

ATLANTA LITIGATOR THE LIKELY NOMINEE FOR 11TH U.S. CIRCUIT



SEE PAGE A3

LAW | REAL ESTATE | FINANCE

DailyBusinessReview.com

An **ALM** Publication VOL. 86, NO. 146 \$2.00

dbrr DAILY BUSINESS REVIEW

INSIDE

LEGAL REVIEW

BILL WOULD PROTECT ER DOCTORS

Doctors working in emergency rooms would be protected by sovereign immunity from large medical malpractice judgments under a Senate bill. **A3**

SENATE BILL TARGETING DOSAL REFILED

SB 1414 would require Miami's Dosal to join a group of other tobacco companies that have paid billions into the Lawton Chiles Endowment since the 1990s. **A5**

BILL TO REPEAL VOTING LAW CHANGES

House Bill 1189 would strip changes including reduced early-voting days, restrictions on third-party voter registration groups, limits on when voters can change their addresses and new standards for citizen initiatives. **A5**

BUSINESS REVIEW



MIAMI BEACH HOTEL SELLS FOR \$12M

The 67-room Indian Creek Hotel at 2727 Indian Creek Drive in Miami Beach sold for \$12 million and will be converted into a youth hostel. **A7**

TRUST COMPANY NAMES CHIEF EXECUTIVE

Pedro Parra has been named president and chief executive officer of Mercantil Commercebank Trust. **A14**

INDEX

BUSINESS REVIEW	A7	LEGAL PRACTICES	A6
BUSINESS SERVICES	A17	LEGAL REVIEW	A3
COMMENTARY	A20	LEGAL SERVICES	A5
CORPORATE BRIEFING	A16	ON REAL ESTATE	A15
LAW JOBS	A19	ON THE WEB	A2

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.

Should you have delivery questions, call 1.877.256.2472

Postmaster: Send address changes to Daily Business Review, PO Box 010589, Miami, FL 33101.

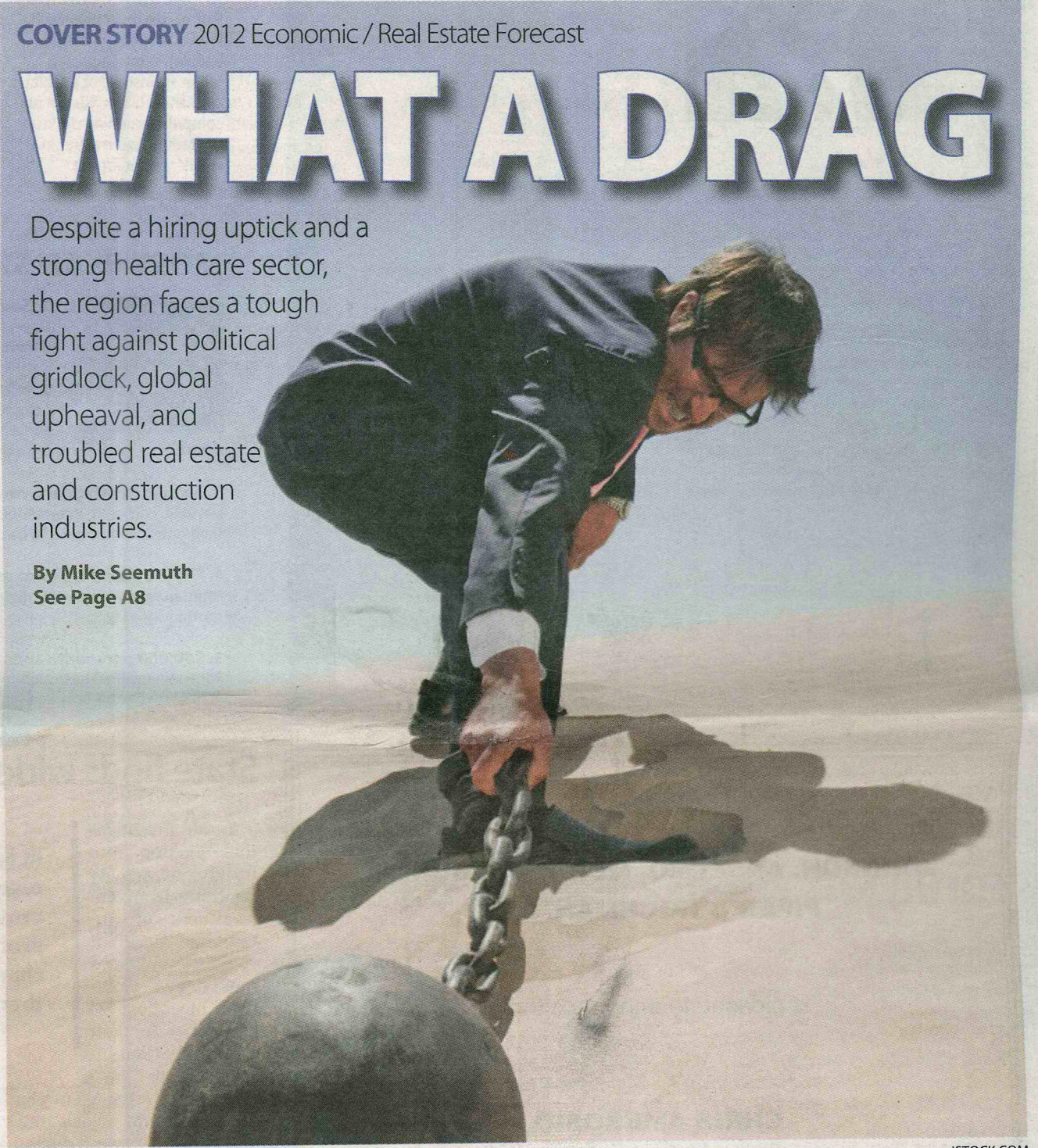
Published daily Monday through Friday, except legal holidays, by ALM Properties, LLC., 1 SE 3rd Ave., Suite 900, Miami, FL 33131, (305) 377-3721. © 2012 ALM, Daily Business Review (USPS 344-300) (ISSN 1538-1749) Miami
Subscription Rates: One year (253) issues - basic (individual and small firms) \$409 plus tax; discounted group rates available. Single copies (M-F) - \$2. Back issues when available (M-F) - \$6. Periodicals postage paid at Miami, FL.

COVER STORY 2012 Economic / Real Estate Forecast

WHAT A DRAG

Despite a hiring uptick and a strong health care sector, the region faces a tough fight against political gridlock, global upheaval, and troubled real estate and construction industries.

By Mike Seemuth
See Page A8



ISTOCK.COM

JUSTICE WATCH John Pacenti

Tough stance on foreign bribes suffers setback

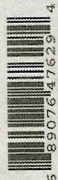


It was a dark December for the Justice Department's mandate to curtail foreign bribery. Decisions by federal judges in two poster child cases severely undercut the Obama administration's goal of leveling the corporate playing field worldwide by prosecuting executives for bribery under the Foreign Corrupt Practices Act.

A judge dismissed the conspiracy count in

a Washington case with tentacles extending to Florida. An earlier trial in the case ended in a hung jury.

Another case in California is more disturbing. A federal judge vacated a jury verdict against top executives of the electrical infrastructure company Lindsey Manufacturing after finding widespread prosecutorial misconduct. **SEE COLUMN, PAGE A3**



ALL ROADS LEAD TO MIAMI LAKES
RETAIL, OFFICE, INDUSTRIAL SPACE

For leasing information, please contact Steve Style,
Vice President of Marketing at 305.817.4025
or visit us at www.miamilakes.com



GRAHAM COMPANIES
MIAMI LAKES



LEGAL REVIEW

EVENTS

Today

International Human Trafficking Awareness Community Forum: "The Faces of Human Trafficking: Myths and Reality," 1 p.m., Office of the State Attorney, 1350 NW 12th Ave., Miami. Call (305) 547-0885.

Jan. 10

South Palm Beach County Bar Association: Membership lunch with Jilliane Hoffman, former Miami felony prosecutor and author, noon, Boca Renaissance Hotel, 2000 NW 19th St., Boca Raton. Cost: \$35 members, \$45 nonmembers. Email: southcounty@southpalm-beachbar.org

Broward County Bar Association and North Broward Bar Association: Joint CLE luncheon with Florida Bar president Scott G. Hawkins speaking on "Amendments to the Oath, Funding the Judiciary and Merit Retention," noon, The Grill, 2101 W. Cypress Creek Road, Fort Lauderdale. Cost: \$17 members, \$20 nonmembers. RSVP to stevenson2@bellsouth.net.

SEE EVENTS, PAGE A5

PEOPLE



Razavi Ferrera O'Connor Ferguson

Poorad Razavi joined Clark Fountain La Vista Prather Keen & Littky-Rubin as an associate in the West Palm Beach office. He was an insurance defense attorney. Razavi has a bachelor's degree from Indiana University and a law degree from the University of Cincinnati. **Sandra M. Ferrera**, a partner at Meland Russin & Budwick, was elected president-elect of the Cuban American Bar Association. She has a bachelor's degree from Florida International University and a law degree from the University of Miami.

Kevin O'Connor and **Timothy Ferguson** have been named partners at Foley & Mansfield. O'Connor focuses on medical malpractice defense, while Ferguson's practice areas include product liability and medical malpractice defense. O'Connor has a law degree from Notre Dame, and Ferguson has a law degree from St. John's.

LEGISLATURE

Bill would extend immunity to ER doctors

Doctors working in emergency rooms would be protected by sovereign immunity from large medical malpractice judgments under a Senate bill.

The measure (SB 1506) filed Thursday by Sen. John Thrasher, R-St. Augustine, notes emergency room doctors must treat those who show up and, because they can't turn away patients, their malpractice insurance is expensive.

Under the bill making them agents of the state, doctors would be immune from paying more than \$200,000 in a malpractice claim. Victims of malpractice who are awarded more than that would have to seek compensation from the Legislature.

Doctors and trial attorneys have battled for years over the rules for malpractice suits.

One provision would shift the burden of proof to claimants, who would have to prove by "clear and convincing evidence that the alleged actions of the health care provider represent a breach of the prevailing professional standard of care."

The proposal also would allow doctors accused of malpractice to use ex parte interviews of the claimant's other health care providers outside the presence of claimants and their lawyers.

— News Service of Florida

JUSTICE WATCH John Pacenti

FEDS' TOUGH STANCE ON BRIBES SUFFERS SETBACK

The Obama administration mandate to prosecute more people for foreign bribery hit a deep pothole in December, one that might knock the initiative out of alignment.

The Justice Department figured a better way to achieve the goal of leveling the corporate playing field worldwide would be to send executives to prison rather than just fine companies in deferred prosecution agreements.

But unlike its success in cracking down on offshore tax havens, the Justice Department is failing at the trial level in Foreign Corrupt Practices Act cases.



Bronis

A messy case in California again showed that despite its claims of addressing prosecutorial misconduct, the Justice Department appears more than ready to bend rules when it comes to high-profile FCPA cases.

And U.S. District Judge **Richard J. Leon** in Washington gave prosecutors a big lump of coal right before Christmas when he gutted a much-publicized FCPA case involving small-time weapons dealers by throwing out the underlying conspiracy charge. A jury hung in July in the first trial



Paul Calli, a Miami partner at Carlton Fields, helped free a former Sunrise executive who faced trial with other weapons dealers. A California judge dismissed the conspiracy charge against Calli's client.

of four defendants.

Lanny Breuer, head of the Justice Department's criminal division, touted the case against 22 weapons executives as an example of the administration's bullish FCPA policy.

The executives were accused of funneling bribes to clear weapons sales to the African nation of

Gabon. But it was all an elaborate sting operation, which included an alleged \$15 million deal reached in the tony Mandarin Oriental hotel in Miami.

The case was built around informant Richard T. Bistrong, a Jacksonville man who also

SEE JUSTICE WATCH, PAGE A4

FEDERAL BENCH Jill Pryor clerked on U.S. 11th Circuit Court of Appeals

Atlanta litigator appears likely nominee



JILL A. PRYOR

Education: Yale University, J.D., 1988; College of William and Mary, B.A., 1985

Experience: Partner, Bondurant Mixson & Elmore; former law Clerk, Judge J.L. Edmondson, 11th U.S. Circuit Court of Appeals

Background: State Bar of Georgia board of governors, former chair of appellate practice section; former president, Georgia Association for Women Lawyers; former member, 11th U.S. Circuit Court of Appeals lawyers advisory committee; Atlanta Bar Association judicial selection and tenure committee chair

by Alyson M. Palmer
apalmer@alm.com

It appears the White House has landed on Atlanta litigator Jill A. Pryor as its new choice for Georgia's vacant seat on the 11th U.S. Circuit Court of Appeals.

Senior Fulton Superior Court Judge Melvin K. Westmoreland said he recently received an inquiry about Pryor from the American Bar Association committee, which rates White House nominees for the federal bench. He said the ABA committee's representative wrote to say the committee was evaluating Pryor because she is being considered for the vacancy.

The Obama administration has struggled to fill a Georgia-based spot vacated in August 2010 by retired Judge Stanley F. Birch Jr.

A year ago, the ABA committee vetted Mercer University law professor Daisy Hurst Floyd for the opening, but she wasn't nominated. Now the administration finds itself without a nominee at the start of an election year, historically a tricky time for getting a judicial pick through the Senate.

Pryor, 48, is a partner at Bondurant Mixson & Elmore, a politically connected litigation boutique. She declined to comment.

Born in Harrisburg, Pennsylvania, Pryor received her undergraduate degree from the College of William & Mary before going to Yale Law School, where she was senior editor on the Yale Law Journal.

A paper she wrote on an obscure topic — the meaning of the constitutional provision that only a "natural-born citizen" can become president — received attention during the 2008 presidential campaign when questions surfaced about whether Republican nominee John McCain, born at a military base in the Panama Canal Zone, was ineligible for the office.

"If I were on the Supreme Court, I would decide for John McCain," Pryor told the New York Times, adding the question wasn't frivolous.

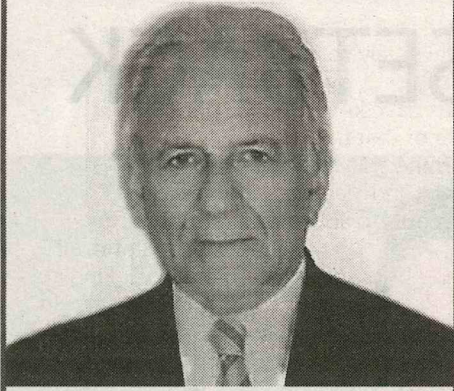
After graduating from Yale in 1988, Pryor served a term as a law clerk to a relatively new, conservative 11th Circuit judge from north Georgia, J.L. Edmondson. She went on to work at Bondurant, where she has handled complex business cases both at trial and on appeal.

If she joins the court, she would become the second Pryor on the

SEE PRYOR, PAGE A6



Circuit, District, Appellate
MEDIATOR



NEIL FLAXMAN, ESQ.
flaxy@bellsouth.net
www.neilflaxman.com

Business Support Services
TRUSTEE SERVICES INC.
Owned & Operated by a U.S. Bankruptcy Trustee



Real Estate Property Management

Chief Restructuring Officer Assignments

Noticing and Claim's Agent

Receiverships

Assignments for Benefit of Creditors

Marshaling and Sale of All Types of Assets

Business Turnaround Consulting

Accounts Receivable Collection

Personal Property Appraisals



www.kawpa.com

(954) 889-3403

Kenneth A. Welt, President
kaw@kawpa.com

SUBSCRIBE TO THE DAILY BUSINESS REVIEW

To order your subscription, call
Toll Free 1-877-256-2472

FROM PAGE A3

JUSTICE WATCH: Feds fared better pursuing fines

faced FCPA charges and had ties to the Clinton administration. Bistrong, trying to reduce his prison sentence, persuaded the government to fund him in the sting operation.

'MOST DANGEROUS'

"I think you will see an increase in trials in white-collar cases, particularly when the government makes the ill-fated decision to use criminal cooperators," said **Paul Calli**, a Miami partner at Carlton Fields.

Calli and fellow Carlton Fields partner **Stephen Bronis** represented Stephen G. Giordanella, a former executive with Protective Products of America in Sunrise. He walked out of the courtroom after Leon's ruling since he faced only the dismissed conspiracy charge.

"In many respects, Mr. Giordanella's indictment in the DOJ's fake Gabon sting operation conspiracy represents a prosecution at its most dangerous," Calli said.

While much was made of Bistrong's role, Leon's ruling cut deeper because he questioned the very essence of the case.

"The evidence in this case has shown that the government has failed to show the type of interdependence necessary for the single conspiracy of the type that was charged," he said at a Dec. 22 hearing announcing his decision.

Even though there were common elements in the weapons deal, such as splitting a \$3 million commission, the judge ruled it "did not necessarily link the success or failure of any of the defendant's deals with the success or failure of any of the others."

Andrew Levi, a former federal prosecutor who heads the Miami office of the investigative firm Nardello & Co., said, "The dismissal of charges in this case represents yet another disappointing setback to DOJ."

Mike Koehler, assistant professor of business law at Butler University in Indianapolis and author of the FCPA Professor blog, said considering the resources involved, it boggles the mind why the sting was green-lighted.

"DOJ should be focused on those actual cases rather than concocting a scheme as they did in the African sting case," he said.

WIDESPREAD MISCONDUCT

The California FCPA case is disturbing given U.S. District Judge **A. Howard Matz's** finding of widespread prosecutorial misconduct in a bull run to convict executives at Lindsey Manufacturing.

In May 2011, a Los Angeles jury convicted Lindsey Manufacturing, its president Keith Lindsey and CFO Steve Lee for doling out more than \$5 million to an employee to cover bribes to Mexican officials to secure contracts.

But the judge vacated the jury verdict Dec. 1, finding the prosecution team intentionally acted in bad faith by allowing an FBI agent to testify untruthfully before a grand jury, introducing sworn falsehoods to a federal magistrate to secure search warrants, im-



Attorney Jan L. Handzlik says Justice invests too much time and expenses in a lot of FCPA cases. "There is a huge amount of pressure to win them," he said.

properly reviewing email between Lee and his attorney, violating court rulings and engaging in questionable behavior during closing arguments.

With orders coming from Washington, the prosecution team of **Doug Miller**, an assistant U.S. attorney in Los Angeles, and **Nicola Mrazek**, a senior trial attorney with the Justice Department, appears to have thrown caution to the wind. The Justice Department filed a notice of appeal.

"I've never seen anything like this before," said Venable partner **Jan L. Handzlik**, who represented Lindsey. "Too much time and expenses are invested in a lot of these cases. There is a huge amount of pressure to win them. Whether or not that had an impact is difficult for me to say."

LONGEST SENTENCE

Federal prosecutors haven't struck out every time at the plate, finding fertile FCPA ground in South Florida.

Justice Department spokeswoman **Laura Sweeney** said she couldn't comment on ongoing cases but pointed to "significant positive results" nationally.

"Whenever we bring a case, we do so understanding that various parties will aggressively litigate a variety of issues, and ultimately a court and a jury will determine the outcome based on the facts and the law," she said. "Our enforcement efforts have led to guilty pleas, convictions at trial and corporate enforcement actions in courts across the country, including in South Florida."

Prosecutors like to tout the case against Joel Esquenazi and Carlos Rodriguez, who were sentenced by U.S. District Judge **Jose E. Martinez** in Miami to a record 15 years and seven years, respectively, in October. Martinez also ordered the defendants to forfeit more

than \$3 million.

Esquenazi's term was the longest sentence ever imposed in an FCPA case, prompting Breuer to issue a statement that the prosecution was "a stark reminder to executives that bribing government officials to secure business advantages is a serious crime with serious consequences."

Handzlik said one of the problems contributing to the recent setbacks may be that the Justice Department assumed executives would plea out just like companies do when faced with FCPA charges. Instead, executives fought back in the African sting and Lindsey cases. He said he pressed for a quick trial, knowing the government would be ill-prepared.

"The cases are almost always resolved through plea bargains or deferred prosecutions. Very rarely does any case go to trial," Handzlik said. "So DOJ is used to winning and as a result may have been lulled into a false sense of security."

EASY MONEY

Koehler notes the new muscle in the FCPA was written by attorneys who have since left Justice, creating a cottage defense industry at several law firms.

"The same people who created this new era FCPA enforcement at DOJ are now in private FCPA practices making millions of dollars," he said.

He questions on his blog the new emphasis on trying individuals, noting 60 percent of those charged since 2008 have been in just three cases.

In the past before millions of dollars were spent on complex sting cases, he said the FCPA meant easy money for the government as it was more cost-efficient for businesses to pay fines rather than risk an indictment or go to trial — even if a company had a good chance of acquittal.

There also might have been a good reason why no individuals were being charged. "Maybe the strength of the case is so weak to begin with is why the DOJ couldn't prosecute individuals," he said.

Handzlik noted Judge Matz delved into the weaknesses of the government's case against Lindsey in vacating the convictions, finding a specious connection between the executives and an

employee who allegedly doled out money for contracts secured years earlier.

The attorney said the meatier FCPA policy promulgated by the Obama administration hurts U.S. companies. Lindsey employs about 120 workers, but it's the only U.S. company that makes emergency electrical towers.

"I hear the idealistic statements about leveling the playing field, but the government is making it very hard for the U.S. to compete," he said. "You put Lindsey out of businesses, and that business shifts to a Canadian company or a French company. Now you have a playing field that's been wiped clean for American competitors."

John Pacenti can be reached at (305) 347-6638.

People charged under the Foreign Corrupt Practices Act

2010	31
2009	19
2008	12
2007	8
2006	6
2005	1

Source: Butler University

"I think you will see an increase in trials in white-collar cases, particularly when the government makes the ill-fated decision to use criminal cooperators."

**PAUL CALLI
CARLTON FIELDS**