

Friday
November 25, 2005
DAILY BRIEFING

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."

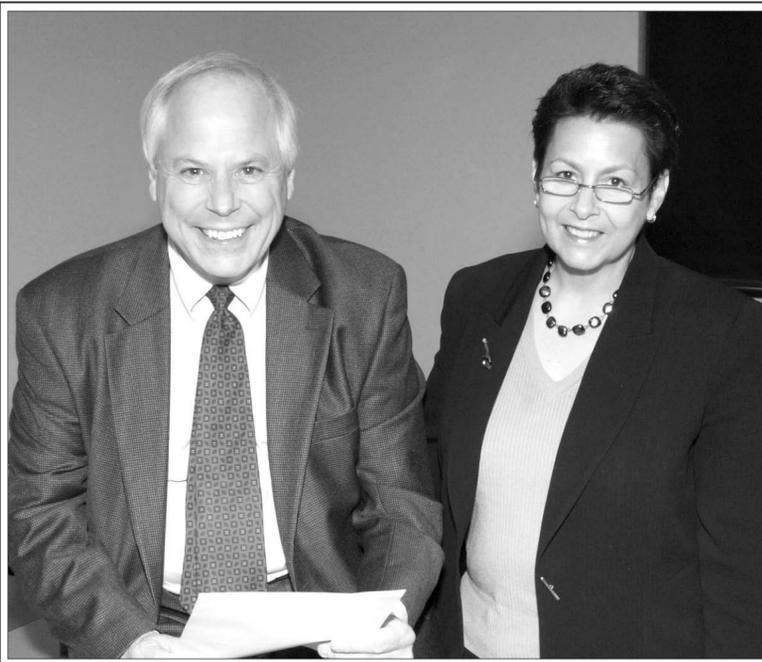
Padilla's lawyers had asked justices to review his case last month, and the Bush administration was facing a deadline next Monday for filing its legal arguments.

"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 Mei

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.

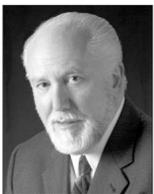
"The solution lies not in the common law of trespass or the testimonial component of the act of production or even in the language, history or 'policy' of the Fifth Amendment privilege. Instead a frank, careful, and sensitive balancing of individual privacy against the needs of law enforcement is required,"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



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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■ Taking Stock

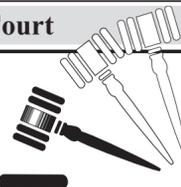
Malcolm Berko believes GM is not running on empty, but 529s are.
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Arraignment for Conrad Black pushed back to end of the month.
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■ Courthouse Shooting

Lawyer says plea deal in previous case could have prevented rampage.
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Mortgages Recorded
 Bernard J. Youngblood
 Register of Deeds
 As recorded in the office of the
 Register of Deeds
 \$50,000 and above.
THE MORTGAGE LENDER (i.e. ABN AMRO MTG GROUP) is indicated by CAPITAL LETTERS and applies to all subsequent listings until another LENDER is noted.
 August 8-12

Fayvenia Mize 13841 Tacoma St Detroit 48205-1845 FREMONT INVESTMENT & LOAN \$67,000
 Abodul A Bazzi 7841 Neckel St Dearborn 48126-1140 \$108,000
 Latonya Anthony 19395 Klinger St Detroit 48234-1737 \$89,000
 Keisha Williams 15505 Tuller St Detroit 48238-1235 \$68,000
 Carol J Tolliver 25200 Wick Rd Taylor 48180-3113 \$122,000
 Rhonda A Dresner 48318 Manhattan Cir Canton 48188-1495 \$368,000
 Leamon Streety 14510 Washburn St Detroit 48238-1636 \$50,000
 Consuelo Angel 4632 52nd St Detroit 48210-2730 \$84,000
 Debra Robillard 29700 Winter Dr Garden City 48135-2648 \$104,000
 Twana Brewer 18350 Burgess Detroit 48219-2472 \$77,000
 Collette Milletto 11856 Harbor Ln Belleville 48111-2406 \$280,000
 Judie Brown 20110 Spencer St Detroit 48234-3174 \$95,000
 Candice Porter 19742 Grandville Ave Detroit 48219-2133 \$96,000
 Valerie D Cooper 19011 Curtis St Detroit 48219-2805 \$95,000
 Lewis Washington 11327 Mansfield St Detroit 48227-1656 \$58,000
 Timmi Gordy Oliver 5072 Garland St Detroit 48213-3317 \$59,000
 Frank Roe 8340 N Henry Ruff Rd Westland 48185-7096 \$88,000
 Valerie Todd 8970 Arnold Redford 48239-1528 \$125,000
 Connie Brown 13611 Park Grove St Detroit 48205-2838 \$86,000
 Jonika Williams 18495 Lenore Detroit 48219-3019 \$101,000
 Mutaz Alabid 6614 Winthrop St Detroit 48228-5231 \$67,000
 Adrian Tedford 5885 Renville St Detroit 48210-3709 \$81,000
 Gary Thomas 6353 Grandville Ave Detroit 48228-3946 \$78,000
 Gary Thomas 18451 Oakfield St Detroit 48235-3058 \$104,000
 Jewel Jones 19376 Alcoy St Detroit 48205-2235 \$86,000
 Gregory Campbell 4511 Fredro St Detroit 48212-2896 \$74,000
 Carlos Duenas 31990 Cherry Hill Rd Garden City 48135-3326 \$136,000
 Anna Diaz 1117 McKinstry St Detroit 48209-3813 \$52,000
 Lisa Rasmussen 8400 Alton St Canton 48187-4228 \$180,000
 Aniseh Alari 7744 Winthrop St Detroit 48228-3670 \$64,000
 Bernardo Cervantes 1424 Detroit Ave Lincoln Park 48146-3334 \$157,000
 Tawanna Burns 12716 Promenade St Detroit 48213-1418 \$56,000
 Michael Carter 19132 Cecelia St Brownstown 48173-9312 \$205,000
 Michael Carter 19132 Cecelia St Brownstown 48173-9312 \$51,000

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Are foreigners losing appetite for U.S. investments?

By JEANNINE AVERSA
 AP Economics Writer

WASHINGTON (AP) — The economy is able to chug along despite record-high trade deficits because foreigners are still willing to invest in the United States.

How much longer they will keep pouring money into America is unclear, even to the government's foremost economists — Federal Reserve Chairman Alan Greenspan and his chosen successor, Ben Bernanke.

If foreign investors were to sour on the United States and unload their holdings, the prices of U.S. stocks and bonds could plunge. Interest rates — including those for mortgages — could soar. And the country could be faced with a financial crisis.

Greenspan and Bernanke don't think that will happen, but they also say the trade deficits can't keep growing forever. Greenspan recently warned that foreigners might already be losing some of their appetite to invest in U.S. stocks, bonds and other dollar-denominated assets.

America's shortfall on all trade and investment income with the rest of the world mushroomed to an all-time high of \$668 billion last year. This deficit, known as the "current account," is expected to set a new record this year.

The current account deficit is considered the best measure of a country's international economic standing because it tracks not only goods and services but also investment flows between countries.

As Greenspan's 18-plus years at the helm of the Fed end on Jan. 31, it will fall to Bernanke to monitor the situation and deal with any fallout that could arise if foreign investors turn fickle.

The huge trade deficits the United States has been running up each year "cannot persist indefinitely," Greenspan warned in a Nov. 14 speech. "At some point, investors will balk at further financing," he said, without offering a guess when that might occur.

Of the more than \$30 trillion in foreign investment tracked by the Bank for International Settlements in the first three months of 2005, 42.5 percent was in dollars, 39.3 percent in euros, Greenspan noted. The dollar's share was down by 4 percentage points from around three years earlier, while the euro's share was up by 5 percentage points, he noted.

One day after Greenspan's remarks, Bernanke fielded ques-

tions on the subject from senators considering his nomination to be Fed chairman. Lawmakers wanted to know what he thought about the deficits and foreigners' willingness to keep investing in the United States.

"I don't expect to see foreign lenders change their holdings very significantly," Bernanke said.

Sen. Chris Dodd, D-Conn., asked whether he was concerned about the record levels of debt being held by foreign creditors.

Bernanke responded wryly. "Well, senator, given that we have a large current account deficit ... and given that that deficit needs to be financed, we are fortunate that foreigners seem quite willing to hold U.S. Treasury debts and other financial instruments," he said.

"So it's like asking how it feels to be very old: you consider the alternative. It's better to have willingness to hold our financial assets than not, given our large current account deficit."

Among other things, that investment has helped keep U.S. interest rates low.

A recently released Treasury Department report suggests foreigners still have a strong taste for U.S. investments, and thus remain willing to lend the U.S. money to finance its deficits.

Net purchases by foreigners of U.S. stocks, corporate bonds, Treasury securities and other investments totaled \$118.1 billion in September, a sharp increase from August, according to the Treasury figures. Of that total, \$113.8 billion came from private foreign investors, while foreign governments bought \$4.3 billion worth of securities.

"These whopping figures for September indicate that the day of reckoning is still quite some time away," said Sherry Cooper, chief economist at BMO Nesbitt Burns.

Japan, followed by China and then Britain are the biggest holders of U.S. Treasury securities. All three increased their holdings from August to September, Treasury's data shows.

Greenspan has said the "seemingly endless" U.S. ability to finance its trade deficits through foreign investment has confounded experts.

He and Bernanke agree it can't go on forever but both are optimistic the deficits can be curbed without inflicting serious damage to the economy.

"I believe that can be done over a period of time," Bernanke told lawmakers. "But it won't happen overnight."



Taking Stock

by Malcolm Berko



GM's not running on empty, but 529s are

Dear Mr. Berko:

I bought 300 General Motors Senior Notes this May at \$20.41 for a 9 percent current yield. The notes trade like a stock on the exchange under the ticker symbol HGM. This security is now trading at \$16 and I'm worried that GM may declare bankruptcy. Should I sell my 300 HGM? I'm worried because everyone I talk to is so pessimistic on GM and it worries me. I also have \$9,800 in the California 529 college plan for my two grandchildren and it's not performing well. What's wrong and what should I do? The account is down about \$2,500 and the stock market has been up.

N.R., Harrisburg, Pa.

Dear N.R.:

The price activity of GM's 7.375 percent Senior Notes (HGM-\$15.20) callable Oct. 3, 2006, and maturing Oct. 1, 2051, has been sloppy. The \$1.84 dividend gives HGM shareholders a copious current yield of 12.2 percent, which roundly beats the return you can get on money market funds.

Now I don't like General Motors and during my 43 years as a money manager I have never bought a share of GM stock. But Kirk Kekorian, an 88-year-old multimillionaire who never got beyond the eighth grade, believes that General Motors Corp. (GM-\$23.03) is vastly undervalued and believes the stock trades at \$20 under his calculated net asset value of \$46. Kekorian, the 19th-richest man in the United States, made his fortune (estimated at \$11 billion) in gambling casinos, airlines, movie studios and cable companies. He recently raised his ownership of GM shares to 9.5 percent. And he did this because the numbers make sense to him and the team of expert analysts on his payroll. Of course he's an eternal optimist. He thinks he will live to be over 100 and if he does he's got it made because so few people die at age 100 or older.

General Motors is having a bad couple of years, its colossal health care costs exceed \$7 billion annually and while its heavy discount program was successful, GM took a \$2.5 billion loss for the first half of 2005. High oil prices will continue to hurt sales, Japanese auto

barons are eating GM's breakfast, lunch and dinner, and prices for 2006 models will be under intense pressure. So in this climate it's easy to be a pessimist.

However I advise you not to sell your 300 shares of HGM. Kirk Kekorian knows the GM numbers better than most GM executives and he now owns 53 million shares of the common stock. He's putting his money where his mouth is and knows that many an optimist has become rich by buying out a pessimist. So stay the course.

There are very few 529 plans that have provided investors with acceptable returns and the California 529 plan is a real dog. It just boggles neurons in my medulla oblongata because states so aggressively promote their 529s as panaceas to higher education costs.

California's plan only has 12 funds with a five-year investment history and the best five-year return among the Golden State's dozen was a plus 4.29 percent. Well, a spotted pig could do better than that for the last five years. There are myriad funds with five-year records that would put the California plan to shame.

Candidly, I wouldn't invest a nickel in any state 529 plan. You have invested \$9,800 in the California plan and it's worth \$7,300. Ouch! Get your money out of that plan immediately and be mindful that those losses are costing you significantly more than you're saving on your tax return, which is probably the case with most state 529s.

When you get your money back (don't you dare consider another 529 plan) visit the no-load Fidelity, Vanguard or T. Rowe Price groups. Each has a good selection of successful mutual funds and after 10 more years of annual contributions you should have much more money to pay for college costs than the sad sacks who invested in a state 529 and got worthless tax breaks.

Please address your financial questions to Malcolm Berko, P.O. Box 1416, Boca Raton, FL 33429 or e-mail him at malber@adelphia.net. Visit Copley News Service at www.copleynews.com.
 © Copley News Service

Agency takes over pension plans for some beneficiaries

By JEANNINE AVERSA
 AP Economics Writer

WASHINGTON (AP) — A federal agency announced Tuesday that it has taken responsibility for two pension plans covering nearly 2,300 workers and retirees of Falcon Products Inc., a maker of institutional furniture.

One of the pension plans being taken over is for Falcon Products. The other is for the company's subsidiary, Shelby Williams Industries Inc., which makes chairs and other commercial furniture.

The Pension Benefit Guaranty Corp. said these two companies were among the subsidiaries of St. Louis-based Falcon Products that filed for bankruptcy protection in January of this year.

The PBGC, which insures private defined-benefit pension plans, said that a bankruptcy court has ruled that the companies met all the criteria under federal law to transfer their pension liabilities to the pension insurance program.

The PBGC estimates that together the two pension plans being taken over are 44 percent funded, with about \$26 million in assets to cover nearly \$59 million in benefit promises. The agency said it will be liable for \$31.6

million of the \$33 million shortfall.

The maximum annual benefit for plans taken over in 2005 is \$45,614 for workers who wait until 65 to retire. Workers who retire before 65 get smaller benefits.

The pension takeovers come as Congress scrambles to advance legislation aimed at shoring up private pension plans. The Senate passed a far-reaching pension overhaul bill last week. The House is expected to vote soon on its own measure.

The Senate vote came one day after the PBGC said it was running a deficit of \$22.8 billion. Bankrupt steel and airline companies that have transferred pension responsibilities to the PBGC have been a major factor in the agency's swollen debt.

Private analysts worry that a taxpayer-funded bailout could happen at some point if the private pension system isn't overhauled by Congress.

PBGC's operations are financed by insurance premiums, which are paid by companies that sponsor traditional pension plans. It also earns money from investments and receives funds from pension plans that it takes over. The agency is not funded through tax revenues.

PADILLA: Dirty bomb suspect indicted by federal grand jury

(Continued from page 1)

Although the Justice Department has said that Padilla was readying attacks in the United States, the charges against him and four others allege they were part of a conspiracy to murder, kidnap and maim persons in a foreign country and provide material support to terrorists abroad.

The others indicted are: Adham Amin Hassoun, Mohammed Hesham Youssef, Kifah Wael Jayyousi, and Kassem Daher. Hassoun also was indicted on eight additional charges, including perjury, obstruction of

justice and illegal firearm possession.

Hassoun, a Palestinian computer programmer who moved to Florida in 1989, was arrested in June 2002 for allegedly overstaying his student visa. Prosecutors previously described him as a former associate of Padilla.

Padilla has been held at a Navy brig in South Carolina. Following the indictment, which was handed up last Thursday, President Bush sent a memo to Defense Secretary Donald Rumsfeld ordering Padilla transferred to the federal detention facility in Miami.

ALITO: Justices have already acted on some Alito decisions

(Continued from page 1)

Souter was joined by O'Connor, the swing vote in the case, and the court's liberal justices.

Souter wrote: "We hold that even when a capital defendant's family members and the defendant himself have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on."

In a sharply worded dissent, Justice Anthony Kennedy agreed with Alito and the 3rd Circuit that it was right to uphold the state ruling.

"We have reminded federal courts often of the need to show the requisite level of deference to state court judgments," Kennedy wrote. "By ignoring our admonition today, the court adopts a do-as-we-say, not-as-we-do approach to federal habeas review."

In 2003, the 3rd Circuit backed Pauline Thomas, a disabled former elevator operator who had applied for federal Social Security disability payments after her employer installed new elevators and eliminated her job.

The government had denied her claim for benefits.

"Sam wrote and I was with him on it," said Becker, who noted that elevator operators were rare in public places — except at the Supreme Court, as Justice Antonin Scalia pointed out during the oral arguments.

"Sam got reversed on that nine-zip. Sam was for the little guy," Becker said.

In his 10-page opinion, Scalia disparaged the 3rd Circuit's logic in the case, and wrote, "To generalize is to be imprecise. Virtually every legal (or other) rule has imperfect applications in particular circumstances."

Evaluating Alito's opinions and dissents before the Supreme Court is far from an exact science. The high court considers only about 80 cases per term and the 3rd Circuit, which has jurisdiction for New Jersey, Pennsylvania,

Delaware and the Virgin Islands, gets only a few in that group.

In 2003, the Supreme Court considered four cases from the 3rd Circuit, compared with 33 from the largest, the San Francisco-based 9th Circuit, and 10 from the Cincinnati-based 6th Circuit, according to the Harvard Law Review.

"The 3rd Circuit is a tiny circuit," said Tom Goldstein, a Washington lawyer who argues frequently before the high court.

The Supreme Court's reason for taking a case also is a factor. The court sometimes selects a case because an issue has been bubbling in lower courts and the justices decide it's time to weigh in.

"They're writing the law. It's very different from taking the lower court decision and beating on them for being stupid," said Stephen L. Wasby, a professor at the State University of New York at Albany who has analyzed how the 9th Circuit fared before the Supreme Court.

Frank Cross, a professor at the University of Texas who has examined the work of circuit judges, said Alito's opinions were seldom reviewed, in part because he wrote "cautious, fairly modest opinions, not the extreme case the Supreme Court is going to take."

Legal experts also cited what's known as "circuit splits," in which the Supreme Court rules on one case but the decision reflects on a case from another circuit. This has happened a number of times with Alito's opinions and dissents.

Howard Bashman, a Philadelphia attorney whose Web blog focuses on the appellate courts, has analyzed how the 3rd Circuit has fared before the Supreme Court since 2000. His analysis cited several circuit splits in which the Supreme Court's ruling affirmed or rejected Alito's stand in a separate 3rd Circuit case.

"He's viewed as someone who does his best to apply the law fairly and intelligently," Bashman said. "His record would be an admirable one."

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