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Friday, December 5, 2014

Entertainment & Sports**African-American media group sues AT&T, DirecTV for \$10 billion**

Prominent litigator Louis "Skip" Miller filed a bombshell racial discrimination lawsuit in California federal court Tuesday that threatens to complicate AT&T Inc.'s planned acquisition of DirecTV Inc.

Law Practice**Pitfalls of purchasing insurance for law firm leaders**

Insurance intended to defend directors and officers can bring peace of mind to law firm leaders, but the policies are complicated and highly negotiable, meaning they have to be crafted to ensure they perform the way firms intend.

Bar Associations**Reinvent the State Bar of California**

If history is any guide, these are times that could try the soul of the State Bar. By **Teresa J. Schmid**

Alternative Dispute Resolution**Building from Scratch**

Michael J. Bayard started his own arbitration and mediation business in 2000. Since then, he's taken on construction disputes in California and Nevada, and because of his deep ties to the field, he's never had to advertise.

Litigation**Judge opens door for trial of fraud claim against Manatt**

Investors in a real estate venture that later emerged as a \$200 million Ponzi scheme can proceed to trial with a fraud conspiracy claim against Manatt Phelps & Phillips LLP, a judge ruled this week.

California Supreme Court**Supreme Court reverses conviction due to prosecutorial misconduct**

The state's highest court unanimously reversed a prisoner's conviction after finding a San Bernardino County prosecutor used an unrelated diagram to illustrate the concept of proof beyond a reasonable doubt.

Obituaries**Harold Weinstock: 1925-2014**

Harold Weinstock, a pioneer in the field of estate planning and a founding partner of one of Los Angeles' oldest estate planning boutique law firms, died Monday. He was 89.

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Building from Scratch

Michael Bayard has deep expertise in construction litigation matters

By **Matt Hamilton**

LOS ANGELES - After more than a decade as partner and national chair of construction litigation at two of the nation's biggest firms - Pillsbury Madison & Sutro and Sonnenschein Nath & Rosenthal LLP - Michael Bayard wanted out.

It wasn't the long hours; he still clocks more than 200 hours in a month. Nor was it the types of cases; his niche as a neutral is the same as when he practiced law: construction.

"I looked down the road, and said, 'What will be different the next 20 years?'" Bayard said during a recent interview. "I liked the firm, I liked the people, but there was nothing really more for me to do."

On the encouragement of high profile mediators like Mike Piazza and David Jenkins, Bayard started his own arbitration and mediation business in 2000. Since then, Bayard has taken on construction disputes in California and Nevada, and because of his deep ties to the field, he's never had to advertise.

"The construction lawyers know they are dealing with one of their own," Bayard said. "They know I won't make an aberrational decision because I don't know the area."

As a lawyer, Bayard worked on the plaintiffs' and defense side, and years of representing large public agencies like the Metropolitan Water District of Southern California have given him a specialty in complex, highly technical cases.

Over 15 years as a neutral, he's handled cases with two to 50 parties. He sees each dispute as a rupture of human relationships, so Bayard seeks out the positions of the actual parties.

"I've been doing this long enough and people trust me enough that I will actually ask the parties to speak," Bayard said. "A lot of what we do as mediators is to break through and figure out, what's the real conflict here?"

Attorneys praised Bayard's combination of expertise and persistence in tackling large cases.

"He's very quietly tenacious. He keeps working and working to try to get a matter resolved," said Ted R. Gropman, a Los Angeles-based partner with Pepper Hamilton LLP's construction practice group.

"He's really a go-to person," added Marcia Kamine, a retired assistant Los Angeles city attorney who now handles construction litigation at Kamine Law Group PC. "If you're not serious, you don't go to Mike. He really wants to make things happen."

Scott Green, managing partner of Simi Valley-based Green Law Group LLP, said he's currently using Bayard in two matters, including a large, multi-party dispute arising from a recently built cold storage facility. Stakes are high, Green said, and Bayard is tirelessly pursuing a resolution. Litigating the case could cost each party more than \$500,000.

"When there's a hot issue, Mike is writing seven days a week, multiple times a day, to ferret out the important information and determine what could help move the process forward," Green said.

Construction litigation is in Bayard's genes, he said. His uncle, Everett Maguire, ran the boutique construction law firm Shapiro & Maguire, and after graduating from UC Hastings College of the Law in 1979, working there was expected.

In 1999, when Bayard left Pillsbury to start his neutral's practice, the transition wasn't a difficult one.

A father of four and grandfather to seven, Bayard gained flexibility by working for himself. And there wasn't a big learning curve as there can be for some new neutrals. Although alternative dispute resolution is increasingly popular, construction litigators have utilized mediation and arbitration for decades.

"Construction [lawyers] were the pioneers in ADR," Bayard said, explaining that the size, cost and technical complexity of construction disputes have made ADR standard procedure. The process of building a significant-sized project is complicated, and it has to [come] together in a certain order," Bayard said. "If something delays one part of the project, it'll delay other parts," in turn generating disputes.

Since the recession, Bayard has seen fewer cases centered on residential subdivisions, and more involving high-value homes. The disputes at the highest echelons of the home construction market have high stakes: costs run about \$1,000 per square foot, and homes are more than 30,000 square feet.

Regardless of size, Bayard said he relishes the task at hand, especially working with construction lawyers - a "high quality" class of attorneys that lack the flash of other legal segments.

From his perch as a neutral, he's witnessed changes to the construction and real estate industries. There are more joint ventures between American and international companies. Parties often opt to impose time constraints at the outset of a mediation in hopes that the "chess clock" keeps costs down. "There's a lot of sense that the job expands to the time allotted," Bayard added.

And rather than engage in alternative dispute resolution in the middle of discovery or in the weeks before trial, more parties are opting for pre-litigation mediation.

"Once that lawsuit is filed and people start getting served, it can take on a life of its own - and in some ways, spin out of control," Bayard said. "By moving the mediation earlier and having pre-litigation mediation, you take out that factor."

"If it doesn't work, you can always go kill each other in court."

Here are some lawyers who have recently used Bayard's services:

Ted R. Gropman, Pepper Hamilton LLP, Los Angeles; Marcia Kamine, Kamine Law, PC, Los Angeles; E. Scott Holbrook Jr., Crawford & Bangs LLP, Los Angeles; Andrew C. Harris, Salamirad, Morrow, Timpane & Dunn LLP, Irvine; Scott Green, The Green Law Group LLP, Simi Valley; Ted Levin, Morris, Polich & Purdy, Los Angeles

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Biography Not Available.

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Corporate

Survey: in-house legal spending to slow

Companies are predicting flat or lowered legal spending this year in what may be a sign that increasingly sophisticated cost management programs are paying off.

Solo and Small Firms

Agility Counts

McMahon Serepca handles both transactional work and litigation - and staffs up as needed.

Government

Department of Justice forms cybersecurity unit

The Department of Justice announced Thursday the formation of a dedicated cybersecurity unit to combat criminal acts with ties to the Internet.

Litigation

Long Beach hospital and former owner face additional suits over spinal implants

Two more plaintiffs have filed legal actions against a Long Beach hospital and its former owner, joining a litany of voices alleging the health care provider inflated the price of medical hardware while implanting substandard devices into patients.

Ethics/Professional Responsibility

Leaving your firm? Clients come first

While lawyers change firms every day, important ethical principles that govern how lawyers and firms should act to protect clients' interest don't - and can get lost in the shuffle. By **Merri A. Baldwin**

The rules for selling a law practice

California lawyers waiting patiently for a version of the CRCP that will conform to the numbering of the Model Rules - employed in every other state - must wait a bit longer. By **William K. Mills**

Labor/Employment

California courts continue to chip away at-will doctrine

While it's now codified in the California Labor Code, there has long been judicial protection for those wrongly accused of, and terminated for, whistleblowing. By **Timothy D. Reuben and Michael N. Hirota**

Judicial Profile

Peter B. Foor

Superior Court Judge Solano County (Fairfield)

Immigration

New strategy plays out in suit seeking counsel for undocumented youths

As the national immigration debate rages, advocates trying to secure a right to lawyers for undocumented youths in deportation proceedings

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tried to sharpen their legal case by adding a 3-year-old El Salvador boy to a federal class action.

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