

DAILY REPORT

A SMART READ FOR SMART READERS



DAILY REPORT BUSINESS MATTERS

Obama can only hope for a Paul Volker-like recovery under Ben Bernanke's second term as Fed chairman, analysts say. **Story, page 6.**

An incisivemedia publication

Newsreel

Souter blocks access to papers for 50 years

• The New Hampshire Historical Society has announced that retired Supreme Court Justice David Souter is donating his personal and professional papers to the society. But don't book travel to New Hampshire quite yet to take a peek; Souter has placed an extraordinarily long restriction on public access to his papers, barring anyone—historians, friends, journalists—from viewing the material for 50 years. That's lengthier than any justice has placed on papers in recent memory.

The unusually severe bar on access is surprising in one sense, but very Souter-esque in another. Souter is an avid historian—in fact joining the board of trustees of the New Hampshire Historical Society as part of the announcement of his decision to donate his papers there. He knows well the “call of history,” the obligation of historical figures and public officials to help flesh out the how and why of important events.

But Souter is also an intensely private person, especially protective of the Supreme Court on which he served for 19 years. He was a lifelong diarist and may have decided that his files were too sensitive to be made public while any of his colleagues or many of his law clerks are still alive.

“I would have been surprised by anything under 25 years,” said David Garrow, a court historian who has written extensively about Souter. “I guess I would have hoped for 25. But, given his diary keeping (though we don't know for sure whether or to what extent he continued that at the Supreme Court) I could imagine him wanting to believe, for instance, that pretty much all his clerks would be gone by the time that everything came open.”

—The Blog of Legal Times



10 MEDIOCRE MOVIES

Eleanor Ringel Cater: This summer's batch did well at the box office, but only a handful were well-made films.

9 AFTER HOURS

The *Daily Report* shines a spotlight on lawyer's lives outside the office.

VICK BANKRUPTCY

Read about the judge's decision in Vick's case at DailyReportOnline.com.

OPINIONS INSERT

Read summaries of recent opinions from Georgia's high court and Court of Appeals.



ZACHARY D. PORTER/DAILY REPORT

Plaintiff Betsy Vance Peterzell consults with her attorney, Eric C. Lang, in court.

Balch must pay in dispute with lawyer

GWINNETT JURY RETURNS VERDICT for ex-Meadows Ichter partner who wasn't paid monies owed to her when she left firm

BY ANDY PETERS

A 12-PERSON Gwinnett County jury on Thursday awarded \$236,129 to a lawyer in a dispute with Balch & Bingham over compensation that she was owed by

Meadows, Ichter & Bowers, which Balch absorbed in a merger in 2003. Plaintiff Betsy Vance Peterzell claimed Meadows Ichter shortchanged her fees she was owed after she left the firm.

See *Balch*, page 5

Mulling recusal and election issues, justice settles into job

BY ALYSON M. PALMER

EARLIER THIS WEEK David E. Nahmias was starting to settle into his new job as a justice on the Supreme Court of Georgia.

Just a few days after he officially completed his service as U.S. attorney in Atlanta, his name wasn't on the door to his new chambers across downtown. And framed wall coverings were perched around the perimeter of his office, waiting to be hung.

Amid the mundane tasks of taking on a new job, however, the court's newest justice has a few tricky matters to ponder in addition to dozens of cases, including major challenges to the state's 2005 tort reform law, that he'll consider with his colleagues next month. For one thing, he still needs to decide whether to participate in cases involving King & Spalding, where his wife is an equity partner. The *Daily Report* dropped by his chambers to get some of his first thoughts.



David Nahmias

See *Justice*, page 4



ZACHARY D. PORTER/DAILY REPORT

Doris Downs reminded listeners of the court's struggles with tight budgets.

Atlanta Bar honors Fulton judge, lawyer

COLLEAGUES ACKNOWLEDGE Judge Doris Downs' role after courthouse shooting, Wade Malone's mentorship

BY GREG LAND

THE DOUBLE BANQUET room of downtown's Capitol City Club was filled to near capacity Thursday for the Atlanta Bar

Association's Leadership Awards Luncheon. The gathering of lawyers, judges and their significant others had come to recognize two of their peers: Fulton County

See *Honors*, page 4

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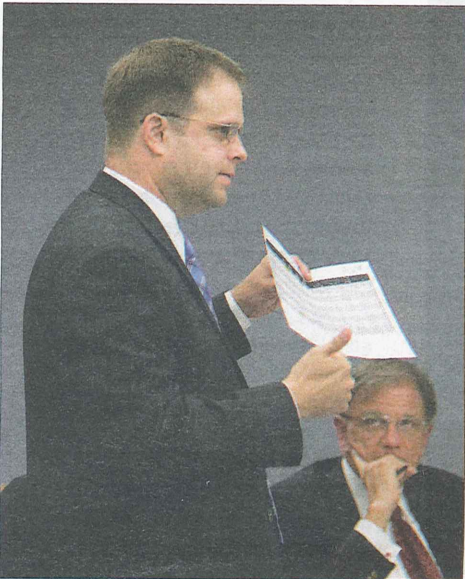
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Balch & Bingham must pay in dispute with lawyer

Balch, from page 1

Former Georgia Attorney General Michael J. Bowers and Peterzell were the only two witnesses in the case. Balch & Bingham was represented by its local managing partner T. Joshua R. Archer, who argued unsuccessfully that his firm was not liable for any judgment against Meadows Ichter. Meadows Ichter was represented by former Balch & Bingham attorney J. Tom Morgan.



ZACHARY D. PORTER/DAILY REPORT

Joshua Archer, managing partner of Balch's Atlanta office, represented his firm in the trial.

Eric C. Lang of The Lang Legal Group represented Peterzell, who won on all counts and was awarded attorney fees of \$61,533. The jury also granted Peterzell's request for a court-supervised audit of Meadows Ichter files to determine if she is owed money for other cases.

Lang said he was "very pleased" with the verdict, and Peterzell declined comment. James L. Hollis, in court for Balch & Bingham on Thursday, said he doesn't know if the firm will appeal.

Morgan said his client, Meadows Ichter, will appeal, and he added that the outcome shows "lawyers need to do a better job of drafting contracts between each other."

Bowers called the outcome "not unexpected."



Michael 'I-Didn't-Know-What-Was-Going-On' Bowers and the other lawyers, if they could come up with any reason not to pay her any money on purpose, they would.

—Eric C. Lang, plaintiff's lawyer

Peterzell was an equity partner in Meadows, Ichter & Trigg. After she left in January 2001, the firm later became Meadows, Ichter & Bowers, and in 2003, it became the Atlanta office of Birmingham, Ala.-based Balch & Bingham.

Bowers' testimony was crucial because he was the lead lawyer in a reverse discrimination suit against the Atlanta-Fulton County Library System that yielded a \$16.8 million verdict in 2002 for white librarians. Peterzell said she didn't receive her share of the firm's \$6 million fee in that

case, which constituted the largest portion of the back pay and interest she sought in the suit. Twenty-five other cases also figured in the verdict.

Morgan argued that Peterzell was paid the appropriate amount as dictated by the agreement she signed when she became an equity partner in 1995.

Attorneys for Balch argued that it was not liable for her back pay because it did not assume the liabilities of Meadows Ichter in the merger. Balch lost that argument, as the jury ruled it is liable, along with Meadows Ichter, for paying Peterzell.

The jury of four men and eight women delivered its decision after a three-day trial, and after deliberating for four hours, in front of Gwinnett County Superior Court Judge Karen E. Beyers, presiding over her first civil jury trial since winning election to the Gwinnett Superior Court in November after unseating incumbent Richard T. Winegarden. The case is *Peterzell v. Meadows, Ichter & Bowers*, No. 05-A-11041.

At the center of the dispute was whether the Fulton County library case was brought into Meadows Ichter early enough for Peterzell to qualify to share in its contingency fees. Peterzell left Meadows Ichter on Jan. 12, 2001. Her shareholder agreement and departure agreement required that the firm buy back her 6.25 percent stake in the firm on Feb. 12, 2001, or 30 days after her resignation. A payout period defined in her contracts said that in order for her to qualify to share in the fees from a contingency case, the case had to be brought into Meadows Ichter at least six months before the firm bought back her equity stake in the firm. Both sides agreed that the six-month period began on Aug. 12, 2000.

But the disagreement centered on when the Fulton County library case became a contingency case. Lang argued that Meadows Ichter agreed to take the case on contingency the day it was brought into the firm, June 23, 2000. That would have been early enough for Peterzell to share in its contingency fees.

Lang cited language in Peterzell's 1995 shareholder agreement as evidence that the library case qualified as one for which she should receive a portion of attorney fees. The language Lang cited during closing arguments was: "Qualified Contingent Files shall mean, with respect to any Shareholder, the files of Clients upon which a contingency fee is or will be payable to the Corporation."

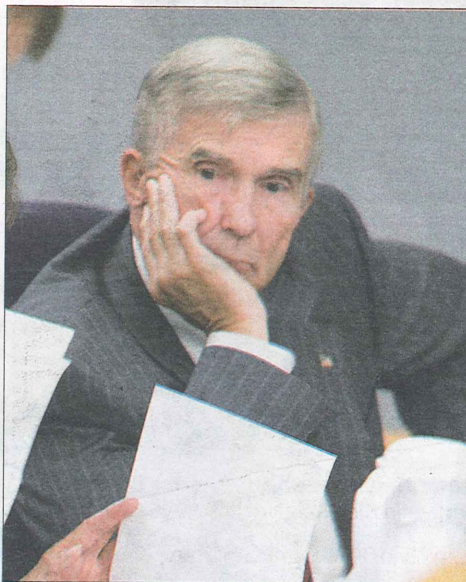
But instead of abiding by the terms of that agreement, Bowers and other Meadows Ichter lawyers, including James D. "Dart" Meadows and Cary Ichter, ignored the agreement's terms to avoid paying Peterzell, Lang said. They also bullied her into leaving, Lang said during closing arguments.

"Michael 'I-Didn't-Know-What-Was-Going-On' Bowers and the other lawyers, if they could come up with any reason not to pay her any money on purpose, they would," Lang told the jury. "They treated her with disdain, they were snide to her, they tried to trick her, they tried to kick her out of their office during a meeting."

Morgan, the former DeKalb County district attorney, argued that a letter sent from Bowers to the librarian-plaintiffs proved that Peterzell did not qualify to enjoy the reward from the case. The letter states that Meadows Ichter initially billed the librar-

ian-plaintiffs on an hourly basis, but that the case would be billed on a contingency basis if the plaintiffs were to lose a future procedural motion.

The plaintiffs lost that procedural motion: On Sept. 1, 2000, U.S. District Court Judge Beverly B. Martin denied the plaintiffs' motion for a preliminary injunction. Thus, Meadows Ichter converted the library case to a contingency-fee case on



ZACHARY D. PORTER/DAILY REPORT

Michael Bowers, the defense's witness, called the verdict "not unexpected."

Sept. 1, meaning it was not a contingency-fee case by Aug. 12, 2000, and Peterzell is not entitled to earn a share of its fees, Morgan said.

"She should not have been paid anything on the [library] case," Bowers said on the witness stand while being questioned by Morgan.

The letter cited by Morgan, written on Meadows, Ichter & Trigg stationery, signed by Bowers and addressed to eight of the nine plaintiffs, says:

"We have been representing you and others in the grievance proceeding before the Fulton County Grievance Committee. That representation has been on an hourly basis. We will continue to represent you on an hourly basis as previously agreed ... through the hearing on the Motion for Preliminary Injunction. If we are unsuccessful at that stage, we will continue our representation of you on a contingency fee basis."

But Lang used the same letter from Bowers to the librarian-plaintiffs to bolster his argument. Lang said that, in the letter, Meadows Ichter promised to represent the plaintiffs on a contingency basis.

"It's as pure a contingency fee case as could ever be created," Lang said to the jury.

Lang showed the jury dozens of e-mails between Bowers and other members of the management of Meadows Ichter in which they referred to the library case as one for which Peterzell should be paid, although not necessarily the level she later claimed in the suit. Lang also introduced into evidence a chart allegedly produced by Meadows Ichter that listed the library case, among others, as those for which Peterzell qualified.

But the attorneys for Meadows Ichter and Balch said the firms erred in paying Peterzell a share of the library case fees. Only after Peterzell sued the firms, and Balch's and Meadows Ichter's attorney conducted discovery, did they realize that Peterzell did not qualify to be paid a share of the library fees.

"Had she never sued the firm, we would have never found our mistake," Morgan said.

Archer, who served as lead counsel for his firm during the Peterzell trial, said that Balch didn't get any share of the winnings from the library verdict and didn't assume its liabilities. When the two firms merged, they set aside specific cases from which they would not share fees with the other. Bowers said on the witness stand.

"We did not want to give up what was hopefully going to be a \$6 million fee [from the library] to this law firm [Balch], which had done nothing about it," Bowers said.

Meadows Ichter was awarded a fee of about \$6 million on the \$16.8 million award in the library case.

But Lang argued that because Balch issued at least 20 payments to Peterzell after her departure from Meadows Ichter, that was one element of proof that it had assumed Meadows Ichter's liabilities.

"The facts before the jury are that all the cases of Meadows Ichter, all the addresses, the phone numbers, the lawyers moved over" to Balch, Lang said.

"Balch didn't follow procedures, they created another mess," Lang said. "Balch is saying they made mistakes not paying her right, we know we made a mess, don't hurt us."

Peterzell is one of two former Meadows Ichter partners who have sued the firm, alleging it shortchanged her share of contingency-case fees. A suit filed by Lauren S. Antonino is pending in Fulton County Superior Court. That case is *Antonino v. Meadows, Ichter & Bowers*, No. 2006-CV-124997. ☞

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Invitation to Bid

2010 Intersection Improvements
BID NUMBER
09-252

Bid Due Date
September 9, 2:00 p.m.

Pre-Bid Conference
August 27, 2009 @ 9:00 am
City of Sandy Springs
7840 Roswell Road Suite 500
Sandy Springs, Georgia 30350
Abernathy Conference Room

The City of Sandy Springs is requesting submittals from interested parties for our 2010 Intersection Improvements project. The Invitation to Bid for 2010 Intersection Improvements is available by visiting our website at www.sandyspringsga.org.