

FROM THE COURTS

After Investigation Into Class Action Billing, Law Firms' Fees Slashed

by Jack Newsham

Plaintiff law firms Labaton Sucharow and the Thornton Law Firm are again in the spotlight after a federal judge slashed their fees in a large class action and referred his opinion about the firms' conduct to a disciplinary authority.

Thursday's decision by U.S. District Judge Mark Wolf of the District of Massachusetts found that New York-based Labaton and Boston-based Thornton had engaged in "serious, repeated misconduct." Wolf issued his decision after a special master's investigation in 2018 confirmed that they double-counted millions of dollars' worth of time and hid a \$4.1 million payment to a lawyer who did no work on the case.

Both firms are now speaking out about the decision, saying they are evaluating options. A spokesman for Thornton said the firm remains proud of its work and the result achieved for the case and said, "we are, therefore, disappointed with the ruling and are reviewing all of the available options."

Echoing Thornton, a Labaton spokesman said the firm was "extremely disappointed" by Wolf's decision. The firm argued that Wolf ignored the special master Gerald Rosen's conclusion "that the referral payment made in the case did not violate the rules of professional conduct or warrant disciplinary sanction or other action." Labaton added that Wolf "ignored" findings by retired U.S. District Chief Judge Garrett Brown of the District of New Jersey—whom the firm hired for an assessment—who found that the type of referral payment in this case "was a singular anomaly."

Wolf, in the Thursday decision, had Labaton and Thornton bear the brunt of the reduction in fees from \$75 million to \$60 million. He also had his decision sent to the Massachusetts Board of Bar Overseers and told the board to report back on whatever actions it took.

The judge called for Labaton's fees and costs to be cut from \$32 million to \$22 million and for Thornton's to be cut from \$20 million to \$13 million, with Lieff Cabraser Heimann & Bernstein's fees reduced from \$16 million to \$15 million and ERISA firms—Keller Rohrback, McTigue Law and Zuckerman Spaeder—receiving fee increases.

The decision, issued late Thursday, came more than three years after a \$300 million settlement was reached in the case brought by the Arkansas Teacher Retirement System, a pension fund known as ATRS, against financial institution State Street. It also came after three years and over \$5 million of investigation and argument between Rosen, appointed by Wolf as special master, and Labaton, Thornton, Lieff Cabraser and other firms involved in the case.

Rosen was tasked with investigating discrepancies in the law firms' fee petitions identified by the Boston Globe, with multiple firms claiming to retain the same "staff attorneys" or contract lawyers at different rates. The firms said the error was inadvertent and urged the judge to take no action, saying \$75 million remained a reasonable fee.

But the investigation went ahead. Not only did Rosen confirm that the staff attorneys' time was double-counted, but he also found that \$4.1 million of the fee was paid to Damon Chargois, a Texas lawyer who did no work on the case. That fee was bigger than the fees paid to counsel for Employee Retirement Income Security Act pension plans whose case was consolidated with the suit brought by ATRS. The ERISA lawyers were kept in the dark about the fee.

Law.com reported earlier this year that Labaton lawyers made thousands of dollars in contributions to two Arkansas politicians who were closely linked to ATRS. The firm's time records and campaign finance records showed that some contributions were recorded by the campaigns while Labaton was trying to win its business and within a day of a meeting between Labaton lawyers and the fund's director.

"Labaton's conduct in assiduously trying to conceal its obligation to pay Chargois indicates that it knew the arrangement was highly questionable, if not improper," the judge wrote. He cited the firm's effort to have details about Chargois redacted from Rosen's report and its practice of leaving Chargois off of emails with the client, or blind-copying him.

Massachusetts politics, too, were implicated in the case. Garrett Bradley, the Thornton firm's managing partner and a former assistant majority leader in the Massachusetts House of Representatives, "exploited his political connections to get business," Wolf wrote, citing the Globe's reporting about how Labaton lawyers contributed to the treasurer of Plymouth County, Massachusetts, who chairs a public pension fund that went on to lead several class actions with Labaton and Thornton as its lawyers.

Wolf said Labaton's arrangement with Chargois was not a "referral fee," as the firm had argued, but a "finders fee" that violated Massachusetts Rule of Professional Conduct 7.2(c). He concluded that Labaton, Thornton and, to a lesser extent, Lieff Cabraser, "made submissions in support of their request for \$75,000,000 in attorneys' fees that were replete with false and misleading statements" and said Labaton and Thornton violated Rule 11 of the Federal Rules of Civil Procedure and state ethics rules.

In a footnote, the judge also raised concerns about the common practice by securities plaintiffs law firms of offering free portfolio monitoring services to investment funds in exchange for the opportunity to pitch them on lawsuits. He invoked similar concerns by Senior U.S. District Judge Jed Rakoff of the Southern District of New York and said a fee-for-service model—rather than a free service—would reduce the risk that funds receive self-serving advice from lawyers who profit by suing.

"The United States has a proud history of honorable, trustworthy lawyers," the judge wrote. "However, this case demonstrates that not all lawyers can be trusted when they are seeking millions of dollars in attorneys' fees and face no real risk that the usual adversary process will expose misrepresentations that they make."

Contact Jack Newsham at jnewsham@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **Local Planning Agency (LPA)** on **Wednesday, March 18, 2020 beginning at 5:00 PM**, to consider the following amendment to the City of Doral's Comprehensive Plan, Future Land Use Map. This meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166.**

The City of Doral proposes to adopt the following Resolution:

RESOLUTION No. 20-

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, SITTING AS THE LOCAL PLANNING AGENCY, RECOMMENDING APPROVAL / DENIAL OF, OR GOING FORWARD WITHOUT A RECOMMENDATION, TO TRANSMIT TO THE LOCAL GOVERNING BODY AN AMENDMENT TO THE CITY OF DORAL COMPREHENSIVE PLAN, FUTURE LAND USE MAP (FLUM) TO INCLUDE AND GRAPHICALLY DISPLAY THE "DOWNTOWN ARTS REUSE DISTRICT" OVERLAY BOUNDARIES REFERENCED IN POLICY 2.1.2 ENTITLED "INDUSTRIAL" CATEGORY OF THE FUTURE LAND USE ELEMENT; AND AUTHORIZING THE TRANSMITTAL OF THE FLUM AMENDMENT ADOPTION PACKAGE TO THE STATE LAND PLANNING AGENCY, THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, AND OTHER REQUIRED GOVERNMENTAL REVIEWING AGENCIES PURSUANT TO THE PROVISIONS OF SECTION 163.3184, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

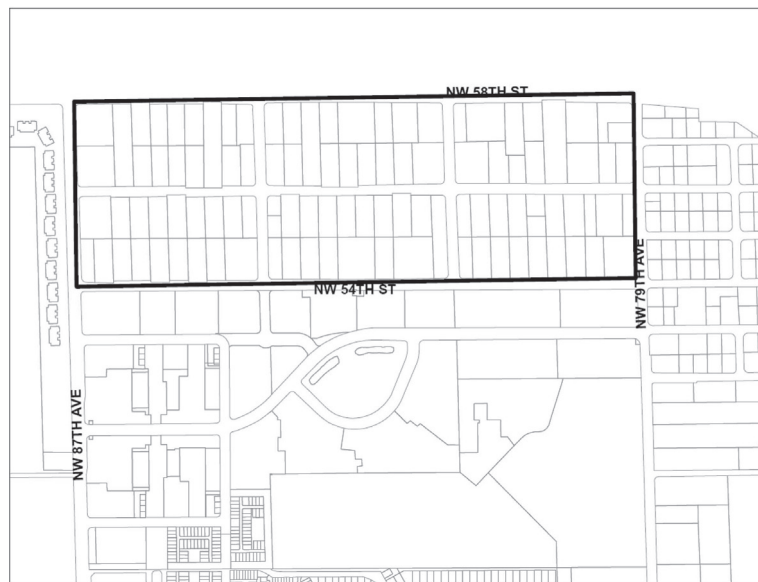
HEARING NO.: 20-03-DOR-03

APPLICANT: City of Doral

LOCATION: Area located north of Downtown Doral, bounded by NW 87th Avenue on the west, NW 58th Street on the north, NW 79th Avenue on the east and NW 54th Street on the south.

REQUEST: The City of Doral (the "Applicant") is requesting Mayor and City Council approval for an amendment to the City of Doral Comprehensive Plan Future Land Use Map (FLUM) to include and graphically display the "Downtown Arts Reuse District" overlay boundaries referenced in Policy 2.1.2 of the Future Land Use Element.

Location Map



Information relating the subject application is on file and may be examined in the City of Doral, Planning and Zoning Department Located at **8401 NW 53rd Terrace, Doral, FL. 33166**. All persons are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the City Clerk, **8401 NW 53rd Terrace, Doral, FL. 33166**. Maps and other data pertaining to these applications are available for public inspection during normal business hours in City Hall. Any persons wishing to speak at a public hearing should sign in with the City Clerk prior to this item being heard. Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

NOTE: If you are not able to communicate, or are not comfortable expressing yourself, in the English language, it is your responsibility to bring with you an English-speaking interpreter when conducting business at the City of Doral during the zoning application process up to, and including, appearance at a hearing. This person may be a friend, relative or someone else. A minor cannot serve as a valid interpreter. The City of Doral DOES NOT provide interpretation services during the zoning application process or during any quasi-judicial proceeding.

NOTA: Si usted no está en capacidad de comunicarse, o no se siente cómodo al expresarse en inglés, es de su responsabilidad traer un intérprete del idioma inglés cuando trate asuntos públicos o de negocios con la Ciudad de Doral durante el proceso de solicitudes de zonificación, incluyendo su comparecencia a una audiencia. Esta persona puede ser un amigo, familiar o alguien que le haga la traducción durante su comparecencia a la audiencia. Un menor de edad no puede ser intérprete. La Ciudad de Doral NO suministra servicio de traducción durante ningún procedimiento durante el proceso de solicitudes de zonificación.

Connie Diaz, MMC
City Clerk
City of Doral