

IN BRIEF

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for the devices, but did not disclose prices and model numbers. "It's crystal clear that if this court were to disclose the names of the Stingray devices, that would provide the bad actors with the capabilities of the NYPD's technology," Hagler said while ruling to deny the NYCLU's petition, according to a transcript of the proceedings. "They can then use that to evade detection."

Assistant Corporation Counsel Neil Giovanatti and Thomas Roberts appeared for the city. Nicholas Paolucci, a spokesman for the city's Law Department, said that Hagler "perfectly summarized" the NYPD's position in the case.

NYCLU attorney Robert Hodgson said in an interview that the organization is considering if it will appeal the ruling. He said, though, that Hagler's ruling is inconsistent with other courts' jurisprudence, arguing that various law enforcement agencies at the federal, state and local levels—including the Erie County Sheriff's Office and the New York State Police—have turned over the type of information that the NYCLU seeks from the NYPD.

"We think it's disappointing that the court has allowed the NYPD to maintain its culture of secrecy and withhold what is really basic information about the surveillance tools they use across our communities," Hodgson said.

—Andrew Denney

Ex-Fiber Optic Network CEO Charged in \$250M Fraud Scheme

The former CEO of Alaska fiber optics company Quintillion Networks was arrested and charged with defrauding two New York investment firms out of \$250 million, the U.S. Attorney for the Southern District of New York announced Thursday.

"To realize her plan to build a fiber optic system that would service Alaska and connect it to the lower 48 states, Elizabeth Ann Pierce allegedly convinced two investment companies that she had secured signed contracts that would supposedly generate hundreds of millions of dollars in guaranteed future revenue from the system," U.S. Attorney Geoffrey Berman said in a statement.

According to prosecutors, between May 2015 and July 2017, Pierce perpetuated a scheme against the two unnamed investment firms—a Manhattan private equity firm and a subsidiary of a French corporate and investment bank. To convince the firms to invest, prosecutors say Pierce presented forged contracts with two telecommunication companies.

The agreements appeared to show commitments to buy wholesale bandwidth the new fiber optic network Pierce's company was building in Alaska. Over the life of the agreements, the deals appeared to be worth approximately \$1 billion.

In reality, some of the agreements never existed at all, while others were false versions of real agreements that were more favorable to the Quintillion than the genuine agreements.

Under one of the fake agreements, the customer supposedly agreed to buy increasingly more gigabits per second of capacity over a period of 20 years from Quintillion. That contract would have assured Quintillion of hundreds of millions of dollars in future revenue, if it were genuine. In reality, negotiations over that deal ended unsuccessfully, and Pierce never disclosed that fact to the investors.

Under another fake deal, the customer had purportedly agreed to buy a fixed, predetermined amount of capacity regardless of subsequent market conditions. In actuality, that customer was not obligated to buy any capacity, according to prosecutors.

In April 2017, prosecutors say a Quintillion staff member sent an invoice to one of the telecommunication companies that was supposedly in a deal. The company then disputed the invoices, since it hadn't actually ordered in capacity in the network. This launched an investigation by one of the firms allegedly defrauded. In July, an employee at the firm discovered Pierce had deleted documents in support of the fake agreements she'd shared online, according to prosecutors.

Pierce resigned as CEO in August 2017. She is charged with a single count of wire fraud, and faces up to 20 years imprisonment.

Lowther Walker name attorney

Joshua Sabert Lowther is representing Pierce. He did not respond to a request for comment.

In a statement, Quintillion said it took "swift action" when it learned of the allegations against Pierce last year, and self-reported to the Department of Justice. The company has been cooperating with investigators, and said Pierce's alleged conduct is "not aligned with how Quintillion conducts business."

— B. Colby Hamilton

On the Move

• Antitrust litigator **David Reichenberg** has joined **Cozen O'Connor** as a member in the firm's Commercial Litigation Department. He was previously at **Wilson Sonsini Goodrich & Rosati**.

• **Mayer Brown** has added **Ryan Suda** as a partner in the firm's global Banking & Finance practice and Structured Finance group. He joins from **Freshfields**.

• **Kathleen McGee**, former chief of the Bureau of Internet & Technology for the New York State Attorney General's Office, has joined **Lowenstein Sandler** as counsel in the firm's Tech Group and White Collar Criminal Defense practice.

• **Craig D. Baron** has joined **Rawle & Henderson** as a partner. Prior to joining, he was a partner with an international insurance litigation firm based in Manhattan.

• **Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone**, has added **Amy Marion** as a partner in the firm's litigation department.

• **Michael Jaffe** has joined **Baker McKenzie** as counsel in New York. He joins after spending a year opening a New York representative office for **Taylor Wessing France**.

• **Holwell Shuster & Goldberg** has promoted **Lani Perlman** to counsel.

Have a Move to Announce?

All potential items for "On the Move" should be addressed to Patricia Kane at pkane@alm.com

Renew your subscription by phone!

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Outside Counsel

Third-Party Funding of Lawsuits Permeates the Legal Landscape

You know the feeling: You're crunched for time as you scan the newspaper, the *New York Law Journal* or the Internet, reading only the first few paragraphs of an article, a newly reported case or a post. As a result, all too often you don't understand enough of what you've just read to fully appreciate its significance. Over the past two years, I've always felt that way about third-party litigation funding. On its face, the idea of having a stranger use the courts to make a profit seems at odds with the common law doctrine of champerty and maintenance.

Champerty is an agreement to divide litigation proceeds between the owner of the litigated claim and a party unrelated to the lawsuit who supports or helps enforce the claim. Black's Law Dictionary (10th ed. 2014). It was developed to prevent the commercialization of (or trading in) litigation. *Justinian Capital SPC v. Westlb AG*, 28 N.Y.3d 160, 163 (2016). Maintenance is the continuation of something, such as a lawsuit. Black's Law Dictionary (10th ed. 2014).

Are those centuries-old doctrines now archaic? Does third-party funding provide a bona fide vehicle for individuals without the financial resources to level the playing field and pursue legitimate claims against larger, wealthier defendants?

In New York, Judiciary Law §489 codifies the champerty doctrine by providing that, when disputes involve notes and securities, individuals and companies are prohibited from purchasing an assignment with the intent of bringing an action or proceeding. [1] The Court of Appeals has held that the distinction that makes a difference is whether the third-party's intent to sue on the claim was the "primary purpose," if not the sole motivation, behind the third-party's involvement. [2] In light of this narrow judicial definition, the

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By
Neal M. Eisman



vast majority of third-party funding cases (which involve the claimant's right to seek relief for some type of injury) do not, on their face, constitute champerty.

Indeed, third-party funding of litigation has grown enormously in the past few years and it is now clearly big business. Last year, it became known that billionaire Peter Thiel had financed Hulk Hogan's successful "sex tape" lawsuit against Gawker Media. That, however, is just the most popular tip of the iceberg. Just google "third-party funding

Does third-party funding provide a bona fide vehicle for individuals without the financial resources to level the playing field and pursue legitimate claims against larger, wealthier defendants?

or financing" and you will find scores of companies who specialize and actively promote it. Some even raise the money they use to make loans via IPOs. Lawrence S. Schaner and Thomas G. Appelmann, "Third-party Litigation Funding in the United States," RArb_indb at 178 (2012). And not all third-party funders are limiting their sights to plaintiffs; some are funding defendants on the condition they share in the delta between what the plaintiff sought and the extent to which a successful defense reduced that sum.

Many attorneys are receiving unsolicited requests asking them to consider funding one or more of their clients' cases through the use of litigation funding. Last month, I received a letter from one located in New York City that asserted it

will provide the claimant and the claimant's law firm funding for meritorious cases in return for a share of the recovery. The letter enclosed an article that included some hypotheticals illustrating some of the most popular kinds of litigation funding deals, including (1) single-case financing (where, for example, a law firm has one case with an expected recovery of \$10 million and the funder provides \$1 million to cover case costs and the funder receives \$2 million back when and if a favorable judgment comes in) and (2) portfolio deals (where, for example, a law firm has five pending contingency cases with the potential to recover \$20 million in fees and the funder provides \$2 million and receives \$4 million if and when a favorable judgment comes in).

Relatedly, there has been a large uptick in the proliferation of companies who offer money advances to plaintiffs at exorbitant interest rates. As you might expect, these companies traditionally sought out personal injury cases. However, that too is changing. Earlier this year, the *New York Times* reported that "settlement advance companies" are trying to cash-in on the #MeToo movement by reaching out to women with sexual harassment claims and offering advances that only need to be paid back—again, at what would normally be considered usurious interest rates—if the claimant collects.

Matthew Goldstein and Jessica Silver-Greenberg, "How Some in the Finance Industry Are Trying to Cash In on #MeToo," *New York Times*, Business Section, p.1 (Jan. 28, 2018). The high interest rates are considered "advances" and not "loans." Consequently, they do not appear to be within the ambit of New York's usury laws. Id. With increasing frequency, settlement advance companies are reaching out to any class of claimants in any industry or any area of the law who appear to possess solid legal claims and who may require funding to pursue them. Three weeks ago the *New York Times* reported that federal prosecutors are investigating finance companies providing

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Calendar

FRIDAY, APRIL 13

New York Law School

The 151st CityLaw Breakfast with TLC Commissioner, Chair, and CEO Meera Joshi
8:15 a.m.–9:30 a.m.

Free
RSVP: www.nyls.edu/CityLaw-Breakfast151

New York City Bar (CLE)

Hot Topics in Privacy & Data Security Law: New Legislation/Regulation, Vendor Management, Digital Media, Regulated Industries, International Concerns & More
9 a.m.–12:30 p.m.
3.5 CLE Credits
42 West 44th Street
Contact: Rosan Dacres
212-382-6630
rdacres@nycbar.org

St. John's School of Law

New York International Law Review 30th Anniversary Symposium
Program will examine the role of New York State in international legal practice
8000 Utopia Parkway
Queens
8:30 a.m.–5:30 p.m.
4.5 CLE credits.
www.stjohns.edu/law/nyilr

Diversity & Inclusion Gala

6:30 p.m. Cocktails
7:30 p.m. Dinner
Tribeca Rooftop
2 Desbrosses Street
www.stjohns.edu/law/d&igala2018

Practising Law Institute

Hot Topics in Child Custody, Visitation & Guardianship for New York Practitioners
9 a.m.–5 p.m.
1177 Avenue of the Americas
www.pli.edu/HTCC18

MONDAY, APRIL 16

New York City Bar (Non CLE)

Jeffrey Toobin on "The Supreme Court in the Age of Trump" - The Leslie H. Arps Lecture
Note: registration for this event is at capacity.
6:30 p.m. - 9 p.m.
42 West 44th Street
Register: www.nycbar.org

Nassau County Bar (CLE)

Laws That Protect You and Your Pets
5:30 p.m.-8:30 p.m.

Light Supper provided
CLE credit available for a fee
15th & West Streets
Mineola
Contact: Valerie M. Zurblis
516-747-4070 x204
vzurblis@nassaubar.org

Practising Law Institute

Corporate Governance: A Master Class
9 a.m.–5:15 p.m.
1177 Avenue of the Americas
www.pli.edu/CGovern18

MONDAY, APRIL 16

TUESDAY, APRIL 17

Practising Law Institute

Developments in Antitrust Law & Regulation
9 a.m.–5 p.m. (Day 1)
9 a.m.–4:45 p.m. (Day 2)
1177 Avenue of the Americas
www.pli.edu/DALR18

TUESDAY, APRIL 17

New York City Bar (CLE)

The Basics of Enforcement Actions and Civil Litigation Related to Swaps, Futures, and Options
9 a.m.–12 p.m.
3 CLE Credits
42 West 44th Street
Contact: Rosan Dacres
212-382-6630
rdacres@nycbar.org

Queens County Bar (CLE)

Stated Mtg & CLE: An Update on The New Federal Tax Law and How It Affects You
6:30 p.m.–7:30 p.m.
1 CLE credit
90-35 148th St., Jamaica
Contact: 718-291-4500 x 232 or cle@qcba.org

New York City Bar (Non CLE)

A Conversation with Ambassador Dani Dayan, Consul General of Israel in New York: Public Affairs Luncheon
12 p.m. - 2 p.m.
42 West 44th Street
Register: www.nycbar.org
The New Tax Laws Impact Matrimonial Decisions?
6 p.m. - 9 p.m.
42 West 44th Street
Register: www.nycbar.org

NYCLA (CLE)

Best Practices for Property Owners
3 CLE credits
9 a.m.–12 p.m.
14 Vesey Street

The Association of Law Secretaries to the Justices of the Supreme and Surrogates' Courts

Annual Spring Dinner
Judge Rolando T. Acosta, and Judge Alan Scheinkman will receive the Association's William Goldstein Memorial Award for Distinguished Service to the Court.

6 p.m. Cocktails
7 p.m. Program
7:30 p.m. Dinner
Battery Gardens
Inside Battery Park, On the Water
Opposite 17 State Street
Contact: Nadine Johnson at njesq@yahoo.com; 646 642-7748

Nassau County Bar (CLE)

Evidence in Matrimonial Actions
5:30 p.m.-7:30 p.m.
2 CLE credits (The Nassau Academy of Law is waiving tuition for the CLE for attorneys who will commit to taking a new pro-bono case through either The Safe Center LI or Nassau Suffolk Law Services.)
15th & West Streets, Mineola
Contact: Valerie M. Zurblis
516-747-4070 x204
vzurblis@nassaubar.org

TUESDAY, APRIL 17–

FRIDAY, APRIL 20

American Bar Association

SIL Annual Conference
The ABA's Section of International Law will convene its first Annual Conference in New York with programs and luncheon events featuring Vietnam war-era whistleblower Daniel Ellsberg and a panel of judges discussing international law.
Where: Grand Hyatt New York, 109 E 42nd St.
Contact: Bill Choyke
Phone: 202-662-1864
Email: bill.choyke@americanbar.org
www.americanbar.org/news

WEDNESDAY, APRIL 18

Appellate Division, First Department (CLE)

Lunchtime CLE Sexual Harassment and Discrimination in the Workplace
1 p.m.–2 p.m.
1 CLE credit
100 Centre Street, Room 535 (July 2)
Speakers: Sherrill Spatz, Inspector General for the Unified Court System

Kay-Ann Porter Campbell, Managing Inspector General for Bias Matters for the Unified Court System

New York City Bar (Non CLE)

Teleconference: Understanding Health Insurance
12 p.m. - 1 p.m.
42 West 44th Street
Register: www.nycbar.org
Landing and Managing Media Interviews: Small Law Firm Evening Program
6 p.m. - 7:30 p.m.
42 West 44th Street
Register: www.nycbar.org

NYC Network Group

NYC Real Estate Expo
7:30 a.m.–5 p.m.
New York Hilton Midtown
1335 Avenue of the Americas.
Early Bird Registration fee is \$69 per ticket. (\$89 after April 1.)
Register: www.nycnetworkgroup.com/
Contact Julie Duquet jduquet@nycreeexpo.com or 914-924-0354

Brooklyn Law School

Book Talk—The Rise of the Working-Class Shareholder: Labor's Last Best Weapon
4 p.m.–5:30 p.m.
Subotnick Center
250 Joralemon Street, Brooklyn
718-780-0691
RSVP: www.brooklaw.edu/webber-booktalk

Practising Law Institute

Global Capital Markets & the U.S. Securities Laws
9 a.m.–5 p.m.
1177 Avenue of the Americas
www.pli.edu/GlobalCM18
IP Monetization and Investment
9 a.m.–5 p.m.
1177 Avenue of the Americas
www.pli.edu/IPMon18

Nassau County Bar (CLE)

Dean's Hour: Demystifying Grievance
12:30 Sign-in and Networking
1 p.m.-2 p.m. Program
1 CLE credit
15th & West Streets
Mineola
Contact: Valerie M. Zurblis
516-747-4070 x204
vzurblis@nassaubar.org
Nassau Community College
Brexit and The Law
On WHPC 90.3 FM radio
3 p.m.
(repeated 7 a.m. on Sunday)
Voicemail: ncc.edu/whpc

For podcasts search WHPC on iTunes

Queens County Bar (CLE)

CLE: Equitable Distribution Law Update
6 p.m.–8 p.m.
2 CLE credits
90-35 148th St., Jamaica
Contact: 718-291-4500 x 232 or cle@qcba.org

WEDNESDAY, APRIL 18 &

WEDNESDAY, APRIL 25

New York City Bar (CLE)

New Jersey Bridge-The-Gap: Satisfy the Mandatory 15 Credits and More
9 a.m.–5 p.m.
16 CLE Credits total (8 Credits each day)
42 West 44th Street
Contact: Rosan Dacres
212-382-6630
rdacres@nycbar.org

THURSDAY, APRIL 19

Appellate Division, First Department (CLE)

A Practical Guide to Understanding and Interrupting Implicit Bias
Mirra Martinez Santiago
2 CLE credits
6 p.m.–8 p.m.
New York County Supreme Court, 111 Centre Street
Jury Room, 11th Floor.
Contact: Amy Ostrau at 212-340-0558 or aostroau@nycourts.gov.

The Society of Professional

Investigators
Meeting: "Recent Developments in Fraud Hotlines: The Sexual Harassment Crisis" with Speaker Professor Chelsea Binns
6 p.m.
Forlini's
93 Baxter Street
Contact C. E. Gordon at sleuth32@aol.com or 516-433-5065

New York City Bar

How to Be an Effective Ally: Practical Tips for Advocating Across Difference
6:30 p.m. - 8:30 p.m.
42 West 44th Street
Register: www.nycbar.org
Mindfulness & Well-Being In Law Committee Open House
7 p.m. - 8:30 p.m.
42 West 44th Street
Register: www.nycbar.org

New York City Bar (CLE)

What a Relief! Practicing Before the NYC Board of Standards & Appeals
6 p.m.–9 p.m.
3 CLE Credits
42 West 44th Street
Contact: Rosan Dacres
212-382-6630
rdacres@nycbar.org

Practising Law Institute

Tax Cuts and Jobs Act Update
9 a.m.–5 p.m.
1177 Avenue of the Americas
www.pli.edu/TJCA18
Appellate Advocacy
1 p.m.–5 p.m.
1177 Avenue of the Americas
www.pli.edu/AppellateA18

FRIDAY, APRIL 20

NYCLA (CLE)

Is Security Possible in a Cyber World?
8 CLE credits
9 a.m.–5 p.m.
14 Vesey Street

New York City Bar (CLE)

6th Annual Institute on Not-for-Profit Law: Current Trends in Nonprofit Law
9 a.m.–5 p.m.
6 CLE Credits
42 West 44th Street
Contact: Rosan Dacres
212-382-6630
rdacres@nycbar.org

New York City Bar (Non CLE)

Friday Evening Chamber Music at the Association
6:30 p.m. - 8:30 p.m.
42 West 44th Street
Register: www.nycbar.org

Practising Law Institute

Diversity & Inclusion in Law Practice
1:30 p.m.–5:15 p.m.
1177 Avenue of the Americas
www.pli.edu/DiversityLP18

MONDAY, APRIL 23

NYCLA (CLE)

Controversies Surrounding Preparing Clients for Child Custody Evaluations
3 CLE credits
10 a.m.–12:45 p.m.
14 Vesey Street

Have an event to list?
E-mail the details to pkane@alm.com