



CITY OF PROVIDENCE

Angel Taveras, Mayor

April 29, 2014

Ms. Lori Hagen
City Clerk's Office
Providence City Hall
25 Dorrance Street
Providence, RI 02903

RE: Annual Report of Civil Suits and Legal Proceedings

Dear Ms. Hagen;

In accordance with the Providence Code of Ordinances Sec.2-98, I hereby submit to the City Council, the Annual Report of Civil Suits and Legal Proceedings that are currently pending.

Very Truly Yours,

PROVIDENCE CITY SOLICITOR

A handwritten signature in black ink, appearing to read "Jeff Padwa".

Jeffrey M. Padwa

**IN CITY COUNCIL
MAY 15 2014**

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.

A handwritten signature in black ink, appearing to read "Lori Hagen".

CLERK

ACTING

CITY SOLICITOR'S OFFICE

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JEFFREY M. PADWA
City Solicitor



ANGEL TAVERAS
Mayor

**ANNUAL REPORT OF CIVIL SUITS AND LEGAL PROCEEDINGS¹
IN ACCORDANCE WITH PROVIDENCE CODE OF ORDINANCES SEC. 2-98
APRIL 2014**

15 Park Row v. Tax Assessor - This is an appeal for relief from tax assessment for a commercial property. The potential exposure exceeds \$2.2 million for tax years 2009-2012. The matter currently is in settlement discussions.

101 Plain LLC v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for 10 commercial properties. The potential exposure exceeds \$300,000 for each tax year – 2010, 2011, and 2012. The matter currently is in settlement discussions. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

380 Westminster Street LLC v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for a piece of commercial property. The potential exposure averages an excess of \$398,000 for each tax year: 2008, 2009, 2010 and 2011. The matter is currently in discovery. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

AER Realty, LLC v. City and Providence Redevelopment Agency – This is an action wherein the plaintiff claims inverse condemnation and diminishment of value of property owned at One Fields Point. If the plaintiff were to prevail, the property is valued at \$1.3 million. This action is still in discovery.

¹ The City is a defendant in many cases involving claims for personal injury, property damage, tax appeals, claims for contract violations, claims for violations of civil rights, and other claims. The City is a party in many other matters not included here, as they are less significant in terms of financial exposure or otherwise. As for matters involving property owners seeking relief from assessment, there are significant number of cases in which there is currently insufficient data to estimate the City's potential exposure. In the cases where there was enough data, the cases have been evaluated and, where appropriate, added to this list. It should also be noted that in virtually all tax appeal cases, taxpayer relief comes in the form of future tax credits for the taxpayer – forgone future City revenue - as opposed to a payment by the City.

Andrews v. City of Providence (Medicare) – This case concerns retired police and fire employees 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.

Atlantic-Eddy Realty v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for three (3) properties. The potential exposure could exceed \$300,000. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

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. The City is vigorously defending the suit, but if proven, damages against the City could exceed \$1.5 million. The matter is currently in discovery.

In re: 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. Currently, the complaint survived a contentious motion to dismiss and is proceeding with discovery and further litigation.

Brown University v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for 11 commercial properties. The potential exposure exceeds \$2 million for each tax year – 2010 and 2011. The matter is currently in settlement discussions. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

Ceprano v. City — wrongful termination and libel suit commenced by the City's former Tax Collector. Summary judgment recently entered for the defendants as to most, but not all, of the counts of Plaintiff's complaint. If proven, damages against the City could exceed \$350,000.

City of Providence v. Abbvie Inc. et al. – This action 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 unfair trade practices and anti-competitive conduct by the prescription drug maker of Niaspan.

City of Providence v. Aeropostale, Inc. – This is a securities class action pending in the U.S. District Court, Southern District of New York, in which the terms of a settlement have been reached. Aeropostale has agreed to pay the members of the class a total of \$15,000,000.00, of which the city will receive its proportionate share.

City of Providence v. BATS Global Markets, Inc. et al. – This action is pending in the United States District Court for the District of New York and involves a class action complaint against various brokerage firms, securities exchanges, and high-speed traders of shares of stock between 2009 and 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 so as to halt future lost earnings to its pension fund.

City of Providence v. Buck Consultants, et.al. – This case involves the city's allegations that our longtime actuary miscalculated pension savings with a present value of approximately \$10 million. This recently filed case is in discovery.

City of Providence v. Endo Pharmaceuticals, Inc. et al. – This action 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 unfair trade practices and anti-competitive conduct by the prescription drug maker of Lidoterm.

City of Providence v. Medicis Pharmaceutical Corp. et al. – This action is pending in the United States District Court for the District of Arizona 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.

City of Providence v. Taketa Pharmaceuticals Company Limited et al. – This action is pending in the United States District Court for the Southern District of New York 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 Actos and Actosplus Met.

City of Providence v. Warner Chilcott Public Limited Company, et. al. - This action 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 unfair trade practices and anti-competitive conduct of the prescription drug maker of Loestrin 24.

In re Dole Food Co., Inc., Consolidated Shareholder Litigation. – This action is pending in the Delaware Court of Chancery in which the City has initiated a shareholder derivative suit for breach of fiduciary duties and non-disclosure related to a private buyout unfair to minority shareholders. The City is attempting to secure a better share price of the pension fund's holdings in this company and/or recover related damages.

Doughty v. City of Providence – recently commenced civil suit in which the Providence Firefighters Union alleges violations of the Fair Labor Standards Act concerning the calculation of overtime payments. If proven, damages could exceed \$3,000,000.

Eagle Square - the city and the Eagle Square entered into a tax increment financing agreement, which provided the amount of tax owed the city by Eagle Square. A receivership intervened, but regular payments were authorized. Nevertheless, the receiver failed to make these payments over a period of years. The city estimates that Eagle Square currently owes an additional \$759,000 in taxes, plus \$580,762 to the Providence Redevelopment Authority pursuant to the agreement.

Estate of Juana Contreras v. City — wrongful death action alleging gross negligence on the part of the city and two emergency medical technicians. Damages against the City could exceed \$750,000 if proven. Discovery is nearly complete. Trial likely will commence in the late spring or early summer.

Extell Providence, LLC v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for 1 commercial property. The potential exposure exceeds \$255,000.00 for tax year 2010. The matter is currently in settlement discussions.

Epoch SL III, Inc., Epoch SL I, Inc. v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for 3 commercial properties. The potential exposure exceeds \$260,000.00 for tax year 2010. The matter is currently in discovery. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

Epoch SL III, Inc., Epoch SL I, Inc. v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for 3 commercial properties. The potential exposure exceeds \$255,000.00 for tax year 2011. The matter is currently in discovery. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

Farrell v. Retirement Board - This is a state court action in which the former fire chief plaintiff is contesting both the Retirement Board's denial of an accidental disability retirement and the City's calculation of his pension allowance. The Court granted summary judgment for the City on the first issue, and, as for his pension allowance, the court found questions of fact and left it for trial. If plaintiff were to win all issues on appeal, he would win in the range of tens of thousands of dollars for pension allowance and the city could potentially have to pay more in health care costs as he would be entitled to health care for life without the cost cap which his current plan provides.

Franchina v. City – This is a sexual harassment and discrimination action filed against the city by a female firefighter. It is pending in Federal District Court. Damages against the City could exceed \$250,000 if proven. The matter is in discovery, and trial likely will commence in the summer of 2014.

J&W Associates v. Tax Assessor – This is an action challenging 11 property tax valuations. The potential exposure exceeds \$2,000,000.00 for tax years 2010-2012. The matter is currently in settlement discussions. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

Machado v. City – wrongful death suit resulting from alleged police chase. A verdict against the city could be in excess of \$500,000. One expert still needs to be deposed. Trial is expected to commence in late 2014.

Manzotti v. City – recently commenced civil suit in which the Fraternity Order of Police President, on behalf of all other officers, alleges violations of the Fair Labor Standards Act concerning the calculation of overtime payments. If proven, damages could exceed \$2,000,000.

McAllister Towing v. Tax Assessor – This action constitutes an appeal for relief from tax assessment for tangible property (primarily a tugboat). The potential exposure could exceed \$357,643.16.

Mendonca v. City — action for alleged police brutality on October 20, 2009. Although the extent of the personal injury to the claimant is not yet clear, available information suggests that if liability is found, damages against the City could be in excess of \$250,000. The matter was filed in the Rhode Island Superior Court, but the City removed it to the United States District Court for the District of Rhode Island. Trial likely will commence in late 2014.

Mentor v. Providence School Department – action for breach of contract, violation of civil rights and defamation arising from Mentor’s failure to receive a continuation of its contract to provide adult education services for 2002 academic year. The Court granted the City’s motion to dismiss the civil rights claim, determined that the breach of contract claim will proceed to trial, and has not yet decided whether to dismiss the defamation claim. The City is actively undertaking further efforts to obtain dismissal of the remaining claims. If the Plaintiff prevails on the contract claim alone, damages could exceed \$850,000.

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. If the City were to be found liable, damages could exceed \$11 million.

PRI I, LP v. Tax Assessor - These are two actions for appeals for relief from tax assessment for 1 commercial property. The potential exposure exceeds \$700,000.00 for tax year 2010 and \$600,000.00 for tax year 2011. The matter is scheduled for trial in the summer of 2014.

Providence Biltmore – the city and the Biltmore Hotel entered into a tax stabilization agreement, which provided a reduced amount of property taxation upon completion of certain renovations. The city has been underpaid over the 2012 and 2013 tax years when the Biltmore was erroneously given the benefit of the reduced taxation ahead of schedule. The city estimates that Biltmore currently owes an additional \$1.34 million in taxes.

Quattrucci v. City of Providence (Cost of Living Adjustment) – This case concerns retired police and fire employees 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.

Retirement Board v. Frank E. Corrente - The Superior Court confirmed the action by 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. The Rhode Island Supreme Court has decided to have both appeals briefed concurrently - with full briefing rather than for a show cause hearing.

SEI/Aaron’s v. Tax Assessor – This action constitutes an appeal for relief from tax assessment and “illegal tax” for tangible taxes. The potential exposure could exceed \$2,000,000. Typically, relief in this type of case comes in the form of future tax credits for the taxpayer.

School Housing Aid Litigation — action challenging the state's attempt to recoup an alleged overpayment in aid to the City which, if the City is found liable, could result in an approximately \$6,000,000 judgment against the City.

Terzian, Boghos v City of Providence and Laborers International of North America Local Union 1033 - Boghos Terzian was suspended for off-duty criminal conduct and later terminated for unauthorized absences from his position as a utility maintenance worker at Water Supply Board. He had been unable to report to work and perform his job duties due to his incarceration at the ACI from his criminal conduct. 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. Lost income totals \$204,000.00.

Yangambi v. City (School Board) — 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 the plaintiff on one claim of discrimination and assessed damages at \$190,710.35. Many post-trial issues remain, including the final damage award after calculating prejudgment interest, which would increase damages, and mitigation, which could decrease damages. With prejudgment interest and without mitigation, the damages could exceed \$400,000.

Young v. City of Providence — civil suit for damages relating to a rape allegedly committed by a City police officer. If the City were to be found liable, damages could exceed \$750,000. Discovery has begun but not yet concluded.