

**CITY OF MIAMI  
OFFICE OF THE CITY ATTORNEY  
MEMORANDUM**

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**TO:** Honorable Mayor and Members of the City Commission  
**FROM:** Victoria Méndez, City Attorney  
**DATE:** June 9, 2020  
**RE:** Office of the City Attorney - General File for FY 2019-2020  
Litigation Report for the Month of May 2020  
Matter ID No.: 19-2538

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In order to keep you informed of the status of pending litigation matters currently handled by the Office of the City Attorney, provided below is a summary of significant results and new cases in May 2020, and other important updates. My attorneys and I remain available to discuss any of these matters in further detail at your convenience.

**SIGNIFICANT RESULTS AND UPDATES:**

**ORAL ARGUMENT GRANTED IN POTTINGER APPEAL:** *David Peery, et al. v. City of Miami*, Eleventh Circuit Court of Appeals, Case No. 19-10957 (**KLM**). This case originated in 1988, when the original Plaintiffs filed an action under 42 U.S.C. § 1983, alleging widespread constitutional violations by the City of Miami, through its police department, in the arrest, harassment, and destruction of property of homeless individuals. After years of litigation as a class action, several appeals, and lengthy settlement negotiations, the parties reached a consent decree, which the Court approved in October 1998. In the twenty years since that time, the City of Miami has undergone tremendous change-socially, culturally, economically, and politically. Because during this time, the City of Miami's approach to its homeless population, as well as that of the County and other neighboring community organizations, has changed significantly, and because the City had substantially complied with its terms, the City in 2018 filed a motion to terminate the consent decree. The ACLU filed a cross-motion to enforce the consent decree, and to hold the City in contempt for violations of the decree. Following six days of evidentiary hearing, on February 15, 2019, the district court issued an order terminating the consent decree and denying the ACLU's cross-motion. The ACLU has appealed that order in this pending appellate litigation. The appeal is now fully briefed and the Eleventh Circuit has tentatively scheduling oral argument in the matter for the week of September 21, 2020 in Miami. The precise date of the argument will be set closer to the argument.

**ORDER OF DISMISSAL - NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Srdan Strmseck v. City of Miami et al.*, Miami-Dade County Circuit Court, Case No. 19-32158CA 01 (**NMR**). This case involves an automobile accident that took place on July 18, 2018 between the Plaintiff, Srdan Strmseck, and a City of Miami Police Officer. Plaintiff alleges that the Officer was negligently operating a vehicle owned by Defendant City of Miami. Plaintiff further alleges that he suffered permanent and/or continuing bodily injuries as a result of the accident. Plaintiff

named both the City and the Officer, individually. In response, the City filed a Motion to Dismiss the count against the Officer. On May 15, 2020, the Court granted the City's Motion and dismissed the officer from the case.

**ORDER OF DISMISSAL - NEGLIGENCE ACTION (TRIP AND FALL):** *Domingo Ferro v. City of Miami and Estate of Delfina Marin*, Miami-Dade County Circuit Court, Case No. 18-36279 CA 01 (**NMR**). This case involved a trip and fall incident that occurred on May 5, 2016 near S.W. 5th Terrace and S.W. 40th Court. Plaintiff alleges that he tripped and fell on an uneven sidewalk due to the City and Co-Defendant the Estate of Delfina Marin's negligence in failing to maintain the premises in a reasonably safe condition. Plaintiff further alleges that as a direct and proximate cause of this fall he sustained permanent bodily injuries. On January 14, 2020, Plaintiff's counsel was granted leave to withdraw from the case and the Plaintiff was given twenty days to obtain new counsel. Plaintiff failed to obtain new counsel or to take any action within the required timeframe. As such, Co-Defendant, the Estate of Delfina Marin, filed a Motion to Dismiss the case in which the City joined. On May 28, 2020, the Court granted the Motion to Dismiss, pending proof that the Estate of Delfina Marin properly served the Plaintiff with notice of the hearing.

**WRIT OF MANDAMUS:** *City of Miami, et al. v. Robert F. Piper, III, et al.*, Third District Court of Appeal, Case Nos. 3D20-464 and 3D20-466 (**KLM**). This case involves the challenge to the Miami City Clerk's decision not to transmit the recall petition to the Supervisor of Elections because of the determination that the petition was untimely. The recall committee and the chairperson of the committee filed a petition for writ of mandamus in circuit court to force the Clerk to transmit the petition to the Supervisor of Elections. The circuit court granted the writ of mandamus, and the City and the Clerk appealed due to the fact that the ruling would cause the clerk to have to turn over any document given to him. That would mean it could be a document that was a year late, a document with not enough signatures, document containing tonight's lottery numbers. Thus, it merited an appeal without any case law precedent to guide the City. Today, the Third DCA unfortunately affirmed the ruling of the circuit court. The ruling was very limited, finding that the Clerk has no power to review the facial sufficiency of the petition. The Clerk basically has to turn over the documents received, like a robot, paying no attention to whether there is anything facially wrong with the petition. It can basically have anything or say anything and it has to be turned over to the Elections supervisor. However, the appellate court specifically stated that it was not reaching the merits of whether the recall petition was timely or legally or facially sufficient which will be litigated further in the circuit court.

**VOLUNTARY DISMISSAL – NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Derrick Devine v. City of Miami*, Miami-Dade County Circuit Court, Case No. 19-31412 CA 23 (**JTM**). The Plaintiff alleged that on April 1, 2018, on northbound Florida's Turnpike in Miami, Officer Kevin Targia negligently operated a City vehicle, which caused a collision and injured the Plaintiff. The case was scheduled for a jury trial on September 8, 2020. The City filed a Motion for Summary Judgment arguing that (1) Officer Targia was acting outside the course and scope of his employment at the time of the alleged incident; and (2) the City cannot be held liable for his actions under Florida's Dangerous Instrumentality Doctrine. A hearing was scheduled for June 8. On June 3, the Plaintiff filed a Notice of Voluntary Dismissal.

**VOLUNTARY DISMISSAL - DECLARATORY AND INJUNCTIVE RELIEF:** *Yachts, LLC and Alan Kaufman v. City of Miami*, United States District Court for the Southern District of Florida, Case No. 20-CV-21819 (**HJH/EJE**). The Plaintiffs, a yacht company and its owner, filed suit against the City, challenging the City's authority to close its marinas during the COVID-19 pandemic. They also sought money damages for lost profits as a result of the marina closures. Among other claims, the Plaintiffs argued that the City's decision to close the marinas was preempted by state law and violated the Florida and United States Constitutions. The case was filed in state court on April 29<sup>th</sup>, but the City removed the case to federal court on May 1<sup>st</sup>. In their emergency motion for injunctive relief, the Plaintiffs demanded the immediate reopening of all marinas in the City. In a written response, the City disputed all the Plaintiffs claims and defended its authority to close its marinas during a pandemic. After a hearing before the Honorable Federico A. Moreno and the reopening of the marinas, the Plaintiffs agreed to voluntarily dismiss their case without receiving any relief or monetary compensation from the City.

**VOLUNTARY DISMISSAL - NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Daniel Fink v. City of Miami, John Kocur, and Progressive American Insurance Co.*, Miami-Dade County Circuit Court, Case No. 19-8243 CA 24 (**JTM**). The Plaintiff alleged that on December 16, 2017, at I-95 Flyover South and SR 826 in Miami, Officer John Kocur negligently operated a City vehicle within the course and scope of his employment, which caused a collision and injured the Plaintiff. The City took the position that Officer Kocur was acting outside the course and scope of his employment at the time of the alleged incident. On May 13, 2020, the Plaintiff filed a Notice of Voluntary Dismissal with Prejudice regarding the City.

**NEW CASES OPENED IN MAY 2020:**

**NEGLIGENCE ACTION (TRIP AND FALL):** *Mogilefsky, Claudine v. City of Miami and Miami-Dade County*, Miami Dade County Circuit Court, Case No. 20-8931 CA 01 (**JTM**). The Plaintiff has filed suit against the City and County alleging that on May 1, 2016, she tripped and fell on alleged broken pavement at 840 SW 13 Ave. in Miami and was injured.

**NEGLIGENCE ACTION (TRIP AND FALL):** *June Pasquier, et. al. v. City of Miami, et al.*, Miami-Dade County Circuit Court, Case No 20-8703 CA 01 (**NMR**). Plaintiff alleges that on September 21, 2019, she "tripped and fell because of an uneven sidewalk with multiple code violations and no warnings." The location of the alleged condition was on the north side of East Flagler Street adjacent to/in front of the Amazing Discount store. Plaintiff's trip allegedly caused her to fall causing personal injuries and enjoyment of life. Plaintiff alleges that the City failed to keep and maintain said premises in a reasonably safe condition and that it also breached its duty to warn her of the alleged dangerous condition. A loss of consortium claim has also been plead by Plaintiff's husband, Harry Pasquier.

**NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Angel Hidalgo v. City of Miami*, Miami Dade County Circuit Court, Case No. 20-8416 CA 02 (**JTM**). The Plaintiff alleges that on May 21, 2018, on NE 10th Avenue in Miami, Yovanni Jose Frias' negligent operation of the City's 2013 Freightliner Truck caused it to collide with the Plaintiff's vehicle and injure the Plaintiff.

**NEGLIGENCE ACTION (SCOOTER OPERATOR):** *Castillo, Anthony v. City of Miami & Bolt Mobility Corporation*, Miami Dade County Circuit Court, Case No. 20-10825 CA 01 (**JTM**). The Plaintiff alleges that on September 8, 2019, on the Miami River Greenway near 64 SE 4th Street in Miami, the Bolt scooter he was riding struck a dangerous condition in the poorly lit walkway, which caused him to crash, fall, and fracture his right arm. The Plaintiff alleges the City negligently maintained the subject location and Bolt negligently operated its business. The defense of this case has been tendered to Bolt and the City is awaiting a response.

**NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Grays, Alisha v. City of Miami*, Miami Dade County Circuit Court, Case No. 20-1782 CA 02 (**JTM**). The Plaintiff alleges that on June 22, 2018, a City employee negligently operated a “school bus,” which caused it to collide with the Plaintiff’s vehicle and injure the Plaintiff.

**NEGLIGENCE ACTION (FORKLIFT ACCIDENT):** *Freddy Castillo v. City of Miami*, Miami-Dade County Circuit Court, Case No. 20-008942 CA 01 (04) (**DAH**). Plaintiff alleges that on June 6, 2019, he was run over by a forklift negligently operated by an unnamed City of Miami employee at 3501 Rickenbacker Causeway, Miami, Florida. Plaintiff is claiming bodily injury that required surgery and that the City of Miami negligently failed to properly train its employee to operate a forklift.

**NEGLIGENCE ACTION (FORKLIFT ACCIDENT):** *Maria Garcia v. City of Miami*, Miami-Dade County Circuit Court, Case No. 20-008946 CA 01 (31) (**DAH**). Plaintiff alleges that on June 6, 2019, she was run over by a forklift negligently operated by an unnamed City of Miami employee at 3501 Rickenbacker Causeway, Miami, Florida. Plaintiff is claiming bodily injury and that the City of Miami negligently failed to properly train its employee to operate a forklift.

**NEGLIGENCE ACTION (TRIP AND FALL):** *Tonya Jones v. City of Miami*, Miami-Dade County Circuit Court, Case No. 20-7081 CA (13) (**DAH**). Plaintiff has filed suit against the City of Miami claiming that she tripped and fell on a cracked sidewalk maintained by the City of Miami located on the east side of N.W. 60th Street and 15th Avenue, Miami, Florida on December 12, 2018. Plaintiff alleges City negligently maintained the sidewalk, failed to properly inspect the sidewalk, failed to properly train its employees in the maintenance and inspection of the sidewalk, by creating a dangerous condition consisting of a cracked sidewalk, by maintaining the dangerous condition, by failing to rope or otherwise barrier-off the cracked sidewalk until the dangerous condition was remedied, and by failing to warn the Plaintiff of the dangerous condition. Plaintiff is claiming bodily injuries to her knee and ankle. Plaintiff is also claiming the loss of past and future wages and medical expenses for her care and treatment due to her injuries.

**NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *RUIZ, Delmis and DE LA CRUZ, Reyna v. City of Miami*, Miami-Dade County Circuit Court, Case No. 20-003417 CA 01 (23) (**JPO**). Plaintiffs claim that they suffered injuries as a result of a motor vehicle accident caused by a City of Miami Police Officer which occurred on February 21, 2019 while they were driving and stopped for traffic on I-95.

**NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Diego Martin Talamo v. State of Florida Department of Transportation and the City of Miami*, Miami-Dade County Circuit Court, Case No. 20-9138 CA (11) (**CAG**). Plaintiff alleges he suffered catastrophic injuries on September

15, 2017, when his motorcycle struck the median on N.E. 36th Street and 5th Avenue. Plaintiff claims the State of Florida DOT and the City were negligent in failing to maintain the median with proper lighting, roadway striping and reflectors.

**MISCELLANEOUS MATTERS:** During the month of May, 2020, 4 foreclosure matters; 5 bankruptcy matters; 3 quiet title actions; 2 workers compensation lien subrogation matters; and 22 pre-suit claim matters were opened by this Office. The details of those matters are not included in this report. If you wish to be briefed on any or all of these additional matters, a meeting will be coordinated at your convenience.

### **TRIALS, HEARINGS, AND/OR ORAL ARGUMENTS IN JUNE 2020:**

**POST-JUDGMENT HEARING – TAX EXEMPTION DISPUTE:** *346 NW 29TH STREET, LLC and others similarly situated v. City of Miami et al.*, Miami-Dade County Circuit Court, Case No. 13-037260 (**HJH/EJE**). This was an action for declaratory relief, mandamus, and damages regarding the City's obligations pursuant to Chapter 56, Article V, of the Code of the City of Miami. The plaintiffs, a group of businesses located in an Enterprise Zone, alleged that the City failed to review and approve their applications for tax exemptions. The parties eventually settled. The settlement allowed for up to 8 million dollars in refunds, if the businesses could provide necessary documentation, verified by an administrator. The administrator subsequently entered an order on entitlement to the full amount. As authorized by the settlement, the City filed an objection to the administrator's decision and sought review by a special master. The hearing before the special master occurred on June 2, 2020. At the conclusion of the hearing, the special master reserved ruling and directed the parties to submit post-hearing memoranda.

**APPELLATE ORAL ARGUMENT – BALLOT CHALLENGE:** *Bruce C. Matheson vs. City of Miami*, Third District Court of Appeal, Case No. 3D19-711 (**JAG**). In this case, Plaintiff filed a complaint for declaratory relief challenging the Charter Amendment authorizing the City Commission by a 4/5<sup>th</sup> vote to negotiate and enter into a lease with Miami Freedom Park. Plaintiff alleged the ballot language was materially misleading because it failed to inform voters among other things, that competitive bidding was waived for the project. In addition, Plaintiff alleged that the Charter Amendment violates Section 29-B of the Charter. The trial court granted summary judgment in favor of the City and Miami Freedom Park, and the Plaintiff appealed. Following briefing, the Court conducted oral argument, via Zoom, on June 2, 2020.

**APPELLATE ORAL ARGUMENT – LAND USE MATTER:** *Miami-Dade County v. City of Miami*, Miami-Dade County Circuit Court, Appellate Division, Case No. 19-167 AP (**KLM**). In this matter, Miami-Dade County appeals a mayoral veto of a resolution of the City Commission that granted the County's appeal of a decision of the City's Historic and Environmental Preservation Board ("the Board"), which had denied the County a certificate of appropriateness, which was necessary to allow the County to move forward with its proposed plan to redevelop the Coconut Grove Playhouse ("the Playhouse"). The certificate of appropriateness was required in this circumstance because the Playhouse has been designated historic by the City. Oral argument, via Zoom, is scheduled for June 16, 2020.