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THE RODENT: OFFICE CLEANUP NOT FOR THE FAINT OF HEART

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BUSINESS REVIEW

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PetMed Express, which runs the online pet pharmacy 1-800-PetMeds, said its net income declined 21 percent in the fiscal second quarter. But the Pompano Beach company's results were still stronger than Wall Street expected. **A10**

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PUBLIC NOTICES & THE COURTS

Public notices, court information and business leads, including foreclosures, bid notices and court calendars. **B1**

Public notices from Miami-Dade, Broward and Palm Beach also available at DailyBusinessReview.com/public_notices.jsp. Public notices published in newspapers statewide available at FloridaPublicNotices.com.

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FORECLOSURE Program could still be optional in some circuits

PANEL URGES ABOLITION OF MANDATORY MEDIATIONS

by Adolfo Pesquera, DBR. A committee appointed by the Florida Supreme Court recommends abolishing the mandatory mediation program for homeowners going through foreclosure.

The committee said lenders and servicers lack the economic incentive to participate, and most borrowers are never contacted or choose not to participate.

The committee suggested the Supreme Court amend the program by making it optional in circuits that would like to continue. However, even an optional program would need major revisions in operations.

Among the suggestions, the committee called for improving the integrity of lenders' and borrowers' financial documents and sanctions for noncompliance by either party.

SEE STORY, PAGE A3



MELANIE BELL

Foreclosure defense attorney Tom Ice opposed mandatory mediation from the beginning: "We strongly believe this is worthless," he said.

DEVELOPMENT Jorge Perez set to build again

Related Group plans to build a 92-unit condo project in the Brickell area called Mybrickell.



J. ALBERT DIAZ

South Florida condo projects back in mix

by Paola Iuspa-Abbott, DBR. Miami developer Jorge Perez is ready to build again after losing some of his South Florida condo projects to lenders during the recession.

On Thursday, Perez's Related Group plans to launch sales of Mybrickell, a 92-unit condo project planned in the Brickell Avenue area of Miami.

Related also expects to start construction next month on Apogee Beach, a 49-unit condo high-rise project on Hollywood Beach.

Perez's projects would be some of the first condominiums to be built in the region since 2007 when the financial and real estate markets collapsed.

SEE STORY, PAGE A7

TAX EVASION

Swiss banks likely to hand over U.S. names

Bloomberg News. Swiss banks will probably settle a sweeping U.S. probe of offshore tax evasion by paying billions of dollars and handing over names of thousands of Americans who have secret accounts.

Sources say U.S. and Swiss officials are concluding negotiations on a civil settlement. The U.S. is investigating 11 financial institutions, including Credit Suisse Group, suspected of helping American clients hide money from the Internal Revenue Service.

The United States seeks data on Americans who have dodged U.S. taxes and a pledge by Swiss banks to stop helping such clients. Switzerland, the biggest haven for offshore wealth, wants an end to new U.S. probes while preserving its decades-old tradition of bank secrecy.

SEE STORY, PAGE A7




ON APPEAL

Circuit court wrongly made findings of fact in Publix case


See Page A16



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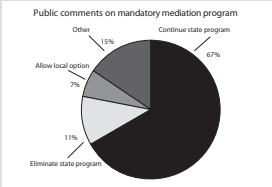
EXCLUSIVELY ON THE WEB



Ruling overturned in case tainted by acts of suspended lawyer: Six months after suspending an attorney for professional misconduct, a case against a registered sex offender will be retried because the attorney did such a poor job.




Jury convicts in Facebook threat case: A federal jury convicted a Facebook user of making threats against everyone from his estranged wife to an FBI agent. His attorney said the defendant was venting during a personal crisis.



Mediation: Read the report on public comments on mandatory mediation where about 67 percent of respondents urge continuation of the state program despite mixed reviews on its success.

MOST-READ STORIES ONLINE



1. Managing Partners Survey 2011: As managing partners are watchful of budgets, costs and billing, law firms are doing well again.

2. Judge removed from bench because of court absences, tardiness: A state Court of Judicial Discipline has removed a district judge from the bench who told her staff she would not be coming to court 116 days over a two-year period and, when she did come to court, habitually arriving tardily.

3. Attorney suspended for delivering drugs to inmate client: An attorney was suspended from the bar for three years after being convicted of delivering marijuana to a prisoner-client in the county jail.

4. Managing as a Managing Partner: DBR Reporter Julie Kay asks the managing partners of two top South Florida law firms what it takes to succeed in their jobs.

5. Despite optimism, managing partners keep close eye on costs: In the last year, Hinshaw & Culbertson purchased a firmwide videoconferencing system to cut down on partners' travel, surrendered its Miami Dolphins and Marlins season tickets and discontinued its permanent summer associate program. The cost cuts helped the Chicago-based law firm save tens of thousands of dollars.

BENEFITS Federal judge puts measure on hold

State's welfare drug test law blocked

The Associated Press

A federal judge in Orlando on Monday temporarily blocked Florida's new law that requires welfare applicants to pass a drug test before receiving the benefits, saying it may violate the constitutional ban on unreasonable search and seizure.

U.S. District Judge Mary Scriven's ruling is in response to a lawsuit filed by the American Civil Liberties Union that claims the law is unconstitutional.

The lawsuit was filed on behalf of a 35-year-old Navy veteran and single father who sought the benefits while finishing his college degree, but refused to take the test.

Nearly 1,600 applicants have refused to take the test since testing began in mid-July, but they aren't required to say why. Thirty-two applicants failed the test, and more than 7,000 have passed, according to the state Department of Children and Families. The majority of positive results were for marijuana.

Supporters of the law say applicants


skipped the test because they knew they would have tested positive for drugs. Applicants must pay \$25 to \$35 for the test and are reimbursed by the state if they pass. It's unclear if the state has saved money.

During his campaign, Gov. Rick Scott said the measure would save \$77 million, but it's unclear how he arrived at that figure.

Under the Temporary Assistance For Needy Families program, the state gives \$180 a month for one person and \$364 for a family of four.

Those who test positive for drugs are ineligible for cash assistance for a year, though passing a drug course can cut that period in half. If they fail a second time, they are ineligible for three years.

The ACLU said Florida was the first to enact a similar law since Michigan tried more than a decade ago. Michigan's random drug testing program for welfare recipients lasted five weeks in 1999 before it was halted by a judge, kicking off a four-year legal battle that ended with an appeals court ruling it unconstitutional.



Gov. Rick Scott said the law would save \$77 million, but that figure has not been confirmed.



LEGAL REVIEW

EVENTS

Oct. 25

Palm Beach County chapter of Nova Southeastern Law Alumni Association: Reception, dinner and program featuring Palm Beach Circuit Judge John Kastrenakes, Alan Johnson of the Palm Beach County Commission on Ethics and Carolyn Bell of The Florida Bar Professional Ethics Committee, 5:30 p.m., Marriott West Palm Beach, 1001 Okeechobee Blvd., West Palm Beach. Cost: \$35. Email: nmorris@nmorrislaw.com.

Oct. 26

Broward County Bar Association Probate & Trust and Elder Law Section: Probate and Guardianship e-filing seminar, 3:30 p.m., Bar office, 1051 SE Third Ave., Fort Lauderdale. Cost: \$10 members, \$20 nonmembers. Email: traci@browardbar.org.

PEOPLE



Rundle



Tachmes



Caulkins

Miami-Dade State Attorney **Katherine Fernandez Rundle** has been recognized by the University of Miami School of Law Center for Ethics and Public Service with the William M. Hoeveler Award for her ethics and public service.

Alexander I. Tachmes, a partner of Shutts & Bowen in Fort Lauderdale, has been named vice president of the board of governors of the Miami City Ballet.

Charles Caulkins, managing partner of Fisher & Phillips in Fort Lauderdale, has been recognized by the Florida Chamber of Commerce for his outstanding leadership with the chamber.

David E. Sacks, a partner of Pathman Lewis, has been named pillar trustee chair of the Miami Beach Chamber of Commerce's Pillar Trustees board of directors.

Stephen K. Harper, assistant public defender and co-coordinator of the Capital Litigation Unit of the Miami-Dade Public Defender's Office, has been recognized by the Florida Public Defender Association with the James "Jim" Evans Slater Award for his outstanding representation of indigent persons charged with capital crimes and pursuit of justice. Harper was part of the team that abolished the death penalty for juveniles in 2005.

TAX LAW

Tribe wants high court to consider fuel tax exemption

The Seminole Tribe of Florida is asking the state Supreme Court to take up a tax dispute about fuel it buys off tribal lands.

An appeals court in June sided with the Florida Department of Revenue in rejecting the tribe's argument that it should not have to pay taxes on fuel used on tribal lands after being purchased elsewhere.

The tribe, a sovereign nation, said state taxation of the fuel would violate the federal Indian commerce clause. In a brief, the tribe argued Supreme Court review of the dispute is "critical."

"The application of well-settled precedent from the United States Supreme Court mandates a conclusion that the state may not tax the on-reservation use of fuel by an Indian tribe," the brief said.

But the 4th District Court of Appeal noted the tribe benefits from being exempt from taxes when fuel is purchased on tribal lands but used elsewhere.

"Common sense suggests that the tax should correspondingly be imposed if the fuel is purchased off the reservation regardless of where it is consumed," a unanimous three-judge panel ruled.

— News Service of Florida

FORECLOSURE FALLOUT Optional program backed by review group

GROUP WANTS MANDATORY MEDIATION PROGRAM KILLED

by **Adolfo Pesquera**
apesquera@alm.com

A mandatory foreclosure mediation program should be axed and replaced with an opt-in plan, according to recommendations from a study group created by the chief justice of the Florida Supreme Court.

The recommendations ran counter to the majority of public comments, with 83 of 123 people saying the statewide mediation program should continue.

The small numbers of responses appeared to skew some categories, but the results were fairly predictable. Attorneys for lenders and servicers at the forefront of the crisis sided with the panel, while a majority of homeowner attorneys and mediators favored the program.

The Assessment Workgroup for the Managed Mediation Program was assembled in September by Chief Justice Charles Canady.

The panel, which released its report Friday, suggests the Supreme



CANDACE WEST

Banks avoid settling with borrowers in mediation because foreclosure lets them tap the Federal Deposit Insurance Corp., which guarantees the original mortgage amount, said Peter D. Ticktin of the Ticktin Law Group in Deerfield Beach.

Court should revise its 2009 administrative order creating the program to allow judicial circuits to opt into the program rather than make it mandatory.

The findings came as no surprise to Tom Ice of the Ice Legal foreclosure defense firm in Royal Palm Beach. He did not submit comments to the panel but opposed the program when it was first being con-



Ice

sidered.

"We recommend to our clients that they not participate," Ice said. "That's not to say we don't want to settle, but we strongly believe this is worthless."

Mediation should occur through the normal course of litigation after a borrower's attorney has had time to develop a

SEE MEDIATION, PAGE A12

CENSUS 'Stratospheric' increase seen in U.S.

Adoptions spike among gay couples in decade

by **Kelli Kennedy**

The Associated Press

The number of gays and lesbians adopting children has nearly tripled in the past decade despite discriminatory rules in many states, according to an analysis of recent population trends.

"It's a stratospheric increase. It's like going from zero to 60," said Miami Beach attorney Elizabeth Schwartz who has coordinated more than 100 adoptions for gay and lesbian families in the past year. "I think many really dreamed of doing this but it wasn't something they ever thought would become a reality."

About 21,740 same-sex couples had an adopted child in 2009, up from 6,477 in 2000, according to the Williams Institute, UCLA School of Law. About 32,571 adopted children were living with same-sex couples in 2009, up from 8,310 in 2000. The figures are an analysis of newly released Census Bureau estimates.

New York-based Evan B. Donaldson Adoption Institute released a report Thursday culminating a four-year project surveying 158 gay and lesbian parents and their experience with the adoption process. Their researchers found the highest number of homosexuals adopted children from Massachusetts, California, New York and Texas.

Tom Bourdon, 35, and his husband interviewed more than a dozen private adoption agencies when they began the adoption process two years ago. The Massachusetts couple found some agencies "didn't really have experience working with a same sex couple and didn't how to treat us equally."

Once they settled on an agency, the couple created a profile that was open about their sexual orientation and desire to create a family. The couple, who were married in 2005, were matched with a birth mother five weeks later. They adopted their son in 2009 and

a daughter eight days ago. Both children were born in California.

"We just wanted to be treated like any other prospective parent out there. We didn't want it to be an issue," said Bourdon, who works in education.

Several states specifically prohibit same-sex couples from adopting jointly, while others have a patchwork of discriminatory policies that make it difficult for gays and lesbians to adopt either as individuals or as couples. But some states have eased restrictions on gay families.



Schwartz

Florida stopped enforcing its ban on gay adoptions last year following a decision by a state appeals court that a 33-year-old law is unconstitutional. The American Civil Liberties Union challenged the law, among the strictest in the country, on behalf of Martin Gill and his male partner, who adopted two young brothers from foster care in North Miami.

FOSTER CARE ADOPTIONS

In the past, adoption was often only an option for wealthy gay families who could afford to adopt internationally or to pay a surrogate. Allowing gay couples to adopt from foster care, where health care and college is paid for, opens it up to more people, experts say. The study estimates half of adoptive gay families adopt children from foster care.

Earlier this year, the Arkansas Supreme Court rejected a voter-approved initiative that barred gay couples and other unmarried people living together from serving as adoptive or foster parents.

Virginia allows married couples and single people to adopt or become foster parents, regardless of sexual orientation, but bars unmarried couples — gay or straight — from doing so. Earlier this month, hundreds of residents weighed in on proposed regu-

SEE ADOPTION, PAGE A6

THE FIRM

THE RODENT Expedition through paper jungle can yield unexpected surprises

Cleaning up the law office is not for faint of heart

Periodically one is forced to clean out the office. This usually occurs when the last bit of stuffable, stackable or crammable space disappears, but there remains more stuff still to stuff, stack or cram.

A small but significant minority of lawyers are so anal they maintain stuff-less offices and never have to go through this. What they do go through is organizing each night before they leave so that there is nothing left on any surface except the impeccably matched desk accessories, precisely placed in measured symmetry. What the secretaries of such lawyers go through is shudder-worthy.

Many lawyers secretly aspire to such OCD office habits, but are, blissfully, unable to pull it off. (Another large fraction just surrender completely to the chaos and call themselves creative or free-spirited, both of which are euphemisms for "slob.")

In any case, the once-every-five years-or-so office cleanup can be a stroll down memory lane, with cute little surprises under every file and behind every credenza. You just hope one of the surprises isn't an expired statute

of limitations (or, worse, an expired malpractice insurance policy).



The first step is to transfer as much paper as possible from your space to your secretary's. Entire foot-high stacks of paper can be disposed of in this manner. These stacks are important-looking, but probably trivial printouts of e-mails and copies of documents. They must be

significant, however, because the names on them are familiar and you can even remember a little bit about the matter, whatever it was. Accordingly, these must be not only important, but current, and they go off to secretary heaven for filing.

(Secretaries, of course, are not permitted to allow stacks of paper to accumulate around their stations or in the file rooms, on pain of snarky comments from their attorneys on their performance evaluations: "Slow on filing; causes delays when she can't find my vital documents.")

Many lawyers secretly aspire to OCD office habits, but are, blissfully, unable to pull it off.

The next step is to create an island of organization by cleaning the top of your desk. This is accomplished by moving mess from the desk to the open spots on the credenza, the bookshelves and the floor that you have created when you piled up your secretary. Now you're making progress! Just look at that shiny wood surface you haven't seen in months.

For the truly strong of spirit, there is a role in the office cleanup for the round file. Hoarders do exist among lawyers, but are not common. The Managing Partner will not allow even esteemed Partners Emeriti to imprison themselves behind accumulated debris, at least not to the point where it spills in an unseemly mess into the corridor.

A young associate or an older secretary usually are required for trash patrol, as the partner could otherwise be counted on to keep nonsense and throw out the key original documents for any number of matters. Numerous

small waste bins are indicated; large ones would either become immovable or would burst from the weight of that volume of paper.

Successful cleanups are rewarding for numerous reasons. Beyond improving the atmosphere generally and the partner's efficiency (no more, "I can't find anything! I'm going home!"), the expedition through the paper jungle yields unexpected prizes.

Half-finished journal articles, diplomas, and even checks(!) have emerged from under or behind the mountains of dross.

Years ago, we started hearing about the "paperless office." With the advent of document storage systems that almost work, it is true that even partners who remember typewriters and carbon paper now save new and scanned documents in the system.

Which means that the lawyer can now turn from his sparkling, neat and stack-less office to his screen for the documents he needs and survey an endless and incomprehensible list of filenames, among which it is absolutely impossible to find anything.

The Rodent is a weekly commentary about law firm life in South Florida by an anonymous legal profession veteran with experience as both a cog and an occupant of a corner office. Rebuttals are welcome.

BUSINESS OF LAW Company joins off-siting trend

Pillsbury firm moving administrative workers to Nashville

by Sara Randazzo

srandazzo@alm.com

Pillsbury Winthrop Shaw Pittman is headed to Music City. But its new operation in Nashville won't house corner offices for new partner recruits.

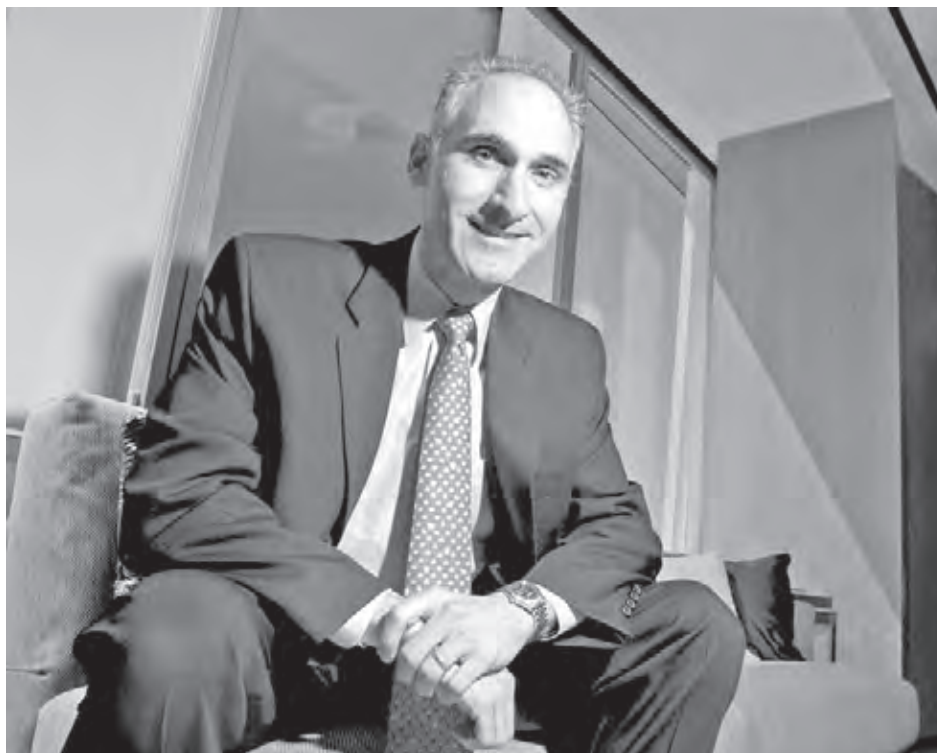
The firm plans to send back-office functions including information technology, finance, new client intake and word processing to the country music capital by next year.

The move announced Tuesday puts Pillsbury on a path blazed by Orrick Herrington & Sutcliffe, which has housed administrative staff and low-cost lawyers in Wheeling, West Virginia, for almost a decade, and Wilmer Cutler Pickering Hale and Dorr, which has been sending nonlegal work and document review to an office in Dayton since last year.

"It's a competitive marketplace," said Pillsbury chair Jim Rishwain. "Law firms need to find better ways to add value to clients in a very difficult economy."

The firm's Nashville office will ultimately employ 150 people, Rishwain said. Pillsbury chief financial officer Sean Whelan and chief information officer Martin Metz will be relocating to Nashville to run the center. The firm plans to offer current employees an opportunity to move to Nashville, will begin recruiting locally in March to fill any remaining positions and expects to have the new office up and running by fall 2012, Whelan said.

"The model other firms have taken is



VIRGINIA LEE HUNTER

Pillsbury Winthrop Shaw Pittman chair Jim Rishwain said the firm's Nashville staff will eventually number 150 people.

to leave their C-level individuals behind in practice offices," said Whelan, who currently splits his time between San Francisco and Tysons Corner, Virginia. "Frankly, Marty and I both started looking and said, 'This is actually a great place to be ... and we would love to be with our team.'"

Whelan said the firm settled on Nashville after a nationwide search. Though the city wasn't the cheapest option, he said its mix of cultural attractions, educational institutions, affordable housing and solid infrastructure made it the best choice to draw potential new talent.

"Law firms need to find better ways to add value to clients in a very difficult economy."

JIM RISHWAIN
CHAIR
PILLSBURY WINTHROP
SHAW PITTMAN

For current employees affected by the move, Pillsbury plans to conduct tours of the city to show off its assets. For those who choose not to make the move, Pillsbury is offering an enhanced severance package and job search assistance, Rishwain said.

Also last week, O'Melveny & Myers confirmed it will eliminate about 75 staff positions nationwide. The work will now be handled by Williams Lea, an outsourcing company O'Melveny has used for 12 years, the firm said.

"We continue to evaluate and restructure our staff functions to reflect technology-driven efficiencies and practice model changes," said George Demos, the firm's chief operating officer, in a statement.

Earlier this year, Paul Hastings confirmed it would eliminate 45 positions in its word processing department and outsource the work to RR Donnelley.

Sara Randazzo reports for The American Lawyer, an affiliate of the Daily Business Review.

THE FIRM

DODGERS TRUSTEE QUESTIONS FIRM BILLING IN BANKRUPTCY



The U.S. trustee overseeing the bankruptcy case of the Los Angeles Dodgers has objected to about \$350,000 in legal fees and expenses, arguing that work billed by attorneys to obtain financing last summer was "not reasonably likely to benefit" the team.

The Dodgers' lawyers at Dewey & LeBoeuf and Young Conaway, Stargatt & Taylor, in a response filed Oct. 19, defended their actions, which they insisted ended up benefitting the Dodgers and came at the direction of the lender.

A hearing on the objection by U.S. Trustee Robert DeAngelis in Wilmington, Delaware, where the Dodgers filed for Chapter 11 bankruptcy protection June 27, is scheduled for Nov. 8.

The dispute centered on the first month for which both firms sought fees: June 27 to July 31. The trustee has taken issue with a portion of the fees tied to a proposed financing arrangement designed to meet the team's payroll.

Dewey & LeBoeuf submitted its application in August, seeking more than \$1.7 million in compensation and about \$32,000 in expenses. Of that, more than 2,000 hours and \$1.1 million were spent on attempts to obtain immediate financing.

In another application, Young Conaway sought more than \$267,000 in compensation and \$41,000 in expenses. The

proposed financing deal accounted for \$104,000, or 256 hours. (**National Law Journal**)

ORRICK ALLOWED TO WITHDRAW OVER UNPAID BRATZ BILL

A federal judge has granted Orrick Herrington & Sutcliffe's motion to withdraw from representing MGA Entertainment, maker of the Bratz doll, in its copyright dispute with Mattel.

The Oct. 19 order issued by U.S. District Judge David Carter in Santa Ana, California, marked the second time Orrick has fired MGA. On June 16, U.S. District Judge Shira Scheindlin in New York approved a request by MGA and Skadden Arps Slate Meagher & Flom to replace Orrick in a related case. Again, Orrick cited unpaid bills in moving to withdraw.

Orrick spokesman David Schaefer declined to comment, and MGA spokeswoman Susan Hale did not respond to a request for comment by deadline.

Orrick moved to withdraw from representing MGA and its chief executive, Isaac Larian, citing \$3.85 million in unpaid legal fees and other compensation associated with the Mattel case. According to the motion, MGA had agreed to pay a monthly fixed amount of \$550,000 beginning in December 2010 and to turn over its insurance payouts to cover legal fees, costs and expenses.

Instead, the motion said, MGA has paid Orrick's fees only twice — in January and March — and has not turned over insurance proceeds since May 2011. In addition, MGA owes at least \$287,000 for outstanding costs and expenses, the motion said.

Carter, who had scheduled an Oct. 24 hearing on Orrick's motion, issued his order without hearing arguments. (**National Law Journal**)

CARTON FIELDS EXPANDS REAL ESTATE PRACTICE FOR MBS WORK

Carlton Fields in Atlanta has hired three veteran real estate lawyers experienced in using commercial mortgage-backed securities to finance real estate loans, positioning itself for the re-emergence of the CMBS origination market while working with distressed debt.

Marci P. Schmerler and A. Lee Lyman joined the firm last week as shareholders from Thompson Hine. Robert A. Barnes joined as of counsel earlier in the year from Cantor Fitzgerald, where he was a managing director.

Barnes spent 17 years at Column Financial, a CMBS originator based in Atlanta and a subsidiary of Credit Suisse. He served

as general counsel for Column Financial before joining Cantor Fitzgerald a year ago to open an Atlanta office for Cantor Commercial Real Estate to originate CMBS loans.

W. Gregory Null, who started a commercial real estate practice for Carlton Fields' Atlanta office when he joined the firm two years ago from Click & Null, said he'd known of Schmerler for a long time through mutual friends and clients and saw a good opportunity to practice with her and Lyman. "We're old fashioned real estate lawyers in a lot of ways. Over the years we've bought, sold, financed, leased, worked out and developed through the

different cycles," he said.

Schmerler spent the bulk of her 25-year career at Alston & Bird before joining Thompson Hine five years ago to head its Atlanta real estate practice. She and Lyman have worked together since Alston & Bird. Schmerler said Lyman left Alston to get a master's degree in urban planning from Georgia Tech and then joined her at Thompson Hine. (**Daily Report**)

DEFLECTIONS LEAD TO QUESTIONS ABOUT FIRM'S GROWTH PLAN

More than two years into its current management regime, McDermott Will & Emery has seen at least 38 partners — including several practice group leaders — leave this year.

The latest defectors: Stephen Shahida, head of the firm's intellectual property litigation group in Washington, joined Weil Gotshal & Manges last week, and Gary Moss, head of the IP practice in London, is leaving for British IP boutique EIP.

The lateral losses come amid declining revenues and a shrinking equity partnership. Am Law 100 figures show McDermott's gross revenue fell from \$966 million in 2008 to \$789 million in 2010. The firm, which like many others laid off attorneys and staffers during the recession, saw its equity partner numbers drop from 266 to 185 during the same period.

Former partners and legal consultants suggest that while high turnover is not new at McDermott, a lack of strategic vision combined with some financial factors has accelerated the churn.

But in an Oct. 13 interview, firm leaders strongly disputed that characterization, downplaying the departures, touting the addition of 19 partners and 11 counsel to offset the losses and insisting McDermott is committed to growing in key areas.

"Looking at ins and outs can be misleading," said litigation partner Jeffrey Stone in Chicago, who was elected co-chair of the firm two years ago along with New York-based litigation partner Peter Sacripanti. "There is an intelligent and strategic growth initiative going on here." (**The American Lawyer**)



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FROM PAGE A3

ADOPTION: Half of adoptive gay families adopt kids from foster care

lations that would allow state-licensed groups to turn down prospective adoptive and foster parents because of their sexual orientation.

According to the Adoption Institute, at least 60 percent of U.S. adoption agencies surveyed accept applications from non-heterosexual parents. Nearly 40 percent of agencies have knowingly placed children with gay families. About half the agencies surveyed reported a desire for staff training to work with such clients.

But some adoption agencies have been bucked the rules, saying it's unfair to force them to go against their religious beliefs by coordinating adoptions for gay families.

Catholic Charities refused to recognize Illinois' new civil unions law and allow gay couples and others living together outside marriage to be foster or adoptive parents. The state tried to end its multimillion dollar contracts but a judge temporarily allowed Catholic Charities to work with the state.

"If one agency doesn't serve you and you're gay, then another agency will," said Adam Pertman, executive director of the Adoption Institute. "You don't need 100 percent agency participation.



ALAN DIAZ/THE ASSOCIATED PRESS

The ACLU challenged Florida's ban on gay adoptions on behalf of Martin Gill and his male partner, who adopted two young brothers from foster care in North Miami.

The bottom line is if you're a qualified gay or lesbian in America and you want to adopt, you can."

About one-third of the adoptions by lesbians and gay men were "open," and the birth families' initial reactions regarding sexual orientation were very positive, according to the study.

At California's Independent Adoption

Center, executive director Ann Wrixon has seen a spike in LGBT couples adopting. In the past five years, gay families have consistently made up about one-third of the 200 adoptions a year.

Wrixon's agency is licensed in seven states and works with adoption agencies all over the country to find baby matches for clients. Ten years ago, she estimates only 25 agencies nationally were willing to work with gay families.

"We would often struggle to find agencies that would work with our families," said Wrixon.

Now she has a database with more than 125 agencies.

While the number of gay couples adopting is increasing, the overall number of same sex couples raising kids is actually declining, said Gary Gates, demographer at the Williams Institute, UCLA School of Law.

"The bulk of parenting among gay people is still people who had children at a young age with a different sex partner before they were out," said Gates.

Now that many homosexuals are coming out earlier in life, they're having fewer biological children and are more likely to turn to adoption to start a family, he said.



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BUSINESS REVIEW

EVENTS

Today

Realtors Association of the Palm Beaches: Seminar on “Build your Business & Help Clients with Affordable Housing Resources,” 8:30 a.m., RAPB Boca Raton, 3200 N. Military Trail, Suite 102, Boca Raton. Free for members, \$75 nonmembers. Email: education@rapb.com.

Miami Association of Realtors: Florida Realtors/Florida Bar “As Is,” 9 a.m., Aventura Office, 1550 NE Miami Gardens Drive, Suite 400, Aventura. Cost: \$45 members, \$75 nonmembers, \$90 at the door. Call (305) 468-7000.

The Professional Advisory Committee of The Foundation of the Greater Miami Jewish Federation: Seminar on the “Impact of Eichmann Trial — 50 years Later,” with Dr. Deborah E. Lipstadt, author and professor of Modern Jewish and Holocaust Studies at Emory University, 11 a.m., Temple Israel, 137 NE 19th St., Miami. Cost: \$36. Call (786) 866-8627.

Greater Boca Raton Estate Planning Council: Cocktail reception, 5:30 p.m., Woodfield Country Club, 3650 Club Place, Boca Raton. Cost: \$65. Go to www.gbrepcc.org.

Oct. 26

Chamber South: Membership breakfast with Xavier L. Suarez, Miami-Dade County commissioner, District 7, 7:30 a.m., Dadeland Marriott, 9090 S. Dadeland Blvd., Miami. Cost: \$25 members, \$35 nonmembers. Call (305) 661-1621.

Association of Certified Anti-Money Laundering Specialists and the Association of Certified Fraud Examiners: 2011 AML/Fraud conference, 8 a.m., Kovens Conference Center, 3000 NE 151st St., North Miami. Cost: \$150 members, \$175 nonmembers. www.acams.org.

NAIOP Commercial Real Estate Development Association: Social, 5 p.m., O'Lounge at Yolo, 333 E. Las Olas Blvd., Fort

SEE EVENTS, PAGE A10

PEOPLE



Schultz

Sheri F. Schultz, director of business valuation for Fiske & Co., has been named to the Florida Institute of Certified Public Accountants board of governors.

Paul Kissinger, principal of EDSA, has been named by Gov. Rick Scott to the Florida Board of Landscape Architecture. The Florida CCIM chapter elected five district officers:

Matthew Rotolante of Sperry Van Ness, president

Frank Rodriguez of Melo Real Estate, president-elect

Daniel Zelonker of Mizrach Realty Associates, vice president

Adriana Jimenez of Flagler Development, secretary

Stephen Rigl of Orion Investments, treasurer

REAL ESTATE

Joint venture pays \$24M for Margate apartment complex

The Advenir at Lakes of Margate apartment complex has been sold for \$24.35 million to a joint venture of Dallas real estate investment trust Behringer Harvard and Grand Peaks Properties of Denver, according to Broward County records.

A company managed by Aventura multifamily developer Advenir was the seller of the 280-unit apartment complex at 5750 Lakeside Drive. The sale closed last Wednesday and was recorded by the county the following day.

Advenir@Margate paid \$17.6 million for the complex in December 2009.

Behringer Harvard Margate assumed existing mortgages totaling \$22.1 million in the transaction.

Advenir at Lakes of Margate was built in 1988 and is fully leased, according to CoStar Group. Apartments at the complex range from one-to-three bedroom units with an average square footage of 828.

— Eric Kalis

TAX EVASION Identities of U.S. clients may be revealed



CHRIS RATCLIFFE/BLOOMBERG NEWS

U.S. and Swiss officials are concluding negotiations on a civil settlement amid U.S. criminal probes of 11 financial institutions, including Credit Suisse Group, suspected of helping American clients hide money from the Internal Revenue Service.

SWISS BANKS LIKELY TO HAND OVER NAMES

by David Voreacos,
Klaus Wille
and Giles Broom
Bloomberg News

Swiss banks will probably settle a sweeping U.S. probe of offshore tax evasion by paying billions of dollars and handing over names of thousands of Americans who have secret accounts, according to two people familiar with the matter.

U.S. and Swiss officials are concluding negotiations on a civil settlement amid U.S. criminal probes of 11 financial institutions, including Credit Suisse Group, suspected of helping American clients hide

money from the Internal Revenue Service, according to five people with knowledge of the talks who declined to speak publicly because they are confidential.

Switzerland, the biggest haven for offshore wealth, wants an end to new U.S. probes while preserving its decades-old tradition of bank secrecy, the people said. The United States seeks data on Americans who have dodged U.S. taxes and a pledge by Swiss banks to stop helping such clients, according to the people. The Swiss reached accords this year with Germany and the U.K. on untaxed assets.

“The Swiss would like to get

out of this by paying money, and they’ve done that with other countries,” said tax attorney H. David Rosenbloom of Caplin & Drysdale Chartered in Washington, who isn’t involved in the talks. “For the U.S., it’s not primarily a money question. It’s a matter of making sure the laws apply fairly among taxpayers.”

The Swiss government seeks to outline a final accord for the Foreign Affairs Committee of its Parliament’s upper house Nov. 10, according to a person familiar with the matter. The number of banks that will pay to resolve the

SEE BANKS, PAGE A11

DEVELOPMENT Jorge Perez launches Mybrickell, Apogee Beach

South Florida condo projects back on track



J. ALBERT DIAZ

Mybrickell, at 31 SE 6 St., would be Related’s first condo development in downtown Miami since 2007.

by Paola Iuspa-Abbott
piuspa@alm.com

Miami developer Jorge Perez, who helped ignite a surge in condo construction in downtown Miami during the last real estate boom, is ready to start building condos again.

On Thursday, Perez will launch sales of Mybrickell, at 31 SE 6 St. in Miami. His Related Group plans to start construction of the high-rise in the first quarter of 2012.

Related plans to start construction of Apogee Beach, a 22-story condo tower in Hollywood Beach, next month.

Mybrickell, with 92 units, would be Related’s first condo development in the Miami downtown area after losing two nearby condo towers to lenders during the nation’s

worst recession in more than half a century. The three-tower Icon Brickell, with two towers repossessed by HSBC Bank in early 2010, was Perez’ most ambitious condo project. It was completed at a time when banks had stopped making condo loans and buyers fled the market.

Perez would be the first developer to break ground on a condo project in the Brickell area since 2007, when the real estate bubble burst. Over the past decade, Related played a key role in bringing thousands of condos to the Brickell area and Miami’s business district, north of the Miami River. In part, his projects — including The Plaza on Brickell, 500 Brickell and 50 Biscayne — gave way to an

SEE RELATED, PAGE A8

DEAL OF THE DAY

Office, auto buildings
sell for \$5.38 million

Address: 21025, 21101 and 21151 NW Second Ave., Miami Gardens
Property type: 37,870-square-foot office building and two automotive buildings totaling 44,878 square feet
Price: \$5.38 million, or \$65.02 per square foot
Seller: Maroone Dodge LLC, Jeffrey Shupert, manager
Buyer: Capital Group of Broward Inc., Ramin Farahmand, director



J. ALBERT DIAZ

Site of stalled project
sold at auction

The site of a stalled mixed-use project in Coral Gables was sold during a foreclosure auction.
Address: 1505 Ponce de Leon Blvd. and 126 Menores Ave., Coral Gables
Property type: Two commercial parcels totaling 1.43 acres
Borrower: Sunkap Coral Gables LLC, affiliated with Kapital

Development LLC
Lender/winning bidder: SunTrust Bank
Judgment amount: \$13 million
Bid amount: \$2,100

Commercial condo
sells for \$1.13 million

Address: 455 E. Palmetto Park Road, Boca Raton
Property type: 4,205-square-foot commercial condominium

built in 2008
Price: \$1.13 million, or \$268.73 per square foot
Seller: Fifth Avenue Place LLC, Calvin Haddad, president
Buyer: 455 Place LLC, Arturo Gismondi, manager

Sale of retail buildings
tops \$1 million

Address: 9852 Southern Blvd.,

Palm Beach County
Property type: Two retail buildings totaling 25,825 square feet and a 6.47-acre submerged parcel
Price: \$1.23 million, or \$47.43 per square foot
Sellers: George Elmore and Aneice Lassiter
Buyer: 441 Southern LLC, Julio Capo, managing member

Service station
bought for \$650,000

Address: 4025 S. Military Trail, Palm Beach County
Property type: 1,876-square-foot service station built in 1971 on 0.47 of an acre
Price: \$650,000, or \$346.48 per square foot
Seller: Eagle Petroleum Inc., Andrew Hrenick, president
Buyer: Omshri Petroleum II LLC, Rajiv Shah, managing member
Past sale: \$400,000 in January 2000

Warehouse sells
for \$850,000

Address: 2511 SW Second Ave., Fort Lauderdale
Property type: 10,420-square-foot warehouse on 0.78 of an acre
Price: \$850,000, or \$81.57 per square foot
Seller: Croissant Park Management Group, Gary Waldron, partner
Buyer: Fig Tree On 2nd LLC, Clifford Berry, managing member
Past sale: \$225,000 in 1991

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.

FROM PAGE A7

RELATED: Developer dips toes back into condo market

inventory glut that is just now being absorbed mostly by cash buyers from Latin America. Nearly 17,500 condos were built downtown and in surrounding areas from 2004 to 2007. Today, 2,897 units remain on the market, according to International Sales Group, a real estate broker and research firm in Aventura.

The quick absorption of the condo inventory is fueling a new wave of condo construction.

“That is the basis behind Jorge wanting to put his toe back in the water and



Studnicki

start the next cycle of new construction,” said Craig Studnicki, whose company International Sales Group partnered with Related Group to create Related ISG. That new company is marketing Mybrickell and Apogee Beach.

Studnicki said the new construction shows the region is entering a new phase in the real estate cycle.
“It is a welcome sign for everybody, not just for Realtors but also for general construction business and a good omen for the economy in South Florida,” he said. “We are starting to see things move.”

Things are definitely moving for seasoned developer Martin Margulies, who this week started construction of Bellini Williams Island, a condo project in Aventura. The 24-story Bellini would have 70 condos priced between \$1 million and \$3.9 million and could be completed in 2013, said Shannon Selby, chief operating officer with Bellini.



JILL KAHN

Miami developer Jorge Perez played a key role in bringing thousands of condos to the Brickell area and downtown Miami.

“The inventory is going down, and there is an appetite for new construction,” she said. “There are not as many options as there was maybe 12 months ago. People are looking.”

Bellini was initially planned to break ground in 2008, but the proposal was put on hold as the economy deteriorated.

“Like Mr. Margulies says, ‘you don’t want to be selling your way out of a bad market’ so we all went home,” Selby said.

The 49-unit Apogee Beach would be one of the first South Florida condo projects to break ground since 2007.

The units are priced from the mid \$600,000s to \$1.8 million, said Studnicki, a principal with Related ISG. Related expects to pre-sell about 30 units before starting construction. Related would require buyers to put down 80 percent of the purchase price during the construction phase and the rest at closing. The

MYBRICKELL

- 30 SE Sixth St., Miami
- 92 condos, priced from \$180,000 to the low \$400,000s
- Construction planned for the first quarter of 2012

APOGEE BEACH

- 4053 S. Surf Road, Hollywood
- 49 condos, priced from the mid \$600,000s to \$1.8 million
- Construction planned for mid November

hefty deposits would help pay for the construction.

Mybrickell would come out of the ground as South Florida real estate continues to recover.

The units would be priced from \$180,000 to the low \$400,000s, Studnicki said. Related expects to sell about 140 condos to start construction by March. Mybrickell would be adjacent to Related’s 500 Brickell, a condo tower completed during the housing boom.

Selby said Margulies was able to start construction of his project sooner because he is self-financing the early stages of construction. Eventually, he would seek to get a construction loan to com-

plete the building.

“We won’t use deposit monies to build the project,” she said.

Miami-based Newgard Development Group plans to start construction of a 374-condo Brickell House at 1300 Brickell Bay Drive in the second quarter of 2012. Condos would be marketed for under \$200,000 for a studio to up to \$1.3 million for the penthouse, said Kinga Konsorska, a sales agent with Miami-based Cervera Real Estate, which is handling sales. Buyers would be required to put down 70 percent of the sale price throughout the construction period, Konsorska said.

“We want to be 70 percent sold to start construction,” she said, adding the buyers will most likely be foreign buyers.

The first condo project to break ground since 2007 was 23 Biscayne, a 98-unit tower in Miami’s Edgewater, a neighborhood north of downtown Miami. The Miami-based Melo Group began construction in June, and the project is half pre-sold. Buyers are required to put 50 percent down before closing. Unites are selling for from \$185,000 to \$360,000, said Linette Guerra, whose firm La Playa Properties in Miami is handling sales.

The new waive of condos would be funded, for the most part, with buyers’ deposits and that could help avoid a new condo glut.

“Is it going to be 2004, 2005 all over again? No,” Konsorska said. “This time, it is going to be smoother and much healthier.”

Paola Iuspa-Abbott can be reached at (305) 347-6657.

ELECTIONS Half of S&P 100 discloses contributions

COUNSEL CAN HELP NAVIGATE CAMPAIGN FUNDING HAZARDS

by Catherine Dunn
cdunn@alm.com

The machinations of the 2012 election cycle are fully in motion, with each televised debate and catchy tax proposal marking the countdown to the primaries and general election — and in the national, state and local election processes, general counsel will have a pivotal role in developing oversight for corporate political spending, according to the authors of a new report by The Conference Board.

Among the complex thicket of state and federal regulations that govern this sphere, “one way for corporations to mitigate the potential risks of political spending and other political activities is to employ strong internal processes and structures at the management level and to consider some degree of oversight at the board level,” according to an advance copy of the report, released Sunday at an event in New York City.

In this area, general counsel are “absolutely critical,” says Bruce Freed, president of the Center for Political Accountability. He is also a member of the advisory group to The Conference Board’s committee on corporate political spending, which produced the report. “[GCs are] the ones who really should have the final review of a company’s political spending decisions — ensuring that it’s complying with the law, and also that the proper risk assessment has been done.”

Co-chaired by senior executives Dan Bross of Microsoft and Charles Grezlak of Merck, the committee was convened in April by the Conference Board, a non-advocacy, not-for-profit business membership and research association. Their report offers a compilation of approaches to disclosure undertaken by companies that, in addition to Microsoft and Merck, include Altria Group, Cambell Soup, Exelon, Pfizer and Procter & Gamble. The report draws strong connections between the value of transparency to the public and shareholders, and the perceived trustworthiness of a company — at a time when “public trust in U.S. corporations is at near-record lows, according to many of the trust-measurement tools corporations now use.”

Last year’s Supreme Court decision *Citizens United v. Federal Election Commission* has also raised questions about corporate transparency and accountability. The Court’s ruling allows corporations to make anonymous donations — in the form of independent expenditures — to tax-exempt organizations for political purposes.

But even before that ruling, shareholder resolutions have been key in prompting some corporations to be more forthcoming on their websites about company spending decisions. At Thursday’s event, representatives from Altria, Microsoft, Merck and Pfizer all said shareholder engagement has played a big part in decisions about sharing policies and spending information online.

Freed says that since 2005, there has been a growing recognition among companies that corporate political spending poses a risk to shareholder value. “They began to look at it as: This is another aspect of risk management,” he said.

Now, over half of the companies on the S&P 100 are disclosing information about the political spending and related policies on their websites, Freed says. The Center for Political Accountability indexes corporate transparency on political spending using 29 indicators — including the level of involvement from the office of general counsel in that process.

Over the course of the day, other speakers and committee members also stressed the importance of the general counsel in corporate political matters.

“This area is one that is littered with a lot of regulation,” said Bruce Wilson, general counsel of Exelon, a public utilities company. “The compliance task here is enormous for a company that’s national, or even international, in scope. I think general counsel can help guide a company into a compliance framework that deals with it in a more manageable way.”

That’s not just compliance with the law, Wilson said, but “compliance with the policy guidelines that we set for how we’re going to act in this arena.” He believes general coun-



PAUL O'DRISCOLL/BLOOMBERG NEWS

General counsel Brad Smith help Microsoft establish campaign-funding policies by first developing a set of principles as a guide.

sel can both “help a company establish what its boundaries are,” as well as partner with the board of directors “in helping them to understand what the policy decisions are, and having them ratify those decisions.”

At Microsoft, general counsel Brad Smith “played an active leadership role in helping us get where we are,” said Bross, the company’s senior director for corporate citizenship. “Brad’s guidance was, rather than establishing a bunch of policies ... let’s first develop some principles that will inform and help develop the policies.”

Out of those discussions, Bross said, “We developed these principles around transparency, public advocacy, accountability, compliance. And then, once we had those, we set the policies under them.”

At Pfizer, it’s about having a process in place around political spending, said Matthew Lepore, chief counsel for corporate governance. That process revolves around determinations of how the company decided to give money, to whom they gave it, and what they disclose on their website.

Grezlak, Merck’s vice president for state government affairs and policy, said the company isn’t claiming to be perfect when it comes to disclosure. Hearing from other companies, he said, offered opportunities for continued improvement, and to learn what others “think the risks are in this area, so to the extent we’re not mitigating reputational risks and the legal risks, we can take appropriate action.”

Catherine Dunn reports for Corporate Counsel, an ALM affiliate of the Daily Business Review.

COMPANY BRIEFS



ORACLE TO BUY RIGHTNOW FOR \$1.5 BILLION

Software company Oracle said Monday that it is buying RightNow Technologies for about \$1.5 billion so it can offer a broader range of software and services that help businesses manage customer service.

Oracle is offering \$43 per share for the tech service company from Bozeman, Montana. That is a 19.6 percent premium over RightNow’s closing price of \$35.96 on Friday.

RightNow’s board has agreed to the deal, which is subject to shareholder approval. Oracle expects to complete the deal by late this year or early next.

RightNow’s main product helps companies manage customers’ questions and complaints. It is delivered over the Internet — or “cloud” — rather than by installing software directly on computers. The deal follows a smaller acquisition Oracle made in the space when it bought InQuira to expand its selection of products that help companies keep their customers happy. Terms of that deal, announced in July, were not disclosed. **(The Associated Press)**

INSURER CIGNA TO BUY HEALTHSPRING FOR \$3.8 BILLION

Cigna will buy fellow health insurer HealthSpring in a \$3.8 billion deal as it becomes the latest managed care company to snap up a bigger share of the fast-growing Medicare Advantage market.

Cigna, based in Bloomfield, Connecticut, also said Monday that it raised its earnings expectations for 2011 and moved up its third-quarter earnings report to Friday from Nov. 3.

HealthSpring shares soared more than 33 percent, or \$13.53, to \$53.69 in morning trading, while Cigna stock fell 30 cents to \$44.40 and broader trading indexes rose less than 1 percent.

Cigna’s acquisition is the latest in a series of deals made by health insurers to expand their Medicare Advantage businesses, which have grown increasingly popular with the managed care sector as baby boomers become eligible for them. In addition, big insurers like Cigna have reported strong results in recent quarters, and analysts have speculated that companies would look to make acquisitions with the cash they were piling up.

Medicare Advantage plans are privately run versions of the government’s Medicare program for people aged 65 and older and the disabled. They are subsidized by the government and offer basic Medicare coverage topped with extras or premiums lower than standard Medicare rates.

Earlier this year, WellPoint said it would acquire Medicare Advantage plan provider CareMore Health Group, which provides coverage and coordinated care for about 54,000 people. Terms of that deal were not disclosed. WellPoint officials noted in June that more than 1 million baby boomers will become eligible for Medicare every year until 2030 across WellPoint’s states. **(The Associated Press)**



BUSINESS BRIEFS

OCCUPY BOSTON PROTESTERS FIND ROOM FOR RELIGION

Downtown Dewey Square is crammed with tents and tarps of Occupy Boston protesters, but organizers made sure from the start of this weeks-old encampment that there was room for the holy.

No shoes are allowed in the “Sacred Space” tent here, but you can bring just about any faith or spiritual tradition.

A day’s schedule finds people balancing their chakras, a “compassion meditation” and a discussion of a biblical passage in Luke. Inside, a Buddha statue sits near a picture of Jesus, while a hand-lettered sign in the corner points toward Mecca.

The tent is one way protesters here and in other cities have taken pains to include a spiritual component in their occupations. Still, Occupy Wall Street is not a religious movement, and signs of spiritually aren’t evident at all protest sites.

Clergy emphasize they are participants in the aggressively leaderless movement, not people trying to co-opt it. Plus, in a movement that purports to represent the “99 percent” in society, the prominent religious groups are overwhelmingly liberal.

Religion might not fit into the movement seamlessly, but activist Dan Sieradski, who’s helped organize Jewish services and events at Occupy Wall Street, said it must fit somewhere. (The Associated Press)

SCHOOLS’ BUDGET WOES NOT ALL GLOOM AND DOOM, SOME SAY

Teenage girls in ponytails and boys in



CHARLES KRUPA/AP

Protesters from Occupy Boston vow to continue their demonstration indefinitely despite the arrests of 129 people.

long athletic shorts dash across the gym at Abraham Lincoln Middle School, pausing their game of indoor tennis to motion “Y-M-C-A” with their arms as the Village People’s song blares from the loudspeaker.

It’s a scene happening less frequently these days. Budget cuts and teacher layoffs have forced the school to cut some P.E. classes, reduce library hours and eliminate small literacy classes for problem readers and Spanish for sixth- and seventh-graders.

Educators across America are bracing for a tough reality. Even in a best-case scenario that assumes strong economic growth next year, it won’t be until 2013 or later when districts see budget levels return to pre-recession levels, said Daniel Domenech, executive director of the American Association of School Administrators in Arlington, Virginia. That means more cuts and layoffs are likely

ahead. Already, an estimated 294,000 jobs in the education sector have been lost since 2008, including those in higher education.

Districts have little choice but to put off buying textbooks and technology and training teachers, said Rob Monson, a principal in Parkston, South Dakota, who is president of the National Association of Elementary School Principals.

Not everyone sees all doom and gloom in schools’ budget woes. Some say many districts haven’t wisely spent tax dollars or didn’t adequately prepare for the end of the \$100 billion in federal stimulus dollars for schools. And that while the number of students per teacher in America dropped from 22.3 in 1970 to 15.3 in 2008, according to the National Center For Education Statistics, they say the reduction hasn’t made a noticeable difference. (The Associated Press)

VATICAN CALLS FOR NEW WORLD ECONOMIC ORDER

The Vatican on Monday called for radical reform of the world’s financial systems, including the creation of a global political authority to manage the economy.

A proposal by the Pontifical Council for Justice and Peace calls for a new world economic order based on ethics and the “achievement of a universal common good.” It follows Pope Benedict XVI’s 2009 economic encyclical that denounced a profit-at-all-cost mentality as responsible for the global financial meltdown.

The proposal acknowledges, however, that a “long road still needs to be traveled before arriving at the creation of a public authority with universal jurisdiction” and suggests the reform process begin with the United Nations as a point of reference.

Vatican pronouncements on the economy are meant to guide world leaders as well as the global church. United States Roman Catholic bishops, for example, have released a voter guide for the 2012 election that highlights social concerns such as ending poverty.

“It is an exercise of responsibility not only toward the current but above all toward future generations, so that hope for a better future and confidence in human dignity and capacity for good may never be extinguished,” the document said.

It highlights that reforms must assure that financial and monetary policies will not damage the weakest economies while also achieving fair distribution of the world’s wealth.

The proposal also called for a “minimum, shared body of rules to manage the global financial market,” lamenting the “overall abrogation of controls” on capital movements.

While past Vatican pronouncements have condemned unfettered capitalism, the latest criticized “an economic liberalism that spurns rules and controls.”

It also attacked “utilitarian thinking,” saying what is useful to the individual does not always favor the common good. (The Associated Press)

EARNINGS

Income falls 21 percent for PetMed Express

The Associated Press

PetMed Express, which runs the online pet pharmacy 1-800-PetMeds, said Monday that its net income declined 21 percent in the fiscal second quarter, but the results were still stronger than Wall Street expected.

Shares of the Pompano Beach company were up 7.8 percent ahead of the market’s close.

PetMed said its profit and revenue decreased because it offered more discounts on flea and tick products. Its competitors are also selling cheaper versions of the company’s Frontline flea and tick fighter. PetMed said it did not market a generic version of Frontline because of patent litigation.

But PetMed said it will market a generic version of Frontline in 2012, and that should improve results next year.

The company said it earned \$3.9 million, or 19 cents per share, in the three months ended Sept. 30, down from \$5 million, or 22 cents per share, in the same period a year ago. Its revenue fell 5 percent, to \$58.2 million from \$61.2 million.

Analysts had forecast a profit of 15 cents per share and \$60.5 million in revenue, according to FactSet.



FROM PAGE A7

EVENTS

Lauderdale. Cost: \$25 members, \$30 nonmembers. Email: naiop.info@naiopsfl.org. **YWCA Greater Miami-Dade:** Cocktails & Conversation, 5:30 p.m., Executive National Bank, 6193 Sunset Drive, Miami. Cost: \$10 members, \$25 nonmembers. Email: gflynn@ywca-miami.org.

Oct. 27 Society of Financial Service Professionals — Palm Beach County chapter: Breakfast and panel discussion on “Long Term Care Insurance — Clients Taking Charge of their Future,” 7:30 a.m., Delray Beach Golf Club, 2200 Highland Ave., Delray Beach. Cost: \$25 members, \$50 nonmembers. Call (561) 588-5444.

NAIOP Commercial Real Estate Development Association: Members only Conversation and Coffee with Dale Scott, senior vice president of SIKON Construction, 8 a.m., 431 Fairway Drive, Deerfield Beach. Cost: \$5. Email: naiop.info@naiopsfl.org.

Nova Southeastern University and The Florida Humanities Council: Panel discussion and documentary on “Florida: Choosing the Future,” with former Florida Gov. and U.S. Sen. Bob Graham, 10 a.m., Rose & Alfred Minaci Performing Arts Center, Nova Southeastern University, 3301 College Ave., Davie. Free. Call (954) 262-5353.

Miami-Dade Gay & Lesbian Chamber of Commerce: Business builders luncheon, 11:30 a.m., City Hall, The Restaurant, 2004 Biscayne Blvd., Miami. Cost: \$30 members, \$40 potential members. Call (305) 673-4440.

Association of Corporate Growth South Florida: “The Good, The Bad and The Ugly,” panel discussion with Ben Baldanza, chief executive officer of Spirit Airlines, and Doug Pauls, chief financial officer of BankUnited, 5:30 p.m., The Westin Fort Lauderdale, 400 Corporate Drive, Fort Lauderdale. Cost: \$55 members, \$170 nonmembers. Email: jduffy@bdo.com.

Oct. 28 Miami Association of Realtors: Lunch and Learn on “How to Work with HUD,” 10:30 a.m., Signature Grand, 6900 State Road 84, Davie. Cost: \$30 members, \$60 nonmembers. Call (305) 468-7000.

Commercial Real Estate Women Fort Lauderdale Palm Beach: Casino Royale — Lady Luck with CREW and Bond ... James Bond, 7 p.m., IGFA Fishing Hall of Fame, 300 Gulf Stream Way, Dania Beach. Cost: \$75. Email: admin@crewftlpbch.org.

Oct. 31 Miami Association of Realtors: “Servicing the Listing and Working with Buyers,” 9 a.m., Coral Gables Office, 245 Alcazar Ave., Coral Gables. Cost: \$45 members, \$75 nonmembers, \$90 at the door. Call (305) 468-7000.

Nov. 1 Organization of Women in International Trade — South Florida: Awards luncheon, 11:30 a.m., The Intercontinental Miami West Hotel — Doral, 2505 NW 87th Ave., Miami. Cost: \$50 members, \$65 nonmembers, \$20 more at the door. Call (305) 971-2880.

Financial Planning Association of Miami-Dade: Dinner with Kevin Reichard with MetLife Bank Reserve Mortgage Division and Ira M. Rothberg of FBR Focus Fund, 5:30 p.m., University of Miami BankUnited Center, Hurricane Room 100, 1245 Dauer Drive, Coral Gables. Cost: \$45 members, \$55 nonmembers, \$10 more at the door. Email: info@fpamiamidade.org.

Miami Finance Forum: Happy hour, 6 p.m., Blue Martini, 2432 E. Sunrise Blvd., Fort Lauderdale. Cost: \$40 members, \$50 nonmembers. Email: elena@miamifinanceforum.com.

Nov. 2 Women’s Chamber of Commerce of Palm Beach County: Lunch & Learn with Marcella Scherer, executive director and national trainer of BeautiControl, speaking on topic: “De-Stress and Look you Best for the Holidays,” 11:30 a.m., Airport Hilton, 150 Australian Ave., West Palm Beach. Cost: \$25 members, \$30 nonmembers, \$35 at the door. Call (561) 684-4523.

Greater Miami Chamber of Commerce: Trustee luncheon, noon, Jungle Island, 1111 Parrot Jungle Trail, Treetop Ballroom, Miami. Cost: \$55 members, \$75 nonmembers. Call (305) 577-5421. **Nova Southeastern University:** “Celebrating a Lifetime of Giving,” honoring Nova Chancellor Ray Ferrero Jr., 6 p.m., The Westin Beach Resort, 321 N. Fort Lauderdale Beach Blvd., Fort Lauderdale. Cost: \$250. Call (954) 262-2116.

Nov. 3 Commercial Real Estate Women Fort Lauderdale/Palm Beach: Economic Forecast, 11:30 a.m., Ruth Chris Steakhouse, 225 NE Mizner Blvd., Suite 100, Boca Raton. Cost: \$35 members, \$45 nonmembers. Email: admin@crewftlpbch.org. **Broward College:** “The American Dream,” fundraiser luncheon, noon, Signature Grand, 6900 State Road 84, Davie. Free. Call (954) 21-7373. **Jewish Federation of South Palm Beach County Metro Division:** Happy hour, 5:30 p.m., Caliente Kitchen, 8 E. Atlantic Ave., Delray Beach. Cost: \$5. Call (561) 852-6058.

Nov. 4 NAIOP Commercial Real Estate Development Association: Dealmakers Roundtable, 7:30 a.m., Nova Southeastern University, Huizenga School of Business Carl DeSantis Building, 3301 College Ave., Fort Lauderdale. Cost: \$35 members, \$55 nonmembers. Call (954) 990-5116. **Appraisal Institute, South Florida chapter:** Luncheon, 11:45 a.m., The Westin Fort Lauderdale, 400 Corporate Drive, Fort Lauderdale. Cost: \$75 members, \$100 nonmembers, \$1 more after Oct. 28. Call (954) 229-0499.

Nov. 6-8 Miami Association of Realtors: International Real Estate Congress, 8:30 a.m., Biltmore Hotel, 1200 Anastasia Ave., Coral Gables. Cost: \$199 members, \$399 nonmembers. Call (305) 468-7000.

Nov. 8 City of Hollywood and Small Business Development Center: Workshop on “How to be Certified as a Minority-, Disadvantage- or Women-Owned Business,” 6 p.m., Hollywood Branch Library, 2600 Hollywood Blvd., Hollywood. Free. Call (954) 921-3388.

Nov. 9 Miami Finance Forum: CEO power breakfast panel: “Private Equity 2011, Part II,” 7:30 a.m., Conrad Hotel, 1395 Brickell Ave., Miami. Cost: \$25 members, \$55 nonmembers. Email: elena@miamifinanceforum.com.

Submit information about upcoming business or real estate events to Deborah España at despana@alm.com.

FROM PAGE A7

BANKS: U.S. casts 'a wide net' to catch offshore tax evaders

U.S. negotiations may extend beyond the 11 under criminal investigation, the people said.

"We are aiming for an all-encompassing solution that will apply to all the banks," Finance Minister Eveline Widmer-Schlumpf said in an Oct. 4 interview in the Swiss capital, Bern. "We don't want to be confronted with the same issues time and again."



Widmer-Schlumpf

Under accords this year with Germany and the U.K. on untaxed assets, the identity of clients remained secret. The United States insists that the Swiss disclose client account data and the banks may end up handing over data on 5,000 to 10,000 accounts, the people said. A final determination hasn't been made, they said.

CRIMINAL CHARGES

The U.S. Justice Department also may bring criminal charges or civil enforcement actions against any of the 11 financial institutions. They could avoid prosecution by separately paying fines, admitting wrongdoing and disclosing data, the people said. On Aug. 30, the Justice Department requested statistical data from the 11 about their U.S. accounts, which the U.S. has received and is analyzing, the people said.

Credit Suisse, the second-biggest Swiss bank, said July 15 that it was a target of U.S. prosecutors. On July 21, seven Credit Suisse bankers were indicted on a charge of conspiring to help U.S. clients evade taxes through secret accounts.

The group of 11 also includes HSBC, the biggest European bank; Basler Kantonalbank, Wegelin; Zuercher Kantonalbank; and Julius Baer, the people said. Three Israeli banks — Bank Leumi Le-Israel, Bank Hapoalim and Mizrahi-Tefahot Bank — are on the list, as well as Liechtensteinische Landesbank and an asset manager, NZB, according to the people.

The U.S. crackdown against offshore tax evasion has led to charges against UBS, the largest Swiss bank; at least



PAUL TAGGART/BLOOMBERG NEWS

The group of 11 banks under investigation includes HSBC, which declined to disclose information on revenue from U.S. clients. A spokesman for HSBC in Geneva declined to comment on the settlement talks.

21 foreign bankers, advisers and attorneys; and at least 36 U.S. taxpayers.

UBS, which isn't one of the 11 banks now under scrutiny, avoided prosecution in 2009 by paying \$780 million, admitting it fostered tax evasion and handing over details on 250 secret accounts. It later disclosed another 4,450 accounts.

UBS made \$12.1 billion in revenue in the United States in 2010, or 34 percent of the group's total. Credit Suisse made 41 percent of the total. HSBC's Swiss private bank and Julius Baer declined to disclose information on revenue from U.S. clients. A spokesman for HSBC in Geneva declined to comment on the settlement talks.



Rohner

Credit Suisse gained 2.4 percent to 24.42 Swiss francs in Zurich. Baer was unchanged at 34.70 francs. Basler Kantonalbank and Liechtensteinische Landesbank dropped 0.4 percent and 2.8 percent, respectively.

Urs Rohner, chairman of Credit Suisse, last month told newspaper NZZ

am Sonntag that the bank has transferred statistical data sought by the U.S. Marc Dosch, a spokesman for the Zurich-based bank, declined to comment further.

Basler Kantonalbank spokesman Michael Buess said it also gave such data to the United States.

Wegelin spokeswoman Albena Bjoerck said it will show "Swiss and U.S. authorities that the bank has not breached either Swiss or U.S. law." The bank is cooperating with authorities "within the scope of Swiss law."

After a U.S. indictment of two Julius Baer bankers this month, the bank said it "is one of a number of Swiss financial institutions supporting the ongoing tax negotiations between the U.S. and Switzerland" and is cooperating with the U.S. probe. Spokesman Martin Somogyi declined to comment further.

Youval Dichovski, Zurich-based head of internal audit at Bank Leumi Switzerland Ltd., said the bank is cooperating.

Bank Hapoalim Switzerland is complying with its legal and regulatory duties in cooperating with Swiss authorities, said Chief Executive Officer Michael

Warszawski. He said the bank "has only a limited number of American clients whose holdings with the bank are very small." The bank, he said, "is not aware of any violations of U.S. law by the bank or its employees."

'A BIG ISSUE'

"This is a big issue for these banks," said C. Evan Stewart, an attorney at Zuckerman Spaeder LLP in New York, who isn't involved in the settlement talks. "These are no longer small in-



Stewart

stitutions catering to wealthy people in a small part of central Europe," he said.

"These are multinational institutions now that have a reach that's all over the world. This has a huge impact on the banking system in

Switzerland. Another issue is the sovereignty in Switzerland and whether that will be given deference by other governments."

The IRS has said 30,000 U.S. taxpayers with offshore accounts avoided prosecution since 2009 by entering a limited amnesty program, paying back taxes and saying who helped them hide their accounts from authorities. Hundreds of taxpayers in the program have given information to prosecutors that have helped them build criminal cases against bankers and advisers.

"The DOJ and IRS are casting a wide net as they try to identify Americans guilty of offshore tax evasion," said Aaron D. Schumacher, a Geneva-based wealth planning attorney, with Withers LLP.

Attorney Robert Katzberg, who represents clients in criminal tax cases, said U.S. taxpayers with Swiss accounts don't understand that the IRS and Justice Department will get a trove of new data on secret accounts.

"There are thousands of Americans, who are the functional equivalent of residents of New Orleans on the eve of Hurricane Katrina, who have no idea that Katrina is about to happen," said Katzberg, of Kaplan & Katzberg in New York.

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IPO Just two initial public offerings in months

Fewer companies make market debuts due to risks

by Matthew Craft
The Associated Press

Two companies with quirky names, Ubiquiti Networks and Zeltiq Aesthetics, made their public debuts earlier this month with listings on the Nasdaq Stock Market. Each company's stock went up modestly on the first day of trading.

Ubiquiti pocketed \$106 million for the day, and Zeltiq made \$91 million. They were the most successful stock debuts of the past two months. Then again, they were the only stock debuts of the past two months.

The market for initial public offerings, or IPOs, is suffering through a drought of Texas proportions. Companies thinking of going public are deciding it's just too risky.

The stock market lost nearly 20 percent of its value in a month this past summer. Swings of 200 points for the Dow Jones industrial average continue to be commonplace. Getting the timing wrong for a coming-out party can mean missing out on millions of dollars.

A dried-up IPO market matters because stock debuts aren't just a chance for tech whizzes to become overnight billionaires and ring the bell at the New York Stock Exchange. Companies use the cash they raise to grow — and that means hiring people.

And at a time when 14 million



TONY AVELAR/BLOOMBERG NEWS
Tim Westergren, founder and chief strategy officer of Pandora, speaks at the Web 2.0 Summit in San Francisco. Pandora debuted in June, bulking up its product development staff by 74 percent and its sales and marketing by 125 percent.

Americans are looking for work and the unemployment rate has been stuck near 9 percent for two years, the last thing the economy needs is for one engine of hiring to stall.

There are 215 companies waiting to

go public. They've filed the necessary paperwork and lined up bankers, and are just holding out for the right time to unleash their stock. The waiting list is the longest since 2001, according to Renaissance Capital, an investment ad-

vice firm. LogMeIn, a Massachusetts software company, went public in July 2009, raised \$107 million and harnessed the cash to hire people. Within two years, its work force grew by a third, to 432 people. Without the IPO, the company might have added only 10 percent to its work force, says Jim Kelliher, the chief financial officer.

"It's cash to expand your business," he says.

That's how it usually works. For up-start companies, IPOs and hiring sprees go hand in hand:

■ LinkedIn, the online social network for professionals, went public in May to fanfare, raising \$353 million. In the three months through the end of June, it expanded its staff by 17 percent.

■ Pandora, which streams music online, debuted in June. It bulked up the product development staff by 74 percent and sales and marketing by 125 percent. Pandora employed about 300 people at the end of January and now has more than 400.

■ ReachLocal, an online marketing company, went public in May 2010. From the month before its coming-out party through the end of the year, its work force grew 30 percent, to 1,381.

In good times, an open door for stock

SEE IPO, PAGE A13

FROM PAGE A3

MEDIATION: 3.6% of eligible cases settled in two years

case and possibly has some leverage, Ice said.

The state program requires mediation at the beginning of the process.

"It's not mediation. It's loan modification," Ice said, asserting lenders do not consider any other option than adjusting interest rates. The principal on loans larger than the market value is not touched for homeowners who are underwater.

The report cited two major weaknesses — low borrower participation and a lack of economic incentives for lenders and servicers to settle. Citing a sample of Miami-Dade foreclosures that ended in impasse after mediation, the report said 79 percent were still unresolved two years later.

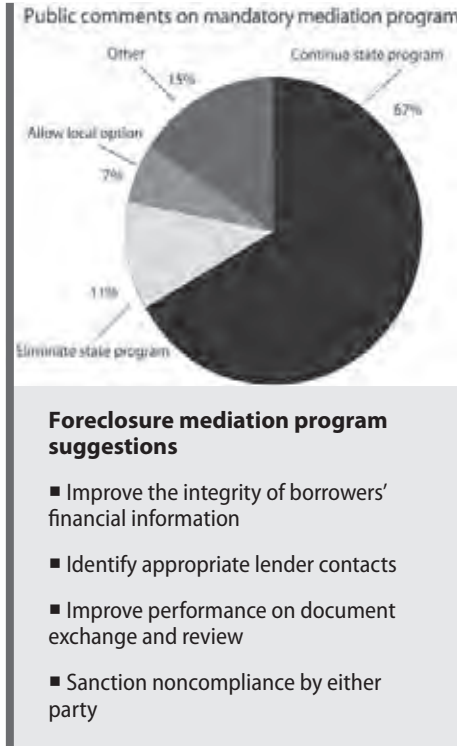
Peter D. Ticktin of the Ticktin Law Group in Deerfield Beach, said banks avoid settling with borrowers in mediation because foreclosure lets them tap the Federal Deposit Insurance Corp., which guarantees the original mortgage amount.

"If a house loan is \$600,000 and the house is worth \$270,000, why is the bank taking that property?" Ticktin asked. "By having the loss through foreclosure, the bank is able to call on that guarantee, whereas if they settle the case they don't get the same deal."

Servicers also have an economic incentive to avoid settling because they earn fees while a foreclosure case is ongoing.

CLOGGING COURTS

Canady created the panel on the dismal news that only 3.6 percent of cases eligible for mediation had settled in al-



most two years.

"I would bet dollars to doughnuts the vast majority of the ones that settled are direct loans where the bank kept the loan because the servicers just do not provide people who have the authority to settle," Ticktin said.

Where lenders are concerned, foreclosure defense attorney Roy Oppenheim of Oppenheim & Pilelsky in Weston hopes the Supreme Court will look hard at the recommendation for sanctions for noncompliance.

"I would argue the banks acted in bad faith. They did not show up to ne-

gotiate a solution," he said.

Alternatives exist, including short sales, letting homeowners offer the deed in lieu of foreclosure, structured foreclosures or handing for the deed for a lease-back contract, he said.

"There's a systemic pattern here, and that pattern ultimately suggests evidence of sanctionable actions," Oppenheim said.

State Rep. Kathleen Passidomo, R-Naples, said she agreed with the panel's findings.

"In general, in light of the vast numbers of mediations out there, mandatory mediation has just clogged the courts," she said. "Everything is just on hold while it is sorted out."

She favors making mediation an option.

"I think an opt-in [system] is good. If a borrower really wants to work out a modification, the borrower should be able to ask the court," she said. "But for every case, including those where the borrower abandoned the property, it doesn't make sense."

Lenders are only able to contact 42 percent of homeowners. Of that group, about a third result in mediation appointment. And of those, about a quarter of the borrowers reach a mediated agreement.

WHY THE RUSH?

Passidomo has filed a bill that would streamline foreclosure law while preserving the use of judicial foreclosures. There are concerns that a lack of progress with the existing judicial foreclosure system could lead to radical changes.

Gov. Rick Scott, Senate President

Mike Haridopolos and House Speaker Dean Cannon have said they're open to doing away with judicial foreclosures, but Passidomo hasn't heard of any such bill.

"I've not gotten any comments from the bankers yet," she said of her bill. "I think there's a lot of things in the bill they will not like, but there are some tools in there to help them expedite the process."

Ticktin, however, thinks the Supreme Court is rushing to fix something for the wrong reason. It is counter intuitive to leave a clogged system in place, but he asks what's the harm?

"If you have a family that's going to be homeless and a house emptied that is going to deteriorate, what good is that?" Ticktin asked.

Some banks hesitate to take possession of foreclosed homes because of the related expenses and liabilities they take on, while courts want to clear a foreclosure backlog so judges can move to other cases.

A special appropriation last year allowed courts to hire senior judges expressly to clear the decks, but the foreclosure backlog when the money ran out June 30 stood at 44,278 cases in Miami-Dade County, 27,748 in Broward County and 23,725 in Palm Beach County.

"So big deal, there's a file that is not closed. It's not as though somebody in the courthouse has to go through that file every year. There's no manpower attached to that sitting file," he said.

Adolfo Pesquera can be reached at (954) 347-2616.

FROM PAGE A16

ON APPEAL: Court found to have not followed DCA's opinion

After the bench trial on liability, a jury entered a total award of more than \$121,000, plus statutory interest, to cover the Roberts' damages, costs, attorney fees and expert fees.

Case: City of West Palm Beach v. Roberts
Case no.: 4D09-1028, 4D09-2142 & 4D1-1963


Appellant Lawyer: Lisa M. Fedynyshyn-Conforti, Assistant City Attorney, West Palm Beach

Appellee Lawyers: Michael D. Brown and Valencia Y. Stubbs, Brown & Associates, Riviera Beach

TRUSTS & ESTATES

4TH DISTRICT COURT OF APPEAL

Trial court violated 4th DCA's prior opinion

 Beneficiaries of a trust who had standing to contest expenditures were entitled to an evidentiary hearing to determine whether the trustee and attorney-in-fact breached their fiduciary duties.

Dorothy H. Rautbord formed a trust that was designed to provide for her needs and, after her passing, to distribute the remainder to her children. She appointed JPMorgan Chase Bank as the trustee and gave her daughter, Judith Novak, power of attorney. Only Rautbord could amend, modify or revoke the trust. In limited circumstances, the trustee could pay from the trust's income or principal but could not make gifts. Novak's power of attorney allowed her to make gifts, but not from the trust's principal.

Before her death Rautbord was diagnosed with dementia. Rautbord's sons, Daniel and Simon Siegel, alleged that the trustee and Novak breached their fiduciary duties by making unauthorized payments and gifts while Rautbord was suffering from dementia. JPMorgan cut 111 checks for gifts in a seven-year span, including some to Novak's employees — Rautbord had never met some of these

people. Novak also forgave substantial debts owed to Rautbord, in addition to prematurely establishing a trust for distributions that caused significant tax liability. The trustee allegedly made payments in excess of what was necessary to care for Rautbord.

At the outset of trial the trial court agreed to JPMorgan's request to address the question of the Siegels' standing to challenge the expenditures made before Rautbord's death. Applying New York law, the trial court determined that the Siegels lacked standing to challenge the expenditures — contrary to the 4th District Court of Appeal's prior opinion — incorrectly treating "the question of whether the withdrawals were appropriate and authorized as a question of standing."

The 4th DCA reversed the trial court's dismissal and ordered that the Siegels be given the opportunity to contest the expenditures.

Case: Siegel v. JPMorgan Chase Bank
Case no.: 4D09-699


Appellant Lawyers: John R. Hargrove, Hargrove Pierson & Brown, Boca Raton; Bernard A. Jackvony, Pannone Lopes Devereaux & West, Providence, Rhode Island

Appellee Lawyers: Matthew Triggs and Jonathan Galler, Proskauer Rose, Boca Raton; Peter A. Sachs, Theodore S. Kypreos and Jennifer G. Ashton, Jones Foster Johnston & Stubbs, West Palm Beach

FORECLOSURE

2ND DISTRICT COURT OF APPEAL

Bank failed to prove ownership of mortgage

 The 2nd District Court of Appeal reversed summary judgment in favor of U.S. Bank because the pleadings properly before the court created a genuine issue of material fact.

U.S. Bank sought to re-establish a lost note and foreclose on Julia Feltus'

home. U.S. Bank alleged that it owned and held the note but the copies of the mortgage and lost note attached to the complaint showed Countrywide Bank as the lender. U.S. Bank failed to allege that Countrywide Bank had assigned the note.

U.S. Bank tried to prove the assignment by filing an affidavit of an assistant secretary from Countrywide Bank. She acknowledged the assignment, which was on her review of loan payment records prepared by a servicing agent. U.S. Bank also filed as a supplemental exhibit to the complaint a copy of the note that included a blank endorsement and attached that note as an exhibit to its response to the affirmative defenses.

But the affidavit was insufficient because the assistant secretary lacked sufficient personal knowledge of the assignment, the 2nd DCA held. The court called U.S. Bank's supplemental filings "an attempt to amend its complaint in violation of Florida Rule of Civil Procedure."

Case: Feltus v. U.S. National Association
Case no.: 2D10-3727


Appellant Lawyer: Jacquelyn Mack, The Mack Law Firm, Englewood

Appellee Lawyers: Roy A. Diaz and Diana B. Matson, Smith Hiatt & Diaz, Fort Lauderdale

DAMAGES

3RD DISTRICT COURT OF APPEAL

Damages award based on estimates overturned

 The 3rd District Court of Appeal reversed damages awarded at trial because the lost profits calculation of damages failed to account for overhead and expenses and was based on unsubstantiated profit estimates.

Net Results, Inc. entered into a consulting services agreement with Del Monte Fresh Produce Company to review the company's accounts with certain telecommunications vendors to identify past over-

charges and future savings. The fee for services was 35 percent of the amounts Net Results recovered or saved.

The following year, the services Net Results provided translated into refunds and savings that totaled nearly \$500,000. Del Monte Fresh paid less than half of the fees due to Net Results. A few months later, Del Monte Fresh attempted to terminate the agreement and Net Results claimed the company's untimely notice was fraudulently backdated.

During the trial the owner of Net Results was permitted to testify as an expert on damages. He testified his estimates were based on extrapolations from the information he had on hand and suggested Del Monte Fresh had not provided him with complete information. The total fee Net Results claimed it was owed amounted to \$22,618,056. The jury awarded \$10 million in consequential damages.

Not only was there a complete disconnect between the jury verdict and the amount claimed by Net Results, the 3rd DCA also found the "model" used by Net Results to calculate damages was invalid as a matter of law. The model was filled with assumptions that produced damage estimates that were inconsistent with the actual budgets of Del Monte Fresh. While Florida law does not require "absolute exactness" in calculating lost profits, there must be "reasonable certainty" that the estimates are based on sound proof. The estimates also must take into account overhead and expenses.

The 3rd DCA affirmed liability, but reversed and remanded on damages.

Case: Del Monte Fresh Produce Co. v. Net Results, Inc.

Case no.: 3D10-1052

Appellant Lawyers: Rodolfo Sorondo Jr. and Frances F. Guasch-De La Guardia, Holland & Knight, Miami

Appellee Lawyers: Gary A. Magnarini and Erik P. Bartenhagen, Hicks Porter Ebenfeld & Stein, Miami; Thomas K. Plofchan, Westlake Legal Group, Potomac Falls, Virginia

FROM PAGE A12

IPO: Companies scared off after 2,000-point Dow drop

market debuts can start a snowball of benefits, says Steven Kaplan, a professor of finance at the University of Chicago Booth School of Business.

Venture capital firms bankroll small upstarts, like Amazon and Google, years before they go public. A successful IPO enriches the venture capital backers. They then have an easier time raising money from new investors to plow into companies that might be the next Amazon or Google.

"There's a feedback effect," Kaplan says.

For profitable businesses, an IPO can also unlock the door to corporate debt markets, another source of cash that helps a company grow.

Entrepreneurs and investors describe going public as a crucial hurdle for fast-growing companies, one that divides the Amazons and Googles of the world from the graveyard of startups.

Those that clear the hurdle can transform themselves from obscure businesses to household names. A recent study by

the National Venture Capital Association, a trade group, and IHS Global Insight, an economic forecasting firm, examined companies that went public from 1970 to 2010 and had been backed by venture capital before their IPO.

It found that 92 percent of the people hired by those companies over the four decades came on after the IPO.

A separate report by Nasdaq OMX, which owns the Nasdaq Stock Market, examined companies that went public from 2001 to 2009 and found that they increased their collective work force by 70 percent. The number of employed people in the United States in that time rose 1.3 percent.

Of course, the economy has bigger problems than a barren IPO market. Even if all the promising upstarts in line for an IPO went public, it might not put a dent in the 9.1 percent unemployment rate.

And it's difficult to know exactly what companies will do with the money. Most are vague in regulatory paperwork

about their next steps. And would-be public companies are barred from talking about their plans until a month after their debut.

Before this past summer, fast-growing companies like LinkedIn and Pandora had been jumping into the stock market at a brisk pace. The companies got a good initial price, and their stock generally did well after that. LinkedIn went public May 19, and its stock more than doubled on its first day.

For a while, it appeared that 2011 would be the best year for IPOs since the Internet bubble popped in 2000. Investors were ready for Internet companies like Zynga and Facebook to go public.

They're still waiting. The Dow lost more than 2,000 points from late July through mid-August. And while the market has rallied since early October, the past two months have been a series of up and down lurches.

As dry as it's been, the drought for IPOs is still not as bad as during the fi-

nancial crisis. Just one company, Grand Canyon Education, managed to go public in six months, August 2008 to February 2009.

Faced with a long wait and a volatile stock market, some companies have decided to give up. At least 15 private companies have withdrawn their IPO paperwork from the Securities and Exchange Commission in the past two months.

Others are getting snapped up by larger corporations. Of the five companies that pulled their IPOs in September, three were acquired. Hitachi, Nestle and private equity firms all picked up companies that gave up their dream of going public.

What will it take to end the drought? Calmer markets. In recent weeks, moves by European officials to end the region's debt crisis have lifted stocks, but the market remains volatile.

In the meantime, companies are warily eyeing the calendar. Groupon, the daily-deal email service, plans to go public in early November.

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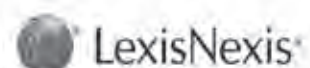


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EMINENT DOMAIN

4TH DISTRICT COURT OF APPEAL

West Palm destroyed historic property without notice



The City of West Palm Beach failed to give proper notice before demolishing an "unsafe" historic property, entitling the owners to compensation for the city's taking by inverse condemnation.

A fire caused significant interior damage to the home of Olenza and Venita Roberts that was situated in the West Palm Beach historic district. Work to repair the property began after the Roberts pulled the required permits. Midway through the repairs they realized that the house required work beyond scope of the initial permit. Because the home was in the historic district, the Roberts had to prepare a comprehensive building plan for review and re-permitting.

The city's Historic Preservation Planning Division approved the plan. Before the Roberts could obtain the new permit, the city building official found that the property was unsafe and commenced demolition proceedings. The preservation division issued a do-not-demolish order, but it was overridden by the building official. The property was demolished.

Upon learning of the demolition, the Robertses sued the city for taking its property through inverse condemnation. They alleged the city failed to provide proper notice, which deprived them of the opportunity to contest the building official's claim that the house was unsafe. The trial court agreed: "It makes no sense that an owner who is pursuing permits on the very structure at issue would not contact the city, if notice was given, or to pursue additional remedies."

The 4th District Court of Appeal rejected the notion that the Robertses could not challenge the inverse condemnation proceeding. "The doctrine of exhaustion of administrative remedies is a judicial doctrine which must yield where a party's constitutional rights are infringed in such a manner that the party has no administrative remedy," the court said.

SEE APPEAL, PAGE A13

3rd DCA rules Miami-Dade Circuit wrongly made own findings of fact in Publix case

Case: City of Sunny Isles Beach v. Publix Super Markets, Inc.

Case no.: 3D11-1846

Topic: Administrative Law

Opinion Issued: Oct. 19, 2011

Court: 3rd District Court of Appeal

Authoring Judge: Angel A. Cortiñas

Lawyers for Appellant: Hans Ottinot, City Attorney, and Fernando Amuchastegui, Assistant City Attorney, Sunny Isles Beach; Kendall B. Coffey, Coffey Burlington, Miami

Lawyers for Appellee: Elliot H. Scherker, Paul R. Lipton and Brigid F. Cech Samole, Greenberg Traurig, Miami

Holding: Circuit court violated clearly established principles of law when it found due process violations, engaged in fact-finding and failed to base its decision on substantial competent evidence.

The Sunny Isles Beach City Commission nullified a Publix site-plan application after finding Publix perpetrated a fraud in violation of its land development ordinance. This is the third time the parties' dispute has reached the 3rd District Court of Appeal.

The first time, the court entered a writ of prohibition in favor of Sunny Isles, blocking a circuit court from entertaining a Publix request for declaratory judgment on the commission's interpretation of an ordinance. The 3rd DCA then vacated a circuit court order quashing the commission's decision because the circuit court neglected to explain why it granted certiorari in the first place.

Publix proposed a site plan for a 284-unit condominium complex situated on 3.57 acres in Sunny Isles. The plan included a new Publix supermarket to provide residents another option to the existing, well-worn Sunny Isles store. But Publix failed to provide a survey with its application, a requirement of virtually every municipal and county building department in Florida. Publix allowed its application to automatically lapse by not correcting its deficiencies.

Publix submitted an amended application a year later. The new site plan was for a 378-unit condominium complex and, in addition to its anchor supermarket, a



JILL KAHN

Publix submitted a site plan for a 378-unit condominium complex and, in addition to its anchor supermarket, a 140-slip marina. But on a revised application Publix omitted a significant detail — the marina.

140-slip marina situated on 17.13 acres. Publix then revised its application yet again because the city attorney advised Publix that submerged land should not have been included in the land area total. The final proposal stated that the parcel was 5.41 acres, but omitted a significant detail — the marina.

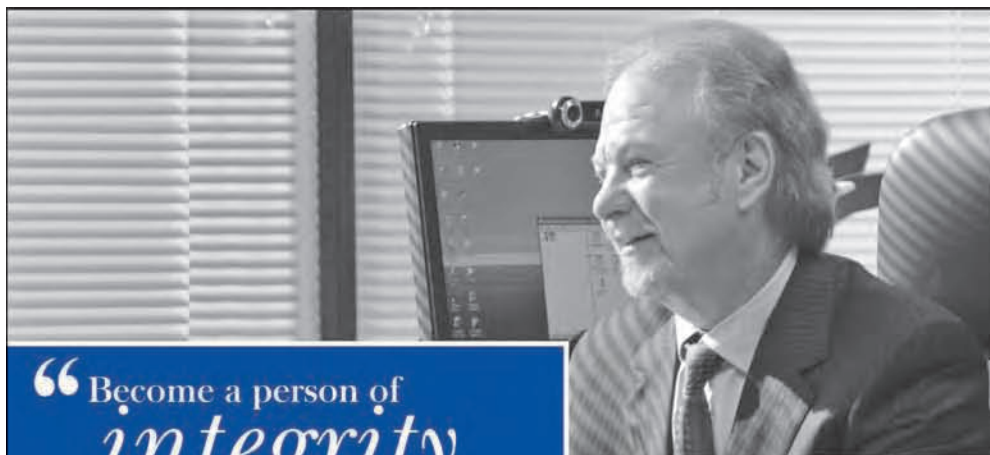
On Publix's purchase of submerged land, a perturbed commission noted, "Publix claims to be a good corporate citizen, and if they are such a good corporate citizen then they should follow the laws and ordinances of our city but instead they decided for probably a minimal investment ... they could roll the dice and see what happens." The circuit court's decision in favor of Publix vindicated the ubiquitous supermarket giant.

Sunny Isles, appealing to the 3rd DCA, asserted the circuit court incorrectly found that Publix was denied due process. The court found the hearing notice was broad enough to adequately notify Publix that any of its three municipal appeals rightly could have been considered by the commission. "Publix's somewhat tortured position seems to have been that it demanded the right to argue certain issues, but that it would be unfair (and, in the view of the circuit court, a violation of due process) actually to argue them," the DCA said.

Nor was it a violation of due process when the city attorney both advocated for the city and advised the commission. Unlike the facts of a Florida Supreme Court case relied on by Publix, the Sunny Isles Beach city attorney did not participate in private deliberations.

The circuit court also erred when it determined that the city "failed to observe the essential requirements of law when it attempted to enforce conduct not forbidden by its code." According to the 3rd DCA, the only way the circuit court could have reached the conclusion that Publix did not perpetrate a fraud was by impermissibly reweighing the evidence to make its own findings of fact. The final basis of the circuit court's decision was that the City Commission did not have substantial competent evidence to prove what it considered a key issue. The 3rd DCA concluded that the circuit court misidentified the issue and incorrectly placed the burden of proving land ownership on the city when it found that the City Commission did not have substantial competent evidence to prove ownership. Rather than being a title issue, the City Commission properly rested its decision on Publix's failure to disclose all relevant facts in its application.

— Robert Morris



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