gorman said, referring to his co- counsel Edward Tuddenham and Anthony Natale.

Gorman is lead lawyer in the $7 million class-action wage dispute brought by cane cutters against Atlantic Sugar Association Inc. The trial, which began in Palm Beach Circuit Court on April 6, has become a showcase for the little-known Gorman and the litigation superstars on the other side of the well.

It's anyone's guess which side will prevail, but the contrast in style and strategy could not be sharper.

While Atlantic's big guns, Willie Gary and Elizabeth du Fresne, have played to the jury with every artful word and careful gesture, Gorman has studiously avoided emotional pitches to the jury of five women and one man.

Gary, best known for winning a $500 million Mississippi jury verdict against a Canadian funeral home chain, speaks in the explosive, fiery tones of a tent revival preacher.

Du Fresne, a partner at Steel Hector & Davis in Miami, is the very image of a kindly aunt: apple cheeks, hair pulled into a ruffled bun and a soothing, sing- song voice.

By his own count Gorman, 52, has tried only two cases before a jury in the last decade. He has all the pizzazz of the commercial litigator that he is, one who seems more comfortable parsing technical arguments before a judge than making a passionate appeal to a jury.

"I am what I am," he says.

Gorman realizes he may not only be outspent, but outmatched.

A battery of Steel Hector attorneys and paralegals from Miami have to be bused between the court and their rooms at the Radisson Hotel in West Palm Beach in an industrial-size van.

"It is intimidating that they have the resources we could only imagine," said Tuddenham. "I'm sitting here, figuring out how many [trial exhibit] posters we can afford."

Both Gary and du Fresne were named among the state's top 10 litigators by the National Law Journal. Du Fresne has lost six cases in her 30-year legal career. Until she joined Steel Hector six years ago, she also was a plaintiff's lawyer.

And while Gary was breaking bread with President Clinton at a recent $6,000 a plate fundraiser, Gorman's typical fare is a Swiss burger - rare, sliced in half - at the Brass Ring Pub in North Palm Beach, his regular lunch spot, where many of the workaday patrons have paint on their coveralls and ladders on their trucks.

"I'm surprised they let me in the same courtroom," Gorman said.

A North Palm Beach solo practitioner who specializes in contracts and contractor liens, Gorman seems a little amazed at how he became lead attorney in what has turned into a decadelong crusade to seek back wages for 20,000 field hands from the West Indies.

Gorman was 29 when he received his law degree from Cornell in 1976, after a stint in Vietnam where he served as a U.S. Army linguist translating and decoding messages.

A Connecticut native, Gorman came to Palm Beach County in the 1980s because his mother and stepfather lived in Jupiter and his then-wife wanted to live in the South.

Gorman got involved in the case when the cutters' Texas attorney, Edward Tuddenham, brought on an old ACLU contact, James K. Green of West Palm. Green, in turn, recruited Gorman, who he had known since they both did criminal defense work, Green as an assistant public defender and Gorman on the court appointment list.

By 1989, when the cases were filed, Gorman's practice had evolved into contract law, which is at the center of the dispute.

The current trial is against Atlantic, the smallest of the remaining four defendants, since U.S. Sugar Corp. bowed out with a $5.6 million settlement last year. The case was originally scheduled as a nonjury trial. That was before the Fanjul family of Palm Beach, which owns three of the defendant companies, hired Gary. Still to be tried is are the cases against the other remaining defendants - Fanjul-controlled Okeelanta Corp. and Osceola Farms Co., and Sugar Cane Growers Cooperative of Florida.

In the cane cutters case, Gorman contended that the growers used bait-and- switch tactics to cheat foreign field workers out of their pay. The sugar growers told the federal government that workers would be paid $5.30 a ton of cane, but actually paid them only about $4 over a four-year period, he claimed.

The cutters asked for $3.3 million. With interest over the last 10 years, they say they're owed $7 million.

The defense counters the $5.30 a ton figure is wrong. They contend the cutters are relying on disparate pieces of information from various documents to come up with a concocted wage.

Even with potentially inflammatory evidence, such as a brief videotape of sugar company recruiters interviewing Jamaican prospects by feeling their palms for calluses, squeezing their muscles for strength and ordering toe touches to test flexibility, Gorman has let the images speak for themselves.

Even if he had wanted to make more of an emotional appeal, he has been hamstrung by Palm Beach Circuit Judge Edward Fine. Fine, for instance, ruled that Gorman and the plaintiffs could not use the word "cheat" to characterize the company's handling of workers' wages.

And then there are Gorman's own qualms about playing up the pathos. "I'm not going to put [cane cutter] Canute Williams up there and humiliate him about how he can't read," he said of one of the class representatives.

Indeed, the jury learned about Williams' illiteracy from the defense, when Gary said Williams was selected as a class representative for that reason.

"This is not about fireworks," said Tuddenham, a former Legal Aid lawyer who specializes in cases involving class actions and undocumented aliens that the government-funded agency is forbidden to pursue. "These men are not complainers, they're not up here to cry and moan and say, 'Feel sorry for me.'"

Gregory Barnhart, a personal injury lawyer in West Palm Beach who has known Gorman since law school days at Cornell, said this is the type of case Gorman handles well.

"He's a tough, hard-nosed, intellectually gifted lawyer," Barnhart said. "The job of the trial lawyer is to make something that's difficult simple, and if you have that you have a real gift.

"If you can educate a jury, you can persuade a jury," he said.

Such a case doesn't naturally lend itself to emotional displays, Barnhart said. A jury will see through any insincerity.

"You have to look at the kind of case where emotions come in. The kind of cases where someone's been killed, grievously injured or defrauded. There are some things that go along with breach of contract, that you just can't get exercised about," Barnhart said.

Yet, when the plaintiffs rested last week, the jubilation from the defense table was obvious.

"They're going to get lucky if they get past a directed verdict," Gary said at the time.

He was wrong. Judge Fine denied the motion to throw out the case.

The Fanjul family of Palm Beach has spared no expense to fight the claims by their former workers, although they have long been replaced by machines. Sugar growers have twice appealed cutters' victories and won.

In jury selection and opening statements, Gary has tried to depict the Fanjuls as a farm family of immigrants.

"When I say Atlantic Sugar Association, we're talking about small-business people. They've got families," Gary said during jury selection. "Corporations have rights in America, you all agree with that? Small businesses have rights in this country, you agree with that?"

Outside of court, Gary said the Fanjuls are not as well-off as people think. "They make less than $100 million a year. After you take out expenses, it's basically nothing," Gary said. "Sometimes, you get penalized for working hard."

In the course of the trial, Gary has also tried to downplay the difficulty of the cane cutters work, which involved swinging a machete through thick rows of burned stalks in the sweltering muck outside Belle Glade. Gary said grave digging was a much worse job.

"I wish the men could have eaten lobster every day. I wish they could have eaten steak every day," Gary said in an interview. "That's not the real world. That's not even reality."

Flair and charisma aside, which side wins will largely hinge on Fine's ruling on what the jury should use as the law of the case.

Three weeks into the trial, the judge still has not ruled on the defining issue of the case: What constitutes the contract between the cutters and the growers?

Atlantic's lawyers contend the contract between growers and cutters wasn't breached because the growers never intended to pay - and the cane cutters never expected to get - $5.30 a ton of cut cane.

Gorman says what the workers expected to be paid is irrelevant. He contends that only the written documents outlining minimum quotas and wages should be used to settle the dispute.

For his part, Gorman knows that all of the posturing in the world will mean nothing unless the judge agrees with his legal theory of the case.

"If the judge says [our interpretation of the contract] doesn't mean anything, we've lost," Gorman said.

4/22/1999 PALMBCHDBR 1

END OF DOCUMENT

12/22/1998 PALMBCHDBR 1
12/22/1998 Palm Beach Daily Bus. Rev. 1

Palm Beach Daily Business Review
Vol. 45, No. 85

December 22, 1998

REFORMS IMPERILED

EFFORTS TO CLOSE THE GIANT INSTITUTIONS THAT WAREHOUSE MANY OF FLORIDA'S DISABLED ARE ENDANGERED BY U.S. SUPREME COURT

Carol Marbin Miller
Review Staff

Efforts to reform Florida's beleaguered system of care for disabled people by shutting down large state institutions may be in jeopardy.

For years, the state has been under pressure to move developmentally disabled and mentally ill people from segregated state institutions to integrated community-based facilities, where they can interact with nondisabled people.

Advocates have pressed their cases, in part, by arguing that the regulations associated with the Americans with Disabilities Act (ADA) prohibit segregating disabled people because it constitutes discrimination.

But now that legal reasoning, which has been a catalyst for Florida's reforms, is being challenged - and could very well be rejected by the U.S. Supreme Court.

Last week, partly at the urging of Florida officials, the high court agreed to decide whether the ADA requires states to provide disabled people with services in the more open, integrated facilities.

The case, L.C. v. Olmstead, originated out of the 11th U.S. Circuit Court of Appeals, which has jurisdiction over Florida, Georgia and Alabama. In L.C., the 11th Circuit, in a decision written by former Florida Supreme Court Justice Rosemary Barkett, ruled that Georgia's Human Resources Department could not confine two mentally ill patients in a state psychiatric hospital for treatment that could be provided in a less restrictive setting.

The decision, rendered in April, has been wielded by advocacy groups across the country to argue that psychiatric patients and the developmentally disabled must be moved out of large, often isolated, institutions.

State officials also fear it could be used to force them into greatly expanding programs for the disabled.

Florida Attorney General Bob Butter-worth's office filed a "friend of the court" brief, on behalf of 22 states, supporting Georgia's efforts to overturn the ruling.

Indeed, Florida may have more to lose than any other state. The appeal's outcome could influence judges' decisions in about a half-dozen class-action suits against the state.

"It really is a very important case," said Marcia Beach, a Fort Lauderdale lawyer and former head of the state Advocacy Center for Persons with Disabilities, a federally funded watchdog group.

While state officials are pleased with the Supreme Court's decision to review the case, some advocates for the

disabled fear the justices intend to reverse the 11th Circuit's controversial holding.

The high court often does not agree to hear cases unless there are conflicting rulings from lower courts. In this case, no such conflict exists, leading advocates to believe that a majority of justices may simply want to overturn the 11th Circuit's conclusions.

"It's not a good sign," said Miami lawyer Helena Tetzeli, whose law firm, Kurzban, Kurzban, Weinger & Tetzeli, has helped lead efforts to improve services for the developmentally disabled. "This usually means they are going to reverse."

'The core principle'

The ADA was passed in 1990 with an eye toward eliminating discrimination against the physically disabled, mentally ill and developmentally disabled. Title II of the act was designed to prohibit discrimination by governments that provide state and local services.

To give meaning to Title II, Congress called upon the Justice Department to draft regulations defining and limiting the act's scope. What followed was called the "Integration Mandate," which says "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of ... individuals with disabilities."

"Where, as here, the state confines an individual with a disability in an institutionalized setting when a community placement is appropriate, the state has violated the core principle underlying the [ADA]," wrote 11th Circuit Judge Barkett.

Georgia's appeal to the Supreme Court challenges whether the ADA requires community-based treatment, or whether the state complies with the ADA when "appropriate treatment and habilitation can also be provided ... in a state mental institution."

Georgia officials acknowledge that the state, like most others, has for several years been moving away from a model in which the mentally ill or disabled are treated in large, isolated institutions. But to require the state to treat all disabled people in the community would force an overhaul of the state's social welfare program - with enormous consequences for the treasury, they say.

"The ADA does not require, mandate, community-based treatment," said Daryl Robinson, a Georgia deputy attorney general.

But perhaps nowhere in the country could the high court's decision hold more consequence than in Florida. Pending are two class-action suits involving state psychiatric hospitals, one in Broward. Another suit seeks to either shut down or improve conditions at all four state institutions for the developmentally disabled.

And in other suits, the L.C. decision could be used to improve funding and services for developmentally disabled people who are at risk of being institutionalized, said Chesterfield Smith Jr., an assistant Florida attorney general who helped write Butterworth's friend-of-the-court brief.

In his amicus brief, Butterworth likens a provision of the ADA to a "blunt and inefficient instrument" wielded by aggressive advocates to force the overhaul of state programs.

"It is self-evident that, if a state expends enough money, virtually any person can safely and appropriately be served in his or her own home," states the brief, also written by assistant Stephanie A. Daniel. "However, legitimate fiscal reality limits the ability of the states to adequately fund community- based placements for all individuals with disabilities."

One suit that may depend on the outcome of the appeal concerns conditions at G. Pierce Wood Memorial Hospital, a state mental hospital in Arcadia. The suit was filed in Tampa federal court in 1987, and was settled by a consent

decree in August 1989. However, West Palm Beach lawyer James K. Green continues to use the case to force improvements at the hospital.

"G. Pierce Wood is a textbook example of why we need the Integration Mandate," said Green, a solo practitioner. "It is isolated, remote, and segregated in an area where there is an insufficient labor force to draw qualified, competent, caring people."

Likewise, the Advocacy Center for Persons with Disabilities relied heavily on the ADA in its March lawsuit challenging what they call the "warehousing" of almost 1,500 disabled adults at state institutions.

"Class members spend most of their time within the institution where they have little or no contact with persons without disabilities, other than staff," the suit says. "The living and environmental conditions are inhumane, unsafe, unsanitary and harmful. As a result of harmful conditions, many ... are injured and some even die."

While the suit seeks to improve conditions at the four institutions - one of them in Miami - it also seeks to move the inmates and into an "integrated community setting."

Attorney Ellen Saideman of Hollywood, who helped file the suit, is convinced the case and two others filed by the center can prevail even if L.C. is reversed.

Nevertheless, she added, "We hope the Supreme Court would affirm L.C., as it was so clearly rightly decided."

One Miami advocate, however, welcomes the Supreme Court's review.

Steven M. Weinger, who is litigating two lawsuits on behalf of the developmentally disabled, had feared L.C. could be misunderstood to mean all disabled people must be treated in the community - even when they do not wish to be.

One of Weinger's cases involves 8,000 developmentally disabled people who sued the state after being forced to wait years for service. His efforts have forced the state to eliminate its enormous waiting list for state-funded programs.

But, Weinger notes, not all believe they will be best served by community- based programs. Many would prefer the comprehensive care provided by a private institution.

Weinger's fear is that the precedent set by the L.C. case might keep some of his clients from getting treatment in their preferred setting.

"The case needed a lot of clarification, because it can be misread, and has been, by some in Florida," Weinger said. "I thought the case had been misread by some people in an effort to deprive individuals of the right of choice."

12/22/1998 PALMBCHDBR 1

END OF DOCUMENT

8/21/1998 PALMBCHDBR C1
8/21/1998 Palm Beach Daily Bus. Rev. C1

Palm Beach Daily Business Review
Vol. 44, No. 252

August 21, 1998

Law
Deals and Suits

BYGRAVE, ET AL. VS. SUGAR CANE GROWERS COOPERATIVE OF FLORIDA, ET AL.

Stephanie Smith

Palm Beach Circuit Judge Edward Fine approved $1 million in legal fees and costs for attorneys who represented Caribbean sugar cane cutters in a multimillion-dollar settlement with U.S. Sugar Corp.

The judge's Aug. 11 ruling comes in two class-action lawsuits, which U.S. Sugar agreed to settle for $5.65 million.

The lawsuits, filed in 1989 and 1993, allege the sugar industry cheated 20,000 foreign workers, mostly from Jamaica, on wages during a five-year period. The fees and costs will come out of settlement proceeds, and cutters who worked for U.S. Sugar will receive about $300 for each year they worked during the time frame covered by the suits, said **David Gorman**, a North Palm Beach solo practitioner and lead trial attorney for the workers.

The cutters are also represented by West Palm Beach solo practitioner **James K.** Green **and** Edward J. Tuddenham **with Texas Rural Legal Services in Austin.**

U.S. Sugar was represented by **Robert E. Muraro** and **Sarah L. Schweitzer,** partners at **Thomson Muraro Razook & Hart** in Miami; **Michael J. Burman** a partner at **Burman, Critton & Luttier** in North Palm Beach and **John M. Simpson,** a partner at **Fulbright & Jaworski** in Washington, D.C.

U.S. Sugar's decision to settle seems to have strengthened the resolve of the remaining defendants, mostly companies controlled by the Fanjul family in Palm Beach, to fight the allegations.

The Fanjuls hired millionaire personal injury lawyer **Willie Gary** of **Gary,** Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando **in Stuart, to join** the defense team that already includes **Mark Cheskin** and **Elizabeth du Fresne,** partners at **Steel Hector & Davis** in Miami. The group represents Fanjul- controlled Okeelanta Corp., Atlantic Sugar Association Inc. and Osceola Farms.

Another defendant, Sugar Cane Growers Cooperative of Florida, is represented by **David L. Ross**, a partner at **Greenberg Traurig** in Miami.

8/21/1998 PALMBCHDBR C1

END OF DOCUMENT

7/17/1998 PALMBCHDBR C3
7/17/1998 Palm Beach Daily Bus. Rev. C3

Palm Beach Daily Business Review
Vol. 44, No. 227

July 17, 1998

Law
Deals and Suits

MICHAEL GOLD V. CITY OF MIAMI

Erich Wasserman

The American Civil Liberties Union of Florida has asked the U.S. Supreme Court to hear the case of a Miami resident arrested for using vulgar language when complaining to police officers.

While driving up to a bank automated teller machine, in 1991, Michael Gold watched as a woman, who did not seem disabled, parked her car in a space reserved for the handicapped.

Seeing an officer nearby, Gold drove up to him, and asked, "Aren't you supposed to give them a ticket for parking in a handicapped spot?"

When the officer ignored Gold's question, Gold remarked, "Miami police don't do shit."

Standing in line a few minutes later, Gold repeated his comment.

Among those who overheard the second airing were two plainclothes police officers stationed at the ATM to help with related crime. They arrested Gold, charging him with disorderly conduct and then with resisting arrest.

With the help of attorney **Charles M. Baron** in North Miami Beach, Gold sued the City of Miami, its police chief, and the three officers involved in the arrest under the federal Civil Rights Act of 1983, as well as under several state tort laws, claiming false arrest.

The three officers and the police chief failed to convince U.S. District Judge **James W. Kehoe** to dismiss them as defendants, under the theory that they were shielded from such suits under the doctrine of qualified immunity.

They filed an interlocutory appeal and the 11th Circuit Court of Appeals reversed Kehoe. Gold then filed his petition for certiorari to the Supreme Court, arguing that Gold's statement was protected speech under the First Amendment, that the arrest violated his Fourth Amendment rights, and that the officers should be held accountable.

Joel Perwin, a partner with Miami's **Podhurst, Orseck, Josefsberg, Eaton,** Meadow, Olin & Perwin**, will argue the case on behalf of Gold if the Supreme** Court agrees to hear it. Others involved on behalf of Gold are: **Andrew H.** Kayton**, legal director of the ACLU of Florida; and** James K. Green**, of West Palm** Beach's **James K. Green P.A.**

The city was represented at the trial level by former assistant city attorney **Leon M. Firtel**, currently a Miami-Dade Circuit judge. Former appellate assistant city attorney **Kathryn S. Pecko,** now a workers compensation judge in Miami-Dade, handled the city's 11th Circuit appeal. The city has not yet assigned a lawyer to handle the case if it is accepted by the high court.

7/17/1998 PALMBCHDBR C3

END OF DOCUMENT

*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*

2128378 - GREEN, JAMES K

Date and Time Printing Started: (Central)	12/26/2003	02:27:36 pm
Date and Time Printing Ended: (Central)	12/26/2003	02:27:36 pm
Offline Transmission Time:		00:00:00
Number of Requests in Group:	1	
Number of Documents Charged:	10	
Number of Lines Charged:	0	

*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*END*