



**APARTMENT COMPLEX  
GOES FOR \$3.6M**

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# dbrr DAILY BUSINESS REVIEW

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## Judge Puts Stop Light on Red Light Camera Cases

by Julie Kay  
jkay@alm.com

A judge has stayed hundreds of thousands of pending red light camera tickets issued in Miami-Dade County pending a possible appeal.

County Court Judge Steve Leifman issued the stay Oct. 16 after sending one case to the Third District Court of Appeal for a ruling that could affect the entire red light camera program.

"Countywide, there are currently hundreds of thousands of red light camera citations backlogged due to a stay requested by defense counsel," Leifman said in his order. "In fairness to all other municipalities with red light camera programs, this court finds no reason why the stay now granted in this case should not be consistently applied."

Leifman's ruling follows a similar one by a Tampa judge. In that case, the Second District Court of Appeal on Friday agreed to hear the case, setting up a possible conflict with the Third DCA.

Lawyers on both sides say the issue of the legality of the red light camera could be headed to the Florida Supreme Court.



J ALBERT DIAZ

SEE RED LIGHT, PAGE A2

In the last year or two, cities throughout Florida have come under fire for their remote camera ticket programs.

## Lyft Sued in Death of Motorcyclist

by Celia Ampel  
campel@alm.com

The ridesharing company Lyft is facing a wrongful death lawsuit after one of its drivers allegedly crashed into a Miami motorcyclist.

Lyft driver Pirooz Pakdel failed to yield the right of way at a four-way stop sign near the Shops at Midtown Miami on Oct. 31, according to the complaint filed Monday in Miami-Dade Circuit Court.

Pakdel was carrying two passengers when he turned left, striking 29-year-old Loinier Perez and throwing him off his motorcycle. Perez died soon after.

Perez's widow, who is expecting a baby next week, sued Pakdel and Lyft for negligence.

The San Francisco-based company has an unsafe business model that promotes people taking up driving as a side job, argue her attorneys, Ervin Gonzalez and Susan Carlson of Colson Hicks Eidson in Coral Gables.

"They're not chauffeurs," Gonzalez said. "They're working way too many hours if you count up all the jobs they have. It's not safe the way they do it. More importantly, they're constantly on their cellphone



J ALBERT DIAZ

Attorney Ervin Gonzalez of Colson Hicks Eidson said he expects Lyft to raise the argument that its drivers are independent contractors, not employees.

because that's the mode of communication Lyft uses with their drivers." Lyft, its main competitor Uber, their vehicles and drivers don't have the permits that taxi and limousine

SEE LYFT, PAGE A2

## Miami Ranks High Tracking House Prices and Good Schools

by Samantha Joseph  
sjoseph@alm.com

Good news for some South Florida parents: the Miami area is among the best in the country when it comes to housing prices in areas with top-performing schools.

A report issued Thursday by Irvine, California-based housing data and analytics company Renwood RealtyTrac LLC looked at school test scores for nearly 27,000 elementary schools in more than 7,200 ZIP codes across the U.S.

The findings were bleak: In about 65 percent of the neighborhoods surveyed, home prices were unaffordable for families earning the areas' average income.

ZIP codes with at least one top school had median home prices nearly double those of neighborhoods with no good schools.

But that wasn't the case in the Miami area, which ranked in the top 20 neighborhoods where parents could live near above-average schools without spending more than

SEE SCHOOLS, PAGE A2



### TROPICAL TRANSFERS

**4,000-Square-Foot Pinecrest Home Sells for \$4.7 Million**

See Page A9



## FROM THE COURTS

# Sierra Club Asks EPA to Review Sugarcane Field Burning

News Service of Florida

Pointing to smoke that comes from burning sugarcane, the Sierra Club on Thursday asked the U.S. Environmental Protection Agency to object to a state air-emissions permit for U.S. Sugar Corp.

The state Department of Environmental Protection in September renewed the permit for U.S. Sugar's Clewiston facilities.

But the Sierra Club, represented by

the environmental law firm Earthjustice, said in Thursday's petition that the permit failed to properly take into account pollution from burning sugarcane in surrounding fields.

Fire is used to burn away leafy portions around sugarcane stalks, which are filled with water and don't burn. The burns make it easier for harvesting equipment to cut down and collect the bare stalks.

The petition seeking the EPA's involve-

ment cites the federal Clean Air Act and said U.S. Sugar's application for a permit was incomplete because it "lacked any mention of its sugarcane field burning operations. ... EPA must therefore object to the issuance of the permit and require DEP to obtain from U.S. Sugar information about its pre-harvest burning of sugarcane."

Sugar growers anticipated the challenge and held a conference call with

reporters in September to defend the burning of sugarcane fields.

"We believe that this attack is simply another of their efforts to put the sugar farming industry out of business in Florida," Judy Sanchez, senior director of corporate communications and public affairs for U.S. Sugar, said during the call. "And we're prepared to defend this action as we have defended every other attack that they have made on our business."

## FROM PAGE A1

## LYFT

companies do, raising a safety issue for Gonzalez.

"Like any new industry, it needs to be properly regulated and supervised so that public safety is ensured," he said. "Right now they're kind of operating like the wild, Wild West, and that's not safe."

The lawsuit claims Lyft was negligent in its training and background checks for Pakdel.

"I think if the driver failed to see a big, giant red stop sign, the most fundamental sign in driving, that to me is questionable as to whether this man should be driving passengers," Gonzalez said. "Having a driver's license, even if you have a clean record, doesn't mean that you're a competent chauffeur."

Gonzalez said he expects Lyft to raise the argument that its drivers are independent contractors, not employees. Both Lyft and Uber are involved in litigation over the employment status of their drivers.

Florida law considers the amount of control a company could exert over a worker to be the most important test of employment, and the instructions drivers receive from the Lyft app are enough

to pass that test, Gonzalez said.

The company has not yet offered to pay any insurance settlement for the accident, Gonzalez said.

Lyft declined an interview request.

"We are not commenting on the suit, but our hearts go out to all involved in this tragic accident," Lyft spokeswoman Chelsea Wilson said in an email.

**Celia Ampel can be reached at 305-347-6672.**

## FROM PAGE A1

## SCHOOLS

one-third of their income to buy a median-priced home.

"Over the past decade there has been a focus on improving the South Florida public education system, and we are seeing great results," Keyes Co. president and CEO Mike Pappas said.

The Miami-Dade County public school system was awarded the prestigious Broad Prize by the Eli and Edythe

Broad Foundation in 2012 for the most improved urban school system, with neighboring Palm Beach County public schools as a runner-up.

"Our overall median price for South Florida real estate is 20 to 30 percent lower than other major U.S. cities," Pappas said. "This combination gives South Florida homeowners many good options to find good schools in affordable neighborhoods."

Miami ranked with Chicago, Detroit and Phoenix among the top metropolitan areas, while Los Angeles, New York,

San Francisco and San Diego were among the least affordable when it came to housing and school rankings.

The RealtyTrac study pulled the latest school data from each state's Department of Education and schools where test averages were higher than the state's. It used median price data from public records for single-family homes and condominiums or used loan amounts and estimated property value at the time of sales instead in nondisclosure states where sales prices aren't required in public filings. Average wage data came from the U.S. Bureau of

Labor Statistics.

Researchers calculated affordability based on the percentage of average wages needed to make monthly mortgage payments on a median-priced home, assuming a 10 percent down payment and 3.8 percent interest rate based on Federal Home Loan Mortgage Corp. data. They focused on ZIP codes with at least 50 condo and single-family home sales, not including multiple-parcel transactions, in 2014 and 2015.

**Samantha Joseph can be reached at 954-468-2614.**

## FROM PAGE A1

## RED LIGHT

"If either DCA is conflicting, I would expect this will go to the Florida Supreme Court," said Ted Hollander, whose firm, the Ticket Clinic, has had tens of thousands of the tickets thrown out.

In the last year or two, cities throughout Florida have come under fire for their remote camera ticket programs. Levies totaled more than \$200 million since 2010.

Cities say the program makes the roads safer, while detractors claim the system amounts to a money grab for cities and the state, generating hundreds of millions of dollars annually.

Each \$158 ticket generates \$83 for the state and \$75 for the city where it was issued.

Lawyers from the Ticket Clinic and other firms have challenged the tickets, claiming they improperly delegate police powers to a private company, which screens intersection photos and decides whether a violation occurred before sending data to a city traffic infraction officer to authorize a citation. Thousands of tickets have been thrown out of court as a result.

Broward County dismissed all of its red light camera ticket cases after the West Palm Beach appellate court essentially ruled the tickets illegal in *Arem v. Hollywood*.

The state attorney general's office has intervened in more than 100 cases, including the one decided by Leifman. The Ticket Clinic represented a driver ticketed by the city of Aventura.

On Nov. 13, the judge ruled he was bound by the Fourth DCA opinion and dismissed the case. However, he also sent the case to the Third District Court of Appeal for clarification, citing the class action cases as a reason, and issued the stay, freezing all other county cases.

The Hollywood ruling didn't address the issue of whether the transmission of data about tickets must come from the issuing officer, among other substantive matters, Leifman noted.

### SLIM RECORD

Since the "opinion was premised on a narrowly developed record that did not include the multitude of facts established in the trial court below, an opinion from the District Court of Appeal that



JILL KAHN

**County Court Judge Steve Leifman has stayed pending red light camera tickets issued in Miami-Dade County after sending one case to the Third District Court of Appeal for a ruling that could affect the entire program.**

has all of the decisive facts before it is very much needed," Leifman wrote. A decision "based on a full record would not only resolve issues in Miami-Dade County cases but also clarify issues in cases in the 12 other counties" with red light camera tickets.

Leifman said, "The disruption of camera programs, along with the cost to defend class action lawsuits and legally rebut the *Arem* defense in multitudes of trial courts across that state by over 80 local governments, is a matter of great

public importance."

Leifman is the associate administrative judge in charge of the county court criminal division and has jurisdiction over all traffic court matters.

The Third DCA has not decided whether to accept jurisdiction in the case.

Ed Guedes of Weiss Serota Helfman Cole & Bierman in Coral Gables, who represents 45 cities on the red light camera issue, said he was pleased with both the Miami and Tampa trial court rulings and appeals.

"This is great," he said. "Local governments have taken the position that it's important for another DCA to look at these issues because it's our belief that the Fourth DCA made its decision on an incomplete record. It simply did not have all the facts before it on how Hollywood's program operation, and as we know bad facts make bad law."

Hollander said he expects government agencies to continue to fight every adverse ruling aggressively, possibly seeking a showdown at the Florida Supreme Court.

"Our opinion is that the cities and the state will continue to defend the program because there are hundreds of millions of dollars at stake for the cities, the state and the camera companies," he said. "When so much is on the line, I don't expect them to concede without a fight."

A class action seeking repayment of fines has been stayed by U.S. District Judge Federico Moreno in Miami while public agencies appeal to be dismissed as defendants based on sovereign immunity.

**Julie Kay can be reached at 305-347-6685.**



**NEIL FLAXMAN, ESQ.**

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# FLORIDA LAW REVIEW

## Acrimony Remains, But Alimony Reform Gets Another Chance

by Dara Kam

News Service of Florida

An alimony overhaul years in the making is back on the table, after a similar proposal fell apart during the final days of this spring's legislative session.

Three proposed rewrites of Florida's alimony laws now floating in the Legislature would each do away with permanent alimony and use formulas to determine payment amounts based on lengths of marriage and the combined earnings of couples.

After years of wrangling, supporters of alimony reform and the Family Law Section of The Florida Bar finally reached a compromise during the session that ended May 1.

But the effort got enmeshed in an acrimonious battle between two powerful Republican lawmakers—Senate budget chief Tom Lee and House Rules Chairman Ritch Workman—over whether the proposal should also address time-sharing of children between divorcing parents, something Lee wanted. Workman said the time-sharing issue killed the deal, but Lee disputed that was the reason for the bill's demise.

Rep. Colleen Burton, a Lakeland Republican who sponsored the measure during the 2015 session, is backing a nearly identical plan for the session that starts in January. The House Civil Justice Subcommittee on Wednesday approved Burton's proposal (HB 455) in a 9-4 vote along party lines.

Burton's proposal would eliminate certain types of alimony, known as bridge-the-gap, rehabilitative, durational and permanent alimony. It would also change what are now considered short-term, midterm and long-term marriages. Under the new plan, the category of midterm marriages would be eliminated and long-term marriages, now defined as 17 years or longer, would apply to unions of 20 years or more.

The formula for the duration of ali-



FLORIDAPOLITICS.COM

Powerful Republican lawmaker Ritch Workman, the House Rules Committee chairman, said the time-sharing issue killed last year's alimony overhaul deal.

mony payments would be based on the number of years of marriage, while the amount of the payments would rely on a couple's gross income—the higher earner's salary minus the earnings of the spouse seeking alimony—and would set the length of time for alimony payments.

Divorcing spouses who have been married for less than two years would not be eligible for alimony, unless a judge gives written findings for an exception.

The bill does not include a retroactivity provision that prompted Gov. Rick Scott to veto a separate alimony reform measure two years ago.

Burton's current proposal does not include a child-sharing provision.

The measure, however, elicited emotional objections Wednesday from divorced women and others who appeared before the House Civil Justice Subcommittee during the bill's first vetting.

Ann Dwyer, a 70-year-old from Longwood, said that permanent alimo-

ny, which would go away under Burton's measure, and which Dwyer currently receives, "helps to equalize this economic disparity that exists after a long-term marriage ends."

But Philip Wartenberg, a Tampa lawyer representing the Family Law Section of the Bar, said the bill is intended to provide a "more uniform" framework for judges and to inject certainty into the divorce process.

"This bill seeks to end the horror stories," Wartenberg said. "This bill as a whole will create less litigation. ... It will be less destructive for Florida's families, and that's really what the section is striving for."

Robert Evans, a former circuit judge from Orlando, said he had handled more divorces than any other judge during nearly two decades on the bench.

"I agree there should be some guidelines," Evans said. "But this has some fundamental flaws that have to be fixed."

If you don't, bad things are going to happen to nice people."

The measure would also allow alimony payers to seek payment modifications if their divorced spouses get 10 percent increases in income, a major sticking point for Democrats on the committee.

As in the past, they also questioned why the state has not conducted an economic analysis on the impacts.

"I think we're pulling numbers out of thin air," said Rep. Lori Berman, a Lantana Democrat who is a lawyer.

But committee Chairwoman Kathleen Passidomo, a Naples Republican who also is a lawyer, called this year's effort an improvement on the measure axed in 2013 by Scott.

"The original bill that was filed was abysmal. It was very one-sided. I think everyone worked really, really hard to create a compromise," Passidomo said. "Lawyers on both sides of the issue have all said to me this is the best compromise they can envision."

Passidomo acknowledged that there could be "unintended consequences" if the bill becomes law, "but I can tell you we really worked hard to make something that would work."

Sen. Kelli Stargel, who sponsored alimony reform proposals previously, is backing a measure similar to the Burton bill, and Lee, R-Brandon, has filed a separate bill. Neither of those bills has been slated for a committee hearing yet.

Stargel's proposal also includes the controversial child-sharing provision, but with some modifications.

She acknowledged that animosity between Lee and Workman could hamstring the bill's chances of success next year.

"Obviously they're both important members, with Sen. Lee being appropriations chair and Rep. Workman being the rules chair. So you've got a lot of power. I tried to divorce myself from that and do what I think is the best policy," Stargel, R-Lakeland, said.

## State Asks Federal Court to Dismiss Seminoles' Lawsuit

by Dara Kam

News Service of Florida

In the latest twist in dueling lawsuits over blackjack in Florida, Gov. Rick Scott's administration is asking a federal court in Tallahassee to dismiss a legal challenge filed last month by the Seminole Tribe.

The legal wrangling is based on a 2010 gambling agreement, known as a "compact," between the state and Seminoles. A part of the deal giving tribal casinos the exclusive rights to offer banked card games, such as blackjack, expired this summer.

A 90-day grace period allowing the tribe to continue holding the games expired last month, prompting the Seminoles to file a lawsuit in the federal Northern District of Florida accusing the state of acting in "bad faith" regarding negotiations on a new deal and asking a judge to allow

the tribe to keep holding the card games.

Less than a week later, the state filed a separate lawsuit in the federal Middle District in Tampa, asking a judge to stop the games.

The tribe wants the court to consolidate the cases in the Northern District, but the state filed documents Tuesday asking that the Seminoles' lawsuit be dismissed or transferred to the Tampa court.

Lawyers for the state argued that the Middle District is a more appropriate venue because that's where the Seminoles' gambling activity takes place. The tribe's Hard Rock Casino and Hotel in Tampa is one of the world's most lucrative gambling facilities.

The tribe contends that the state violated the Seminoles' exclusive rights to hold the card games by authorizing slot machines that mimic black-



GLOBALPOKERINDEX.COM

The Seminole Tribe's Hard Rock Casino and Hotel in Tampa is one of the world's most lucrative gambling facilities.

jack and "player-banked" card games at pari-mutuels throughout Florida.

The state rejects those arguments, and, in seeking the

dismissal, accused the tribe of filing its lawsuit too soon, since the overall compact does not expire until 2030.

"The best that can be said

about the tribe's failure-to-negotiate claim is that it is 15 years premature," wrote William Spicola, general counsel for the Florida Department of Business and Professional Regulation, which oversees gambling in the state.

The court battle comes after Scott's general counsel, Tim Cerio, worked alongside House and Senate leaders to try to hammer out a new agreement with the Seminoles that would have allowed the tribe to add craps and roulette to its casino operations. In exchange the Seminoles had agreed to pay the state \$3 billion over seven years, more than double the \$1 billion over five years the tribe agreed to pay for the card games exclusivity.

Hopes of an agreement between the governor's office and the tribe appear to have dimmed as the lawsuits have moved forward.

## FROM THE COURTS

# Lenders Taking More Borrowers to Court Over Student Loans

by Dave Collins  
Associated Press

Fall behind on your student loans these days and you could end up getting more than hectoring phone calls and threatening letters. Some lenders are taking more people to court, attorneys say.

The number of lawsuits filed over delinquent student loans that were made by private lenders has increased significantly in the past two years, lawyers told The Associated Press, even though borrowers are missing payments much less often than they did during the height of the recession.

While no one tracks exactly how many such lawsuits are brought, an AP review of court websites in several states found several thousand, an overwhelming number of them filed since 2013.

"I'm seeing it steadily getting worse," said Joshua R.I. Cohen, a lawyer representing people in student loan cases in Connecticut and Vermont. "They're going to court more often. They're pushing for harder



JIM R. BOUNDS/BLOOMBERG NEWS

The lawsuits come as the student loan industry finds itself under government scrutiny over complaints about such things as paperwork errors and deceptive collection tactics.

settlement terms."

Loan industry officials did not return calls or would not comment on the apparent uptick in lawsuits.

Among those who have been sued are Cohen's clients Brett and Jennifer Rinehart, of Manchester, Connecticut. EduCap Inc., a major lender

and loan administrator, took them to court in August on behalf of HSBC Bank, saying they owe nearly \$59,000 on a student loan taken out by Jennifer, a teacher who earned a master's in education.

The two sides have yet to come to terms on a repayment plan.

"I was angry," said Brett Rinehart, who with his wife is raising two children. "We had been willing to work with them the whole time. They wanted to play hardball. It's been very stressful. It's a big question mark looming over our heads."

EduCap officials didn't return messages seeking comment. A lawyer representing EduCap in the case against the Rineharts declined to comment.

The lawsuits come as the student loan industry finds itself under government scrutiny over complaints about such things as paperwork errors and deceptive collection tactics.

One explanation for the apparent rise in lawsuits is that many loan holders are now able to sue because bankruptcy cases filed by borrowers around the recession have been resolved, said N. James Turner, a lawyer in Orlando. Student loan debt cannot be collected when someone is in bankruptcy.

Also, the sheer amount of money at stake—billions of dollars in delinquent loans—might be contributing to the more aggressive tack, lawyers say.

Student loans from private lenders total an estimated \$91 billion, or about 7 percent, of the \$1.2 trillion student loan market, with federal government loans making up the lion's share, according to MeasureOne, a student loan analysis firm.

Close to 5 percent of private student loans were delinquent in the first quarter of this year, MeasureOne said. That is down dramatically from early 2009, during the recession, when the rate was nearly 12 percent.

Private student loans generally have higher interest rates and less flexible repayment options than federal loans.

Another possible reason for the rise in lawsuits: Loan companies are getting better at producing the more thorough documentation some judges are now demanding.

Loans are often bought and sold after they are made. Many student loan lawsuits filed a few years ago were dismissed because the companies didn't have the paperwork saying they actually owned the loans or had authority to sue.

## Alarm Company Hit With \$9.7M Judgment Sues Former Counsel for Malpractice

by R. Robin McDonald  
rmcdonald@alm.com

Faced with paying a \$9.7 million judgment to a former customer who was raped in her DeKalb County home, a Colorado home alarm company is attempting to recoup the money by suing its former lawyers.

Monitronics, which bills itself as the nation's second-largest service of residential alarms and monitoring, has sued

Atlanta firm Hall Booth Smith and partner James Fisher II in federal court in Atlanta. It blames the firm for "a disastrous trial" that resulted in the multimillion-dollar judgment.

Michael Neff, the rape victim's attorney, said at the time that the 2011 verdict was the largest ever issued in DeKalb County in a civil rape case.

Monitronics first retained Hall Booth after the rape victim sued the company in 2008. She claimed the company failed to

alert her that an intruder was in her home after she arrived there, even though the alarm had sounded multiple times throughout the day. The knife-wielding assailant broke her ribs and later raped her.

The alarm company fired the law firm in August 2011, three months before the case was tried in DeKalb County State Court. Represented by new counsel, the company lost at trial and on appeal.

The company's suit accuses

Hall Booth of legal malpractice and claims that the law firm's representation "ranged from negligent to intentional dishonesty constituting a disbarable offense." The suit claims that because of the conduct of Hall Booth Smith lawyers before their services were terminated, the outcome of the trial "went horribly against" Monitronics and resulted in "massive economic injury" to the company. It also claimed that "the negligence committed by [firm law-

yers] prevented an otherwise probable defense verdict."

The company is not suing its trial counsel, Charles McDaniel Jr., or McDaniel's firm, Carlock Copeland & Stair. McDaniel, who replaced Fisher and Hall Booth Smith, also represented Monitronics' primary insurer, First Mercury, from which the alarm company had purchased a \$1 million policy.

**R. Robin McDonald reports for the Daily Report, an ALM affiliate of the Daily Business Review.**



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## FROM THE COURTS

# Nashville Program Teaches Law Enforcement About Civil Rights

by Lucas L. Johnson II  
Associated Press

On the same downtown block where Nashville police officers carried a young John Lewis by his hands and feet to a paddy wagon for daring to take a seat at a whites-only lunch counter decades ago, today's fresh-faced police recruits are learning lessons about the fraught history between law enforcement and black Americans.

About 60 police hopefuls, many around the same age Lewis was when he emerged as a leader of the civil rights movement, gathered recently in the "Civil Rights Room" at Nashville's main library. Dressed in plain blue uniforms, they listened to stories about Lewis and other college students who helped make Nashville the first Southern city to desegregate its lunch counters. Words Lewis uttered back then to urge his fellow students not to falter in the face of violence—"If not us, then who? If not now, then when?"—were inscribed on the wall above the recruits.

As confrontations between police and the black community once again trigger public outcry, law enforcement leaders around the country are looking for new ways to restore trust. In Tennessee, they have turned to the Nashville library's rich archive on the movement to teach new recruits about past injustices, hoping the lessons of history will foster evenhanded police work. The sessions with new recruits quickly became a core part of their training, and other law enforcement agencies around the country have taken notice.

"This interaction is going to put in the minds of everybody in that room, 'When I approach someone or someone approaches me, I need to think about where they may be coming from,'" said



ERIK SCHELZIG/AP

**As confrontations between police and the black community once again trigger public outcry, law enforcement leaders around the country are looking for new ways to restore trust.**

Nashville police Chief Steve Anderson after speaking to recruits at a recent session.

For several years, the library's Civil Rights Room, lined with pictures of Nashville during the movement, has become the setting for regular programs about the role leaders such as Lewis, Diane Nash, Bernard Lafayette and James Lawson played in the push for equal treatment.

Some Nashville officers who visited the room while on a leadership tour were so impressed that they asked the library to develop a curriculum for new recruits, and later for veteran law enforcement officers, including members of the Tennessee Bureau of Investigation.

"Civil rights education is a valuable part of the training we pursue for our agents," TBI Director Mark Gwyn said. "Remembering the valuable lessons

learned from the mistakes of the past helps us to better serve the diverse public we encounter in our work every day."

At the library's first session with new recruits in April, instructors used images, films and oral histories to connect the past to situations they might face now.

Nashville police recruit Micah Wright said the images convey the pain people feel when their rights are denied.

"As long as civil rights aren't realized, then everyone is going to feel the burden and the pain from that," he said.

Andrea Blackman, who oversees the library's program, said police chiefs from across the country have visited the library to learn about the program, and some have asked her to put something together for their departments.

Chuck Wexler, executive director of the Police Executive Research Forum, a

Washington-based think tank, said new recruits can benefit.

"Today's young officers weren't even alive back then, but this history is alive in people's memories and can't be swept under the rug," he said. "By incorporating these lessons into the curriculum for police recruits, the Nashville Police Department distinguishes itself as a leader."

That view is shared by some of the legendary civil rights leaders the young recruits are learning about.

Lafayette recalled how during the lunch-counter sit-ins, Nashville police would just stand by as he and other protesters were attacked. He said he hopes programs such as the one at the library will help new recruits better understand their roles as protectors, and the trust bestowed on them.

"You do more than simply stop the shootings, you create a sense of community," said Lafayette, who still teaches Dr. Martin Luther King Jr.'s principles of nonviolence all over the world. "Because in my opinion, there is no separation between police and community."

Lawson, who started training students in nonviolent protest in a church basement before the sit-ins began more than a half-century ago, said he believes such a program helps officers "adopt the notion that I'm going to treat this person exactly as I want to be treated."

"I'm not going to say that police officers can do that in every situation ... where life is being threatened or crime is being committed," he said. "But I do say that in the 80 or 90 percent of the encounters that they have as police officers, which usually have nothing to do with a crime being committed, they can treat the folk that they're facing and dealing with and incidents with that kind of character and spirit."

# DOJ Fights Public Disclosure of Federal Judge's Racist Emails

by Zoe Tillman  
ztillman@alm.com

The U.S. Department of Justice does not contest that now-retired Montana federal district judge Richard Cebull sent racist and otherwise inappropriate emails from his courthouse account. But lawyers for the government warn that making those emails public would undermine the entire judicial discipline system.

In dueling court papers this week, the Justice Department and lawyers for two journalists who sued for copies of Cebull's emails—compiled as part of a misconduct investigation—clashed over whether the emails should remain confidential.

What's at stake is not only access to records about Cebull and judicial-misconduct investigations, but also broader access to internal judiciary records, such as judges' emails, which are generally shielded from the public under federal law.

Cebull retired in 2013 after

reports surfaced that he had forwarded a racist email about President Barack Obama from his government account. Cebull filed a complaint against himself—U.S. Court of Appeals for the Third Circuit Chief Judge Theodore McKee and others filed complaints as well—to initiate a misconduct investigation. A judicial review panel found that Cebull had sent "hundreds" of inappropriate emails.

Two Montana journalists, John Adams and Shane Castle, filed a lawsuit in March in federal district court in Oakland against the Committee on Judicial Conduct and Disability, an arm of the federal judiciary's policymaking body that investigates misconduct complaints. They sought copies of emails from Cebull's work account that the committee gathered during its investigation.

Cebull's emails, the journalists said, should be considered public records. They also argued that the rules that keep information about misconduct

investigations secret violate the First Amendment.

U.S. District Judge Yvonne Gonzales Rogers in late October ordered the lawyers to file additional briefs about whether and how she should apply a 1986 U.S. Supreme Court decision that addressed public access to government records, *Press-Enterprise II*. The fight over Cebull's emails, the judge wrote, appeared to "present a question of first impression."

In *Press-Enterprise II*, the Supreme Court laid out a two-factor test for deciding if the public should have access to government records: whether history supported public access and whether public access would play a "significant positive role in the functioning of the particular process in question."

The Justice Department, in court papers filed on Monday night, disagreed that *Press-Enterprise II*, which opened up public access to court proceedings, should apply to the fight over Cebull's emails. Even

if it did, the government said, the lawsuit should fail because there was no history of access to misconduct investigations and to grant access now would "severely undermine, if not eliminate, their functioning."

"Granting public access to investigative files of judicial misconduct inquiries would likely disrupt or hinder future investigations by disclosing the manner of investigation, the avenues of inquiry pursued, the types of questions asked, and other confidential aspects of the investigative process," lawyers for the government wrote.

Adams and Castle argued that Gonzales Rogers should look at the history of public access to emails sent by public officials on government accounts.

"There can be no compelling reason to deny access to records that establish that a member of the judiciary failed to meet his Constitutional obligations to faithfully execute the laws of this nation in an impartial and

unbiased manner," the journalists' lawyer, Lawrence Organ of the California Civil Rights Law Group, wrote in papers also filed on Monday.

The federal judiciary is exempt from the federal Freedom of Information Act, which the public can use to seek—and sue for—government records, including emails sent or received in the course of official business. Recent court fights over access to emails that Hillary Clinton sent and received while she was secretary of state have been brought under the FOIA, for instance.

In an interview, Organ said that Gonzales Rogers' decision to ask for more information on *Press-Enterprise II* "shows that Judge Gonzales Rogers is a very careful jurist who is looking to come up with the right answer legally based on the facts in front of her."

A spokesman for the federal judiciary declined to comment.

**Zoe Tillman reports for the National Law Journal, an ALM affiliate of the Daily Business Review.**

## FROM THE COURTS

## Supreme Court: 13 New Judges Needed in South Florida

by Celia Ampel  
campel@alm.com

South Florida needs 13 new judges due to an increased workload in county court, the Florida Supreme Court reported Thursday.

The high court certified the need for seven more county court judges in Miami-Dade County, four in Broward and two in Palm Beach.

"The loss of civil traffic infraction hearing officers in county court, coupled with added workload associated with new legislation, continues to increase county judge workload," the justices wrote in a mandatory annual report.

The number of civil county court fil-

ings increased 3 percent from last year, according to the report. Small claims filings increased more than 16 percent.

Many county court judges also reported helping with circuit court case-loads, the justices found.

Florida needs 23 new county court judges and one new circuit judge in the Fifth Circuit, which covers five counties in central Florida, the justices found.

The court did not certify any new district court of appeal judgeships this year. The justices are waiting to do that until the Office of the State Courts Administrator completes a workload assessment that will likely affect judicial case weights.

Although the Florida Supreme

Court consistently certifies the need for additional judges each year, the state Legislature has not approved funding for new judges in years.

But legislators have made some moves to reduce judicial workloads, the high court noted.

"We appreciate the legislative appropriation to address the backlog of foreclosure cases throughout the state," they wrote. "The monies provided for senior judges, magistrates, case management and technology made a significant difference in the court system's ability to reduce the overall backlog of pending foreclosure cases."

**Celia Ampel can be reached at 305-347-6672.**

## IN BRIEF

## JUDGE KEEPS ALIVE MAYOR'S BID FOR ATTORNEY FEES

Miami Lakes Mayor Michael Pizzi won the first round of his \$3 million legal battle against his town.

A Miami-Dade judge on Wednesday denied the town's motion to dismiss Pizzi's lawsuit, which seeks to collect attorney fees for his successful litigation to regain his seat after defeating a federal public corruption case.

Pizzi returned to office in April after Gov. Rick Scott lifted his suspension following his August 2013 arrest on bribery charges.

Pizzi was acquitted of all seven counts in August 2014, but Scott refused to reinstate him until after the Florida Supreme Court ordered him to do so.

Pizzi then sued Miami Lakes to return as mayor and won that case in the Third District Court of Appeal.

Raul Gastesi of Gastesi & Associates, representing the town, argued Pizzi's case to regain office was an action solely between Pizzi and Scott, not the town. The judge disagreed.

"While these lawsuits were certainly not instituted during his mayorship, it cannot be reasonably maintained that they were not in any way 'connected' to his office or position as mayor when the very nature of them involved such," Miami-Dade Circuit Judge Jorge E. Cueto ruled.

Law firms seeking attorney fees on behalf of Pizzi include the Law Offices of Benedict P. Kuehne, Jones Walker, Reiner & Reiner, Peckar & Abramson in Miami, solo practitioner Kent Harrison Robbins

in Miami Beach and Carlton Fields Jordan Burt in Tallahassee. **(Celia Ampel)**

## VERDICT ON MOTORCYCLIST'S \$14M REQUEST FOR DAMAGES

The Florida Department of Transportation and companies responsible for a Key Largo utility box defeated a \$14.5 million lawsuit brought by a motorcyclist who crashed into the box in 2010.

A Monroe Circuit Court jury returned a defense verdict Wednesday after 30 minutes of deliberation.

Alejandro Rodriguez sued the state after he rode his motorcycle across a grass median and struck the utility box, which he alleged was improperly raised off the ground. He suffered permanent injuries.

The lawsuit also sought recovery from the Florida Keys Aqueduct Authority; the contractor that built the box, Garney Cos. Inc.; the company that inspected the box, HDR Engineering Inc.; and the company that maintained the box, Transfield Services Inc.

Judge Luis Garcia presided over the four-week trial.

Rodriguez was represented by Gregg A. Schlesinger and Zane Berg of the Schlesinger Law Offices in Fort Lauderdale.

FDOT was represented by solo practitioner James Fishman of Pinecrest. The authority was represented by E. Bruce Johnson and Scott Alexander of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman in Fort Lauderdale.

Garney was represented by David Salazar and Michael Brand of Cole Scott

& Kissane in Miami. HDR was represented by Greenberg Traurig attorneys Michael Murphy in Orlando and Timothy Kolaya in Miami. Transfield was represented by William McCue of Dehamy Labrador Drake Victor & Cabeza in Coral Gables. **(Celia Ampel)**

## JUDGE SETS PENALTIES IN BOCA PRECIOUS METALS FRAUD

A federal judge on Wednesday ordered a Boca Raton company and its owner to pay about \$378,000 for precious metals it sold but never delivered.

U.S. District Judge Beth Bloom required Sentry Asset Group LLC and owner John Pakel to pay a \$100,000 civil penalty and restitution of \$278,767, which is the amount in commissions and fees the company collected from the transactions.

She also imposed permanent trading and registration bans on Pakel and his company.

Sentry received \$1.1 million from customers it solicited over the phone to take part in leveraged, margined or financed precious metals transactions from March 2012 to July 2013.

The sales were illegal off-exchange transactions because the precious metals were not delivered within 28 days as required by law. In this case, they were never delivered.

U.S. Commodity Futures Trading Commission staff members on the case were Eugenia Vroustouris, Michael Loconte, James H. Holl III and Rick Glaser. **(Celia Ampel)**

## Lawyer Disbarred for Using Bribes to Gain Clients

by Ben Bedell  
bbedell@alm.com

A New York criminal defense attorney who pleaded guilty to felony charges stemming from bribes he paid to get client referrals was disbarred.

Dwane Smith, 57, admitted in March that he had paid an employee of the Criminal Justice Agency \$10,000 in bribes to steer criminal defendants to him.

CJA is a nonprofit agency contracted by the courts to do background reports on defendants immediately after their arrest and make recommendations for bail.

Smith, a Rutgers Law School gradu-

ate admitted in 2002, maintained offices in Manhattan and Nyack, New York.

He pleaded guilty to third-degree bribery in violation of Penal Law §200.00, a class D felony, and was sentenced to six months' incarceration and five years' probation, the Appellate Division, First Department, said in *The Matter of Dwane K. Smith*, M-3044.

Smith and two other attorneys were arrested in October 2014 in connection with the scheme. The Manhattan District Attorney's Office said the trio paid \$40,000 in one year to the CJA employee, who became a cooperating witness.

According to the indictment, Smith

paid the CJA employee between \$200 and \$1,000 to assess an arrestees' ability to pay a private attorney and then recommend they retain Smith, promising a shorter pretrial confinement.

Also charged were attorneys Benjamin Yu and Jae Lee.

The First Department panel consisted of Justices Angela Mazzarelli, Karla Moskowitz, Rosalyn Richter, Sallie Manzanet-Daniels and Paul Feinman.

The Departmental Disciplinary Committee was represented by Remi Shea.

**Ben Bedell reports for the New York Law Journal, an ALM affiliate of the Daily Business Review.**

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# FOCUS LATIN AMERICA

## Argentines in Election Weigh Kirchner Policies, State Role

by Peter Prengaman  
Associated Press

From the tables of Buenos Aires pizza parlors to the fields of this South American nation's farmlands, Argentines are intensely debating a question they must answer during Sunday's presidential runoff election: How large a role should the government play in their lives?

At the center of the debate is the contentious legacy of outgoing President Cristina Fernandez and "Kirchnerismo," the political movement aligned with the poor that she created with her late husband and predecessor, Nestor Kirchner.

During 12 years in power, the power couple rewrote Argentina's social contract, gaining both impassioned followers and fierce critics. They designed programs for the poor, nationalized the YPF oil company, raised tariffs on imports to protect and develop local economies and passed laws to aid the elderly, handicapped people, homosexuals and other groups on the margins, such as becoming in 2010 the first Latin American nation to legalize gay marriage.

Fernandez's chosen successor, Daniel Scioli, presents himself as the continuation of such policies—he calls them "the national project"—while promising to make fixes where necessary. Opposition candidate Mauricio Macri promises to maintain a safety net for the poor but says he will overhaul the economy to address inflation estimated around 30 percent and a byzantine monetary system that has spawned a booming black market.

"The big question is the degree to which voters feel comfortable with continuity with a twist versus complete change,"

said Jason Marczak, deputy director of the Atlantic Council's Adrienne Arsht Latin America Center.

That's a weighty proposition in a nation where most people are old enough to remember the 2001-02 financial melt-down, when Argentina defaulted on \$100 billion in debt and millions of people were plunged into poverty.

If last month's first electoral round is an indication, Argentines are mulling their options. Scioli, the governor of the Buenos Aires province, got 37 percent of the vote compared to 34 percent for Macri, the mayor of Buenos Aires. The tight finish meant a runoff, and both men have been scrambling to appeal to the nearly 30 percent of voters who picked one of the other four candidates in the first round.

Macri has emerged as the front-runner, with several polls giving him an 8-point lead. But those same polling companies predicted Scioli would win the first round by more than 10 percentage points, which indicates the race is up for grabs.

During a debate last weekend, Scioli argued that Macri's policies would eliminate subsidies, cut programs for the poor and provoke a sharp devaluation of the Argentine peso.

"Who will pay the price of lifting subsidies?" asked Scioli, a former speed boat racer who lost his right arm in an accident. "Families need to know how they will pay their light, gas and transportation bills."

Macri accused Scioli of distorting his proposals. But he also argued an overhaul is needed to jump-start the economy after four years of stagnation.



DIEGO LEVY/BLOOMBERG NEWS

Daniel Scioli, left, promises to continue President Cristina Fernandez's policies while making fixes where necessary. Opposition candidate Mauricio Macri, right, promises to maintain a safety net for the poor and overhaul the economy to address inflation and a booming black market.

"Argentina can only grow with a government that will tell the truth," said Macri, who comes from one of the country's richest families and gained a national profile as president of a popular soccer club Boca Juniors.

Beyond the sluggish economy, voters are thinking about allegations of corruption involving people in Fernandez's administration and the president herself, a rise in crime and drug trafficking and accusations of government's mismanagement of the social programs it frequently touts.

"The government has created a factory that produces lazy bums," said Guillermo Boianelli, who owns a recycling center on Buenos Aires' outskirts and plans to vote for Macri.

Gladys Malverde, a mother of five who plans to vote for Scioli, sees it differently. She

earns \$275 a month cleaning buildings in a government jobs program that she says has helped her return to school to study nursing.

"If Cristina could run again, we would all vote for her," said Malverde, who like many Argentines refers to the president by her first name.

Constitutionally barred from running for a third consecutive term, Fernandez still has been a force in the campaign, an object of both adoration and scorn in a deeply polarized country of 41 million people.

Scioli has embraced Fernandez's policies while presenting himself as his own man capable of fixing huge problems, including a long-standing fight with bond holders in New York federal court that has kept Argentina on the margins of international credit markets.

Macri has criticized Scioli for aligning with Fernandez. But he also praises many government moves, such as nationalizing Aerolineas Argentinas.

He even inaugurated a statue of Juan Peron, a three-time president and founder of a working class movement that helped inspire Kirchnerismo. The ceremony raised eyebrows because Macri's overarching ideology is free market, but it underscored the resonance of the government's hand in society, a force not easily discarded.

"We know that people want change and that Kirchnerismo will come to an end" when Fernandez leaves office, said Roberto Bacman, director of the Center for Public Opinion Studies, a South American research firm. "But therein lies the real question: What will change mean?"

**db**  
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# Compounding Pharmacies, Physicians Facing Federal Scrutiny

Commentary by  
Bernard M. Cassidy

For several years, the dispensing of compounded medications, particularly pain creams, has been quite profitable for some independent pharmacies.

However, the efficacy as well as the marketing of these medications have led to what will likely be a severe backlash. This is largely due to the fact that the principal payer for these medications eventually became the federal government through its military health benefit program known as Tricare. Already, several federal prosecutions have resulted in convictions and False Claims Act liability.

Compounding of medications is generally permitted when a physician determines that based upon a particular patient's diagnosis, medical condition and reaction to other medications, commercially available medications are not as beneficial to the patient as a customized combination of medicines.

The profitability of pain creams arises from the fact that the creams being prescribed and dispensed are not manufacturer-produced drugs with established National Drug Code-associated prices by manufacturers and insurers. In many instances, the price of the medications

is essentially what the insurer was willing to pay for the medication. In some instances, that amount was thousands of dollars per tube of pain cream.

Eventually, payers began auditing and rejecting claims based on the determination that the creams being prescribed were not medically necessary. Also, many payer reviews of the claims related to the compound medications alleged the pain creams were either not beneficial at all or not as beneficial as much cheaper, readily available products.

Since Tricare is a federal government program, the systematic billing of claims for medically unnecessary medications is grounds for federal False Claims Act and health care fraud criminal liability.

Medical necessity is often fertile ground for insurer denials and overpayment but is not particularly persuasive in many cases as the basis for criminal allegations. This is because

## BOARD OF CONTRIBUTORS

medical necessity can often be extremely subjective: physicians are given leeway in the treatment of their patients. Therefore, reasonable doubt is built into the physician-patient interaction and allegations of false claims related to medical necessity.

The teeth of the investigations will likely come from much more easily discovered evidence — that of unlawful marketing practices and kickback arrangements. Since a physician prescription is the gateway to the dispensing of



SCPR.ORG

Federal prosecutors are cracking down on prescriptions written for high-priced pain creams produced by compounding pharmacies after the Tricare military health program was billed thousands of dollars per tube.

a medication, any financial arrangement between a pharmacy and a physician, directly or indirectly, may be grounds for kickback allegations.

Federal law prohibits that payment for the referral of items or services payable by a federal health care program. This not only relates to financial arrangements between doctors and pharmacies, but also pharmacies and marketers.

In many cases, pharmacies have used non-employee marketers to establish relationships with physicians to encourage

the physician to issue prescriptions for pain creams. The paying of a commission to an outside marketer for the referral of patients or prescriptions is also a violation of federal law in most instances.

As in many health care fraud investigations, Florida is quickly becoming a focal point in a number of these investigations. However, there is now a national focus on this issue.

**Bernard M. Cassidy is a partner at Lubell Rosen in Fort Lauderdale. He may be reached at [bmc@lubellrosen.com](mailto:bmc@lubellrosen.com).**

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**Price:** \$4.7 million

**Seller:** Gustavo A. Bravo

**Buyer:** Arturo J. Fernandez



ZILLOW

### Aventura Condo Sold for \$1.55 Million

**Address:** 20201 E. Country Club Drive, Unit 1910, Aventura

**Property type:** four-bedroom, 3,599-square-foot condo built in 2004

**Price:** \$1.55 million

**Seller:** Omar Jesus Farias Luces

**Buyer:** Hamptons South 1910 LLC

**Past sale:** \$1.03 million on May 1, 2004

### Miami Home Bought for \$1.3 Million

**Address:** 5200 SW 63rd Court, Miami

**Property type:** three-bedroom, 3,362-square-foot home

**Price:** \$1.3 million

**Sellers:** Carrie Cleveland, Sandra and Brad Nojaim

**Buyer:** Antonio C. Moreira

### Doral Home Goes for \$1.5 Million

**Address:** 11352 NW 68th Street, Doral

**Property type:** five-bedroom, two-story, 3,898-square-foot home built in 2001

**Price:** \$1.5 million

**Sellers:** Mauro Belmonte and Laura Lisset Ruiz De Belmonte

**Buyers:** Jorge Romero and Paola Nunez

These reports are based on public records filed with the clerks of courts. Building area is cited in gross square footage, the total area of a property as computed for assessment purposes by the county appraiser.

# Communities Must Learn to Adapt to Home-sharing Culture

by **Natalie Dolce**  
GlobeSt.com

“Long before Airbnb, short-term home rental platforms such as VRBO and Vacation Home Rentals connected individuals looking for an alternative to hotels. However, the concept of short-term home rentals has become a polarizing topic,” so say Ann Levin and Michael C. Polentz in this exclusive commentary, where they dig deeper on this evolving regulatory structure.

Polentz is co-chair of the real estate and land use practice group at Manatt, Phelps & Phillips, LLP, located in the Palo Alto office. Levin is an associate. The views expressed in the column below are the author’s own.

Recently, voters of San Francisco, home to the Airbnb headquarters, rejected a highly controversial proposition (Prop F) aimed at regulating short-term home rentals. Prop F would have limited the number of nights a short-term rental could be to 75 days a year, required individual hosts and platforms to submit quarterly reports to the city and allowed an interested person (i.e. a permanent resident living 100 feet from the short-term rental) to bring to a private right of action for perceived violations.

San Francisco voters may have re-

jected Prop F, but the debate and attempt to further regulate short-term rentals will continue to evolve. Moreover, this debate is not unique to San Francisco. Jurisdictions around the nation are also struggling to grapple with the recent surge in popularity for short-term home rentals. Some cities have addressed the concerns with an outright ban while others have imposed regulations that levy transient occupancy taxes (TOT) and/or mandate onerous permitting requirements.

Regulation of short-term rentals by local jurisdictions is certainly not new, but due to the quickly evolving and increased popularity of home-sharing platforms like Airbnb, cities are now finding themselves behind the curve—governing in a more reactive than proactive manner. Prop F is an instructive example.

If it had passed, Prop F would have created a private mechanism for neighbors to enforce perceived violations of local short-term rental use restrictions. However, what become increasingly clear in the political and bitter “war” in San Francisco is that creating a private right of action to control or mitigate the alleged negative impacts of short-term rentals would not bridge the discontent between those for and those opposed to

the home-sharing economy.

Supporters of increased regulation believe the surge of unregulated short-term rentals have taken much needed housing off the market and increased impacts to local neighborhoods ranging from more traffic and noise to parking shortages and other public safety issues. Opponents of increased regulation argue that the elimination or curbing of growth of sites like Airbnb will not solve a jurisdiction’s housing issues; the shortage of housing is not something caused by the home-sharing economy but rather something Airbnb simply helped highlight, and the positive effects, such as the economic benefits to the local businesses, are often ignored.

As jurisdictions continue to search for means to adapt to a world where home sharing seems to be the new norm, potential solutions at the local municipal levels include rezoning neighborhoods to restrict and/or isolate short-term rentals to limited neighborhoods that often border commercial or industrial areas, requiring licenses and/or permits to help track short-term rentals, to collect the corresponding TOT and to recoup a portion of the administrative costs associated with enforcing violations of short-term rental ordinances.

Ultimately, there is not a one-size-

fits-all approach. Every community will have unique demands and different concerns that will have to be addressed. Jurisdictions near the beach that benefit greatly from tourism may not want to prohibit short-term rentals completely. However, other jurisdictions may seek to pass zoning restrictions designed to preserve the character of neighborhoods that were planned and zoned as single-family residentials in an effort to mitigate higher volumes of traffic.

Regardless of what regulatory structure is implemented, what is clear is that the home-sharing culture is here to stay. Municipalities must learn to adapt and devote more resources to integrating home sharing into their planning and enforcement department while at the same time being proactive in the consideration of the goals of all applicable stakeholders including residents, host platform companies and local businesses. Equally as important, real estate developers, investors and owners must work closely with their professional advisers to fully vet and understand the risks and opportunities with existing and proposed home-sharing regulation. As the fight continues to rage in the courts and at the ballot box, the solution will almost certainly be somewhere in the middle.

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## Bay Harbor Building Bought for \$3.6 Million

**Address:** 10290 E. Bay Harbor Drive, Bay Harbor Islands  
**Property type:** 12-unit, two-story, 11,720-square-foot multifamily building built on 26,400-square-foot lot in 1947  
**Price:** \$3.6 million  
**Seller:** BP Harbour North LLC  
**Buyer:** Olimpus Investments LLC



GOOGLE

### Palm Beach Apartment Buildings Fetch \$6.9M

**Address:** 2738 Lantana Road, Palm Beach  
**Property type:** 62-unit, multi-family commercial building built on 4.23 acres

**Address:** 2735 Donnelly Drive, Palm Beach  
**Property type:** 32-unit, multi-family commercial building built on 3.49 acres

**Price:** \$6.9 million  
**Seller:** Lantana Associates LTD.  
**Buyer:** Cove Crossing Harmony Housing LLC

### Palm Beach Gardens Service Station Acquired

**Address:** 7000 PGA Blvd., Palm Beach Gardens  
**Property type:** 2,178-square-foot service station built on 1.1 acres  
**Price:** \$2.27 million  
**Seller:** Everglades Petroleum  
**Buyer:** 7-Eleven Inc.  
**Past sale:** \$2.4 million in December 2012

### Miami Beach Parcel Goes for \$1 million

**Address:** 19045 Atlantic Blvd., Miami Beach  
**Property type:** 4,402-square-foot vacant varcel  
**Price:** \$1 million  
**Seller:** Terra Beach Walk LLC  
**Buyer:** Diarben LLC

### Opa-locka Warehouse Sale Tops \$1 million

**Address:** 14900 NW 24th Court, Opa-locka  
**Property type:** 30,207-square-foot warehouse built in 1970  
**Price:** \$1.05 million  
**Seller:** AC 10 LLC  
**Buyer:** Marzam Hydraulics & Machinery Corp.

These reports are based on public records filed with the clerks of courts. Building area is cited in gross square footage, the total area of a property as computed for assessment purposes by the county appraiser.

# 18-Unit Luxury Condo Set for Fort Lauderdale Beach

by Samantha Joseph  
 sjoseph@alm.com

A new luxury condominium development is coming to Fort Lauderdale's North Beach Village.

With City Commission approval in hand, the Wave on Bayshore will rise south of the Bonnet House Museum & Gardens and minutes from downtown Fort Lauderdale.

Developer Oak Tree Management plans to convert an 11,882-square-foot multifamily parcel at 620 Bayshore Drive to a \$25 million venture with high-end residences and amenities.

It paid \$2.3 million for the single-story Flag Ship apartments across the street from a canal in August 2014.

Holland & Knight partner Debbie Orshesky was the development's land-use attorney.

The project, five blocks from the ocean, is slated to break ground by June for completion in 2017. It would feature 18 luxury condos in an 11-story tower with a maximum of two units per floor. Penthouses would occupy the entire 10th and 11th floors, providing ocean, Intracoastal Waterway and city views.

It would be the latest high-end residential project in the beach commu-

nity, where new development includes the Ocean Conrad Hotels & Resorts' Resort Residences, Four Seasons Hotel & Private Residences and Gale Boutique Hotel & Residences.

"It's very important to know that North Beach Village is the part of Fort Lauderdale beach where all the activity is happening," said Dan Teixeira, the Douglas Elliman vice president of business development handling marketing for the Wave on Bayshore.

Teixeira and his group will seek 10 percent deposits during the early marketing push.

Prices start at \$750,000 for units ranging from 1,974 to 3,566 square feet.

Oversized terraces would run the length of each unit, playing up the concept of indoor-outdoor living with sweeping views.

The design by architect Art Bengochea incorporates private elevators, smart-home technology, European-style kitchens and floor-to-ceiling, energy-efficient, impact-resistant glass. Community amenities would include a saltwater pool, sun deck, clubroom, catering kitchen, bar, fitness center and fenced dog park. A vertical-lift parking system offers two spaces and an electric vehicle charger per unit.

Samantha Joseph can be reached at 954-468-2614.

## IN BRIEF

### OLD CHIQUITA YARD SELLS FOR \$55M IN MIAMI'S MIDTOWN

An apartment developer went ... uh ... bananas in Miami's Midtown neighborhood, spending \$55 million for 6.6 acres—a whopping \$8.3 million per acre.

AMLI Residential, a Chicago-based developer of luxury apartments, scooped up Chiquita Brands LLC's former banana-shipment site at 2900-3010 NE Second Ave. A development with 700 apartments in two buildings is planned on the vacant site. The project designed by Miami-based Zyscovich Architects will have an eight-story, 215-unit building on the south and a 12-story, 485-unit build-

ing on the north.

CBRE Inc. brokers Robert Given, Gerard Yetming, Zachary Sackley, Mary Kate Swann, Casey Rosen and Dennis Carson led the deal for seller Midtown Opportunities, linked to Midtown Miami creator and developer Alex Vadia.

"This area continues to mature and attract Miami's cultural elite, a dynamic mix of renters, owners, retailers and entrepreneurs," said Yetming, CBRE senior vice president. "Wynwood, Edgewater, Midtown and the Design District have all experienced phenomenal appreciation in real estate sales prices and rents over the last two years as the cache of these neighborhoods continues

to rise."

CBRE marketed the property as part of a 17-acre portfolio controlled by Vadia, who paid about \$57 million for 22 acres near the bottom of the last real estate cycle.

The brokerage is gearing up to market the two remaining tracts at 110 NE. 36th St. and 3501 NE First Ave.

"This site will bridge the gap between Midtown Miami and the Edgewater-Biscayne Boulevard corridor, activating the neighborhood and creating value for residents and owner/investors in the nearby communities," said Given, CBRE vice chairman. (Samantha Joseph)



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## BANKING/ FINANCE

# Pfizer Said Near Allergan Deal Even as Treasury Eyes Inversions

by Cynthia Koons, Ed Hammond  
and Ruth David  
Bloomberg News

Pfizer Inc. is in advanced talks to buy Allergan Plc for as much as \$380 per share, according to people familiar with the matter, valuing the Botox maker at as high as \$150 billion, if the U.S. government doesn't get in the way of the drug industry's largest-ever deal.

The companies aim to announce an agreement as soon as Monday, the people said, asking not to be identified because the discussions are private. The price being discussed is \$370 to \$380 per share, two of the people said. However, the U.S. Treasury Department's letter on tax inversion deals, released on Wednesday, could delay the final agreement and change the terms of any transaction, another person said.

There is speculation that the deal could be hampered by the Treasury's letter, which said the department is reviewing ways to address overseas acquisitions and plans to issue guidance later this week.

There have been a flurry of pharma and biotech mergers this year, already surpassing last year's record of \$220 billion in deals, according to data compiled by Bloomberg. Buying Allergan, which has its legal domicile in Dublin, could let New York-based Pfizer relocate outside the U.S. for tax purposes, a transaction known as an inversion.

"We struggle to see what the Treasury can do to specifically curb" a combination of the two companies, Citigroup Inc. analysts said in a note Wednesday. Still, the "political noise" that would surround Pfizer's relocation "constitutes the most material hurdle to consummation of a transaction of this nature."

Chances of the deal going through



**Buying Allergan, which has its legal domicile in Dublin, could let New York-based Pfizer relocate outside the U.S. for tax purposes, a transaction known as an inversion.**

hinge more on "what price Allergan's willing to take and also, we don't know if there's pressure from the White House in the background," Umer Raffat, an analyst at Evercore ISI, said. The Treasury Department doesn't have power to block an inversion, but it could reduce the economic benefits of such a deal, he said.

A deal at \$380 per share would be the largest acquisition this year in any industry and would surpass Pfizer's \$116 billion purchase of Warner-Lambert Co. in 2000 as the biggest-ever transaction between drug companies, the Bloomberg-compiled data show. Representatives for Allergan and Pfizer declined to comment.

The transaction would strengthen

Pfizer's brand-name drug business and could pave the way for an eventual split in two. Allergan's market value of \$122 billion could also allow the U.S. drugmaker to transfer its headquarters to Ireland. The move requires a large foreign target in order to clear U.S. tax rules, and was one of the reasons Pfizer sought to acquire AstraZeneca Plc last year, before eventually withdrawing its proposal.

The Treasury Department is reviewing ways to address these overseas acquisitions and plans to issue guidance later this week to reduce the economic benefits of tax inversions, Secretary Jack Lew said in the letter Wednesday to Sen. Ron Wyden, the Oregon Democrat who's the ranking member on the Finance

Committee.

The Treasury Department has attempted to deal with inversions before, issuing a notice in September 2014 to make it harder for U.S. companies to borrow against their foreign cash to finance inversions. The Treasury proposal last year impacted a handful of pending deals, but not all of them.

By September 2014, Burger King Worldwide Inc., Medtronic Inc. and Mylan Inc. were all in the process of inverting, and all eventually completed those deals. Others fell apart: AbbVie Inc. dropped a \$52 billion purchase of Shire Plc, in what would have been the largest tax inversion to date, blaming the proposed Treasury rules.

Details of the Treasury Department's latest plans for inversions aren't known. The department may be considering reducing the threshold of how much interest on intercompany debt is considered tax-deductible, said Evercore ISI's Raffat.

The Treasury's guidance could affect deals even if the proposed changes are beyond its authority, Evercore ISI analyst Terry Haines said in a note to clients on Wednesday. The department "never has to go final with the rules to get what it wants, which is stopping more inversions," Haines wrote.

The companies were moving toward a plan to make Allergan's Brent Saunders chief executive officer of the combined firm, people with knowledge of the matter said on Nov. 11.

The purchase would also keep Pfizer on track if it decides to go forward with a split into two companies, an option that CEO Ian Read has raised as a possibility. One business would focus on older, soon-to-be-generic drugs, while the other would develop and market new brand-name products.

## Broken Market for Old Drugs Means Price Spikes Are Here to Stay

by Cynthia Koons and  
Robert Langreth  
Bloomberg News

With most products, you'd expect a flood of new supply to quickly drive back down a price spike caused by a temporary shortage. Not so in the topsy-turvy world of hospital pharmaceuticals.

Just look at prices for glycopyrrolate, an everyday drug used to dry up secretions before surgery. After one of only two makers of the drug temporarily closed its factory in 2012 to fix quality control problems, Hikma Pharmaceuticals Plc raised prices on its injectable version more than 800 percent over the next year. Both manufacturers are now making the drug again, yet Hikma's prices have only fallen slightly and remain more than eight times higher than they were in early 2013.

Glycopyrrolate is hardly an isolated case. All sorts of medications, from treatments for irregular heartbeats to supplies as basic as saline solution,

have shot up in price as common hospital drugs are increasingly, and sometimes critically, in short supply. The reasons for the shortages are varied: creaky old factories, an FDA crackdown on quality control, companies exiting the market for more lucrative opportunities and fewer producers in the wake of a wave of mergers and acquisitions.

"It's a broken market," said Stephen Schondelmeyer, a pharmacist and economist at the University of Minnesota who has studied drug prices. "Drug companies know there is going to be an end to this blank-check era and they are pushing for whatever they can get."

Hikma said that higher prices helped cover the cost of increasing supply and shifting production to a new plant in Portugal after a supplier dropped out. After discounts, the drug still doesn't cost more than \$20 for a typical surgery, according to a company representative.

Many in the industry maintain that massive price hikes on older drugs are limited to a few bad actors. Merck & Co. CEO

Ken Frazier has said "companies that may take advantage of temporary market disruption to charge as much as they think the market will bear" behave in a way that is "inappropriate."

Still, some prices keep soaring. A survey conducted for Bloomberg News of 3,700 formulations of generic hospital drugs found more than 400 have at least doubled in price in the last eight years in the U.S., including about 50 that have gone up at least 10-fold. Roughly 25 percent of all old hospital drugs have gone up faster than the rate of inflation during that period, according to the survey of average wholesale prices by DRX, a unit of Connecture Inc. that provides price comparison software for health plans.

The price of procainamide, a drug from Pfizer Inc.'s Hospira used to treat irregular heartbeats, has jumped about 15-fold in the same period, according to DRX. Injectable papaverine, a blood vessel dilator that has only one manufacturer, has soared 700 percent in price in the U.S. in eight years.

Hospira said its manufactur-

ing costs have increased substantially. It has invested more than \$1 billion "to ensure high quality, lifesaving medicines are available to patients in sustainable supply," said MacKay Jameson, a Pfizer spokesman.

Luitpold Pharmaceuticals Inc., a unit of Daiichi Sankyo Co. that also, along with Hikma, makes glycopyrrolate, said it invested in a successful factory renovation in 2012 where both drugs are manufactured. Papaverine price increases, over a longer time frame starting in 2003, were "less than half" the increase shown over eight years in the DRX numbers, according to the company.

Even increased demand for salt water—saline solution—has caused critical shortages, prompting four senators to ask the Federal Trade Commission to investigate "possible illegal collusion" by manufacturers Baxter International Inc., Hospira and B. Braun Medical Inc., according to an Oct. 26 letter from the senators. The letter said since the shortage started in late 2013, "suppliers are re-

ported to have increased their prices by 200-300 percent."

Baxter and B. Braun dispute the degree of the price increase. Baxter and Pfizer, which closed its acquisition of Hospira in September, said their drugs are fairly priced.

"The cost of this Baxter prescription product is less than a cup of coffee," said William Rader, a spokesman for Baxter.

"Hospira responded by expanding its production of saline products to maximum capacity through manufacturing 24 hours a day, seven days a week," said Pfizer's Jameson.

B. Braun is spending millions of dollars to increase capacity, said spokeswoman Constance Walker, who called the collusion allegation "ridiculous."

To ease the saline shortage, the Food and Drug Administration gave the green light for temporary saline imports from overseas manufacturers, "something that we've had to do more and more in recent years" with a variety of drugs, said Valerie Jensen, associate director of the drug shortage staff at the FDA.



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## BANKING/ FINANCE

# Chinese Financial Reforms Collide With 'Too Big to Fail'

by Joe McDonald  
Associated Press

Chinese leaders' ambition to use market forces to make the state-dominated financial system more efficient is colliding with their version of "too big to fail."

The latest reform target is China's sleepy bond market. Until last year, Beijing protected buyers of corporate bonds by bailing out any company that ran short of cash to repay them. Since then, it has allowed a growing number of defaults, hoping investors will be encouraged to look more closely at companies and force risky borrowers to pay more.

Now, that stance is being tested by a credit crunch involving a steel maker that is owned by the Chinese Cabinet and part of an industry the Communist Party says is a pillar of the economy.

SinoSteel Corp. faced the possibility of being required to pay bondholders up to \$315 million in October but says that has been pushed back to Dec. 16. That followed reports the company warned it might lack the cash to pay, prompting China's planning agency to organize talks with creditors in a sign of SinoSteel's elite status.

A SinoSteel spokeswoman, Zhang Zhuo, said the two sides were in negotiations on repayment.

The conflict highlights the tension between the Communist Party's desire for the prosperity that comes from competition and its insistence on protecting state companies that underpin its political and economic plans.

"If a company is too big or too important, even if it loses money, it is difficult for the government to handle a default," said Chen Kang, chief bond analyst at SWS Research Ltd.



BUSINESSINSIDER.COM

**The SinoSteel Corp. conflict highlights the tension between the Communist Party's desire for the prosperity that comes from competition and its insistence on protecting state companies that underpin its political and economic plans.**

Plans to develop the bond market have been under discussion for a decade. Advocates say shifting away from reliance on state-owned banks will reduce political interference in lending and force borrowers to be more disciplined.

The ruling party has yet to disclose all the details but economic planners suggest some borrowers are too important to fail.

A deputy director of the Cabinet planning agency, the National Development and Reform Commission, said in a June 29 speech its local branches should prevent defaults by state companies, according to business news outlets.

"We cannot allow a credit

market default incident to occur, thereby affecting the entire credit environment and financing for state-owned enterprises and national financial stability," said the official, Lian Weiliang, according to *Caijing*, a business magazine. Lian's agency released no transcript but other outlets attributed similar comments to him.

In September, a state-owned manufacturer of smelting equipment, China National Erzhong Group, said it might miss an interest payment on a \$160 million bond. Its corporate parent averted losses to investors by purchasing their bonds.

Chinese companies are struggling with economic growth that fell to a six-year low

of 6.8 percent in the latest quarter. Companies that expected at least 7.5 percent growth this year are scrambling to repay debts out of weakening cash flow.

The number of defaults still is low in a \$6.3 trillion Chinese bond market with some 3,000 issuers but that is expected to rise as growth of corporate revenue slows.

Especially vulnerable industries include steel, cement and solar panels, where rapid expansion during the past decade's building boom left high debt and a glut of unneeded production capacity, according to financial analysts.

"We certainly will see an increasing number of corpo-

rate defaults," said Sun Binbin, chief bond analyst for China Merchants Securities.

In the biggest failure yet, a cement maker, China Shanshui Cement Group, defaulted last week on a \$315 million note.

Investors also have lost money in smaller defaults by a real estate developer, a producer of solar panels and a manufacturer of power equipment.

Regulators want to enforce discipline by letting weak borrowers fail without allowing a wave of defaults that might hurt the ability of healthy companies to raise money, according to Christopher Lee, chief ratings officer for Standard & Poor's Hong Kong office.

"Market discipline is the byword for the government but it is a balancing act," said Lee in an email.

SinoSteel's troubles are a side effect of Beijing's effort to rebalance the economy away from reliance on trade and investment by nurturing growth based on consumer spending and service industries. Controls imposed to cool a debt-fueled construction boom have crushed demand for steel, cement and other building materials.

The tussle with investors stems from a 2010 bond issue that matures in 2017. Investors had the right to ask for early repayment in October but news reports said SinoSteel warned it might not have enough cash.

Zhang, the company spokeswoman, declined to give details of the negotiations, SinoSteel's financial status or the government's role.

"With the agreement of the investors, what we have done doesn't violate China's Securities Law and does not constitute default," said Zhang. "We hope that through negotiation a final agreement can be reached."

## China Cuts Rates on Loans to Small Businesses to Shore Up Growth

Associated Press

China cut interest rates on loans by small lenders that finance the country's entrepreneurs in a new move to shore up lackluster economic growth.

Beijing has cut its benchmark lending rate six times since last November as economic growth slowed. But those cuts applied to large state-owned banks that lend mostly to government companies, not to entrepreneurs who generate most of China's new jobs and wealth.

On Thursday, the People's Bank of China cut the rate on a one-week loan by small banks and credit cooperatives from 5.5 percent to 3.25 percent. The rate for an overnight loan was cut from 4.5 percent to 2.75 percent.

Communist leaders have affirmed their support for a "new normal" of slower, more self-sustaining growth based on domestic consumption instead of trade



QILAI SHEN/BLOOMBERG NEWS

**Communist leaders are trying to keep a 5-year-old economic downturn from deepening too sharply and causing a politically dangerous spike in job losses.**

and investment. But they are trying to keep a 5-year-old economic downturn from deepening too sharply and causing a politically dangerous spike in job losses.

Growth fell to a six-year low of 6.8 percent in the latest quarter, less than half the past decade's peak of 14.2 percent in 2007.

The International Monetary Fund and private-sector forecasters expect growth to fall to 6 percent or lower over the next two years. President Xi Jinping said Nov. 3 that the country needs at least 6.5 percent a year through the end of this decade to achieve the ruling Communist Party's goal of making the population "moderately prosperous."

Communist leaders have promised to open state-dominated industries wider to private-sector competitors, but have yet to cut back the privileges of state companies, which include monopolies and low-cost loans.

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The Kozyak Minority Mentoring Foundation hosted its Minority Mentoring Picnic at Amelia Earhart Park in Hialeah.

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Miami-Dade Circuit Judge William Thomas and Beranton J. Whisenant Jr. of Foley & Mansfield.

Brett Sager of the Hickey Law Firm, Alan Dimond of Greenberg Traurig, Katy Myers Sager of the Sager Law Firm and Jack Hickey of the Hickey Law Firm.



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Miami-Dade Circuit Judge Jennifer Bailey, Florida Bar president Ramon Abadin of Sedgwick, Miami-Dade Circuit Judge Angelica D. Zayas and her father, Bruno Zayas.



Representing the South Florida Association of Legal Administrators, Paula Lawson of Genovese Joblove & Battista, Victoria Allen of Rogers Morris & Zeigler, Shun Covington of the Murray Law Firm, Lourdes Sanders of Broad and Cassel, Blanca Aguilera of Rumberger Kirk & Caldwell and Maria Colon of Littler Mendelson.

Sparber Shevin held a reunion at the SunTrust International Center in Miami.

**Jill Kahn**



Alex Ferrer of Morgan & Morgan and U.S. District Judge Ursula Ungaro.



Roberta Shevin of the Miami Coalition of Christians and Jews and Miami-Dade General Magistrate Liz Schwabedissen.



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