

**PENDING LITIGATION – INTERIM REPORT – October 28, 2008
PREPARED BY THE CITY ATTORNEY**

**CHURCH OF THE LUKUMI BABALU, AYI, INC. V. CITY OF CORAL GABLES
Circuit Court – General Jurisdiction Division – Case No. 08-38294 CA 02**

Petition for Writ of Mandamus was filed with the City in connection with the public records request served on the City, stating that the City's responses have been overwhelmingly incomplete. **Hearing on Petitioner's Motion to Compel is set for October 7, 2008 before the Honorable Ronald M. Freedman. Discovery is proceeding.**

CITY OF CORAL GABLES V. A.D.P.T., AND ROBERT RUGILO, INDIVIDUALLY

Circuit Court – General Jurisdiction Division – Case No. 07-33733 CA 01

The City filed a Complaint for Injunctive Relief against the City's former provider of microfilming, digitizing and storing of plans and other documents for the City's Building and Zoning Department, and other departments, seeking an order compelling ADPT to return to the City's custody and control the index to the records which ADPT claims to be proprietary in nature. An Evidentiary Hearing took place December 6, 2007 before the Honorable David C. Miller, Judge Miller ordered a continuation of the hearing wherein the following was to occur: (1) a site visit at the ADPT warehouse before December 24, 2007, with Mr. Rugilo, Mr. Ruck, Dona Lubin and Lourdes Alfonsin Ruiz. This site visit took place on December 12, 2007; (2) a site visit at the Certified Records Management (CRM) warehouse before January 15, 2008, with Mr. Rugilo, Mr. Ruck, Dona Lubin and Lourdes Alfonsin Ruiz; and (3) a presentation by ADPT of its document retrieval process at the City of Coral Gables City Hall. The CRM site visit took place January 11, 2008, at their Tampa warehouse and the ADPT demonstration will be scheduled for late January. **The City's claim for breach of professional services agreement for failing provide the City with an index and failure to microfilm and digitize the City's plans and documents are now merged with this action.**

CITY OF CORAL GABLES RETIREMENT BOARD, ET AL, V. PINON

Third District Court of Appeal Case No. 3D08-1114; Circuit Court – Appellate Division – Case No. 07-442 AP;

A Petition for Certiorari Review has been filed with the Third District Court of Appeal to review the Circuit Court Appellate Division's decision regarding Pinon's request for equitable relief, modification and/or revocation of his DROP election, on the grounds that the decision is not supported by case law. The Retirement Board filed its own Petition for certiorari review. **The Court denied the City's and the Board's petitions, granted Pinon's Motion for appellate costs, and remanded the case to the Retirement Board for further proceedings consistent with the decision of the Circuit Court. Pinon has filed a motion for with the Board seeking**

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an adjusted remedy, costs, and attorney's fees. The City intends to respond. The Board has not yet announced what form its further proceedings will take and has not yet scheduled further proceedings.

CITY OF CORAL GABLES RETIREMENT SYSTEM v. UBS FINANCIAL SERVICES, INC., F/K/A PAINE WEBBER, INC., ALDO BUSOT AND FLORENCIO OTTO BUSOT

United States District Court – Southern District of Florida – Case No. 04-22539-CIV-Martinez - Circuit Court – General Jurisdiction Division – Case No. 04-19496 CA 10

The City's Retirement System filed a Complaint for Breach of Contract and Demand for Jury Trial alleging that UBS, as asset managers for the City's Retirement System under a Consulting Services Agreement, breached its contract and fiduciary duty to the System, causing substantial losses to the System in excess of \$50 million, and demanded an entry of judgment awarding compensatory damages, interest and costs. Judge Margarita Esquiroz recently denied UBS' Motion for Summary Judgment. Depositions of several Retirement Board Members have been obtained. The deposition of the UBS representative with the most knowledge as to the asset allocation plans was taken. Depositions of several Retirement Board Members and City officers have been obtained. The Defendant, UBS, has filed a Third Party Complaint against former members of the Retirement Board alleging that any alleged losses were caused by the Third Party Defendants, that any liability attributable to UBS is only derivative, technical or vicarious to theirs and seeking common law indemnification against them. Discovery is ongoing. UBS has voluntarily dismissed the Third Party Complaint. A mediation conference was held, and an impasse was reached. **A trial date has not yet been reset.**

CITY OF TAMPA v. MICHAEL C. ADDISON and RICHARD T. PETITT

13th Judicial Circuit in and for Hillsborough County – Case No. 03-5425; Florida Supreme Court – Case No. SC 07-2198; Second District Court of Appeal – Case No. 06-3168

The Second District Court of Appeal certified a defendant class of all cities and counties in the State with an occupational license tax. Tampa filed an appeal challenging the certification of the defendant class on the basis that significant differences between different cities' and counties' occupational license fee ordinances make it inappropriate for a court to treat all ordinances alike. The Florida League of Cities put together a consortium of cities and retained an appellate attorney, with Coral Gables participating as a named party in the filing of an amicus brief to insure that the City's interests are properly represented in this case. The amicus brief was filed October 9, 2006. Oral Argument was heard April 10, 2007. An opinion was rendered by the 2nd District Court of Appeal affirming the order of class certification. Tampa is seeking further review from the Florida Supreme Court on the class certification, and the City will continue to

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defend Coral Gables' interests and support the appeal along with the League and other municipalities which stand to be adversely affected by this decision. Since the Florida Supreme Court refused to hear the appeal, the matter is back at the trial court level. **Hearing was held on June 13, 2008 in the 13th Judicial Circuit on Defendant, City of Tampa's Motion to Amend Answer and Affirmative Defenses on behalf of Tampa, individually, and the Defendant Class. After Plaintiffs filed a Motion to Disqualify the Judge on the basis that he had made several disclosures over a period of time about being in the class, he disqualified himself. The Chief Judge is to reassign the matter to another trial judge.**

CITY OF CORAL GABLES V. ZBA

Circuit Court – General Jurisdiction Division – Case No. 08-42519 CA 01

On July 23, 2008, the City filed its Complaint for Unlawful Detention and Summary Procedure to recover possession of the property leased by the City to the Defendant, ZBA, LLC, located at 2325 Galiano Street, Coral Gables, Florida. **Defendant filed a Motion to Dismiss.**

CORAL GABLES FRATERNAL ORDER OF POLICE, LODGE, NUMBER 7 AND CITY OF CORAL GABLES

Florida Supreme Court SC 08-669; Third District Court of Appeal 3D06-2305 State of Florida Public Employees Relations Commission ("PERC") – Case No. CA-2006-016;

On or about March 6, 2006, the FOP filed a charge against the City with PERC in which the FOP alleged that the City engaged in unfair labor practices by threatening a zero percent wage increase. PERC issued a Notice of Sufficiency on March 8, 2006. The City filed its Answer and Affirmative Defenses on March 31, 2006. An evidentiary hearing on this matter was held on May 4, 2006. In June, the Hearing Officer issued a Recommended Order finding that the City violated the statute. The City also requested oral argument on the matter. No response to the exceptions were filed by the FOP. On August 21, 2006, PERC issued an order upholding the Hearing Officer's recommended order finding that the City violated the Statute. The City filed a Notice of Appeal with the Third District Court of Appeal on September 20, 2006. The case was fully briefed and Oral Argument took place March 19, 2007. On February 6, 2008, the 3rd DCA reversed the PERC order with directions that the unfair labor practice charge brought against the City be dismissed. In doing so, the 3rd DCA found that PERC's decision erroneously applied the law to the facts and, further, that PERC's findings of fact were not upheld by competent, substantial evidence. In making this ruling, the 3rd DCA noted that PERC, for years and continuing until the date of the 3rd DCA's opinion, improperly retreated from and ignored binding case law issued by the First District Court of Appeal in 1987. The 3rd DCA stated,

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“[PERC] may not disregard an interpretation of a statute rendered by a court of this state.” Order at p. 16 (citations omitted). Accordingly, the 3rd DCA specifically found that the statement made by Mr. Brown (which the Union alleged formed the basis for the unfair labor practice) was not motivated by the Union’s protected activity, but rather, was motivated by a disagreement between the City and union representatives about an interpretation of the collective bargaining agreement. This is a significant ruling in the City’s favor. We are currently considering filing for costs in connection with the appeal. The FOP’s Motion for Rehearing was denied. The Plaintiff, on April 7, 2008, filed a Notice to Invoke the Discretionary Jurisdiction of the Florida Supreme Court. **The Supreme Court declined to take jurisdiction. Therefore, the decision of the 3rd DCA in the City’s favor is upheld.**

DETOURNAY, RANDOL and RIVIERA NEIGHBORHOOD ASS’N v. CITY OF CORAL GABLES and Intervenor, AMACE PROPERTIES

Circuit Court – General Jurisdiction Division – Case No. 07-29458 CA 13

On September 7, 2007, Plaintiffs filed their complaint for declaratory and injunctive relief against the City of Coral Gables seeking to have the Court declare the yacht basin operating at the base of the Mahi Waterway illegal and issue an injunction closing the yacht basin. Amace Properties, Inc., the abutting property owner, moved to intervene in the case. Both the City and Amace have moved to dismiss the complaint. Amace has served discovery request on Plaintiffs. After a Motion to Compel these responses, the Court ruled that Plaintiff must respond no later than February 25, 2008. Plaintiffs have served a public records request on the City. **Hearing on City’s and Amace’s respective Motions to Dismiss held October 21, 2008. Motion approved in part and denied in part, and Plaintiff is filing an amended complaint.**

GRANADA LLC v. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 07-23410 CA 40

Following the City’s Notice of Default letter, Granada LLC, the operator of the Country Club of Coral Gables, filed an action for damages including lost profits, prejudgment interest and cost of action, alleging that the City breached its obligations under the Management Agreement and the Operating Agreement to fully fund the capital improvements to the property and that its failure to do so has led the Plaintiff to be exposed to threatened and actual liability from certain vendors including the General Contractor who performed a portion of the capital improvement work, and seeking to recover the loans allegedly made by Plaintiff to City, and the deferred Operator Fees, which Plaintiff contends were used to fund capital improvements. The City filed a Motion to Dismiss Granada’s Complaint as it is an unlawful attempt by Granada to force the City to pay for Granada’s obligations. The Motion to Dismiss further states that the City, as a sovereign entity,

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is immune from the claims of implied contractual liability as the City does not have a contractual relationship with Granada. Finally, the motion states that Granada's claims are barred by the Statute of Frauds as there is no memorialized agreement between Granada and the City. On April 14, 2008, Judge Gill S. Freeman denied the City's Motion to Dismiss without oral argument. The City has filed its Answer and Affirmative Defenses and has requested extension to file its counterclaims and third party claims on or about May 24, 2008. The City Attorney's Office was authorized to file a counterclaim against Granada LLC for failure to fulfill its obligations under the operative agreement and for breach of the settlement agreement entered into with Courtelis Construction Company, and a third party complaint against Stuart Bornstein, individually, and breach of the operative agreements, and breach of the settlement agreement entered into with Courtelis Construction Company, and to take all action necessary to represent the interests of the City. **Discovery is proceeding.**

IN THE MATTER OF COMCAST CABLE COMMUNICATIONS, LLC, on behalf of its subsidiaries and affiliates

Federal Communications Commission – CSR 6046-E, CSR 6047-E, CSR 6048-E, CSR 6409-E, CSR 6010-E

Comcast has filed a Petition for Special Relief with the FCC. It is seeking a determination that it is subject to effective competition in Coral Gables, along with 14 other franchise areas in Miami Dade County. The City filed its opposition December 3, 2004. To show effective competition, Comcast must demonstrate that more than 15% of the City's households subscribe to DBS service and not to Comcast's service. If granted, it will allow Comcast to raise rates whenever it likes for basic tier service and equipment without being subject to FCC rules. It will also eliminate some federal consumer protections such as uniform rates (allowing Comcast to charge different rates in different areas of the city) and anti buy through (allowing Comcast to require subscribers to purchase advanced products such as digital) to obtain premium services (i.e. HBO). On Jan. 31, 2007, the Federal Communications Commission's ("FCC") Media Bureau issued a Memorandum Opinion and Order granting Comcast's Petition for Effective Competition. The City has 30 days, until March 5, 2007, to appeal by filing a Petition for Review with the full FCC. If no appeal is filed, Comcast's rates will be deregulated in the City and Comcast will be able to raise rates whenever and to whatever level it wants, and will be able to charge different rates to different residents in the City. Comcast will also be able to require residents to subscribe to premium and other higher level services if they want to obtain basic service. The City filed its Application for Review of the Media bureau's Order granting Petition, to which Comcast filed its opposition. **The matter remains pending at the Commission.**

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**IN RE. AMENDMENTS TO FLORIDA RULES OF APPELLATE PROCEDURE
Florida Supreme Court Case No. SC08-147**

The Triennial Cycle Report of the Appellate Court Rules Committee (the "Report") proposes to an amendment to the "automatic stay" provision of Florida Rule of Appellate Procedure 9.310(b)(2), thereby eliminating the automatic stay now afforded to governmental entities when they appeal orders issued by state agencies in administrative proceedings governed by the Administrative Procedure Act ("APA"). At the City Commission's direction, the City Attorney has requested leave of the Florida Supreme Court to file written comments and/or oral argument in opposition to the Rule, as have other governmental entities and interested parties. The City, together with several cities and counties, including the League of Cities, the Association of Counties and the Local Government Section of the Florida Bar submitted written comments to the Florida Supreme Court in opposition to the proposed rule amendment. **Oral Arguments were heard on June 10, 2008 at the Florida Supreme Court and a decision is pending.**

KEARNS, et al v. CITY OF CORAL GABLES

**United States District Court – Southern District of Florida – Case No. 07-22310 CIV
JORDAN**

Plaintiff filed a class action complaint on behalf of himself and those similarly situated seeking damages and injunctive relief from Code Enforcement Citations for violating the pick-up truck ordinance of the City. The City moved to dismiss on various grounds. On March 3, 2008, federal district court Judge Adalberto Jordan issued a ruling on the City's Motion to Dismiss. Judge Jordan first noted that the Plaintiff had admitted that two of his claims--for violation of privacy and for a "taking"--failed to state causes of action. The judge ordered that those claims be dismissed. Judge Jordan denied the City's motion to dismiss the two other claims, which are based on equal protection and the right to freedom of association. The judge's rulings concluded that based on the pleadings alone, he could not rule that the City was entitled to prevail. The judge concluded that he could not rule on the merits of these issues without further information, including "the City's passage and rationale for the ordinance, and the personal situation of the Plaintiff and his father (who the Plaintiff sought to visit)". Plaintiff was given an opportunity to amend his complaint on the two counts which were dismissed, but choose to go forward without those two claims. The City filed its answer on April 8, 2008. **On March 28, 2008, the Plaintiff and the City filed a joint scheduling report. The report sets a deadline of December 1, 2008 for the filing and hearing of motions. The matter has been set for two week trial calendar starting March 2, 2009. Discovery is proceeding.**

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KUVIN v. CITY OF CORAL GABLES

Third District Court of Appeal – Case No. 3D05-2845
Circuit Court – Appellate Division – Case No. 03-8911-AP;

Petitioner filed a Petition for Writ of Certiorari seeking a permanent injunction and damages to prohibit the City from enforcing the provisions of its code, arising from a citation which Petitioner received for parking his truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. The Court, in a ruling rendered October 14, 2005, granted the City's motion for summary judgment and upheld the constitutionality of the City's truck ordinance. The Plaintiff filed a Notice of Appeal with the Third District Court of Appeal, and the City has filed a Motion to Dismiss. The Court dismissed the appeal for failure of Kuvín to comply with the court's November 10, 2005 order. Upon payment of the filing fee, the appeal was reinstated. Kuvín has filed his initial brief in the district court of appeal, and the City filed its answer brief on Sept. 28th. Kuvín has to file his reply brief. The court heard oral argument on Tuesday, November 14th, 2006 before JJ. Schwartz, Cortinas and Rothenberg. Decision entered August 22, 2007, reversing with directions to enter declaratory judgment for appellant and to vacate the guilty determination of the hearing officer, with J. Rothenberg dissenting with a comprehensive separate opinion. The City has filed with the Third District Court of Appeal a Motion for Rehearing En Banc and a Motion requesting the Court to certify this case to the Florida Supreme Court as a matter of great public importance. **The City has filed with the Third District Court of Appeal a Motion for Rehearing en Banc and Motion for Certification to the Florida Supreme Court as a matter of great public importance.**

NAVARRO, MARILYN and HERNANDEZ, JOE v. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 05-18262 (T009835)

Plaintiffs seek a temporary injunction, declaratory relief, and incidental damages arising from a citation which Plaintiffs received for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. As this case challenges the same ordinance on essentially the same grounds as Kuvín, the case is awaiting resolution of the Kuvín appeal. **Plaintiffs filed Motion for Relief from Stay for Final Summary Judgment.**

NAVARRO, MARILYN and HERNANDEZ, JOE v. CITY OF CORAL GABLES

Circuit Court – Appellate Division – Case No. 05-357 (T009646)

Petitioners filed a Petition for Writ of Certiorari Appellate Division seeking review of the citation which was issued for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. Meanwhile, the Court granted the City's request to consolidate this case with Case No. 05-422 AP Martinez v. City of Coral Gables. Upon consideration of the

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Petitioner's Request for Temporary Injunction, the Court denied the request on February 8, 2006. The three-judge panel on March 2, 2006 granted City's Motion to Dismiss petitions for certiorari and to transfer the case to the trial court. **As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal.**

NOA, PERAZA AND PEREZ SIAM v. CITY OF CORAL GABLES

Circuit Court - Appellate Division – Case No. 06-249 AP

Petitioners filed a Notice of Appeal with the Appellate Division seeking review of the citation which was issued for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. The parties agree to abate the action pending final decision in Kuvin. Appellant's counsel will file the motion and agreed order with the court. **As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal.**