

JEFFREY DANA
City Solicitor



JORGE O. ELORZA
Mayor

May 3, 2018

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

Dear Council President Salvatore:

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 cursive script, appearing to read "J. Dana".

Jeffrey Dana
City Solicitor

Enclosure

IN CITY COUNCIL
MAY 17 2018

RESOLUTION IS ORDERED THAT
RECORDED.
A handwritten signature in cursive script, appearing to read "L. Elorza".
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 2018**

Pursuant to Sec. 2-98 of the Code of Ordinances, the City Solicitor submits the following. Currently, there are 1,145 open civil cases in either state or federal court. Of these, 200 are cases for relief from tax assessment. In 41 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.

100 Westminster Street v. Tax Assessor – This is an appeal for relief from tax assessment for tax year 2016.

Ace Enterprises, LLC, v. City – This action stems from alleged breach of contract, unjust enrichment, and estoppel stemming from purported mattress removal services provided by Ace Enterprises, LLC to the City.

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.

Athena Providence Place LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2013-2015.

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.

Branch Avenue Associates v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2009-2012 and 2016-2017.

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 2009-2017.

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-Eletronbras 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.

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.

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

Epoch SL v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2010 - 2012.

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

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 appealed to the United States Court of Appeals for the First Circuit. The First Circuit upheld the judgment, and the final total, inclusive of interest, is \$941,675.58.

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.

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.

The Estate of 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 Mr. Laprocina's resulting medical bills were substantial and that as a result he was both physically and mentally disabled from the time of the accident to the time of his death. Mr. Laprocina passed away, allegedly, due to complications from his injuries.

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. With post-trial motions and the City's appeal to the Rhode Island Supreme Court pending, a settlement agreement was reached, under which the city will pay \$1.6 million in two equal payments. The first payment has been made.

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 litigation.

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.

Narragansett Electric v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2014 and 2015.

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 2013-2016. This matter was tried in December 2017. The Court found that Omni overpaid the real estate taxes due and entered judgment for Omni in the amount of \$2,447,344.20 plus interest (of approximately \$1 million). The city has appealed to the Rhode Island Supreme Court.

One Financial Holdings, LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2010-2015.

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

Orchard Garage, LLC v. Tax Assessor – This is an appeal for relief from tax assessment for tax year 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.

The Providence Journal v. Tax Assessor – This is an appeal for relief from tax assessment for tax years 2011-2016.

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 Rhode Island Supreme Court confirmed the action by the Retirement Board to award a reduced pension pursuant to the City's honorable service ordinance. From the pension fund, Corrente will receive a back payment of approximately \$200,000.00 and, going forward, a reduced portion his regular pension, which the City is in the process of calculating. Any such payments are to be made from the City's pension fund.

Ricci v. City of Providence – This recently filed case is a class-action suit in which Plaintiffs allege that the City improperly implemented an automated camera technology system for the issuance of speeding violations.

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

Sprague Operating Resources LLC v. Tax Assessor – This action is an appeal for tax relief from tangible tax assessment for tax years 2015 and 2016.

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.

Textron v. Tax Assessor – This is an appeal for relief from tax assessment for tax year 2016.

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, filed in the United States District Court for the District of Rhode Island, involves claims of employment discrimination and retaliation. The city's motion to dismiss and/or for summary judgment is pending before the Court.

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 years 2011 and 2016.

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