

Indiana Law Blog Newsletter

Thank you for subscribing to the ILB Newsletter. Invite your friends and colleagues to [sign up to receive this free weekly newsletter](#), emailed in 2018 every other Monday morning. Because it is a biweekly, the *ILB Newsletter* (unlike the earlier *Indiana Law Blog*) will not be able to bring you the news *as it happens*. But it will highlight news you may have missed, and try to provide some depth on news you may have had questions about. Because it is a newsletter, length will be limited to what I believe the normal reader can tolerate. (Feedback and suggestions are encouraged - send to [ilb.newsletter at indianalawblog.com](mailto:ilb.newsletter@indianalawblog.com).)

2018 Schedule: With the exception of the occasional special issue (or unless a sponsor steps forward), the *ILB Newsletter* will publish *every other week* in 2018.

Airbnbs: how much authority should locals have to regulate?

This was a big issue in the 2017 General Assembly and may become the same this year. The *Indianapolis Star* [reported Jan. 11th](#) in a long, worth-reading story that:

The City Council on Monday unanimously approved a fast-tracked ordinance that regulates short-term rental homes. [A year ago, Carmel](#) informed residents who were listing their homes on the online marketplace that they were in violation of residential zoning. * * *

Now, people who want to list their homes will have to apply for a variance, essentially a permit, from the city. In order to discourage investors from buying properties to rent, the variance is restricted to people who live in their homes. It will cost \$100 to receive the variance for the first year and \$50 for annual renewals.

Homes cannot be rented for more than 30 days.

Carmel anticipates some neighbors might not be happy about living next door to Airbnb rentals. Neighbors two homes deep would be provided with a written notice and a sign would be posted on the property that is petitioning for a variance.

A hearing officer's decision to grant or deny a variance will be able to be appealed to the Board of Zoning Appeals. * * *

The Indiana General Assembly is considering legislation that would bar cities from regulating Airbnb rentals, Brainard said, and he wants Carmel's ordinance in hand to lobby lawmakers. Brainard spoke against [similar legislation last year](#).

At least one bill has been introduced in this 2018 session to preempt local bans on short term rentals. Here is the digest of [SB 382](#):

Preemption of local bans on short term rentals. Provides that a local unit of government (local unit) shall not adopt any ordinance that restricts or prohibits the use of a person's primary residence as a short term rental, except for the following purposes: (1) The protection of the public's health and safety. (2) Residential use and zoning related to noise, protection of welfare, property maintenance, and nuisance issues. Provides that, in the case of residential property that is not the person's primary residence, a local unit may require a special exception, special use, or zoning variance for the short term rental of the property. Provides, however, that the local unit may not interpret and enforce the local unit's zoning regulations for a special exception, special use, or zoning variance in a manner that is intended or has the effect of prohibiting or unreasonably restricting all short term rentals of the property. Exempts ordinances adopted before January 1, 1970, that are contrary to the provisions of the bill. Excludes homeowners associations and similar property owners associations from the provisions of the bill

Last April the *ILB* linked to this [Fort Wayne Journal Gazette editorial](#), on "home-rule helicoptering." The editorial referenced a long [\\$\\$\\$ WSJ story](#) from April 13, 2017, which included:

Supporters of state-level pre-emption measures say they are needed to assert states' authority and stop cities from creating uneven regulations that scare off businesses. The states are reacting to increasingly aggressive pushes for local rules, said Ben Wilterdink, director of the commerce, insurance and economic-development task force at the American Legislative Exchange Council [ALEC], which says it is dedicated to limited government, free markets and federalism.

Opioid epidemic spawns lawsuit epidemic

The *NY Times* reported in [a lengthy story on Dec. 20th](#):

Cities, counties and states across the country are turning to the courts in the spiraling opioid crisis. What began a few years ago with a handful of lawsuits has grown into a flood of claims that drug companies improperly marketed opioids or failed to report suspiciously large orders. Close to 200 civil cases have been filed by local governments in the federal courts; dozens of other suits are playing out in state courts; and attorneys general from 41 states have banded together to explore legal options.

"There's a new case being filed virtually every day, and I don't see any end in sight," said Paul J. Hanly Jr., a lawyer who represents some of the local governments. * * *

Critics say the litigation is a sideshow in the opioid debate — a chance for lawyers to make money and politicians to make headlines — rather than a lasting solution in the overwhelming crisis, which the president's Council of Economic Advisers last month estimated as having cost \$504 billion in 2015. *
* *

But lawyers for some counties, cities and states say the litigation could force real changes, such as far wider availability of overdose antidotes, sufficient money to get all addicts into treatment, and the development of a robust prevention and education program. The consolidation of the federal cases in a so-called multidistrict litigation could also speed the process, the lawyers said.

There have been many stories in Indiana on lawsuits being filing by various cities and counties. This [Dec. 22nd story](#) from the *NWI Times* reports on consolidation of many of the suits by the U.S. Judicial Panel on Multidistrict Litigation.

CROWN POINT — A lawsuit by the city of Hammond targeting opioid distributors and manufacturers has been consolidated with dozens of other similar lawsuits in a federal court in Ohio.

The local lawsuit, filed Nov. 16 in the U.S. District Court of Northern Indiana, was transferred Dec. 5 to the U.S. District Court of Northern Ohio. * * *

Cases are transferred back to their original federal districts for trial. * * *

Lawsuits filed by the cities of LaFayette and Indianapolis, as well as a lawsuit filed by Scott County, also were transferred to Ohio's district court.

The lawsuits were transferred to the Ohio district court because of its geographic centrality, and because the state has "experienced a significant rise in the number of opioid-related overdoses in the past several years and expended significant sums in dealing with the effects of the opioid epidemic," the judicial panel's order states.

[On Jan. 8th the Indianapolis Star reported](#) on a number of Indiana lawsuits, and included a link to the complaint filed by the City of Noblesville.

U.S. Attorney Thomas L. Kirsch: northern Indiana's 18th federal prosecutor

[Photo and story here](#), from the Jan. 11, 2018 *NWI Times*.

News of NW Indiana environmental threats often more muted downstate

An [August 16, 2017 NWI Times story](#) was headed: "An environmental threat: The East Chicago lead crisis one year later." By then the East Chicago contamination had long been

[national news](#). Stories of spills of hexavalent chromium, endangering Lake Michigan beaches and waters, presently appear to be news only in the Chicago/NWI area.

[On April 12, 2017](#), the *Chicago Tribune* reported in a long story:

The spill of hexavalent chromium, reported Tuesday by the U.S. Steel Midwest Plant in Portage, prompted the neighboring Ogden Dunes community to shut off its drinking water intake and the Indiana Dunes National Lakeshore to close four beaches as a precaution. Chicago conducted emergency testing of water drawn at an intake crib off 68th Street, about 20 miles across the lake from the spill, but found nothing unusual.

U.S. Steel said it appears a broken pipe joint allowed a still-undetermined amount of wastewater to spill into a ditch next to the plant, where steel forged at the nearby Gary Works is coated with hexavalent chromium and other rust-inhibiting materials.

The [U.S. Environmental Protection Agency](#) said there was no immediate threat to Lake Michigan. But the spill draws renewed attention to a toxic metal made infamous by the movie "Erin Brockovich."

That was from early 2017. On Jan. 12 of this year, the [NWI Times reported](#):

In April, nearly 300 pounds of hexavalent chromium — or 584 times the daily maximum limit allowed under state permitting laws — leaked from facility's wastewater treatment center into the Burns Waterway, just hundreds of feet from Lake Michigan. In October, the facility discharged 56.7 pounds — or nearly twice the daily allowable limit — of total chromium into the waterway.

The company initially sought "confidential treatment" for the October spill. IDEM in December released an inspection summary/noncompliance letter showing U.S. Steel did not monitor after the October leak for hexavalent chromium, a highly toxic form of the chemical.

[Here is an earlier story](#), also from the *NWI Times*, headed "*U.S. Steel faces lawsuit as company sought confidentiality from state regulators after second spill in Portage.*" And this Jan. 12, 2018 [WTTW Chicago story](#) includes a map.

Finally, here is a [long Nov. 24, 2017 editorial](#) from the *Chicago Tribune*, headed "*Wanted: Aggressive Lake Michigan protection.*"

Updating: Bloomington annexation plan effectively killed by non-related language inserted at the last minute into the 2017 budget bill; now in court and bears watching ...

Updating the long [ILB Newsletter entry](#) from the December 18th issue, where the last action reported was that on Dec. 4, 2017 the State of Indiana had filed an 8-page motion for interlocutory appeal in *Eric Holcomb v. City of Bloomington* ([53A01-1712-PL-02764](#)). arguing *inter alia*:

It is important for this Court to grant jurisdiction over this appeal to ensure the Governor is not inappropriately burdened with having to defend against abstract constitutional claims.*

the Court of Appeals denied the motion in a Dec. 8, 2017 order: "Appellant's Motion to Accept Jurisdiction over Interlocutory Appeal is denied."

The case will continue on Monroe County Circuit Court. The mycase.IN.gov docket currently shows no additional action for 53C06-1705-PL-001138.

*From the City of Bloomington's response:

Governor Holcomb is precisely the correct defendant to name in a declaratory judgment action requesting clarity on the constitutionality of a legislative enactment. For years, this approach has been recognized both in Indiana and by our sister courts in other states.

Upcoming Vacancy on the Indiana Court of Appeals

Via the [South Bend Tribune](#) of Jan. 12th, a story headed "*Former St. Joseph County Prosecutor retiring from court of appeals*" that begins:

Mike Barnes, a former St. Joseph County Prosecutor, will retire from the Indiana Court of Appeals after almost 20 years on the bench.

Barnes, who has continued to live in South Bend since being appointed to the appellate court in 2000, will retire June 1. He is a 1973 graduate of the University of Notre Dame Law School and authored more than 2,800 opinions during his appellate court career.

He held the office of the St. Joseph County Prosecutor for 22 years over five elections from 1978 to 2000.

Here the Court's [biography of Judge Michael P. Barnes](#), who represents [the 3rd District](#), the northern third of Indiana. Judges named from the original 1st, 2nd, and 3rd Districts stand for retention only in their districts. [Per IC 33-25-1-3](#):

(a) Judges of the First, Second, and Third Districts of the court of appeals must have resided in their respective districts before appointment to the court.

1/ Do you enjoy this Newsletter? Do you miss the ILB? I'm looking for support for an all-new and even better Indiana Law Blog.

2/ Could your organization or firm use some help with a challenging short or long-term project? Then let's talk.

Oral arguments currently scheduled before the Indiana Supreme Court the remainder of January, 2018

Thursday, Jan. 25th:

- 9:00 AM - ***Christopher K. Kesling, DDS, MS, et al. v. Andrew C. Kesling, et al.*** ([46A03-1701-MI-00064](#)) (LaPorte) Minority shareholders filed claims against the majority shareholder, and the corporation intervened. The LaPorte Superior Court granted the corporation's motion for summary judgment, dismissing some of the claims and ruling that the remaining claims are derivative in nature and that the corporation, acting through its board of directors, is entitled to pursue those claims. The Court of Appeals affirmed. *Kesling v. Kesling*, 83 N.E.3d 111 (Ind. Ct. App. 2017). The minority shareholders have petitioned the Supreme Court to accept jurisdiction over this appeal.
- 9:45 AM - ***State of Indiana v. Pebble Stafford*** ([39A04-1705-CR-00930](#)) (Jackson) In 2014, the Jefferson Circuit Court accepted Stafford's plea agreement and sentenced her to a fixed term pursuant to the agreement. In 2017, the Circuit Court granted Stafford's petition to modify her sentence, over the State's objection. The Court of Appeals affirmed, holding Indiana Code section 35-38-1-17 authorized the trial court to modify the sentence. *State of Indiana v. Stafford*, 86 N.E.3d 190 (Ind. Ct. App. 2017), *vacated*. The Supreme Court has granted the State's petition to transfer and assumed jurisdiction over this appeal.

The briefs and lower court opinions may be accessed via the links above. Webcasts of the Supreme Court's oral arguments are [available here](#).

Recommended this week

- **[Stay Tuned with Preet](#)** - "Join former U.S. Attorney Preet Bharara for a podcast about justice and fairness." A great listen every week.
 - **[10 Easy Ways To Free Up A Lot Of Space On Your iPhone](#)** - 10 simple ways you can manage and clear space on your iPhone - **Huffington Post**
 - **[The 10 Free Apps We're Most Thankful For](#)** - from **Lifehacker**
 - **[The Beginner's Guide to IFTTT](#)** - "Taking the logic of the If/Then statement to its place in today's hyper-connected world is the website IFTTT. It stands for "If This, Then That." Through the IFTTT website and accompanying app, users are able to create logic statements that help them pair up Internet-enabled services and devices in ways that can make life easier—or more entertaining." - from **Lifehacker**.
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