

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Raul Aguila, City Attorney 

DATE: February 12, 2020

SUBJECT: **City Attorney's Status Report**

LAWSUITS FILED BY OR AGAINST THE CITY OF MIAMI BEACH SINCE THE LAST REPORT:

1. **JUAN A. GARCIA, JR. ET AL v. CUYAHOGA WRECKING CORP, a Florida Corporation, et al, Defendants, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, Third-Party Plaintiff v. THE CITY OF MIAMI BEACH, FLORIDA Third-Party Plaintiff** Case No. 91-26591-CA-01 (Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida)

The City was served with this complaint on January 17, 2020. The City and The Florida Department of Environmental Protection ("FDEP"), amongst other defendants, were sued by Plaintiff, Juan A. Garcia, Jr. The Plaintiff dove into the waters at south beach and hit his head against debris at the bottom resulting in his paralysis (paraplegic). The City operates the beach area pursuant to a contract signed with the State in 1982. The City settled with the Plaintiffs in 1997 paying the Plaintiffs the cap of \$200,000, and agreeing to a claims bill of \$1 million and \$50,000 (the claims bill passed in 1998).

FDEP remained in the case after the City settled. FDEP filed a motion for summary judgment on the grounds that they do not operate the beach, and did not designate it as a swimming area. The Motion for Summary Judgment ("MSFJ") was granted by the court, but was overturned on appeal leading to a Florida Supreme Court decision that found the State had a duty to the plaintiff because they derive revenue from the City pursuant to the 1982 agreement. The Supreme Court held that the State had a duty to the Plaintiff to make the beach safe, and found that the State was entitled to indemnification from the City.

FDEP sent a letter to the City demanding indemnification pursuant to the 1982 agreement, and a permit for the demolition of the pier. The City has exhausted the \$200,000 statutory cap (which applies to all state entities), and the statutory cap cannot be stacked against multiple governmental entities. The City has determined that it does not owe FDEP indemnification for their own negligence, and the statute of limitations for an indemnification and declaratory relief action against the City has expired pursuant to Florida Law. We shall file a motion to dismiss the Third-Party Complaint.

2. **IGOR VASSILIEV V. CITY OF MIAMI BEACH** Case No. 19-37746 (Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida)

Plaintiff sued the City alleging employment discrimination. The City will defend this claim.

3. **ALEJANDRO BONNEMAISON V. FLORIDA DEPARTMENT OF TRANSPORTATION**  
Case No. 2018-000349-CA-01 (Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida)

The City was served with this complaint on January 22, 2020, which alleged that on May 21, 2017, the plaintiff, Alejandro Bonnemaïson, stepped from the curb at 7134 Collins Avenue, onto an unpainted portion of the curb, and due to the unmarked gutter/drainage area in/below the curb area, fell backwards, twisting his leg and injuring his 11-month-old daughter, whose skull struck the concrete. The Plaintiff indicated that later, upon close examination and investigation, revealed that portions of the subject curb were once painted yellow. The Plaintiff alleges that this warning would have prevented him from falling.

The Plaintiff finally indicated that no warning was installed at or near the subject curb area; nor was the subject curb area painted yellow to advise pedestrians to take caution. The Plaintiff is suing the City and FDOT. The area is controlled by a 1993 Collins Avenue Agreement between the City and FDOT, but the agreement clearly indicates that the roadway portion of the street including the curb and gutters are the maintenance responsibility of FDOT. We shall file a motion to dismiss the complaint, based upon the City having no maintenance responsibility for the roadway at issue, which is owned and maintained by FDOT.

4. **LEE HOLMES V CITY OF MIAMI BEACH** Case No. 2020-000056-CA-01 (Circuit Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida)

Plaintiff sued the City alleging employment discrimination. The City will vigorously defend this claim.

5. **DTJ INVESTMENTS, LLC, A Florida limited liability company vs. MIGUEL FERNANDEZ; DAIMA FERNANDEZ; THE UNKNOWN SPOUSE OF MIGUEL FERNANDEZ; THE UNKNOWN SPOUSE OF DAIMA FERNANDEZ; THE UNKNOWN HEIRS OF MIGUEL FERNANDEZ; THE UNKNOWN HEIRS OF DAIMA FERNANDEZ; PORTALAGRE CONDOMINIUM ASSOCIATION, INC.; HSBC BANK USA, N.A, AS Trustee Under the Pooling and Servicing Agreement Dated as of 11/1/2006 Fremont Home Loan Trust 2006-D; HARVEY RUVIN CLERK OF COURT; MIAMI-DADE COUNTY, CITY OF MIAMI BEACH; GULF COAST ASSISTANCE, LLC; DODGE ENTERPRISES INC.; CACH LLC; THE GRAND RESERVE CONDOMINIUM ASSOCIATION OF TAMPA, INC; DISTRESSED HOLDINGS, LLC; SUNTRUST BANK; ASSET ACCEPTANCE LLC; BANK OF AMERICA; FLORIDA DEPARTMENT OF REVENUE; LAKESIDE SHOPPING CENTER LLC; AND STATE OF FLORIDA** Case No. 19-36383 CA 01 (Circuit Court of the 11<sup>th</sup> Judicial Circuit, in and for Miami-Dade County, Florida)

This is an action to quiet title on real property located at 2175 NE 170<sup>th</sup> Street, North Miami Beach, FL. The Summons and Complaint were served on the City on January 24, 2020.

The City's Answer and Affirmative Defense was filed on January 27, 2020.