

**PENDING LITIGATION – INTERIM REPORT – JANUARY 22, 2008**  
**PREPARED BY THE CITY ATTORNEY**

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**ALLOCCO V. CITY OF CORAL GABLES AND THE UNIVERSITY OF MIAMI**

**Circuit Court - General Jurisdiction Division - Case No. 96-23179**  
**United States District Court (Southern District) 99-2443-CIV-GOLD**  
**United States Court of Appeals (Eleventh Circuit) 02-15296-A**  
**United States Court of Appeals (Eleventh Circuit) 05-12258-FF**

Allocco was brought against the City and the University of Miami (“UM”) by seven Plaintiffs who are current or former public safety department officers for UM. The Court granted the City’s Motion for Summary Judgment and only two Plaintiffs, Allocco and Fernandez, appealed that decision. On November 7, 2003, the Eleventh Circuit Court of Appeals affirmed, without opinion, the District Court’s decision dismissing the case and awarded costs to the City and UM. Appellants did not seek further review and the City renewed its motion for costs and fees. The Plaintiffs have continued with their appeals of subsequent orders on attorneys fees. On March 31, 2006, Plaintiffs filed responses to Defendants’ Motions and advised that they intended to file a Petition for Writ of Certiorari with the U.S. Supreme Court. The City’s Replies in Support of its Motions were filed on April 10, 2006. Plaintiffs subsequently advised the court that they would not file a Petition with the Supreme Court, which should leave no obstacle for the court to rule on the motions on fees and for costs. Most recently, the Defendants were given leave to re-file their Motions for Fees and Costs. As of June 8, 2007, these motions were fully briefed. The Defendants requested that they be allowed to recover jointly and severally against Plaintiffs approximately \$62,500.00 in costs. As for fees, Defendants are seeking fees against Plaintiffs and their attorneys. The Court is first deciding the issue of entitlement and, if Defendants are so entitled, it will later decide the amount. Defendants’ estimate that the amount of fees that will be requested will be over \$1 million. Any recovery of costs and fees will go to UM. Plaintiffs’ former counsel, Fisher and Feldman, recently filed a Motion for Fees against the City and UM. The basis for the request is the Defendants’ Motion for Attorney Fees against them. This motion was fully briefed as of July 30, 2007. **The status conference to discuss the various outstanding motions for fees and costs was held November 8, 2007. The court allowed the Plaintiffs to respond to the Defendants’ request for costs and we expect a ruling from the Court on the costs in the near future. Thereafter, the Court will address the issue of fees.**

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**ARWOOD V. CITY OF CORAL GABLES**

**United States District Court (Southern District) 02-20778-CIV-GOLD**

**United States Court of Appeals (Eleventh Circuit) 03-13795-ASG**

**United States Court of Appeals (Eleventh Circuit) 05-12410-II**

Arwood, et al. v. City of Coral Gables was brought in state court against the City by ten plaintiffs, five of whom were also the remaining Allocco plaintiffs. Arwood makes factual and legal claims very similar to some of those made in Allocco. The City removed the case to federal court and filed a Motion to Dismiss the case. The Court granted Defendant's Motion to Dismiss on May 13, 2003, fully dismissing all claims. On March 29, 2006, the Court granted Plaintiffs an extension of time of 45 days to respond to Defendant's motions for fees and costs. On April 11, 2006, the City filed a Motion for Leave to Supplement its Motions for Fees and Costs. The Motion is currently pending before the Court. Given the advice to the Court in the Allocco case, discussed above, that the Plaintiffs do not intend to file a Petition with the U.S. Supreme Court, there should be no obstacle for the Court to rule on the motions on fees and for costs. Most recently, the City was given leave to re-file its Motions for Fees and Costs. As of June 8, 2007, these motions were fully briefed. The City requested that it be allowed to recover jointly and severally against Plaintiffs approximately \$600.00 in costs. As for fees, the City is seeking fees against Plaintiffs and their attorneys. The Court is first deciding the issue of entitlement and, if the City is so entitled, it will later decide the amount. The City expects that it will request approximately \$70,000.00 in fees. Any recovery of costs and fees, however, will go to UM. Plaintiffs' former counsel, Fisher and Feldman, and Terri Valdes, P.A., recently filed a Motion for Fees against the City. The basis for the request is the City's Motion for Attorney Fees against them. This motion was fully briefed as of August 7, 2007. The status conference to discuss the various outstanding motions for fees and costs was held November 8, 2007. **The Court allowed the Plaintiffs to respond to the Defendants' request for costs and we expect a ruling from the Court on the costs in the near future. Thereafter, the Court will address the issue of fees.**

**THOMAS CARRIGAN v. CITY OF CORAL GABLES, CITY CLERK WALTER  
FOEMAN, CITY OF CORAL GABLES CANVASSING BOARD, AND TROY EASLEY.**

**Circuit Court – General Jurisdiction Division – Case No. 07-45119-CA-27**

**Plaintiff filed suit in December 2007 for injunctive and other relief pursuant to Florida Statutes Section 102.168. Plaintiff was the unsuccessful candidate for the at-large seat on the Board of Trustees for the City of Coral Gables Retirement System. Defendant Easley was the successful candidate. Plaintiff alleges irregularities and misconduct during the campaign, vote, and vote-counting of the election and seeks to block the seating of Mr.**

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**Easley on the Board and a new election. The City has filed a timely answer and will vigorously defend the lawsuit.**

**CITY OF CORAL GABLES V. A.D.P.T.**

**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. At the conclusion of the ADPT presentation, the City will schedule a continuation of the Evidentiary Hearing before the Honorable David C. Miller.**

**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 denied UBS' Motion to Dismiss and ordered them to file their Answer. Depositions of several Retirement Board

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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 dismissed the Third Party Complaint.**

**CITY OF TAMPA v. MICHAEL C. ADDISON and RICHARD T. PETITT**  
**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 2<sup>nd</sup> 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 defend Coral Gables' interests and support the appeal along with the League and other municipalities which stand to be adversely affected by this decision.**

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

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

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

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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 3<sup>rd</sup> District Court of Appeal on September 20, 2006. The case was fully briefed and Oral Argument took place March 19, 2007. **The Court's decision is pending.**

**CUERVO, PETER v. CITY OF CORAL GABLES**

**United States District Court – Southern District of Florida - Case No. 08-20094 CIV MARTINEZ**

**This suit, filed by a Coral Gables Police Officer, presents the question as to whether the City violated the Fair Labor Standards Act, and reserves the right to opt-in other plaintiffs similarly situated, alleging a claim for unpaid overtime compensation (shift differential) of 5% and 7% which was owed under collective bargaining unit contract and not paid to him during the years 2003 through 2007.**

**DETOURNAY, RANDOL and RIVIERA NEIGHBORHOOD ASS'N v. CITY OF CORAL GABLES**

**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 requests on Plaintiffs.**

**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**

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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, 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. The hearing on the Motion to Dismiss has not been scheduled to date. **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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**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 relieve from Code Enforcement Citations for having been cited for violating the pick-up truck ordinance of the City. The City moved to dismiss on various grounds. **Plaintiff recently filed his response conceding that his complaint was deficient in several respects raised in the City's motion and seeking leave to amend it (which he is entitled to do once as a matter of course).**

**KUVIN v. CITY OF CORAL GABLES**

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

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 Kuvin to comply with the court's November 10, 2005 order. Upon payment of the filing fee, the appeal was reinstated. Kuvin has filed his initial brief in the district court of appeal, and the City filed its answer brief on Sept. 28<sup>th</sup>. Kuvin has to file his reply brief. The court heard oral argument on Tuesday, November 14<sup>th</sup>, 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 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.**

**MADISON CONSTRUCTION v. CONSTRUCTION REGULATION BOARD**

**Circuit Court – Appellate Division – Case No. 07-474 AP, L.T. Case No. 07-576**

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**Appellant filed Notice of Appeal seeking appellate review of the City's Construction Regulation Board decision on September 18, 2007 in which the Board found appellant guilty of violations of the City Code, and Florida Statutes in the work performed at 921 El Rado Street, and suspended appellant indefinitely from obtaining building permits in the City of Coral Gables.**

**MADISON CONSTRUCTION v. CONSTRUCTION REGULATION BOARD**

**Circuit Court – Appellate Division – Case No. 569 AP, L.T. Case No. 07-584**

**Appellant filed Notice of Appeal seeking appellate review of the City's Construction Regulation Board decision on November 19, 2007 in which the Board found appellant guilty of violations of the City Code, Florida Statutes and Florida Building Code in the work performed at 6847 Sunrise Court, and suspended appellant indefinitely from obtaining building permits in the City of Coral Gables.**

**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 Kuvin, the case is awaiting resolution of the Kuvin appeal. **Plaintiffs Motion for Relief from Stay for Final Summary Judgment has been set for hearing on February 20, 2008.****

**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 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.****



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**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.**