

JEFFREY DANA
City Solicitor



JORGE O. ELORZA
Mayor

May 1, 2017

The Honorable Luis A. Aponte
President, Providence City Council
Providence City Hall
25 Dorrance Street
Providence, Rhode Island 02903

Dear Council President Aponte:

Enclosed please find my annual report on civil suits and legal proceedings, which I submit pursuant to Sec. 2-98 of the Code of Ordinances.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jeffrey Dana", is written over a horizontal line.

Jeffrey Dana
City Solicitor

Enclosure

IN CITY COUNCIL
MAY 24 2017
READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.
A handwritten signature in dark ink, appearing to read "Luis A. Aponte", is written over a horizontal line.
CLERK

JEFFREY DANA
City Solicitor



JORGE O. ELORZA
Mayor

**ANNUAL REPORT OF CIVIL SUITS AND LEGAL PROCEEDINGS
FROM THE CITY SOLICITOR TO THE CITY COUNCIL
IN ACCORDANCE WITH SEC. 2-98 OF THE PROVIDENCE CODE OF ORDINANCES
APRIL 2017**

Pursuant to Sec. 2-98 of the Code of Ordinances, the City Solicitor submits the following. Currently, there are 1,106 open civil cases in either state or federal court. Of these, 252 are cases for relief from tax assessment. In 45 cases, the City is the suing entity. In the rest of the matters, the City is a defendant in a (non-tax related) civil action. Below is a list of significant civil actions in which the City is either a plaintiff or a defendant.

380 Westminster Street LLC v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for a piece of commercial property. Settlement talks are underway.

Branch Avenue Associates v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2009-2012 and 2016.

In re Actos End Payor Antitrust Litigation – This action involves the City's attempt to recover damages as a result of unfair trade practices and anti-competitive conduct of the prescription drug maker of Actos and Actos^{plus}, prescription drugs that treat diabetes. The action was dismissed by the United States District Court for the Southern District of New York in September 2015, and the City is appealing that decision to the Second Circuit.

City of Providence v. Aeropostale, Inc. (Securities Litigation) – This action filed in the United States District Court for the Southern District of New York involves allegations that Aeropostale violated the Exchange Act by making false and misleading statements about the projections of sales at its retail stores. A court-approved settlement awarded the class \$15 million in June 2015, of which the City is expected to receive approximately \$12,800.

Alameda County Employees' Retirement Association v. BP p.l.c. (Securities Litigation) – This action, pending in the United States District Court for the District of Texas, Houston Division, involves a securities action brought to recover monies for the Providence Pension system.

Andrews v. City of Providence (Medicare) – This case concerns retired police and fire members who opted out of a settlement. The settlement ended litigation that was a certified class action challenging an ordinance requiring Medicare eligible retired employees of the City to enroll in Medicare as a condition of receiving or continuing to receive health benefits. The individuals who have opted out of the retiree class have brought a separate action. This action was tried and a decision was entered for the City. The members who opted out have appealed to the Rhode Island Supreme Court.

Artist Group, LLC v. Tax Assessor – This action is an appeal for relief from tax assessment for tax years 2010, 2011, and 2012.

In re Barclays Liquidity Cross and High Frequency Trading Litigation (City of Providence v. BATS Global Markets, Inc. et al. – Securities Litigation) – This action, pending in the United States District Court for the Southern District of New York, involves a class action complaint against various brokerage firms, securities exchanges, and high-speed traders of shares of stock between 2009 and the present based on their manipulation of stock prices and unfair gain arising out of high frequency trading technology. The City is attempting to recover damages and/or injunctive relief to halt future lost earnings to its pension fund. The action was dismissed by the District Court and an appeal is now pending.

Estate of Jameson Bazelais and Oidin Bazelais v. City – This lawsuit involves the death by drowning of one minor child and the injury of another at a City swimming pool in 2009.

Calart Association v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for 42 commercial units at the Calart Towers located at 400 Reservoir Avenue for tax years 2009-2014.

Ceprano v. City – This is a wrongful termination and libel suit commenced by the City's former Tax Collector. Summary judgment entered for the defendants as to most, but not all, of the counts of Plaintiff's complaint.

City Lofts, LLC v. Tax Assessor – This action is an appeal for relief from tax assessment for tax years 2009-2013.

City of Providence v. Allergan PLC, et al. – This suit is pending in the United States District Court for the District of Rhode Island and involves the City's attempt to recover damages as a result of anticompetitive collusion among pharmaceutical manufacturers that prevented the sale of generic versions of Digoxin (a drug used to treat various heart conditions) and Doxycycline (an antibiotic).

City of Providence v. Bank of Nova Scotia, et al. (Securities Litigation) – The City filed a class action complaint in September 2015, against various "primary dealers" that colluded in auctions of U.S. Treasury Securities and related derivative financial products, manipulating auctions and pricing.

City of Providence v. Centrais Eletricas Brasileiras Sa-Elektrobras *et al.* – This action, filed in August 2015, in the Southern District of New York against Brazil's largest electric company, alleges violations of federal securities laws and is closely related to the Petrobras bribery and corruption scheme.

City of Providence v. Globe Specialty Metals, Inc., *et al.* (Securities Litigation) – This is an action, filed in the Delaware Court of Chancery, for breaches of fiduciary duties and aiding and abetting in relation to a proposed merger of Globe Specialty Metals and privately held, Madrid-based Grupo FerroAtlantica. A court-approved settlement in February 2016 awarded the class \$32.5 million, of which the City is expected to recover approximately \$5,500.

City of Providence v. Starz, Inc. (Securities Litigation) – This action, brought in the Delaware Court of Chancery, involves a securities action related to an unfair and self-dealing merger with Lions Gate Entertainment Corp. at the expense of minority shareholders, including the Providence Pension system, by the board of directors and controlling shareholder John Malone.

Contreras v. City – This action stems from an injury allegedly sustained by plaintiff when she was hit by a motor vehicle operated by a Providence Fire Department employee. Plaintiff alleges substantial physical injuries.

In re Dole Food Co., Inc., Consolidated Stockholder Litigation – This shareholder derivative suit for breach of fiduciary duties and non-disclosure related to a private buyout unfair to minority shareholders was filed in the Delaware Court of Chancery. In August 2015, the Judge found some Defendants liable for over \$148 million in damages. The case was initially appealed, but it settled in November 2015 with a class award of \$113 million, of which the City will be awarded approximately \$45,000.

Doughty v. City – This is a civil suit in which the Providence Firefighters' Union alleges violations of the Fair Labor Standards Act concerning the calculation of overtime payments. The matter currently is in mediation.

Doughty v. City – This is a civil suit in which the Providence Firefighters' Union alleges the City violated the terms of its collective bargaining agreement when it transitioned from a four platoon system to a three platoon system. The matter currently is in mediation.

Dynamo House, LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2011, 2012, and 2014.

Extell Providence, LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2009 and 2010.

Epoch SL III, Inc., Epoch SL I, Inc. v. Tax Assessor – These actions are appeals for relief from tax assessment for 3 commercial properties for tax years 2010, 2011, and 2012.

Franchina v. City – This is a hostile work environment and retaliation action filed against the city by a retired female firefighter. This matter went to trial in April 2016. After some post-trial motion practice, judgment for Plaintiff entered for \$706,000 in damages and \$183,842.80 in attorney's fees. The City's appeal to the United States Court of Appeals for the First Circuit is pending.

Gambardelli v. City – This action stems from a motor vehicle accident involving plaintiff and a City employee who later died of unrelated causes. Plaintiff has sued and alleges substantial bodily injury and permanent disability.

Hasbro, Inc. v. Tax Assessor – This action is an appeal for tax relief from real and tangible tax assessment related to a TSA.

Johnson v. City – This action stems from a motor vehicle accident between plaintiff and a Department of Public Works employee. Plaintiff alleges substantial physical and psychological injury and permanent disability.

Kukkadapu v. Embraer S.A. (Securities Litigation) – This action filed in the United States District Court for the Southern District of New York involves a securities action brought to recover monies for the Providence Pension system resulting from false or misleading statements or failing to disclose material adverse facts about federal investigation and Brazilian criminal charges related to bribery payments made to Dominican Republic officials to secure a government contract for military aircraft.

Laprocina v. City – This action involves a pedestrian who was struck by a car on Allens Avenue in the City of Providence. Plaintiff alleges that his resulting medical bills are substantial and that he is now both physically and mentally disabled as a result of his injuries.

Lehigh Cement Co. v. Tax Assessor – This action is an appeal for relief from tax assessment for property in the ProvPort area. The City successfully moved for summary judgment. Plaintiff has appealed to the Rhode Island Supreme Court.

In re Lidoderm Antitrust Litigation – This action is pending in the United States District Court for the Northern District of California and involves the City's attempt to recover damages as a result of unfair trade practices and anti-competitive conduct by the prescription drug maker of Lidoderm.

In re Loestrin 24 Fe Antitrust Litigation – This action involves the City's attempt to recover damages as a result of unfair trade practices and anti-competitive conduct of the prescription drug maker of Loestrin 24. The First Circuit reversed dismissal of the complaint on appeal, and the matter has been remanded to the United States District Court for the District of Rhode Island for further proceedings.

Machado v. City – This is a wrongful death suit resulting from an alleged police chase. After trial, the jury awarded Plaintiff approximately \$2,000,000. Post-trial motions are pending. The City's appeal to the Rhode Island Supreme Court is pending.

Mann-Univar v. Tax Assessor – This action is an appeal for relief from tax assessment for property in the ProvPort area.

Manzotti v. City – This is a civil suit in Federal District Court in which the Fraternal Order of Police President, on behalf of all other officers, alleges violations of the Fair Labor Standards Act concerning the calculation of overtime payments. The matter currently is in mediation.

McAllister Towing v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for tangible property (primarily a tugboat) for tax years 2012 – 2016.

In re Niaspan Antitrust Litigation – This action is pending in the United States District Court for the Eastern District of Pennsylvania and involves the City's attempt to recover damages as a result of unfair trade practices and anti-competitive conduct by the prescription drug maker of Niaspan.

OMNI Rhode Island, LLC v. Tax Assessor – This action is an appeal for relief from tax assessment for the Omni Hotel for tax years 2013-2015.

One Financial Holdings, LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2010-2012.

Ophthalmic Partners, LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2007-2011 and 2016.

Park Row Properties, Ltd. v. City – This case is pending in Providence Superior Court and involves maintenance and repairs to the Amtrak station plaza and parking garage.

Penaloza, Rodriguez and Rosa on behalf of their children, NC, JP and JR, and a class of Similarly Situated Children in the Providence School District v. Providence School District. – Purported class action suit filed by RI Legal Service and the ACLU challenging the Providence School Department's use of the Consultation Model for non-English speaking students in the district. The matter is pending before the RI Department of Education, which will rule on the propriety of the model.

In re Petrobras Securities Litigation – This action, which was filed in December 2014 in the United States District Court for the Southern District of New York, involves allegations that the Brazilian oil company fraudulently schemed and artificially inflated the price of Petrobras securities in violation of the Exchange Act and the Securities Act.

Quattrucci v. City of Providence (Cost of Living Adjustment) – This case concerns retired police and fire members who opted out of a settlement. The settlement ended litigation that was a certified class action challenging an ordinance that suspended a cost of living adjustment benefit. The individuals who have opted-out of the retiree class have brought a separate action to challenge the suspension of the COLA benefit. . This action was tried and a decision was entered for the City. The members who opted out have appealed to the Rhode Island Supreme Court.

Retirement Board v. Frank E. Corrente – The Superior Court confirmed the action by the Retirement Board to award a reduced pension pursuant to the City's honorable service ordinance. The Mayor has retained separate counsel and has intervened in the action, challenging the propriety of any award under the circumstances and the Board has also appealed the decision of the Mayor to intervene in this matter. Attorney Raymond Marcaccio represents the Retirement Board, while Attorney R. Kelly Sheridan represents the Mayor. The matter currently is pending before the Rhode Island Supreme Court.

SEI/Aaron's v. Tax Assessor – This action constitutes an appeal for relief from tax assessment and an allegedly "illegal tax" for tangible taxes. The City successfully moved for summary judgment. Plaintiff has appealed to the Rhode Island Supreme Court.

School Housing Aid Litigation – This is an action challenging the state's attempt to recoup an alleged overpayment in aid to the City.

In re Solodyn Antitrust Litigation – This action is pending in the United States District Court for the District of Massachusetts and involves the City's attempt to recover damages as a result of unfair trade practices and anti-competitive conduct by the prescription drug maker of Solodyn.

Southlawn Palms Apartment, LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2010-2012.

In re Suboxone (City of Providence v. Reckitt Benckiser Pharmaceutical, Inc., et al.) – This matter is pending in the United States District Court for the Eastern District of Pennsylvania and involves the City's attempt to recover damages as a result of unfair and deceptive trade practices by Reckitt Benckiser in its sale of Suboxone, an opioid dependence prescription drug.

Terzian, Boghos v. City of Providence and Laborers International of North America Local Union 1033 – Terzian has claimed wrongful suspension and failure to subsequently provide adequate due process hearing procedures which led to his termination. Terzian sued Local Union 1033 alleging failure to adequately represent him resulting in his suspension and termination. Terzian is seeking compensation for lost income, expenses, costs, and reinstatement. Summary judgment was granted for the City, and the matter was appealed to the Rhode Island Supreme Court, where oral argument was heard. A decision has not yet been issued.

In re Thalomid and Revlimid Antitrust Litigation (City of Providence v. Celgene Corp.) – This action is pending in the United States District Court for the District of New Jersey and involves the City's attempt to recover damages as a result of unfair trade practices and anti-competitive conduct by the prescription drug maker of Thalomid and Revlimid.

Thurber Street LLC, et al. v. Tax Assessor – This action is an appeal for relief from tax assessment for tax years 2015.

Vargas v. City (School Board) – This action involves claims of employment discrimination and retaliation. This matter is currently in discovery and pending before the United States District Court for the District of Rhode Island.

Washington Street Garage Corporation v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2010, 2011, 2012, and 2014.

Westminster Street Hotel v. Tax Assessor – This is an appeal for relief from tax assessment for tax year 2013.

Weston v. RCS Capital Corp. et al. (Securities Litigation) – This matter, pending in the Southern District of New York, alleges fraud by Defendant in the purchase deal of Cole Capital from American Realty Capital Properties, Inc. that artificially raised the RCS stock price.

Weybossett Hotel, LLC v. Tax Assessor – This action is an appeal for tax relief from tangible tax assessment for tax year 2011.

Yangambi v. City of Providence (School Board) – This action involves claims of employment discrimination and retaliation for an alleged failure to promote a school department teacher to an administrator position. This matter went to trial in March 2014. A jury returned a verdict for the City on nine of ten claims. The jury found for plaintiff on one claim of discrimination and assessed damages of \$190,710.35. Total judgment entered for \$382,545.13 against the City, which judgment included prejudgment interest, attorney's fees, and costs. Both parties have appealed this matter, which is pending before the Rhode Island Supreme Court.

Young v. City of Providence – This is a civil suit for damages relating to a rape allegedly committed by a City police officer.