BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

LITIGATION TRENDS IN FLORIDA – SPRING 2016

March 9, 2016

Berger Singerman adds Former United States Attorney Pamela Cothran Marsh as Partner

Berger Singerman, Florida's business law firm, is pleased to announce that Pamela Cothran Marsh, the former United States Attorney for the Northern District of Florida, has joined the firm as partner on the Dispute Resolution and Government & Regulatory Teams. Marsh will serve clients across the state, and she will work principally out of Berger Singerman's Tallahassee and Miami offices.

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Before Responding to Discovery: Defendant Facing Claims of Misappropriation of Trade Secrets under Florida Law Should Demand that Plaintiff Identify its Trade Secrets with Reasonable Particularity

By: Gavin Gaukroger

A Florida federal court recently entered an order which required certain plaintiffs to provide a particularized statement of the trade secrets allegedly misappropriated by the defendants before the defendants were obligated to respond to the plaintiffs' written discovery in the case. See Veitch et al. v. Virgin Management USA, Inv., Case No. 5-20989-CIV-Moore/McAliley (S.D. Fla. July 10, 2015). In Veitch, the Court ordered the plaintiffs to "provide a writing … that identifies with reasonably particularity each and every alleged trade secret and novel business idea that Plaintiffs claim they disclosed to Defendants and/or that Defendants used, took or misappropriated."

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Recent Case Provides Wake-Up Call to the Lodging Industry: Potential Liability of Individual Managers and Related Entities Under FLSA

By: Frank Scruggs

A recent decision by the United States District Court for the Middle District of Florida alerts individual managers, companies operating lodging properties, and related entities to potential liability under the Fair Labor Standards Act ("FLSA"). The Court issued the decision in the case of Harry Partridge vs. Mosley Motel of St. Petersburg, Affordable Realty and Property Management, and Al Kadury, which involves circumstances that may dismay and surprise some employers in the hospitality industry (and employers, generally).

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The California Supreme Court's Decision Permitting Borrowers to Challenge Assignments of Mortgage Should Not Have an Impact Upon Florida

By: Fred Goldberg

The California Supreme Court has weighed in on the thorny issue of whether and when a borrower should be permitted to challenge an assignment of mortgage in a recent decision, Yvanova v. New Century Mortgage Corp. In doing so, it has become one of few state supreme courts to address this issue, which has become a centerpiece in foreclosure defense and claims by consumers nationwide against lenders, their servicers, agents and vendors. Most courts that have addressed this issue have held that a borrower cannot contest the validity of an assignment of mortgage because the borrower is not a party to that contract.

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Beware: You May Not Have a Direct Claim Against Your Bad-Acting Co-Shareholder or Co-Member

By: Ben Zuckerman

It is inevitable. When co-owners (whether members of a limited liability company or shareholders of a corporation) split-up or reach the split-up point, one inevitably thinks the other or others have wronged him, that the other or others have breached their fiduciary duty to him. Beware. Two fairly recent cases from Florida appellate courts make it clear that such claims may not be available. In Dinuro Investments, LLC v. Camacho, 141 So.3rd 731 (Fla. 3DCA 2014), the Third District Court of Appeal was faced with what was a seemingly egregious fact pattern. Three investors owned a real estate development company that itself owned several parcels of property.

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Caution: Job Applicants in Alabama, Florida and Georgia Can Sue for Disparate Impact Under Age Discrimination in Employment Act

By: James Cunningham

Forty-eight years after its adoption, the reach of the Age Discrimination in Employment Act (ADEA) is still being determined. In Villarreal v. R. J. Reynolds Tobacco Co., the United States Court of Appeals for the Eleventh Circuit, whose decisions bind federal courts in Alabama, Florida and Georgia, held that the ADEA permits job applicants to bring disparate impact claims against employers by whom they were denied employment. The Court's determination is based not on the ADEA's plain language but was reached by deferring to the Equal Employment Opportunity Commission's ("EEOC") interpretation of the statue.

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Be Careful What You Wish For (Part II): Fourth Circuit Invalidates Arbitration Provision Which Was Not Governed by Applicable Law

By: Zachary Hyman

Arbitration is popular alternative dispute resolution mechanism, which allows parties to structure litigation in a manner that theoretically streamlines the process, cuts costs, and helps them obtain an expeditious resolution of a dispute. However, a party's ability to structure an alternative dispute resolution mechanism is not without limits. For example, the decision of the Fourth Circuit Court of Appeals in Heyes v. Delbert Services Corp., 2016 WL 386016 (4th Cir. Feb. 2, 2016) demonstrates the importance of drafting contracts that comply with applicable law.

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