

BUSINESS

HOUSTON CHRONICLE • THURSDAY, NOVEMBER 26, 2020 • SECTION B

• **DOW:** 29,872.47, down 173.77 (-0.6%) | • **S&P:** 3,629.65, down 5.76 (-0.2%) | • **OIL:** \$45.71, up 80 cents (1.8%) | • **NATURAL GAS:** \$2.90, up 12 cents (4.4%)

Wrongful termination win too late

Downhole Technology's founder dies before judge awards him \$143M in suit

By **Natalie Posgate**
THE TEXAS LAWBOOK

Porter Hedges partner Eric Wade met James Duke VanLue a decade ago when he walked into the law firm's offices in downtown Houston with a box of documents.

Although VanLue was only 30 at the time and had nothing more

than a high school education, the documents he brought that day contained his ideas to develop Downhole Technology, a frac plug manufacturing company that several years later would attract an offer from a foreign buyer to the tune of \$103 million.

"We could tell there was some real substance to his ideas," Wade

said. "We helped him establish his company, prosecute his first round of patents, (develop) the corporate documents and develop a relationship with an accounting firm."

Wade and VanLue's paths crossed again in 2018 after Schoeller Bleckmann America, which had paid \$103 million for a controlling interest in Houston-based Downhole in 2016, fired VanLue and sued him based on allegations VanLue claimed were false and at-

tacks on his character. VanLue retained Porter Hedges to defend him and countersue his former employer. The case went to a bench trial in early 2020.

Earlier this month, a Houston judge ruled in VanLue's favor, awarded him \$143 million in damages and will soon consider Porter Hedges' request for attorneys' fees, which will likely add millions more to the judgment.

But the judgment is bittersweet for Wade and the lawyers at Porter

Hedges, who say the nine-figure ruling clears their client's name and awards money he was rightfully owed. Unfortunately, VanLue never lived to see the result.

On June 27, VanLue died in an accident as he tried to land his small plane on a private runway in East Texas. He had just turned 40.

"They really maligned him in such a way that it was really a personal attack," Wade said of Downhole and SBA. "Duke was not going

Lawsuit continues on B4

LAST-MINUTE SHOPPING GUIDE

Conquer Black Friday with some simple tips



Elizabeth Conley / Staff photographer

Rice Village stores prepare Tuesday for Black Friday shoppers. Retailers are said to be in fierce competition for sales.

By **Courtney Jespersen**
ASSOCIATED PRESS

'Twas the day before Black Friday when all around the country, shoppers were gearing up for a day full of shopping.

So maybe you haven't exactly been gearing up for the day after Thanksgiving. Maybe you haven't done any research at all.

No need to worry; we've broken down everything you need to do to snag the biggest savings – with the least amount of effort.

Here's your last-minute Black Friday guide.

Discounts likely deep this year as retailers pin hopes on the season

Search the web for sales

You've probably been getting emails about Black Friday sales since October. Believe it or not, those were the early sales. The actual Black Friday event will take place tomorrow and, yes, more deals are coming.

Part of the reason for the longer holiday shopping season? Retailers are in "fierce competition" for sales given the pandemic's rippling effects of consumer unemployment and lower disposable income, according to Simone Peinkofer, assistant professor of supply chain management at Michigan State University.

Most retailers have already announced

their planned Thanksgiving Day and Black Friday discounts with shiny websites and flashy ads. Go directly to a store's website or do an online search for the store's name plus the words "Black Friday" to preview the deals. Some deal sites sift through the ads and pull out the biggest discounts for you.

Go online – or hold a spot

After you zero in on what you want, decide how you'll get it. This year, there's more than one way to shop on Black Friday: online, at the store or a hybrid of both.

Another one of the many retail effects of the COVID-19 pandemic is an increase in online shopping, as opposed to in-store purchases, as people avoid packed indoor spaces.

Deals continues on B6

Despite need, no surge seen yet in ACA enrollment

Pace is on par with last year's rate of sign-ups

By **Gwendolyn Wu**
STAFF WRITER

Health care researchers expected a surge in people buying health insurance plans through the Affordable Care Act exchange because of the pandemic, but so far, enrollment numbers are about the same as last year, federal data shows.

More than 1.6 million people nationally have enrolled in Affordable Care Act plans, similar to enrollment in the first half of November last year, according to the Centers for Medicare and Medicaid Services. This year's figures, however, don't include consumers from New Jersey or Pennsylvania, which left the federal exchange this year after setting up their own exchanges.

That means enrollment is creeping up in other states, but it's not a sizable increase from prior years. The open enrollment period ends Dec. 15.

"Permanent job losses have increased over the year, so I would expect enrollment to be higher than it was," said Daniel McDermott, a research associate at the Kaiser Family Foundation, a Washington think tank.

An estimated 7.7 million workers nationwide lost health insurance during the pandemic, according to a study from the Commonwealth Fund, health policy think tank in Washington. Analysts expect that more businesses will shut down for good as COVID-19 rates peak again around the country, meaning more employees will lose job-sponsored coverage.

Last year, 11.4 million consumers across the U.S. and more than 1.1 million Texans enrolled in health plans offered on healthcare.gov, the federal insurance exchange.

Analysts and insurers say the pandemic is making it even harder for consumers to choose plans, following the Trump administration's decision a few years ago to reduce funding for Affordable Care Act

ACA continues on B6

Cracker Barrel tallies another court victory vs. Texas investor

By **Patrick Danner**
STAFF WRITER

SAN ANTONIO – San Antonio investor Sardar Biglari might want to consider not waging any more proxy fights with Cracker Barrel Old Country Store.

Biglari is smarting from a fifth defeat after his nominee to serve as a director on Cracker Barrel's board garnered significantly fewer votes than the company's 10 candidates for the board, results released this week show.

Biglari nominated New Jersey restaurant owner Raymond "Rick" P. Barbrick to serve on Cracker Barrel's board. Barbrick is co-CEO of the Briard Group, owner of 111 Wendy's restaurants and some Marriott- and Hilton-branded hotels in the Northeast.

Barbrick received nearly 2.5 million of the nearly 19 million votes cast by Cracker Barrel shareholders last week. The next closest nominee received about



Tim Boyle / Getty Images

San Antonio investor Sardar Biglari lost another proxy fight over Cracker Barrel's board nominees.

11.3 million votes.

Excluding the shares voted by Biglari, however, Barbrick's support dipped to just 407,521 – or about 2.5 percent of the votes cast.

That marks Biglari's worst defeat among the five proxy con-

tests he has initiated at the Lebanon, Tenn., restaurant and retail chain.

Biglari, chairman and CEO of Biglari Holdings Inc., the owner of Steak n Shake, Maxim magazine and other companies, has

Biglari continues on B4

Verizon's superfast 5G no longer hard to find

When pundits and analysts talk about the superfast version of 5G known as millimeter wave, it's always with some caveats: It can't travel far; it won't penetrate buildings and foliage; and it's only deployed in public places where people gather, not in your neighborhood.

There's not much to be done about the first two downsides – they're due to the physics of that particular radio frequency. But the last one is changing. In Houston, there's a chance you could walk outside your front door with a Verizon 5G smartphone and get download speeds near or even well above 1 gigabit per second.

This does not mean that it's everywhere, yet. But where Verizon's high-speed 5G, which it markets as Ultrawideband, used to be confined to areas mostly in and near downtown, it's now found in some inner-loop neighborhoods. It's not always easy to find, but when you do – whoa!

DWIGHT SILVERMAN
TechBurger



Verizon has not publicized this much, instead touting in several announcements in the number of cities added to the 5G Ultrawideband list. But during its most recent earnings conference call, Chairman and CEO Hans Vestberg told analysts that in "the majority of the cities who had already launched were almost double the size of the footprint (sic)."

A while back I checked out Verizon's coverage area at [verizon.com/coverage-map/](https://www.verizon.com/coverage-map/), which now shows Ultrawideband

TechBurger continues on B4

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INVITATION TO BIDDERS

SEALED PROPOSALS, in duplicate, addressed to HCWCID 99, will be received at the offices of Vogt Engineering, L.P., 2203 Timberloch Place Suite 124, The Woodlands, Texas 77380, until 2:00 p.m., Monday, December 14, 2020 and then publicly opened and read for Cypresswood Waterline Extension for Harris County W.C.I.D. 99, or its assigns.

Proposals tendered after closing will be returned unopened. Each proposal shall be accompanied by a proposal guarantee in the form of a certified check, cashier's check, or bid bond, from an approved surety, drawn to the order of Harris County W.C.I.D. 99 in the minimum amount of Five Percent (5%) of the total amount bid, as a guarantee that the bidder will enter into a contract, within Ten (10) days after receipt of contract documents. Bids without check or bidders bond will not be considered. Prospective bidders may obtain drawings, specifications, and bidding documents from CivCast (www.civcastusa.com) by searching the project name Cypresswood Waterline Extension. Bidders must register on this website in order to view and/or download any documents at no charge. Contact CivCast at 281-376-4577 for assistance in ordering documents. If the Bid Documents are not immediately available for download, they will be available for review at the offices of Vogt Engineering, L.P., 2203 Timberloch Place, Suite 124, The Woodlands, Texas 77380, (281-651-2972), on deposit of \$150.00 per set, which is non-refundable. Plans and specifications will be available for review at the offices of Vogt Engineering, L.P., McGraw-Hill Construction Dodge, Associated General Contractors, Associated Builders and Contractors, Houston Business Council, Houston Minority Business Development Center and Association of Minority Contractors of Houston. The right is reserved, as the interest of the Owner may require, to reject any and all bids, and to waive any informality in bids received. A non-mandatory pre-bid conference will be held at the office of Vogt Engineering, L.P., 2203 Timberloch Place, Suite 124, The Woodlands, Texas 77380 (281-651-2972), at 2:00 p.m., Monday, December 7, 2020.

NOTICE TO BIDDERS

Sealed Bids, in duplicate, addressed to Dannenbaum Engineering Corp. will be received at the office of Dannenbaum Engineering Corporation, 3100 West Alabama, Houston, Texas 77098 (Tel. 713/520 9570) until **10:00 A.M.**, local time, **TUESDAY, DECEMBER 15TH, 2020**, and then publicly opened and read for "Dellrose Section 10 Left Hand Turn Lane at Bauer Road in Harris County MUD 202, in Harris County, Texas." Bids received after the closing time will be returned unopened. **A NON-MANDATORY** pre-bid conference will be held on **TUESDAY, DECEMBER 8TH, 2020 AT 1:00 P.M.**, local time, at the office of Dannenbaum Engineering Corp. Each Bid must be accompanied by a Bid Bond or a certified or cashier's check, acceptable to the Owner, in an amount not less than five percent (5%) of the total amount Bid, as a guarantee that the successful bidder will enter into the Contract and execute the Bonds on the forms provided, and provide the required insurance certificates within seven (7) days after the date Contract Documents are received by the Contractor. Complete bidding documents are available for download at www.civcastusa.com.

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CAUSE NUMBER: 2020-12774
Plaintiff(s): THOMAS TRAN, MINNIE TRAN (INDIVIDUALLY AND ANF FOR C T (A MINOR) AND DUNG TRAN
Defendant: VIDYA TUKARAM DESAI IN THE 11TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS
CITATION BY PUBLICATION THE STATE OF TEXAS County of Harris To: VIDYA TUKARAM DESAI
YOU ARE HEREBY COMMANDED to be and appear before the **11TH** Judicial District Court of Harris County, Texas in the Courthouse in the city of Houston, Texas at or before 10:00 o'clock A.M. Monday, the **14TH DECEMBER, 2020**, being the Monday next after the expiration date of forty-two days after this citation is issued, and you are hereby commanded and required then and there to appear and file written answer to the **PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**, filed in said Court on **FEBRUARY, 2020** in a suit numbered **2020-12774** on the docket of said court, wherein **THOMAS TRAN, MINNIE TRAN (INDIVIDUALLY AND ANF FOR C T (A MINOR) AND DUNG TRAN** are Plaintiff(s) and **VIDYA TUKARAM DESAI**, is Defendant(s), the nature of plaintiff's demand being and the said petition alleging: **This is a motor vehicle accident case. Plaintiffs were hit by Defendant's car when the Defendant ran a red light. As a result of the collision, Plaintiffs' suffered severe injuries and incurred damages. Plaintiff filed suit on February 25, 2020. After several failed attempts on serving the Defendant, Plaintiff file, and was granted, Motion for Substitute Service in which Plaintiff requested service by publication. Plaintiff is now requesting new citation on this case.** Notice hereof shall be given by publishing this Citation once a week for four consecutive week previous to the **14TH day of DECEMBER, 2020**, in some newspaper published in the County of **HARRIS**, if there be a newspaper published therein, but if not, then the nearest county where a newspaper is published, and this Citation shall be returned on the **8TH day of DECEMBER, 2020**, which is forty two days after the date it is issued, and the first publication shall be at least twenty-eight days before said return day. **HEREIN FAIL NOT**, but have before said court on said return day this Writ with your return thereon, showing how you have executed same.

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From page B1

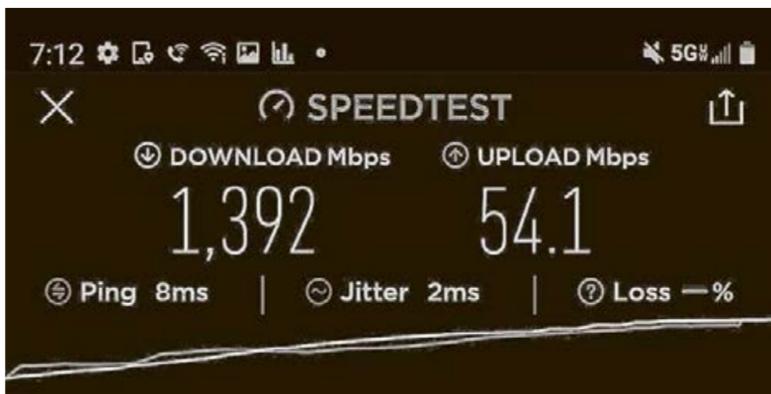
in neighborhoods as far west as inside the Sam Houston Tollway and south to areas around NRG Stadium. There are also outposts to the north, near Little York and Interstate 45.

So I asked Verizon for a 5G device to test it out. The company sent me Samsung's new lower-cost Galaxy S20 FE. The coverage map shows there's plenty of Ultrawideband in the streets of my own neighborhood in the western edge of Montrose, around Shepherd and Welch, so earlier this week I set out in search of what's been touted as 5G nirvana.

And I found it. But it took some work.

Aside from what is shown on Verizon's maps, you are likely to find Ultrawideband speeds in areas where you spot beige cabinets near sidewalks and in front of houses, typically next to utility poles. The cabinets, known as "ground furniture" in the telecom industry, have an electrical meter on them. They provide a data and power connection for the transmitters above, which look like long, rectangular pillows at the top of the poles.

But there's no guarantee that the cabinets and their transmitters you see are pumping out mobile Ultrawideband service. Verizon launched a wireless home broadband service called 5G Home in 2018, and Houston was one of the first cities where it was deployed. At



Houston Chronicle screenshot

A test result of Verizon's Ultrawideband 5G service near the intersection of Brun and Haddon streets in the Montrose neighborhood of Houston on Tuesday.

the time 5G Home was using a protocol that didn't match the under-development 5G standard.

Since then, most of those transmitters have been upgraded to the "real" 5G protocol, but not all. But those that have are doing double duty, delivering mobile 5G as well. This is a smart strategy: The 5G buildout done for its early home broadband service is helping push mobile, superfast 5G out to where people actually live.

When I went looking for Ultrawideband, I started at the corner of Welch and Shepherd, where Verizon's map indicates it should be. There's a transmitter there, but it turns out it's still using the older, non-standard millimeter wave signals. Mostly what I got was a 4G LTE, and not a particularly good one, with most results in the single digits of megabits for downloads.

I moved further east and north and found what I was looking for at the intersec-

tion of Brun and Vermont. Suddenly, I got 995 Mbps downloads and 19 Mbps uploads. And surprisingly, I got that while sitting in my car, encased in glass and steel, which millimeter wave is not usually able to penetrate.

I found even faster speeds nearby, often getting well over 1 gigabit per second, with the fastest close to 1.4 Gbps. Service in the parking lot of the Kroger on West Gray at Woodhead was over 1.2 Gbps. It's also got very good T-Mobile 5G service, with about 150 Mbps. But T-Mobile uses lower-band frequencies called sub-6, and pales in comparison to Verizon's Ultrawideband speeds. Still, it's a good spot to test both of these carriers' offerings.

Verizon also recently rolled out what it calls "Nationwide 5G," which uses the same frequencies as its 4G LTE service and is more prevalent. Although the company promises faster

speeds with this 5G in the future, in my tests this week I found them to have no advantage to 4G, and in some spots were actually slower.

It's not just in Houston. A glance at the Verizon coverage map in Dallas shows the same thing, with Ultrawideband expanding from the center city into nearby neighborhoods, as well as in Irving, Arlington and a small area in Fort Worth. Other U.S. cities that were part of the early launch of 5G Home and 5G Ultrawideband also show growth on the map.

It may be time to revise the conventional wisdom around Verizon's millimeter wave 5G. While it still isn't everywhere, it's expanding. If you've got a 5G phone on Verizon's network, step outside. You may be surprised.

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BIGLARI

From page B1

been a longstanding critic of Cracker Barrel. He has slammed management for store expansions and side ventures that have flopped.

Biglari Capital Corp, which Sardar Biglari solely owns, is the general partner of two investment funds and makes investments in publicly traded companies. A \$241 million investment in Cracker Barrel, made in 2011 and 2012, turned into nearly \$1 billion in value at the end of last year, he wrote in a letter to Biglari Holdings shareholders earlier this year.

Biglari Capital currently holds about 2 million Cracker Barrel shares, or more than 8 percent of the stock.

All 10 of Cracker Barrel's nominees for the board received overwhelming support. Nine of the 10 received at least 94 percent of the votes cast. Director Norman Johnson, whom Biglari criticized for having no restaurant experience, received the least support among the company's nominees. He received support from 61 percent of the votes cast.

Support for Biglari has waned with each successive proxy fight at Cracker Barrel.

In his first proxy contest in 2011, Biglari himself was a

candidate for the board and received almost 26 percent of the votes from shareholders unrelated to him.

He was a nominee the following year, along with Biglari Holding's Vice Chairman Phil Cooley, a former Trinity University professor who had Sardar Biglari as a student. They each received about 11.4 percent of the vote from unaffiliated shareholders, according to Cracker Barrel.

Sardar Biglari and Cooley were nominated to fill board seats again in 2013, with each receiving about 10 percent support – excluding Biglari's shares, Cracker Barrel said.

Then, in 2014, Sardar Bi-

glari floated a shareholder proposal "to pursue all potential extraordinary transactions, including the sale of the company" – possibly even to Biglari. The proposal received 9.2 percent support, Cracker Barrel said.

Whether Biglari intends to launch any future proxy contests couldn't be determined. He didn't respond to a request for comment.

Biglari Capital issued this statement after last week's defeat: It "expects the Cracker Barrel Board to add a director with substantial restaurant operating experience by the next annual meeting."

pdanner@express-news.net



James Durbin / Courtesy

James Duke VanLue was only 30 when he developed Downhole Technology, a frac plug manufacturing company that several years later would attract an offer from a foreign buyer to the tune of \$103 million.

occurred. Otherwise, the buyout price would be \$100 million cheaper.

VanLue's lawyers said their client rose to the occasion. Under VanLue's leadership, Downhole's profits between 2016 and 2018 increased by more than 700 percent.

No cause, at first

But two years after the acquisition, Downhole's board of directors terminated VanLue – first under no cause, then, several months later, for cause. By the fall of 2018, the company had seized VanLue's ownership interest without compensating him.

Why this happened wildly differs among the parties. VanLue characterized the company's reasons for termination as "a failed SBA gamble" to buy him out at a lower price. When the company's performance exceeded the board's expectations, VanLue argued, SBA

developed a scheme to stunt the company's EBITDA growth, push him out, and, in the process, accused him of a slew of misdeeds to both justify a "for cause" termination and bury him in litigation.

SBA and Downhole argued at trial that the board of directors acted rationally, methodically and in good faith in deciding to terminate VanLue. They said the board began receiving employee complaints about VanLue and that he began acting secretly about Downhole's operations.

The board changed the termination to "for cause" after an investigation "revealed a complex fraud orchestrated by VanLue," said David Baay, a partner at Eversheds Sutherland who represents Downhole and SBA.

"There is no dispute that under VanLue's leadership and supervision, Downhole developed and disseminat-

ed false marketing material and certified false test data about the frac plugs," he said.

Moreover, Baay said, VanLue refused to cooperate during the investigation, "stole terabytes" of Downhole data he refused to return until after litigation had begun and used company funds to hire law firms to protect his personal interests.

At trial, Wade argued that Downhole and SBA failed to come up with any meaningful evidence substantiating their claims.

On Nov. 12, Houston visiting Judge Caroline Baker sided with VanLue on all the issues – including that Downhole had no contractual right to change VanLue's termination to "for cause" nor to seize his ownership interest.

For a longer version of this article, please visit TexasLawbook.net.