

## FROM THE COURTS

# Plaintiffs Firm Takes Growing Fee Spat in Mesh Cases to Appeals Court

by Amanda Bronstad

An Ohio law firm is appealing an order allocating an estimated \$550 million in attorney fees in the transvaginal mesh litigation, asserting that the eight firms in charge of doling out the funds enriched themselves at the expense of others.

The filing, submitted by Cleveland-based Anderson Law Offices on Aug. 9 before the U.S. Court of Appeals for the Fourth District, is the latest in an ongoing dispute over common benefit fees in the multidistrict litigation over the mesh devices. Benjamin Anderson, founder of the appellant firm, is a member of the plaintiffs' steering committee who is objecting to his \$7.2 million share of the common benefit fund. The move threatens to halt the first payouts to 94 law firms expecting to receive common benefit fees following U.S. District Judge Joseph Goodwin's July 25 allocation order.

An attorney representing the fee and cost committee, Raymond Franks, argued in a dismissal motion filed Aug. 9 that Anderson Law Offices had waived its right to appeal when it agreed to accept common benefit fees as part of a 2012 court order.

"Appellant's contention that it should not be bound by the appellate waiver because it anticipated a different process or a more favorable outcome is comparable to a criminal defendant arguing that an appellate waiver made in a plea agreement should be disregarded because the sentence later imposed was unexpectedly harsh," wrote Franks, of Bailey & Glasser in Charleston, West Virginia.

Anderson did not respond to a request for comment, but his lawyer provided an emailed statement.

"We are looking forward to having our own opportunity to argue the question of whether district courts can require a waiver of appeal rights as a condition for considering a monetary award, which appears to be a matter of first impression in federal jurisprudence," wrote Paul Flowers of Paul W. Flowers Co. in Cleveland. "In our view, the entire fee allocation process failed to comport with the most basic notions of due process and fair play, which merits careful review in the Fourth Circuit."

Anderson Law Offices is not the first firm to appeal mesh fees. Philadelphia's Kline & Specter petitioned the Fourth Circuit to reverse a Jan. 30 order by Goodwin of the Southern District of West Virginia, approving a 5% holdback of fees, which would establish a common benefit fund of potentially \$550 million based on an estimated \$11 billion in settlements. Goodwin is overseeing seven multidistrict litigation proceedings that at one point surpassed 100,000 lawsuits.

Kline & Specter, along with two other firms, had objected to the holdback, calling the mesh settlements "puny" in comparison to the jury verdicts that firm obtained, many of which were in state court. It appealed Goodwin's order, but, on June 14, the Fourth Circuit dismissed the petition, agreeing with the fee and cost committee that Kline & Specter, as in Anderson Law Offices' filing, waived its right to appeal when it accepted common benefit fees. On July 15, the Fourth Circuit rejected Kline & Specter's petition for rehearing.



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Kline & Specter, Anderson Law Offices and two other firms objected to recommendations about how much each of them would get from the common benefit fund. Many of the objections, including that of Anderson Law Offices, focused on the work done on one of the first mesh trials in the nation, in New Jersey's Atlantic County Superior Court, where defendant Johnson & Johnson lost an \$11 million verdict in 2013.

Adam Slater, of Roseland, New Jersey's Mazie Slater Katz & Freeman, accused the fee and cost committee of self-dealing and bill padding to ensure they would receive the majority of the fees. He cited a comment from Daniel Stack, a retired judge on the Madison County, Illinois, Circuit Court, appointed as an "external review specialist" to review the fee allocation process, that he "was sickened" and "angered" by such conduct. Garrard fired back, accusing the objectors of making false attacks and submitting bills "riddled with excessive entries, duplicative billing."

On March 12, Stack and the fee and cost committee issued their recommendations on how to allocate the fees.

On July 25, Goodwin, in the Southern District of West Virginia, adopted those recommendations as "fair and reasonable" without mentioning the allegations. He pointed to the heavy investments that the firms with the highest allocation in fees made to the litigation, among other things.

"This extraordinarily large group of multidistrict litigation required unprecedented coordination and cooperation among and between the leadership counsel and those other lawyers who performed work for the common benefit of each of the individual plaintiffs," he wrote. The law firms on the fee and cost committee were "substantially responsible" for about 75% of the total number of mesh cases, he added. "Members of the FCC were major contributors to, and claimants of, the monies contributed to the common benefit fund. Their diverse and competing interests offered a large measure of mutually assured fairness to the process."

The objections, he concluded, were "entirely without merit."

Goodwin ordered that the first quarterly payments go out Jan. 15.

**Amanda Bronstad is the ALM staff reporter covering class actions and mass torts nationwide. She writes the email dispatch Critical Mass. She is based in Los Angeles.**



## CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **Local Planning Agency (LPA)** meeting on **Wednesday, August 28, 2019 beginning at 5:00 PM**, to consider the following amendment to the Future Land Use Map of the City of Doral Comprehensive Plan. 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. 19-

**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 AN AMENDMENT TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN TO THE LOCAL GOVERNING BODY, CONSISTENT WITH THE SMALL-SCALE COMPREHENSIVE PLAN AMENDMENT PROCEDURES IN SECTION 163.3187 FLORIDA STATUTES FROM OFFICE AND RESIDENTIAL (OR) TO DOWNTOWN MIXED USE (DMU) FOR A ±1.66 ACRE PARCEL LOCATED AT 8484 NW 36 STREET, DORAL, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE**

**HEARING NO.:** 19-08-DOR-02

**APPLICANT:** Doral Court Plaza, LLC

**PROJECT NAME:** Doral Court Plaza

**PROJECT OWNERS:** Doral Court Plaza, LLC

**LOCATION:** 8484 NW 36 street

**FOLIO NUMBER:** 35-3027-001-0241

**SIZE OF PROPERTY:** ± 1.66 Acres

**PRESENT FUTURE LAND USE:** Office and Residential (OR)

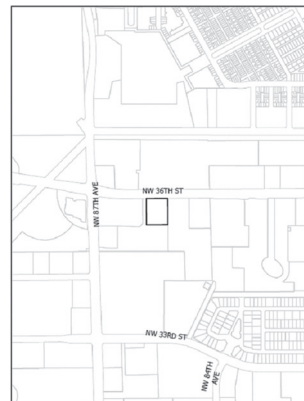
**PRESENT ZONING:** Industrial Commercial District (IC)

**REQUEST:** An amendment to the Future Land Use Map of the City of Doral Comprehensive Plan from Office and Residential (OR) to Downtown Mixed Use (DMU).

**LEGAL DESCRIPTION:** PARCEL "B": A portion of the West 847.72 feet of Tracts 29 and 30, of FLORIDA FRUIT LAND COMPANY'S SUBDIVISION NO. 1, in Section 27, Township 53 South, Range 40 East, as recorded in Plat Book 2, Page 17, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Tract 30; thence North 89°58'53" East along the North line of said Tract 30 for a distance of 609.88 feet; thence South 00°21'28" East for a distance of 55.00 feet to a point lying on the South right of way line of N.W. 36th Street and the Point of Beginning of the herein described parcel of land; thence North 89°58'15" East along said right of way for a distance of 239.71 feet; thence South 01°50'30" East for a distance of 297.24 feet; thence South 89°58'15" West for a distance of 247.41 feet; thence North 00°21'28" West for a distance of 297.14 feet to the Point of Beginning. Containing 72,365 square feet or 1.661 acres more or less. TOGETHER WITH CASTER PARCEL: A portion of the West 847.72 feet of Tracts 29 and 30, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, in Section 27, Township 53 South, Range 40 East, according to the plat thereof, as recorded in Plat Book 2, at Page 17, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows: Commence at the Northwest corner of said Tract 30; then North 89°58'53" East along the North line of said Tract 30 for a distance of 609.88 feet; thence South 00°21'28" East for a distance of 55.00 feet to a point lying on the South right of way line of N.W. 36th Street (Doral Boulevard) and the Point of Beginning of the herein described parcel of land; thence continue South 00°21'28" East along the West line of the lands described in Partial Release of Unities of Title recorded in Official Records Book 22183, Page 4630, of the Public Records of Miami-Dade County, Florida, for a distance of 297.14 feet; thence South 89°58'15" West, along the Westerly prolongation of the South line of the lands described in said Partial Release of Unities of Title, for a distance of 42.00 feet; thence North 00°21'28" West for a distance of 297.15 feet; thence North 89°58'53" East, along the South right of way line of N.W. 36th Street (Doral Boulevard), for a distance of 42.00 feet to the Point of Beginning. Containing 12,480 square feet or 0.29 acres more or less. EASEMENT ESTATE: Together with a nonexclusive easement for access, parking and utilities more particularly described in the Easement Agreement dated March 29, 2004 by and between ACP/Doral Court, LLC, a Delaware limited liability company and Doral Court Plaza, LLC, a Florida limited liability company recorded April 1, 2004, in Official Records Book 22171, Page 4144, as amended by Relocation of Parking Easement Area Pursuant to Easement Agreement recorded October 20, 2016 in Official Records Book 30276, Page 1981 of the public records of Miami-Dade County, Florida.

### 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 register with the City Clerk prior to that 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, all persons 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

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