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Saul Ewing Sees PEP Rise 8.5 Percent, RPL 6.5 Percent

BY LIZZY MCLELLAN
Of the Legal Staff

In its first full year after a major merger, Saul Ewing Arnstein & Lehr posted increases in both revenue per lawyer (RPL) and profits per equity partner (PEP), beating firm leadership's expectations.

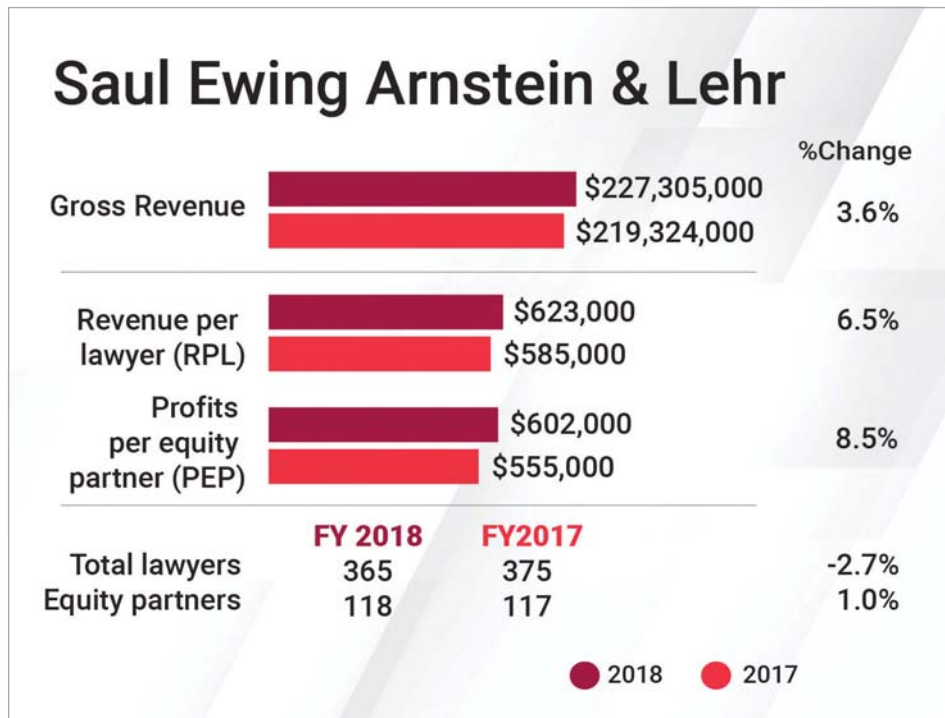
The firm saw gross revenue increase by 3.6 percent, to \$227.3 million. But RPL climbed by 6.5 percent to \$623,000, recovering from a dip in 2017, when head count grew by nearly 50 percent.

Saul Ewing announced in September 2017 that it had merged with Arnstein & Lehr, adding more than 100 lawyers in Chicago and Florida to the Philadelphia-based Am Law 200 firm.

According to managing partner Barry Levin, Saul Ewing beat its budget by 18 percent in 2018. "It was a great year," he said.

PEP increased by 8.5 percent to \$602,000 in 2018, also surpassing 2016 levels after a slide in 2017. Net income, at \$70.9 million, showed a 9.5 percent increase.

With a head count of 365, Saul Ewing had 10 fewer lawyers in 2018 than in



2017, showing a decrease of 2.7 percent. Much of the contraction came in the nonequity partner tier, which shrank by six, to 84 nonequity partners. The

number of nonpartner lawyers decreased as well, while the equity partner tier grew by one.

Saul Ewing continues on 10

Armstrong Teasdale Elects New MP Who Aided East Coast Growth

BY RYAN LOVELACE
The American Lawyer

Armstrong Teasdale announced Feb. 22 that it has elected a new managing partner, David Braswell, to succeed the late John Beulick, who died in December 2018.

The firm's chairman, Michael Chivell, *Armstrong Teasdale continues on 10*

Phila. Mayor's Deleted Texts Could Be Recovered, Forensic Experts Say

BY VICTORIA HUDGINS
Legaltech News

Philadelphia Mayor Jim Kenney grabbed local headlines when it was revealed he periodically deletes text messages from his personal cellphone that he also uses for work.

Kenney's "bring your own device" approach for work is a growing trend in

the economy, including the legal industry. But the mayor's deletion habit could be seen as a slight to government transparency. Still, while recovering the mayor's deleted texts from years ago may be difficult, it's not impossible, experts said.

When The Philadelphia Inquirer requested the mayor's text messages from

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PEOPLE IN THE NEWS

ELECTED AND APPOINTED



KOZUCH

James J. Kozuch, a shareholder of **Caesar Rivise**, was elected president of the **Bar Association of Lehigh County** during the annual membership meeting.

Kozuch is set to serve as president of BALC until January 2020.

Kozuch heads the Lehigh Valley office of Caesar Rivise, a 20-attorney intellectual property law firm with offices also in Philadelphia and Wilmington, Delaware.

A longtime resident of the Lehigh Valley, he has been an active member of BALC since 1985 and currently serves as a delegate in the House of Delegates of the **Pennsylvania Bar Association**.

He served on the board of commissioners for Salisbury Township and on the board of commissioners for Lehigh County.

Kozuch litigates intellectual property and commercial cases and has been lead counsel in jury trials and bench trials.

He also is a registered patent attorney, an arbitrator for the **American Arbitration Association** and the **International Centre for Dispute Resolution**, and a licensed professional engineer with experience in the energy and chemicals

industries as an engineer and strategic planner.

Holland & Knight senior counsel **Lori Atkin** joined the board of directors of the **Homeless Advocacy Project**.

HAP was founded in 1990 to meet the legal and advocacy needs of homeless individuals and families in Philadelphia.

Atkin is one of 350 lawyers, paralegals and law students who volunteer their services to support HAP's mission.

She is an employee benefits attorney who represents a wide range of employers, including for-profit, nonprofit, governmental and church entities.

She focuses her practice on all aspects of defined benefit, defined contribution and hybrid plans, such as cash balance plans, from inception through termination.

SPEAKERS

Stradley Ronon Stevens & Young partner **Steven B. Davis** and insurance financial and regulatory specialist **Stephen J. Johnson** spoke at the Pennsylvania Association of Mutual Insurance Companies Business Transactions Seminar on Jan. 24 in Harrisburg.

Their panel, "Regulatory & Corporate Considerations," discussed regulatory requirements for corporate transactions and regulatory factors and influences that impact business transactions.

Davis is an insurance regulatory and coverage practitioner.

As chair of Stradley Ronon's insurance practice, Davis helps manage the firm's insurance-related regulatory and coverage dispute and litigation engagements.

For more than 20 years, he provided counsel and services in hundreds of insurance regulatory, coverage and litigation matters.

He was previously general counsel of the Pennsylvania insurance department.

Johnson, who previously served as deputy insurance commissioner of the Pennsylvania insurance department, advises on insurance and insurer-related financial transactions with a focus on identifying and addressing insurance regulatory issues.

He works with clients on the insurance regulatory implications of mergers, acquisitions and joint ventures; implementation of new regulatory requirements; reviewing transactional documents for insurance

regulatory issues and possible alternatives; designing and developing presentations to regulators; and creating and assessing workout options for troubled companies.

On Jan. 31, **Susan Maslow**, a founding partner and business law attorney with **Antheil Maslow & MacMinn** in Doylestown, participated in a continuing legal education webinar titled "Protecting Workers and Managing Company Risk in Supply Chains: Moving from Policies to Contracts."

Maslow is a member of the **American Bar Association** business law section's working group, which developed model clauses to incorporate human rights protections in international supply chains.

The program explained how these clauses make supply chain control and worker protection both legally effective and operationally likely by moving the commitments that companies require of their suppliers into the actual contract documents, where they have greater impact. •

All potential items for People in the News should be addressed to **Aleeza Furman** at The Legal Intelligencer, afurman@alm.com

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▶ **Attorney General Josh Shapiro** will provide insights on emerging healthcare issues

▶ **David Nash, Dean of the Jefferson College of Population Health**, examines the current healthcare mess

▶ **Jim Sheehan** will examine the ethical duties of attorneys to provide an adequate independent investigation

▶ **FBI Supervisory Special Agent Edward You** explores data security in healthcare

▶ **Mark Gallant** shares trends in out of network provider reimbursement

▶ **Plus many more terrific speakers in over 38 sessions!**

Attorney General
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REGIONAL NEWS

Lawsuits Over Contaminated Drug Valsartan Consolidated in NJ

BY CHARLES TOUTANT

New Jersey Law Journal

Lawsuits from around the country over alleged contamination in blood pressure and heart disease drug Valsartan are being transferred to a federal judge in Camden, New Jersey, following a consolidation order by the Judicial Panel on Multidistrict Litigation.

The suits were granted mass tort status after an investigation by the U.S. Food and Drug Administration found that Valsartan contained trace amounts of N-nitrosodimethylamine, also known as NDMA, a probable human carcinogen. The tainted drugs in question were made in a facility in China and sold as generics in the U.S.

The JPML granted a motion by plaintiffs lawyers Feb. 14 to transfer Valsartan litigation to the District of New Jersey. Two Valsartan cases from other districts were transferred to New Jersey Feb. 19 and three on Feb. 20, where they will join five other cases that were previously filed in the state. The JPML order covered 11 cases from California, Illinois, Missouri, New York, Tennessee and New Jersey.

The principal defendants are Zhejiang Huahai Pharmaceutical Co. Ltd. and its

U.S. affiliates: Prinston Pharmaceutical Inc., Solco Healthcare U.S. LLC and Huahai U.S. Inc. Prinston, Solco and Huahai have offices at the same location in Cranbury, New Jersey.

The FDA announced a voluntary recall of several brands of generic drugs containing Valsartan in July based on the discovery of NDMA. While not currently in commercial use in the United States, NDMA

Zhejiang Huahai drug factory in China that produced the recalled Valsartan did not follow an EU code of accepted practices for drug manufacturing.

The Kruk petition asked for the cases to be consolidated before U.S. District Judge Freda Wolfson of the District of New Jersey, but the JPML order sent them to U.S. District Judge Robert Kugler. The JPML order did not mention the request for

claim they have been diagnosed with cancer caused by the tainted Valsartan, and suits by third-party payers who paid for the drug.

“This litigation will be massive. It has the potential to be a very, very large MDL,” Geske said. “Our sense is that there are about a million and a half people who take Valsartan-containing drugs every year,” he said.

The scope of the contamination is “unclear at this point,” Geske said. “The FDA investigation that led to a number of suits being filed is still ongoing. I think this has the potential to be one of the largest recalls and one of the largest MDLs in recent memory. At the proceeding before the panel, there were a number of firms there who claimed to represent thousands of plaintiffs who have not yet filed cases.”

The suits bring claims under breach of warranty theories, common-law fraud and state consumer protection laws. Some of the cases bring claims under product liability laws.

The Kruk petition said the 11 cases that were covered by the transfer “represent only a small sample of the cases that will eventually be filed,” and added that government investigations into the scope of the contamination are in their infancy. “It is reasonable to expect that more cases will

Valsartan continues on 9

The FDA announced a voluntary recall of several brands of generic drugs containing Valsartan in July based on the discovery of NDMA.

was formerly used in the production of liquid rocket fuel, according to a petition for consolidation that was filed with the JPML by lawyers for plaintiff Robert Kruk. The petition said that reports from the Environmental Protection Agency indicate that exposure to NDMA in rats and mice caused tumors in the liver, respiratory tract, kidneys and blood vessels.

Kruk’s petition also cites a report by European Union regulators that the

Wolfson but said Kugler is “an experienced transferee judge with the willingness and ability to manage this litigation.”

The case went to Kugler because he currently is handling one other MDL, while Wolfson has several, said Paul Geske of McGuire Law in Chicago, who represents Kruk.

The JPML order encompasses plaintiffs who are bringing economic claims over the sale of allegedly tainted drugs, people who

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NATIONAL NEWS

Missouri Justices Hand Big Talc Win to J&J in Venue Fight

BY AMANDA BRONSTAD

The Recorder

The Missouri Supreme Court has handed Johnson & Johnson a big win in the New Jersey-based consumer products maker's fight to get lawsuits brought over its baby powder out of Missouri, where juries, particularly in a St. Louis courthouse, have rendered several multimillion-dollar plaintiffs' verdicts in the past three years.

The high court's en banc decision could stymie other talcum powder cases in St. Louis, most of which have included multiple out-of-state plaintiffs that Johnson & Johnson has insisted don't belong in Missouri. The ruling, which was dated Feb. 13, focused on interpretations of Missouri's rules and statutes surrounding venue and joinder of claims by multiple plaintiffs into a single case, similar arguments raised in writ petitions that the Missouri Supreme Court took up this year, halting a Jan. 22 trial of 13 women and an April 8 trial of 24 women. Both of those cases, had they gone forward, would have followed the first consolidated talcum powder trial, which ended with a \$4.7 billion verdict last year for 22 women.

"We are evaluating the implications of this ruling on other upcoming trials," wrote plaintiffs attorney Ted Meadows, of Atlanta- and Montgomery, Alabama-based Beasley, Allen, Crow, Methvin, Portis & Miles who is spearheading the talc trials in Missouri. Edward "Chip" Robertson, a partner at Leawood, Kansas-based Bartimus Frickleton Robertson, who argued the case for plaintiff Michael Blaes, did not respond to a call for comment.

Blaes, who alleged his wife died from ovarian cancer after using Johnson & Johnson's talcum powder products, is a resident of suburban St. Louis County, not the city of St. Louis. However, Blaes' joined his claims with those of another plaintiff who was a St. Louis city resident. In 2017, his trial was set to begin when the Missouri Supreme Court intervened.

The majority opinion, on a 4-3 vote, ruled that Judge Rex Burlison abused his discretion in allowing Blaes to pursue claims in his St. Louis courtroom, rather than in St. Louis County Circuit Court. The county was the location where his wife was "injured" as defined under Missouri statutes, the ruling held.

"The central issue in this case is whether permissive joinder of separate claims may extend venue to a county when, absent joinder, venue in that county would not otherwise be proper for each claim," wrote Judge W. Brent Powell, joined by three other panelists. "It cannot and does not. This is evidenced not only by our court's rules but also nearly 40 years of this court's precedent."



Photo by Shutterstock

Johnson & Johnson praised the decision.

"In its ruling, the court held that in a multiple-plaintiff trial, each claim must be properly venued," spokeswoman Kimberly Montagnino wrote in an emailed statement. "One claim that is properly before a court cannot provide a basis for drawing into a trial other claims that are not. We believe that decision is clearly correct, and we continue to believe that the science doesn't support plaintiffs' claims."

St. Louis-based Thomas Weaver, head of the appellate practice area of Armstrong Teasdale's litigation department, represented Johnson & Johnson.

A spokeswoman for Imerys Talc America, a talc supplier to Johnson & Johnson and defendant in the case, declined to comment, as did its lawyer, Susan Robertson of The Robertson Law Group in Kansas City, Missouri. On Feb. 13, Imerys Talc America filed for Chapter 11 bankruptcy in Delaware, citing "historic talc-related liabilities."

Two dissenting opinions chastised the majority's holding as disregarding last year's oral arguments in the case and creating a "sudden and unexpected change in the law."

The Blaes case had a long and complicated procedural background. Blaes, whose wife, Shawn Blaes, died in 2010, originally filed his case in St. Louis County Circuit Court. He dismissed it in 2016 after Johnson & Johnson removed the case to federal court. Blaes refiled his claims in the city of St. Louis soon after a jury there awarded \$72 million in the first talcum powder trial, a move that Johnson & Johnson, in court papers, insisted smacked of "blatant forum shopping."

His claims ended up as part of a case involving 61 plaintiffs, most not from Missouri. Blaes went to trial in 2017, along with the husbands of two other women not from Missouri, but Burlison declared a mistrial after the U.S. Supreme Court's ruling in *Bristol-Myers Squibb v. Superior Court*

made it harder for plaintiffs to sue in states outside their own.

Bristol-Myers, however, did not prevent Blaes from going to trial in Missouri, so Burlison scheduled a retrial. The judge rejected Johnson & Johnson's request to move the case to St. Louis County Circuit Court, prompting the writ of prohibition before the Missouri Supreme Court.

The dissents in this month's en banc opinion latched onto the majority opinion's failure to address a key case in Johnson & Johnson's arguments: Judge Paul Wilson's concurring opinion in the Missouri Supreme Court's 2017 en banc decision in *Barron v. Abbott Laboratories*.

The majority's opinion "essentially becomes an advocate for J&J by reframing its argument in a vastly more favorable light to ensure the outcome it wished to reach," wrote Judge George Draper, in a footnote to his dissent.

The *Abbott* appeal involved a \$38 million verdict in a case involving a Minnesota woman who alleged her baby was born with birth defects after she took the anti-epileptic drug Depakote while pregnant. The St. Louis trial was about only her claims, even though she joined more than a dozen other non-Missouri plaintiffs in the case.

Abbott challenged the verdict on several grounds, including venue and joinder, which Powell denied in the majority's opinion. Wilson, backed by two other panelists, had affirmed the majority's opinion because of Abbott's "ambiguous" arguments but concluded that the ruling could impose onerous venue requirements on plaintiffs not required under Missouri's rules.

"Today, the court announces a second sudden, unexpected, and—in my view—unjustified detour in venue law," Wilson wrote in his *Blaes* dissent, which was joined by Judge Zel Fischer. "This is no small change."

Amanda Bronstad can be contacted at abronstad@alm.com.

Netflix Develops Lab to Foster Legal Careers Backing Film Production

BY RICHARD BINDER

Law.com

What do you do when you're in need of attorneys with specific skills but can't find enough of them? If you're Netflix, you create the Production Legal Lab, an entry-level development program that helps lawyers cultivate those skills and then provides them with hands-on experience at the company.

In a LinkedIn post, Neil Olliviera, director of business and legal affairs at Netflix, talked about the process of devising the Production Legal Lab. It was, from his telling, no easy task. "From a hiring standpoint, it's almost impossible to find attorneys with experience and skills that precisely correspond to the job in question," he wrote. "This is especially true for production legal work, wherein the attorneys preside over the sensitive and often complex engagement of services and procurement of rights from creative professionals such as actors, writers, directors and producers."

Olliviera cited fierce competition, diverse corporate cultures, and "the associated fast pace, high stakes, confidentiality and risks" of episodic series and feature film production as obstacles to entry-level positions. "There's more work to be done," he summarized, "than there are qualified people to do it." So where to begin?

Olliviera said the first step entailed "a deep dive into how feature length and episodic productions evolve at Netflix," in order to lay the foundation of the program. As that deep dive coincided with his hiring at the company, he hit the ground running.

"There were many times I encountered an internal business or legal policy, procedure or principle and thought to myself: 'that's wrong, that's crazy, you just can't do that,'" he said. "On a good day, I'd succeed in holding my tongue, reserving my judgment, and leaving my preconceived notions of the production process at the door. On a bad day, I'd test the patience and goodwill of my colleagues."

Ultimately, Olliviera discovered several things that helped him to understand the workings at Netflix. For one, the business of Subscription Video on Demand is relatively new and requires innovation and collaboration, particularly for the scale at which Netflix is operating. "The overarching lesson I learned in my first few weeks at Netflix was that outsiders and new employees can't possibly intuit the reasoning behind everything that this company does; this understanding and acclimation requires the application of curiosity, communication, tenacity and time," he wrote.

Netflix continues on 8

EDUCATION LAW

The Potential Cost of Medical Residential Placements to Public School Districts

BY GABRIELLE C. GOHAM

Special to the Legal

Public school districts are, by definition, not mental health service providers. However, there are times when a student's medical needs and educational needs are deemed by fact-finders to be so intertwined that students require residential placement to access their education. The decision to place a student in a residential educational program, like all other educational placement decisions, is required under the Individuals with Disabilities Education Act to be made by an Individualized Education Program team (IEP team) comprising professionals from the student's school district of residence and the parents.

That team must decide whether the student requires a residential educational placement in order to receive a free appropriate public education. If parents disagree with an IEP team placement decision, they can initiate a special education due process hearing against their school district of residence.

However, without the resident school district's prior knowledge or input, students are sometimes deemed by Pennsylvania Medical Assistance to require residential clinical treatment due to acute medical



GABRIELLE C. GOHAM

joined Delaware County full-service law firm Raffaele Puppio in 2010 as a partner and chair of the special education department. She represents school districts, charter schools, private schools and intermediate units in special education matters.

necessity. The cost of this medical placement is funded by the insurance carrier for as long as it continues to extend such coverage.

Once the carrier determines that the student no longer requires the medical placement due to acute medical necessity, it notifies the parents that funding will imminently terminate. Parents who disagree and who are concerned about their child returning home without adequate mental health supports often look for an immediate funding source to continue the residential placement. While there may be an appeal process in place for parents to challenge their insurance carrier decisions, parents often choose to initiate a special education due process action. This is a complaint form that is simply filed online with the Pennsylvania Office for Dispute Resolution—against their resident school district, seeking to

force it to pick up the residential placement bill at taxpayer expense.

If a special education hearing officer orders the resident school district to continue funding residential placement for a student, the cost to the school district may be as much as several hundred thousand dollars each year per student. This cost is diverted from educational programming for other school district students (both disabled and nondisabled).

This means that a school district that did not place the student in a residential facility for educational purposes through an IEP team decision may be left footing the full bill for a placement decision made by an insurance company for noneducational purposes once that carrier cuts funding. Because insurance companies decide to place students in medical treatment facilities without consulting

the resident school district, the school district has no way of budgeting in advance for the potential number of students to whom it may be required to offer residential place-

ments originating from these third-party medical decisions in any given school year. Thus, they are left having to scramble to find the funds, money which will necessarily be diverted from educational services for all of the students in the school district.

This potential outcome begs several questions. Will the Department of Education increase funding to our school districts so that they can meet the increasing mental health and other expenses of their special educa-

tion students while still providing quality education to the rest of the student body? Will the mental health system be required to submit to tighter regulation directing it

Education Law continues on 8

If a special education hearing officer orders the resident school district to continue funding residential placement for a student, the cost to the school district may be as much as several hundred thousand dollars each year per student.

The Legal Intelligencer

Wrongful Use of Civil Proceedings and Related Torts in Pennsylvania

George Bochetto, David P. Heim and John A. O'Connell — Bochetto & Lentz, P.C.

Robert S. Tintner — Fox Rothschild LLP



Wrongful Use of Civil Proceedings and Related Torts in Pennsylvania

Over the past decade or so, Pennsylvania has seen a significant (if not explosive) increase in lawsuits that, at their core, complain that some other lawsuit was “wrongful” or “abusive.”

Yet despite the dangerous waters in which litigators swim every day, and despite the fact that “wrongful use” cases have for centuries been debated in the courts, there are few, if any, resources available to provide a comprehensive review of the body of law upon which wrongful use litigation is built. *Wrongful Use of Civil Proceedings and Related Torts in Pennsylvania* is intended to provide that comprehensive review, compiled by author George Bochetto of Bochetto & Lentz, P.C. and his colleagues, based upon years of experience and a close study of the jurisprudence.

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P U B L I C I N T E R E S T

No More Broken Bridges: Children Need Family and Community

BY SUSAN VIVIAN MANGOLD

Special to the Legal

All youth need families and supportive networks to thrive and make a successful transition to adulthood. Philadelphia must act now to guarantee that all youth in the foster care and juvenile justice systems have connections to family and community—including when they exit care. Adolescence is a critical developmental period, and funneling in and out of residential treatment facilities, secure detention centers or other institutional placements can stymie the creation of relationships and other experiences youth need to grow into healthy adults. Far too often youth in these settings fall victim to maltreatment and abuse, as well as harmful practices such as strip searches or solitary confinement.

In February 2018, Congress passed the Family First Prevention Services Act (FFPSA). Among other things, FFPSA limits federal funding for child welfare placements housing more than six residents to no more than two weeks, subject to some specific exceptions. The two-week funding limit is designed to force state and county agencies, such as our state and local Departments of Human Services, to limit use of congregate care in favor of family placements. Reform is desperately needed in our commonwealth: According to the Annie E. Casey Foundation Report, *Fostering Youth Transitions*, 47 percent of Pennsylvania's children ages 14 to 21 in foster care are placed in group homes and



SUSAN VIVIAN MANGOLD is chief executive officer at Juvenile Law Center. Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems. Founded in 1975

in Philadelphia, Juvenile Law Center is the first nonprofit, public interest law firm for children in the country. Through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting and strategic communications, Juvenile Law Center fights for children who come into contact with the child welfare and justice systems in Philadelphia and across the country.

institutional settings. The fact that just over half of these foster youth are placed with families is shocking and a call to action.

Youth advocates at Juvenile Law Center are taking up this call. Juvenile Law Center has two youth advocacy programs that amplify the voices of youth with experience with the justice and child welfare systems to advocate for themselves and for system reform. Juveniles for Justice advocates are youth who have experienced the justice system; Youth Fostering Change involves youth who have lived in foster care. Each year, the groups conduct research and then develop a reform project that will focus the group's advocacy efforts.

Last year, Juveniles for Justice addressed conditions of confinement and published

"Broken Bridges: How Juvenile Placements Cut Off Youth from Communities and Successful Futures," a report featuring youth stories of incarceration and their recommendations for reform. Removal from family and community ranked high among their concerns.

Youth advocate Anahi (only first names were used) wrote: "When I was first going to placement, I didn't actually know when I was being placed. I did not know where or how long I would be there, either. I wasn't allowed home passes when I was there for about three months. I lost contact with my adoptive parents while I was in placement and couldn't return home with them. I also stopped talking to my friends and other people in my life because I couldn't keep in touch when I was there."

Broken Bridges' first recommendation aims to overcome this feeling of isolation: Keep youth in their communities. The youth advocates specifically call upon stakeholders to provide community-based resources to youth and families to help keep kids out of the system. Regarding placement that encourages family and community ties, they recommend:

In the rare instances when placement is deemed necessary, place youth in facilities within their communities or close to their homes. This includes:

- Ensuring that all placements are safe and supportive.
- Training staff on up-to-date trauma-informed practices.

Broken Bridges continues on 8

Some Are Still Left Behind a Decade After The Foreclosure Crisis

BY JOANNE WERDEL

Special to the Legal

This past fall marked the 10-year anniversary of the start of the financial crisis. Fueled by risky, subprime mortgages with predatory terms, the financial crisis and ensuing recession was the worst economic disaster in the United States since the Great Depression. Unemployment climbed to 10 percent nationally and 12 percent in Philadelphia. Between 2007 and 2015, approximately 7.5 million homes were lost to foreclosure, affecting an estimated 19 million people. In Philadelphia, foreclosures peaked in 2009, with approximately 8,500 foreclosures filed in that year alone.

As Philadelphia continues to experience a boom in housing construction and as prices in many neighborhoods climb ever higher, it can be easy to forget that we are only recently emerging from a crisis in which thousands of Philadelphians lost their homes. The anniversary of the financial crisis provides an important opportunity to reflect on the impact of the foreclosure crisis and how we can make sure every Philadelphian has a safe and affordable place to call home.

Many Americans have probably heard the term "subprime" and most may understand that the financial crisis was caused

Foreclosure continues on 9

The Public Interest Calendar of Events

- On Tuesday, the Philadelphia Bar Association's Public Interest Section and LGBT rights committee is set to co-host the CLE titled "LGBTQ Older Adults and Cultural Competency" from 12:30 to 2 p.m. at the Philadelphia Bar Association, 11th-floor conference center, 1101 Market St., Philadelphia. The CLE will educate participants on basic concepts and vocabulary such as sexual orientation and gender identity terms, discuss how the LGBTQ older adult community navigates societal and institutional bias and prejudice, and provide advocates with the knowledge and terminology necessary to promote awareness and inclusivity in their client relationships and allow us all to be allies with this community. For more information and to register, visit www.philadelphiabar.org.

- On March 4, the Philadelphia Bar Association is set to host the CLE titled "Representing Clients in Domestic Violence Matters" from 12:30 to 2 p.m. at the Philadelphia Bar Association. Panelists will provide nuts-and-bolts guidance and practice pointers regarding handling protection from abuse cases

from start to finish, including contempt actions. For more information and to register, visit www.philadelphiabar.org.

- On March 5, Philadelphia VIP is set to hold a volunteer training program, "Consumer Debt: Helping Clients Preserve Their Income by Defending and Negotiating Claims in Municipal Court and the Court of Common Pleas," from 8:30 to 11 a.m. at Dilworth Paxson, 1500 Market St., Philadelphia. To register, email Lauren Ascher at lascher@phillyvip.org or visit www.phillyvip.org.

- On March 6, Philadelphia VIP is scheduled to hold a Small Business Legal Clinic at Ballard Spahr from 5:30 to 7 p.m. at 1735 Market St., Philadelphia. Pair up with local small-business clients to identify and strategize around key legal issues (e.g., choice of entity, reviewing contracts, etc). To register, email Alison Merrick at amerrick@phillyvip.org or visit www.phillyvip.org.

- On March 11, the Philadelphia Bar Association is set to host the

"Chancellor's Forum: A Right to Counsel for Low-Income Tenants" from noon to 2 p.m. at the Philadelphia Bar Association. The first Chancellor's Forum of 2019 brings together Philadelphia city leaders for a discussion centered on providing low-income tenants facing eviction with a right to counsel, regardless of ability to pay. For more information and to register, visit <https://www.philadelphiabar.org>.

- On March 16, the SeniorLAW Center, which seeks justice for older people by using the power of the law, educating the community and advocating on local, state and national levels, is set to host its 41st annual Gala: Silver and Emerald from 6 to 10 p.m. at The Hilton at Penn's Landing, 201 S. Christopher Columbus Blvd., Philadelphia. Enjoy dinner, dancing, compelling stories, auction and more. For sponsorship and ticket information, visit <http://seniorlawcenter.org/>.

- On March 19, the Philadelphia Bar Association is scheduled to present the CLE "Spotting Competency and

Cognitive Deficit Issues" from 3:30 to 5 p.m. at the Philadelphia Municipal Court, 10th-floor conference center, 1339 Chestnut St., Philadelphia. The program will help judges, judicial staff, counsel and other interested professionals recognize conditions that may result in the incapacity of litigants in the Philadelphia Municipal Court as well as strategies for addressing such incapacity. For more information and to register, visit www.philadelphiabar.org.

- On March 21, Philadelphia VIP is set to hold a volunteer training program, "Probate: Resolving Title Issues to Keep Clients in Their Homes," from 8:30 to 11 a.m. at White & Williams, 1650 Market St., Philadelphia. Attendees will learn how to assess a client's claim to inherited property, probate an estate at the Register of Wills, and transfer title from heirs to client. The training will concentrate on unique issues that low-income clients face in obtaining title to a family property. To register, email Mike Jones at mjones@phillyvip.org or visit <https://www.phillyvip.org>.

Netflix

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That level of collaboration, however, made it difficult for Olliviera to find out who was responsible for what at every level of development and production. Netflix, he said, is “a highly innovative, collaborative

and meeting-intensive work environment that values people over process and constantly pivots to improve.” In the end, over 90 professionals at the company agreed to become instructors for the Lab.

Then Netflix hired five attorneys for the program, all of whom had logged three to six years of work at large firms or well-regarded boutiques. Olliviera said this

“class” has completed its formal training and is now rotating through various teams at the company to apply what they’ve learned and increase their knowledge bases through hands-on experience. The Lab is undergoing enhancements and improvements to prepare for the next round of attorneys.

Richard Binder can be contacted at rbinder@alm.com. •

Education Law

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to fund-needed mental health support for

our youth in a manner equal to the increasingly rigorous standards to which public school districts are held? Moreover, if the answer to these questions is no, at what point will the department and our judiciary

recognize that public education simply cannot continue to function if school districts are required to fund services within the purview of other public agencies without increased support? •

Broken Bridges

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Broken Bridges also details the youths’ educational challenges while in placement, including inadequate—if any—educational programming and the inability to transfer the credits they received while in placement to their schools when they exited placement. This year, both Juveniles for Justice and Youth Fostering Change are focusing their reform projects on educational issues that youth confront upon exiting foster care or the juvenile justice system. Too often, lack of credit transfer means these youth must repeat a class or even a full grade, putting them at an educational disadvantage instead of enhancing their chances of success.

To address the need of foster youth for permanency plans that emphasize the need for family and supportive adults, Youth Fostering Change will release its permanency toolkit in the next month. This toolkit will provide resources to both youth and supportive adults working to ensure successful transitions to adulthood, including tips for actively participating in permanency planning meetings and hearings and for ensuring a permanency plan that identifies family, mentors and other adults to ensure a safe and successful transition from care. Check our website, jlc.org, for the upcoming release of this useful resource.

The placement of child welfare and justice-involved youth in institutions and other remote settings are also under increasing scrutiny. On Feb. 6, District Attorney Larry Krasner announced a package of juvenile justice reforms, which plainly favor diversion of youth entirely from the juvenile justice system and, where placement is necessary within the purposes of the Juvenile Act, urge the use of placement as

a last-resort option. At the press conference announcing the new policies, Juveniles for Justice youth advocates Lilly and Bree detailed physical abuse, strip searches, lack of education and other harmful conditions of confinement that they experienced in juvenile justice placements, and which are all documented in Broken Bridges. The system meant to help them instead caused further harm. They called for an end to institutional placements as well as reliance on placements far from home. Marsha Levick, Juvenile Law Center chief legal officer, also spoke and echoed their call to keep kids in their communities.

A few months ago, as part of their reform project that culminated in Broken Bridges, youth advocates from Juvenile Law Center’s Juveniles for Justice program also testified before Philadelphia City Council about the abusive conditions of confinement they experienced in the juvenile justice system. Their testimony, as well as that of other witnesses, prompted Councilmember Helen Gym to form the Youth Residential Placement Task Force to address abusive conditions at facilities and move children out of congregate care. Task Force membership includes representatives from Juvenile Law Center along with colleagues from Education Law Center, Community Legal Services, Support Center for Child Advocates and the Defender Association. Philadelphia Department of Human Services, the District Attorney’s

Office, Community Behavioral Health and the School District of Philadelphia are also members. DHS commissioner Cynthia Figueroa has similarly called for change, publicly supporting our youth advocates at the City Council hearing and committing to lead a citywide effort to keep youth in their communities and families.

The task force will finalize its report in June of this year, and it is critical to keep the pressure on our local agencies and courts to reform the system so that children are only placed outside their families when there is no other safe alternative; are supported—not harmed—in placement; and transition out of care or placement with connections to supportive families and other adults. A broader coalition of youth, families and advocates outside the task force are also working to ensure that the task force

Juvenile Law Center has two youth advocacy programs that amplify the voices of youth with experience with the justice and child welfare systems to advocate for themselves and for system reform.

hears from affected communities. If you or a child you know would like your concerns and voices to be heard, plan to attend the upcoming public meeting at 5:30 p.m. Tuesday at Community Behavioral Health, 801 Market St. A second public comment session is set to be held at 5:30 p.m. May 7. We must create continuous paths to success for our youth, not broken bridges. Together, we can ensure that all of Philadelphia’s children receive the family and community support they need to grow into successful neighbors and citizens. •

The Legal Intelligencer

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1617 JFK Blvd., Suite 1665 Philadelphia, PA 19103
Phone: 215-557-2300 Fax: 215-557-2301
www.thelegalintelligencer.com
e-mail: customer@alm.com
hgrez@alm.com

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Foreclosure

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largely by risky mortgage lending, but in my experience, few understand how truly predatory and egregious so many of these loans were. As an attorney who represents low-income homeowners in Philadelphia, I have seen mortgages with “exploding ARMs” (loans that advertise a low teaser rate, but that jump to an unaffordable payment six months into the loan, and never go back down again), loans with hidden balloon payments that are almost as much as the original loan and that come due when the borrower thinks she has paid off the loan, loans that are structured to never pay down any principal, loans with fraudulent appraisals, and loans with an 18-percent default rate that was triggered as soon as the borrower was late on just one payment. I have represented numerous homeowners, many of them elderly and with limited financial experience, who simply had no idea what they were signing. Sometimes the mortgage broker lied. Sometimes the broker brought the paperwork to the client’s home for them to sign, putting additional pressure on already vulnerable individuals. In one case, when the homeowner was confined to her bed after a stroke, the mortgage company conducted the closing in her bedroom. She could barely sign the paperwork, much less understand what she was signing.

In 1996, subprime lending represented just 9.3 percent of the total mortgage market. By 2006, it had increased to \$600 billion and was nearly a quarter of the total mortgage market. And while “subprime” loans were ostensibly made to borrowers who couldn’t qualify for “prime” loans at more attractive rates, in fact, by the mid-2000s, many lenders were simply trying to maximize the number of subprime loans that they made. As many as 55 percent of the subprime loans originated in 2005 were given to borrowers who qualified for prime loans. See Rick Brooks & Ruth Simon’s “Subprime Debacle Traps Even Very Credit-Worthy,” *Wall Street Journal*, Dec. 3, 2007.

Much of the increase in subprime lending reflected the increased targeting of black and Latino borrowers. Of all the



JOANNE WERDEL is a staff attorney with the Consumer Housing Unit at Philadelphia Legal Assistance. She represents low-income Philadelphia homeowners facing the loss of their homes from mortgage or tax foreclosure.

predatory conduct that pervaded mortgage lending from the late 1990s to the mid-2000s, the discrimination visited on black and Latino borrowers was some of the most insidious. Decades of redlining left minority neighborhoods, and black and Latino neighborhoods in particular, starved for access to credit. Subprime lenders filled this void. Nationally, more than half of the mortgages taken out by African-Americans in 2005 had subprime features, compared to the industry average of 20 percent. See Raymond Brescia, “Subprime Communities: Reverse Redlining, The Fair Housing Act and Emerging Issues in Litigation Regarding the Subprime Crisis,” 2 Alb. Gov’t L. Rev. 164, 173 (2009). These racial disparities were especially pronounced for borrowers with high credit scores. Among borrowers with credit scores above 660 (indicating good credit), black and Latino borrowers were three times as likely as white borrowers to receive a subprime loan, see Debbie Gruenstein Bocian, Center for Responsible Lending, “Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures” 5 (2011). In 2011, Bank of America paid \$335 million to settle charges brought by the Department of Justice that its subsidiary Countrywide steered black and Latino borrowers into high-cost and risky subprime loans more often than similarly situated white borrowers. Wells Fargo paid \$175 million to settle similar allegations in connection with a Department of Justice investigation. Other lenders that settled DOJ charges of lending discrimination during this time period include JPMorgan Chase (\$53 million), National City Bank (\$35 million), and SunTrust (\$21 million), among others.

As one might expect, subprime loans with predatory features are more likely to result in foreclosure. Black and Latino borrowers are twice as likely as white borrowers

to have lost their home to foreclosure. Thankfully, Philadelphia’s nationally renowned Residential Mortgage Foreclosure Diversion Program mitigated the impact of the foreclosure crisis for thousands of households; in 2011, the rate of completed foreclosures for loans originated between 2004 and 2008 was 1.9 percent, compared to 22 percent in Detroit and nearly 9 percent in Cleveland. And yet the same racial disparities persisted here in Philadelphia. By 2011, 3.7 percent of African-American borrowers in Philadelphia with loans originated between 2004 and 2008 had lost their homes to foreclosure, compared to just 1.5 percent of white borrowers.

Fast forward to 2019 and much of the predatory conduct that was so common in the late 1990s and early-to-mid-2000s has been curtailed by the Dodd Frank Wall Street Reform and Consumer Protection Act. Many of the most predatory features are prohibited and lenders must now consider a borrower’s ability to repay a loan, a common sense requirement that was shockingly absent prior to the passage of Dodd Frank in 2010. It is also no longer permissible to reward brokers and mortgage employees for placing borrowers in a loan that is more expensive than the loan for which the borrower otherwise qualifies. Most subprime loans during the years leading up to the crisis were originated by mortgage brokers who received financial incentives from lenders to place borrowers in the most expensive loan possible. These perverse incentives helped fuel much of the discriminatory targeting of black and Latino communities for predatory subprime mortgages.

Most of the predatory loans I described above couldn’t be made today, at least not in connection with a mortgage on a borrower’s home. Unfortunately, discrimination in lending continues to lock many qualified black and Latino borrowers out of

the opportunity to own a home, and many existing homeowners cannot access the equity in their homes to make needed repairs.

A year ago, *Reveal* from the Center for Investigative Reporting published its findings of a yearlong investigation and analysis of 31 million Home Mortgage Disclosure Act records. The results found that black and Latino borrowers, including in Philadelphia, continue to be denied conventional mortgage loans at far higher rates than white borrowers, even after accounting for income, loan amount, debt-to-income ratio and other economic and social factors, see Aaron Glantz & Emmanuel Martinez, “Kept Out: For People of Color, Banks are Shutting the Door to Homeownership,” Feb. 15, 2018.

And for those who already own a home, the same lack of lending and investment in predominantly black and Latino neighborhoods limits their ability to tap the equity in their homes to conduct needed repairs, a critical issue for Philadelphia’s aging housing stock.

Representing low-income homeowners, I routinely see the negative consequences that the lack of access to fair and responsible credit has on the ability to make desperately needed home repairs. Adding insult to injury, the recent report from the controller of Philadelphia on the Accuracy and Fairness of Philadelphia’s Property Assessments found that the Office of Property Assessment routinely over-assessed properties in West, Southwest and Northwest Philadelphia, neighborhoods that are predominantly black and Latino, and are also among the poorest in the city.

We have come a long way from October 2008, when the economy was in free-fall and the foreclosure crisis just beginning. Unfortunately, in this city of neighborhoods, not all of our neighbors are being equally served. •

Discrimination in lending continues to lock many qualified black and Latino borrowers out of the opportunity to own a home, and many existing homeowners cannot access the equity in their homes to make needed repairs.

Valsartan

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be filed as the public becomes increasingly aware that a generic drug meant to treat heart disease—the leading cause of death

for Americans—has been contaminated with a carcinogen, possibly for years,” the Kruk petition said.

The defendants did not respond to a phone message left by a reporter at their Cranbury office. In December 2018, they issued a statement saying they were “taking

every step to ensure that their products remain safe, therapeutically effective, and meet the highest standards. They and their dedicated employees are also cooperating fully with the FDA and regulatory agencies in other countries to address matters relating to the Valsartan recall.”

Seth Goldberg of Duane Morris in Philadelphia, who represented Zhejiang Huahai, Princeton, Solco and Huahai U.S. at the JPML, did not return a call seeking a comment.

Charles Toutant can be contacted at ctoutant@alm.com. •

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Saul Ewing

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“On the heels of a merger, it’s not unusual to have some consolidation,” Levin said. Some of the lawyers who left the firm retired, he said, and some went in-house with clients. According to Levin, there was just one lawyer who cited the merger as a reason for leaving, but that person departed in 2017.

Certain practices were especially strong, including higher education and insurance, Levin said, as well as litigation in general, and real estate. The higher education group, he said, “is one of our top revenue drivers in the firm.” That work includes litigation and regulatory counseling, with some of the firm’s larger clients based in Pennsylvania, he said.

Other significant litigation work included representing Castle Hill Gaming in a trademark case in Oklahoma, and representing Delta Chemical Corp. in a multidistrict litigation, Levin said. Real estate engagements included work in New Jersey and Florida for Property Markets Group, as well as Drexel University’s Schuylkill Yards project. And the firm handled a bankruptcy case for Singapore-based Ezra Holdings.

Saul Ewing raised rates “modestly” in 2018, Levin said, noting that its hourly rate remains competitive. But the firm has also aimed to emphasize its project management team, he said, which is increasingly involved in client relationships—Steven Flaks, Saul Ewing’s director of pricing and project management, often attends client meetings, he said.

“It’s absolutely a significant part of our business model now,” Levin said. While the “vast majority of work is still billed hourly,” he said, “more billing is tied to budgets.”

The focus on efficiency has resulted in better realization, he said, which was “well into the 90s” in 2018.

Another major focus for 2018, Levin said, was continuing to integrate lawyers throughout the firm, which added on large groups in Chicago and Florida in September 2017. The firm also prepared for an entrance to the Minneapolis market, which came to fruition this year.

From a financial perspective, that integration has involved evening out compensation. After two partner compensation cycles, Levin said, the firm has now integrated the

two bands of partner pay that had existed between the two firms pre-merger.

“Having a productive, strong year makes that easier,” he said.

The firm is still working on “harmonizing” associate salaries, Levin said, which is part of why Saul Ewing did not implement firmwide associate raises after other large firms did so starting last summer.

As for its plans for the rest of 2019, Levin said the firm will aim to grow within its current footprint. He said he has noticed increased interest from lawyers seeking to join Saul Ewing since the 2017 merger.

But no additional mergers are on the immediate horizon, he said.

Lizzy McLellan can be contacted at 215-557-2493 or lmclellan@alm.com. Follow her on Twitter @LizzyMcLell. •

Armstrong Teasdale

continued from 1

had assumed the responsibilities of managing partner in the interim.

Braswell is a partner in the corporate services practice group in St. Louis. He joined Armstrong Teasdale in 1995, fresh from Stanford University Law School, and has spent more than a decade in various management positions within the firm. Braswell was leader of the corporate services group for nine years, and has been a member of the firm’s executive committee for the last eight years.

The firm said Braswell was “instrumental” in Armstrong Teasdale’s expansion into New York, where the firm opened a new 16-lawyer office in January. He was not available for an interview Feb. 22.

“I am honored that my partners have entrusted me to serve the firm as managing partner,” Braswell said in a statement. “We have experienced strong growth in the past year with the opening of new offices and addition of new clients. We are well-positioned to build on this positive momentum.”

Armstrong Teasdale is a St. Louis-based Am Law 200 firm, ranking 183 by revenue

among U.S. firms, with \$116 million in gross annual revenues in 2017 and 229 total lawyers.

Beulick served as managing partner from 2016 until his death Dec. 19 last year, and was member of the firm’s executive committee since 2002, just six years after making partner in the firm’s intellectual property practice.

Armstrong Teasdale made no mention of his cause of death in a statement issued upon his passing, but an obituary for Beulick directed mourners to consider donating to the melanoma fund at the Siteman Cancer Center at Washington University in St. Louis.

The firm said Beulick played a critical role in expanding the firm to Las Vegas, Denver and most recently to Philadelphia last year.

In the fall of 2018, Armstrong Teasdale created a Philadelphia office with the addition of seven lawyers from Montgomery McCracken Walker & Rhoads, including the Philadelphia firm’s then-executive chairman, Richard Scheff.

Fewer than six months later, in January 2019, Armstrong Teasdale opened its new office in Manhattan, again pulling lawyers from Montgomery McCracken.

Ryan Lovelace can be contacted at rlovelace@alm.com. •

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Texts

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July 2018 regarding city business, the newspaper was told those texts—and years' worth of previous texts—were deleted, a practice Kenney's spokesperson said the mayor did "habitually" to clear space on his phone, according to the article.

Kenney's text messages regarding government work could be deemed a public record according to Pennsylvania's Right-to-Know Law. Under the state law, a record is defined as "any information regardless of its physical form or character that documents a transaction or activity of an agency and is created, received or retained pursuant to law or in connection with a transaction, business or activity of an agency."

Kenney has maintained his deleted text messages were short and straightforward

correspondences. Kenney told local news his text messages consisted of, "'You're on your way,' 'yeah' 'what time will you be there?,' 'soon.'" He added, "It's not like I go and write a whole speech in a text on a cellphone."

Craig Staudenmaier, a Right to Know and media law attorney, noted the law doesn't prohibit deleting texts.

"Nothing would prohibit him from deleting them, you would have to look at the city's record retention policy," he noted. "It doesn't necessarily mean he did anything wrong, it just depends if they were public records and they needed to be retained."

"We do not know if records were deleted. We know that texts were deleted because the mayor said that," added Terry Mutchler, a lawyer and former executive director of Pennsylvania's Office of Open Records.

Still, even if records were not kept, deleted texts aren't necessarily lost in the abyss, according to forensic and e-discovery

professionals. But retrieval is not an easy or straightforward process.

"It is very possible to recover data off of a phone after it's been deleted, but it might not be everything, and anyone that's watched 'CSI' will probably be disappointed by real-life forensics," said Christine Payne, who co-chairs Kirkland & Ellis' e-discovery committee.

"If someone is hoping that there's a magical backup for everything that's created [they're] going to have a reality check because that doesn't exist," Payne added.

Recovering deleted texts can be done by scouring a phone's cloud storage backup and any connected devices.

Jason Silva, director of Philadelphia-based digital forensics and e-discovery company Cornerstone Discovery, noted phones are backed up periodically and those backups contain text messages. "That backup would tell us the state of the phone," he said.

However, time is of the essence when attempting to recover deleted text messages, experts said. Kyle McArdle, Cornerstone Discovery's web developer, noted that when a text message is deleted, it isn't initially wiped from the phone. Instead, it's marked as deleted and as time passes and text messages culminate, the text marked as deleted is overwritten.

As for software that can assist in recovering deleted texts, digital forensic professionals pointed to solutions like Cellebrite, which also offers e-discovery tools, and QMobile, a program from e-discovery provider QDiscovery, among others. Such software and a quick response to retrieve deleted data are vital for a successful recovery of texts, Kirkland & Ellis' Payne said.

"The sooner you can get the physical device to the professional, the better; so they can work their magic and tell you what is available or not," Payne said.

Victoria Hudgins can be contacted at vhudgins@alm.com.

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