

DAILY REPORT

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Feds drop charges against timber broker; immunity deal at issue

• Prosecutors have dropped charges against a north Georgia timber broker after a federal judge questioned whether the broker's indictment in a Berry College kick-back scheme violated his immunity deal with state prosecutors.

U.S. Attorney David E. Nahmias filed the motion last week to dismiss fraud and money-laundering charges against timber broker R. David Bain, who for four years had cooperated with Floyd County authorities investigating the suspected kickbacks. U.S. District Judge Harold L. Murphy signed the order dismissing the case without prejudice on Aug. 14.

Bain's co-defendant, Robert L. Parker, was Berry College's one-time director of land resources and responsible for managing the harvesting, sales and replanting of the north Georgia college's 27,000 acres of timberland. The indictment accuses Parker of selling college-owned timber at bargain-basement prices to Bain and others in return for thousands of dollars in kickbacks. Parker is slated to go to trial in U.S. District Court in Rome on Sept. 11.

In their motion to dismiss charges against Bain, prosecutors acknowledged that their case against the timber broker was "based significantly" on documents and deposition testimony of witnesses that Berry College lawyers secured after getting Bain's immunized statements from county police. As a result, prosecutors said, they will not be able to use any of that evidence against Bain.

In 2002, Floyd County's district attorney signed an immunity deal with Bain relating to the Berry College timber transactions. Federal

4 AT ISSUE
Robert C. Port: My experiences in court taught me all I need to know about investing.

10 THE SNARK
Goner, Gunner or Gamer? Take our quiz to find out if you've got what it takes to reach the top.

6B OPINIONS
Read summaries of recent opinions from Georgia's high court and Court of Appeals.

Eye docs see the bright side of condemnation

MID-TRIAL SETTLEMENT adds \$1.5 million to Georgia Tech's price for Midtown building

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WHILE POLITICIANS and pundits have in recent years decried governments' powers of eminent domain, not every citizen who challenges condemnation has emerged bruised and bloodied.

Two Atlanta eye doctors who purchased a building in booming Midtown a decade ago will get \$7.2 million and two years' free rent from their new landlord, the Georgia Institute of Technology, in a settlement reached last week in Fulton County Superior Court.

The agreement came after seven days of testimony over Tech's move to seize the property for expansion and wraps up the school's efforts to convert the entire block of West Peachtree Street across from The Biltmore Hotel into administrative space as part of the school's steadily expanding footprint. The case was *Board of Regents v. CSA-Marand Inc.*, No. 2003CV78428.

Drs. Shelby R. Wilkes and Jettie Burnett, a husband-and-wife team of ophthalmologists, bought the three-story Capstone Building at 830 W. Peachtree St. in 1996, said their attorney, Richard N. Hubert of Chamber-



ZACHARY D. PORTER/DAILY REPORT

Lawyers Richard Hubert, right, and Nick Papeleacos said the first award for the Capstone Building on West Peachtree wasn't bad—but a settlement did better.

lain, Hrdlicka, White, Williams & Martin.

They installed an eye clinic and surgery on the first floor, and were in the process of building out the two upper floors when, in 2003, Georgia

Tech—acting on the state Board of Regents' power of eminent domain—moved to condemn the property. The university
See Condemnation, page 7

Find related court documents at dailyreportonline.com.

Eye doctors see bright side of condemnation of Midtown building

Condemnation, from page 1
also sought the rest of the block, which includes another three-story office building owned and partly occupied by a dialysis clinic and parking space; that case was presented in *Board of Regents v. Dialysis Clinic Inc.*, No. 2003CV78430.

“They’d just put in a first-class surgery,” said Hubert, “and were preparing the rest of the property for lease when Georgia Tech came in and said they needed it.”

Although he expressed satisfaction at the outcome, Hubert still thinks Tech’s motives may have been more with a view toward the same sort of pricey mixed-use development that’s transforming Midtown into a glittering warren of high-rises, upscale restaurants and specialty shops.

“This is probably the hottest area in town,” he said, “and here comes the Board of Regents saying, ‘We need this property.’ What for? First they said they were going to put impounded cars on it. Then they said, ‘No, no, we’re going to need it for facilities.’ That proved to me that this was probably not a bona-fide public or educational use for it.”

Hubert and the attorney for The Dialysis Clinic Inc., Jason P. Wright of Morris, Manning & Martin, who could not be reached to

discuss the cases, presented their arguments in separate hearings before court-appointed Special Master Anne W. Sapp.

Among their arguments opposing the condemnation were concerns that Georgia Tech, instead of acquiring the property for public or educational purposes, was planning to use it for mixed-use development. The lawyers pointed to such projects nearby, including some owned by the Georgia Tech Foundation.

In response, Tech provided testimony disavowing any such plans and noted that any mixed-use developments controlled by the school were either privately funded or, in the case of the foundation’s projects, developed with private money.

State-appointed attorney Kenneth L. Levy of Decatur’s Zachary & Segraves, who represented the Board of Regents, referred

questions to the attorney general’s office, which had no response by press time; nor was there an immediate response from the Board of Regents.

In response to Wright’s arguments in the dialysis case, Levy argued that the property owners “have failed to produce even a scintilla of evidence showing that the subject property, after condemnation, is to be used for anything other than academic reasons.”

Sapp agreed and, noting that the arguments in both cases were essentially the same, awarded condemnation in both cases.

On March 22, 2006, Fulton County Superior Court Judge Constance C. Russell awarded the dialysis clinic and its tenants a total of \$8.3 million.

The special master awarded Hubert’s clients almost \$5.7 million.

“That ain’t bad,” said Hubert, but his

clients thought their property was worth more.

“Every week, there was a new sale coming in over there,” said Hubert. He and his associate, Nick Pappleacos, demanded a jury trial, and three days into the second week, the Board of Regents agreed to settle for \$7.2 million and two years of free rent—which Hubert valued at \$500,000—in exchange for the property.

“They knew I was going to bring up the whole issue of non-public use for condemned property,” said Hubert, who declares the “abuse of eminent domain is one of the worst things a property owner can go through. The condemnee has no constituency; he’s doesn’t have the clout of a Georgia Power or Southern Bell or MARTA. It’s like that old song: ‘Nobody knows and nobody seems to care.’” 

