

FROM THE COURTS

White & Case Not DQ'd Over Sidley Partner Lateral Hire



DIEGO M. RADZINSCHI

The U.S. Court of Appeals for the Third Circuit ruled that White & Case is not conflicted out of a bankruptcy case after hiring a partner from opposing counsel Sidley Austin who previously worked on the matter.

by Colleen Murphy

In a precedential opinion, the U.S. Court of Appeals for the Third Circuit ruled that White & Case is not conflicted out of a bankruptcy case after hiring a partner from opposing counsel Sidley Austin who previously worked on the matter.

In 2018, Maxus Liquidating Trust sued Maxus' parent companies, YPF S.A. and YPF International S.A., in U.S. Bankruptcy Court for the District of Delaware. White & Case represents the trust, according to the Third Circuit's Sept. 9 opinion, while Sidley Austin represents YPF.

In late 2018, Thomas Lauria, a White & Case partner, began dating Sidley Austin partner Jessica Boelter (now Jessica Lauria), who had participated in the initial pitch by Sidley to represent YPF and billed 300 hours on the representation. The couple began living together in 2019 and were engaged to be married. While engaged, Boelter moved to White & Case and went through a standard conflict-screening process. On Boelter's first day, White & Case implemented an ethical wall, obtained Boelter's agreement to comply with that wall, and periodically certified that compliance, according to the opinion.

But YPF "never thought any screen could be good enough" and moved to disqualify White & Case, according to Judge David J. Porter, who wrote the opinion for the Third Circuit. The bankruptcy court denied YPF's motion after applying a multifactor test, finding no exceptional circumstances existed to impute Boelter's conflict to the entire firm despite a screen, according to the opinion.

The American Bar Association's Model Rules of Professional Conduct were incorporated into the U.S. Bankruptcy Court for the District of Delaware's local rules governing professional conduct, Porter wrote.

Porter said the Third Circuit's review of the matter pertained to the bankruptcy court's interpretation of the model rules and the denial of disqualification as a sanction for abuse of discretion.

"Both parties agree that Model Rule 1.9 prohibits Boelter from participating in White & Case's representation of the Trust, and both parties agree that she did not try to do so," said Porter. "Whether a firm's conflict-of-interest procedures qualify as a 'screen' under Model Rule 1.0(k) is a different question.

"Courts must determine, based on the facts of each case, whether a firm's conflict-of-interest procedures qualify as an effective screen," Porter said. "Of course, disqualification remains an op-

tion if individual lawyers disregard the limitations imposed by an otherwise adequate screen."

YPF argued that White & Case failed to adhere to Model Rule 1.10(a)(2)(i) because, while it ensured that Boelter was "apportioned no part of the fee" from the bankruptcy matter as required, it did not ensure the same for her husband.

"But the rule directs that only the 'disqualified lawyer' must be 'apportioned no part of the fee' from the matter at issue," Porter stated. "Here, that means Boelter, not her spouse, must not receive proceeds of fees arising from the conflicted representation. The Bankruptcy Court correctly reached the same conclusion."

Porter further found no abuse of discretion in the bankruptcy court findings that White & Case "implemented a thorough, robust ethical screen between Ms. Boelter and the YPF adversary proceeding and all related issues immediately upon Ms. Boelter joining the firm."

In its refusal to disqualify White & Case, according to the opinion, the bankruptcy court found that the firm provided "prompt and exhaustive notice of the screening procedures, as well as repeated statements that White & Case and Ms. Boelter would comply with the screening procedures."

According to Porter, White & Case stated that it would respond promptly to any inquiries from YPF about the screen, including inviting YPF to provide input. White & Case also said review may be available before a tribunal, Porter noted.

"The new firm, White & Case LLP, timely screened Boelter," Porter stated. "But Boelter's former client moved to disqualify White & Case, arguing that a screen was not enough.

"The Bankruptcy Court denied the motion, holding White & Case's screen was sufficient to prevent Boelter's conflict from being imputed to the entire firm," Porter said. "Because the Model Rules state that a timely screen, together with certain other requirements, prevents conflict imputation, we will affirm the Bankruptcy Court."

Judges Joseph A. Greenaway and Peter J. Phipps joined in the opinion.

Counsel for YPF S.A., YPF International S.A., YPF Holdings, and CLH Holdings, Victor L. Hou of Cleary Gottlieb Steen & Hamilton, could not be immediately reached for comment. Likewise, counsel for Maxus Liquidating Trust, Catherine E. Stetson of Hogan Lovells, could not be reached for comment.

Colleen Murphy reports for Law.com, an ALM affiliate of the Daily Business Review. Contact her at cmurphy@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **September 28, 2022 beginning at 6:00 PM** to consider the adoption of the annual update to the Capital Improvements Element of the City's Comprehensive Plan. The City Council will consider this item for **SECOND READING**. The 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 Ordinance:

ORDINANCE No. 2022-15

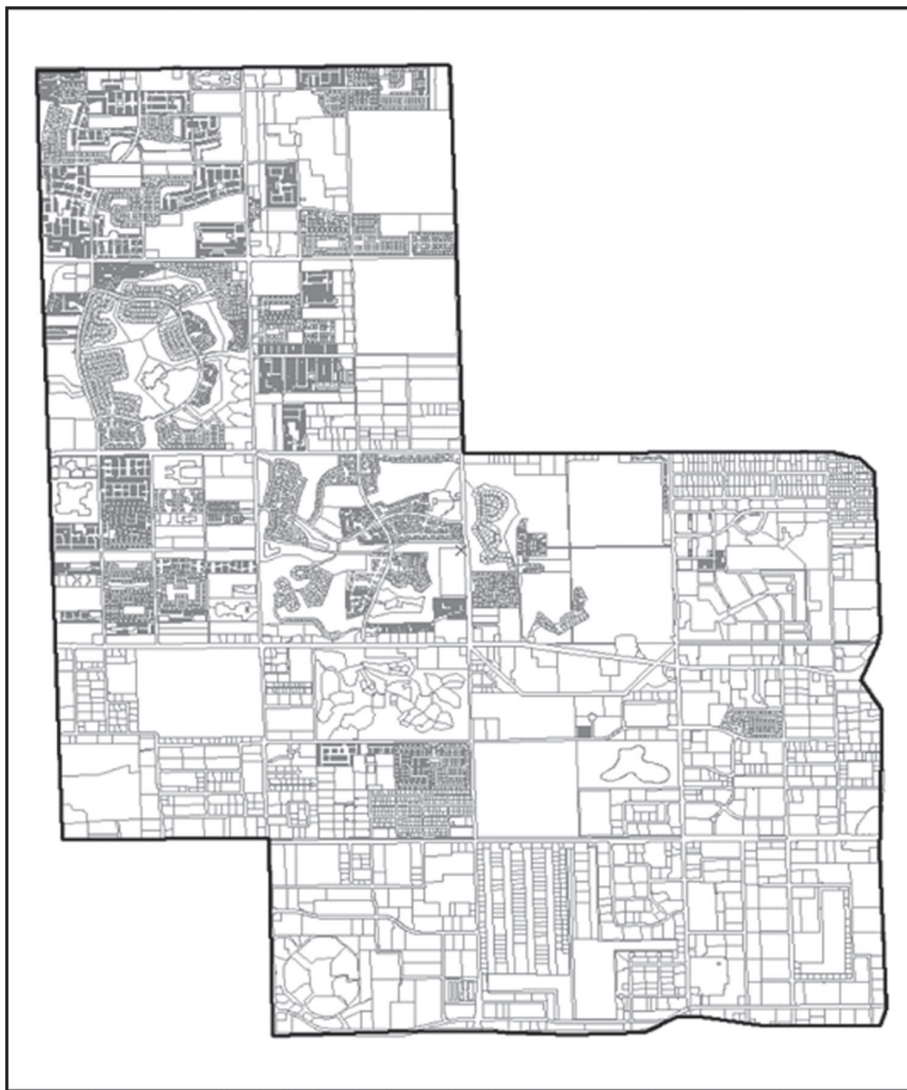
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, ADOPTING THE ANNUAL UPDATE TO THE CAPITAL IMPROVEMENTS ELEMENT (CIE) OF THE CITY'S COMPREHENSIVE PLAN FOR 2022 AND THE FIVE-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS FOR FISCAL YEARS 2022/2023 – 2026/2027 PURSUANT TO SECTION 163.3177(3)(B), FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 22-09-DOR-07

APPLICANT: City of Doral

REQUEST: The City Manager's Office respectfully recommends that the Mayor and City Councilmembers authorize approval of the annual update to the Capital Improvements Element (CIE) of the City's Comprehensive Plan for 2022 and the Five-Year Schedule of Capital Improvements for Fiscal Years 2022/2023 – 2026/2027.

Location Map



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.

Connie Diaz, MMC
City Clerk
City of Doral