

**Bill Ford pushes for tax incentives for gas alternative vehicles**

By KEN THOMAS  
Associated Press Writer

WASHINGTON (AP) — Ford Motor Co. Chairman and CEO Bill Ford urged Congress Tuesday to offer a package of tax incentives to drive innovation in the auto industry and make the nation less dependent on foreign oil.

Ford, during a speech in Washington, said Congress could help the industry with tax credits for research and development of alternative vehicles, the modernizing of plants, training for workers and an improved structure of gasoline stations offering ethanol.

"Now, more than ever, I believe we must take action," Ford said. "If we put our heads together and keep in mind our shared interest in America's future, I'm confident that we can innovate our way toward the right solutions."

Ford was scheduled to meet with White House officials later Tuesday.

In September, Ford urged President Bush to convene an energy summit with automakers, suppliers, energy companies, consumers and the government "to discuss our nation's energy security and our role in helping find a solution."

Ford has launched a public campaign to describe its plans to produce 250,000 hybrids a year by 2010, 10 times the number it produces now. It currently has two hybrid sport utility vehicles on the market.

It has also announced plans to produce 250,000 ethanol-capable vehicles in 2006, including the Ford F-150 pickup, Ford Crown Victoria, Mercury Grand Marquis and Lincoln Town Car.

**Notices of courts and public places**

Please be advised that the Wayne County Probate Court will be closed in observance of Thanksgiving Day on Thursday, November 24, and Friday, November 25, and will reopen on Monday, November 28, at 8 a.m.  
**MILTON L. MACK JR.**  
Chief Judge, Wayne Probate Court

All offices of the United States District Court and the United States Bankruptcy Court for the Eastern District of Michigan will be closed on Thursday and Friday, November 24-25. In case of emergency call (313) 234-5655.  
**DAVID J. WEAVER**  
Court Administrator

The Wayne Third Judicial Circuit Court Civil, Criminal, and Family Divisions will be closed on Thursday, November 24, and Friday, November 25, in observance of Thanksgiving. The court will reopen on Monday, November 28.  
**MARY BETH KELLY**  
Chief Judge, Third Judicial Circuit Court

The Wayne County Clerk's office will be closed on Thursday, November 24, and Friday, November 25, in observance of the Thanksgiving holiday.  
**CATHY M. GARRETT**  
Wayne County Clerk

All offices of the Wayne County Register of Deeds and the Wayne County Treasurer will be closed Thursday, November 24, and Friday, November 25, in observance of Thanksgiving.

Please be advised that the Wayne County 36th District Court will be closed Thursday, November 24, and Friday, November 25, in observance of Thanksgiving. Only felony arraignments will be conducted.  
**MARYLIN E. ATKINS**  
Chief Judge, 36th District Court

**Holiday schedule**

Offices of the *Detroit Legal News* will be closed Thursday and Friday, November 24-25, in observance of Thanksgiving. The regular office schedule and legal publication deadlines resume Monday, November 28.

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## Bomb suspect indicted by grand jury

By MARK SHERMAN  
Associated Press Writer

WASHINGTON (AP) — Jose Padilla, a U.S. citizen held for three years as an enemy combatant suspected of plotting a "dirty bomb" attack in this country, has been indicted on charges that he conspired to "murder, kidnap and maim" people overseas.

A federal grand jury in Miami returned the indictment against Padilla and four others. While the charges allege Padilla was part of a U.S.-based terrorism conspiracy, they do not include the government's earlier allegations that he planned to carry out attacks in America.

"The indictment alleges that Padilla traveled overseas to train as a terrorist with the intention of fighting a violent jihad," Attorney General Alberto Gonzales said at a news conference in Washington. Gonzales declined to comment on why none of the allegations involving attacks in America were included in the indictment.

Padilla, a Brooklyn-born Muslim convert, has been held as an "enemy combatant" in Defense Department custody for more than three years. The Bush administration had resisted calls to charge and try him in civilian courts.

With the indictment, Padilla will be transferred from military custody to the Justice Department. Gonzales said the case would go to trial in September of 2006.

Padilla faces life in prison if convicted on the charges.

The indictment avoids a Supreme Court showdown over how long the government could hold a U.S. citizen without charges. The high court had been asked to decide when and for how long the government can jail Americans in military prisons.

"They're avoiding what the Supreme Court would say about American citizens. That's an issue the administration did not want to face," said Scott Silliman, a Duke University law professor who specializes in national security. "There's no way that the Supreme Court would have ducked this issue."

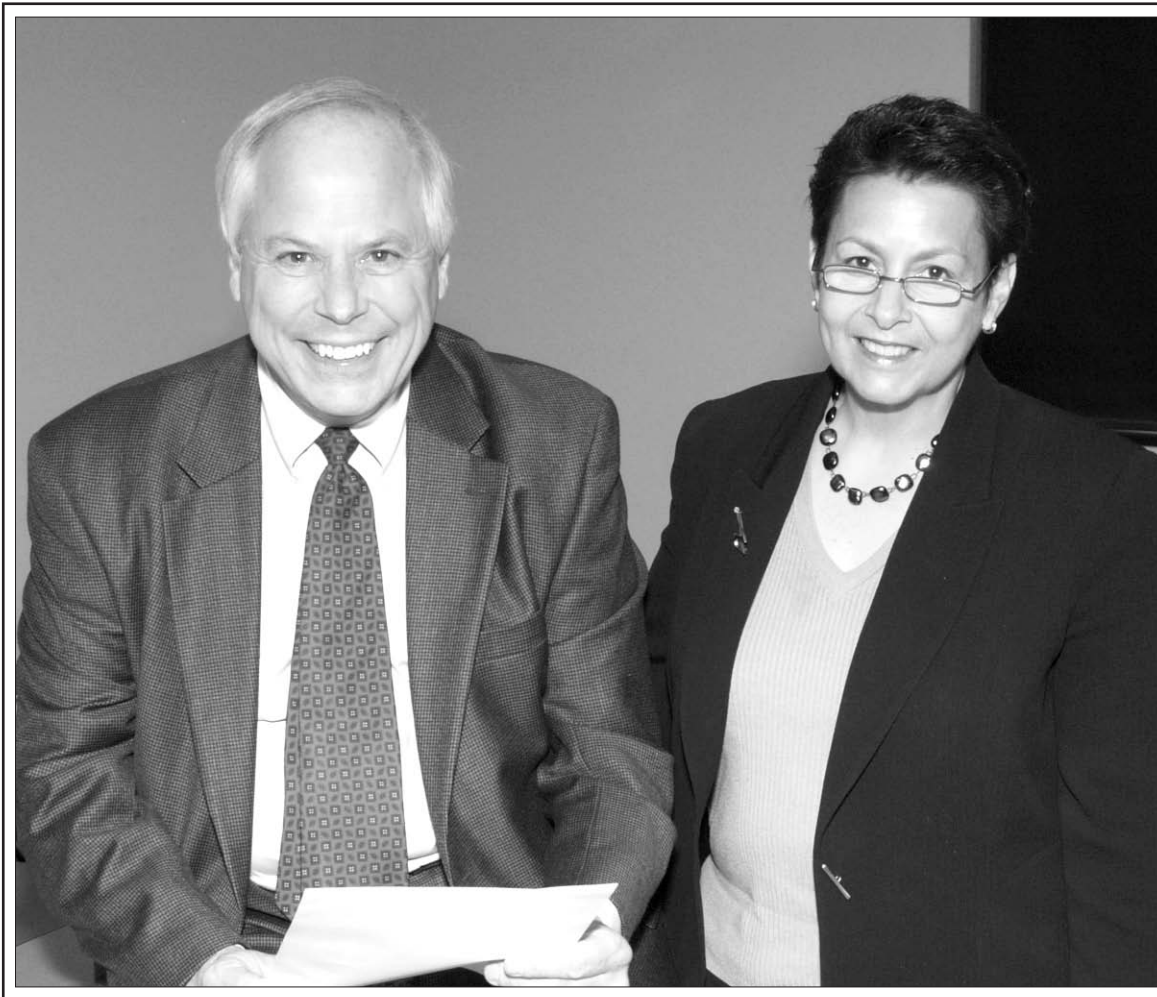
Padilla's lawyers had asked justices to review his case last month, and the Bush administration was facing a deadline next Monday for filing its legal arguments.

"The 'evidence' the government has offered against Padilla over the past three years consists of double and triple hearsay from secret witnesses, along with information allegedly obtained from Padilla himself during his two years of incommunicado interrogation," his lawyers said in their earlier appeal.

The Bush administration has said Padilla, a former Chicago gang member, sought to blow up hotels and apartment buildings in the United States and planned an attack with a "dirty bomb" radiological device.

Padilla was arrested at Chicago's O'Hare International Airport in 2002 after returning from Pakistan. The federal government has said he was trained in weapons and explosives by members of al-Qaida.

(See PADILLA, Page Two)



## Summary dispositions, judgement motions explored

**THE DETROIT METROPOLITAN BAR ASSOCIATION (DMBA) hosted a seminar titled "Where Today's Cases are Won or Lost - Summary Disposition and Judgment Motions in Federal and State Courts" on Tuesday, October 25, at the Smart Detroit Conference Center in the Penobscot Building in Detroit. Taking part in the seminar were (left to right) John Runyan of Sachs Waldman, DMBA Board of Directors Continuing Legal Education Committee chair; and U.S. District Court Judge Nancy G. Edmunds, Eastern District of Michigan, speaker.**  
Photo by John Meiu

## Justices have already acted on some Alito decisions

By DONNA CASSATA  
Associated Press Writer

WASHINGTON (AP) — Long before Samuel Alito takes a seat on the Supreme Court, his words precede him.

Assuming President Bush's nominee wins Senate confirmation, he will join seven colleagues on the bench who have already concurred with his opinions or scoffed at them, echoed his dissents or strongly disparaged them.

As a judge on the Philadelphia-based 3rd U.S. Circuit Court of Appeals, Alito has written hundreds of opinions or dissents in his 15 years on the federal bench. A few of those cases have gained a spot on the selective Supreme Court docket; even more have been affirmed or reversed through the prism of high court rulings on other appellate cases.

Alito has lost some close cases in the Supreme Court; two years ago he was soundly rejected in the case of a former elevator operator who was seeking Social Security disability payments.

Some observers contend it would be inaccurate to focus solely on Alito's won-loss record before the high court. The Supreme Court's motivation for choosing a case and its history with certain appellate courts must be factored in.

Judge Edward R. Becker, a Reagan appointee who has served with Alito on the 3rd Circuit, said of the reversals: "We've all had our share."

Alito's cases do provide some insight on what the justices thought about his judicial work. If confirmed in January, Alito would replace Justice Sandra Day O'Connor, who is retiring. Chief Justice John Roberts, also a former appellate judge, recently took his seat on the high court.

In at least three cases, the Supreme Court

justices mentioned Alito by name and his writings in their citations, including the 1992 abortion case of *Casey v. Planned Parenthood* and a 2000 case involving Webster Hubbell, a former associate attorney general and friend of President Clinton.

In 2004, Alito wrote the majority opinion as the 3rd Circuit decided to let stand a death penalty sentence for a Pennsylvania inmate who argued that his lawyer had done sloppy work during the penalty phase of the trial.

Alito, sounding dismissive, rejected Ronald Rompilla's argument that his trial

counsel had, in the judge's words, failed to "take all the steps that might have been pursued by the most resourceful defense attorneys with bountiful investigative support."

"But while we may hope for the day when every criminal defendant receives that level of representation, that is more than the Sixth Amendment demands," Alito wrote.

The Supreme Court, in a 5-4 vote, overturned the death sentence and ordered a new penalty trial. Justice David H. Souter, writing for the majority, sided with the defendant.

(See ALITO, Page Two)

Justices on the Supreme Court have cited Samuel Alito by name at least three times in their opinions and dissents. Alito has served on the 3rd U.S. Circuit Court of Appeals for 15 years.

In March, the Supreme Court limited the liability that local governments face in fights over cell phone towers, unanimously ruling that a small California community did not have to pay millions in attorneys' fees and damages to a local businessman.

The court blocked Mark Abrams from collecting money from Rancho Palos Verdes, Calif., which was forced by a court to issue a permit for a 52.5-foot radio antenna Abrams wanted on his property. The dispute with Abrams rang up \$15 million in attorneys' fees, roughly the annual budget of the seaside suburb 30 miles south of Los Angeles.

Justice Antonin Scalia, writing for the court, cited Alito's opinion in the 2002 case of *Nextel Partners Inc. v. Kingstow Township* in which the 3rd Circuit affirmed a lower court ruling in a dispute between a wireless telecommunications company and a township over the construction of a tower.

In 2000, the Supreme Court wiped out Webster Hubbell's guilty plea to a misdemeanor tax charge, saying the former associate attorney general and friend of President Clinton could not be prosecuted with documents he was forced to provide under immunity.

Justice John Paul Stevens, in writing for the majority in the 8-1 decision, cited an article Alito wrote for the University of Pittsburgh Law Review on documents and the privilege against self-incrimination.

Alito wrote the article for the 1986-87 edition of the law review, when he was a deputy assistant attorney general in the Reagan Justice Department. He wrote that the problem could be dealt with by lawmakers.

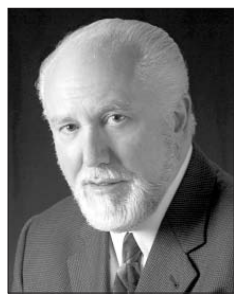
"The solution lies not in the common law of trespass or the testimonial component of the act of production or even in the language, history or 'policy' of the Fifth Amendment privilege. Instead a frank, careful, and sensitive balancing of individual privacy against the needs of law enforcement is required," Alito wrote.

In 1992, a divided Supreme Court reaffirmed its landmark ruling legalizing abortion in *Casey v. Planned Parenthood*. The 5-4 decision, however, upheld many provisions of a Pennsylvania law on consent.

In his dissent, Chief Justice William Rehnquist mentioned Alito, saying, "As Judge Alito observed in his dissent ... the Pennsylvania legislature could have rationally believed that some married women are initially inclined to obtain an abortion without their husbands' knowledge because of perceived problems such as economic constraints, future plans or the husbands' previously expressed opposition that may be obviated by discussion prior to the abortion." By The Associated Press

## Non-traditional uses for structured settlements

By JOSEPH HADUS



One of the more significant advantages of structured settlements is that the future payments are tax-free. However, taxable damages cases including those of non-physical torts such as emotional distress, humiliation, harassment, and age and sex discrimination in the employment area; along with installment sales in the business community can now be structured using annuity policies.

**Non-physical torts**

According to the EEOC, the fastest growing form of litigation in the United States is in the employment arena. These cases can now be structured out with significant advantages for both parties. The plaintiff, as an alternative to receiving all cash and paying taxes on the whole amount today, can choose a structured settlement with the payments being designed to meet a specific need and taxed as received. For instance, the payments could begin at

retirement when the employee would be in a lower tax bracket. Not only would the employee have the advantage of receiving a larger total payout than with a lump sum, but also firm in the knowledge the payments are guaranteed by an A+ rated multi-billion dollar life insurance company. The defendant employer receives a total and complete release at the time of settlement through an Assignment Agreement and can take the tax deduction for the entire cost immediately.

Previously, the main obstacle to structuring out settlements of this type was the unwillingness of any annuity company assignee to accept an assignment of the periodic payment liability. This left the defendant employer in the undesirable position of owning the policy and retaining the contingent liability for the payments, thereby preventing a full release from being executed at settlement. Additionally, from an accounting standpoint the deduction could only be taken as payments were made. Understandably, few cases were resolved with a structured settlement.

Another use of this type of settlement is in the employment buyout area, particularly with highly compensated senior executives who

oftentimes don't have a need for additional income today and would benefit by deferring the payments until a future date. Once again, the tax savings can be substantial.

It is important to keep in mind that in cases of this nature, the periodic payments cannot be subject to withholding and that the recipient will receive a 10-99 from the life insurance company in the year payments are received. Essentially, these non-physical tort cases provide many of the same advantages as traditional structured settlements with the exception that the payments are tax-deferred.

In either scenario consideration of the periodic payment option can provide the employee with a solution to the problem of federal and state taxes substantially reducing the settlement.

**Structured settlements in installment sales**

Structured settlements can also now be used in the sale of businesses and personal real estate holdings. Selling a business or property for a lump sum would subject the seller to the maximum capital gains tax on the total amount. With a structured sale, the recognition of income and taxation will be deferred until

the periodic payments are made. Additionally, the seller has the security of knowing the payments will be made by the life insurance company, rather than being dependent on the cash flow or solvency of the buyer.

In the upper end personal real estate market, many sellers may wish to cash-out now at what appears to be the top end of the market, were it not for capital gains considerations. Funding the installment sale with an annuity would provide for the gains to be taxed as received. These installment payments can be monthly, annually, lump sums, period certain and life, or any combination thereof.

Structured Settlements are constantly evolving, and the intent is to provide information on opportunities and pitfalls that may impact your practice. In future articles we will continue to address areas of interest as expressed by the legal community.

*Joseph Hadus has more than 30 years of experience in the casualty insurance/structured settlement area and is the president and founder of J. Hadus & Associates, Inc. which has its corporate office in Farmington Hills. He can be reached at jhadus@aol.com.*

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