

**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:** November 26, 2019  
**RE:** Office of the City Attorney - General File for FY 2019-2020  
Litigation Report for the Month of October 2019  
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, new cases in October 2019, 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:**

**APPEAL:** *City of Miami v. Juanita Kho*, Third District Court of Appeal, Case No. 3D18-2369 (**EJE**). This is a trip-and-fall case in which the plaintiff alleged that she fell due to a defective sidewalk condition. At trial, she had the burden to prove that the City was on actual or constructive notice of the sidewalk's condition. The Plaintiff's only evidence of notice was a Google Maps photo of the sidewalk dated approximately three years before the accident. Before and during trial, the City objected to the use of the Google Maps photo because the plaintiff could not prove that the date on the photo was accurate. Despite the City's objections, the trial court allowed the Google Maps photo into evidence. The jury ultimately awarded the plaintiff \$90,000. On appeal, the Third District reversed the jury's verdict and instructed the trial court to enter judgment in the City's favor.

**CIVIL RIGHTS ACTION:** *Jamie Brown v. Ti'Andre Bellinger*, United States District Court, Southern District of Florida, Case No. 18-20481-Civ-Scola (**HJH**). This was a civil rights case claiming that Officer Ti'Andre Bellinger sexually assaulted the Plaintiff during a search incident to a marijuana arrest. Plaintiff sought damages and attorney fees under 42 USC 1983 for a violation of the Fourth Amendment of the United States Constitution and for Intentional Infliction of Emotional Distress Under state law. Our office filed a Motion for Summary Judgment on behalf of the Officer based on numerous significant discrepancies between allegations in the Amended Complaint and Plaintiff's testimony given during a protracted and contentious deposition. After reviewing the deposition, affidavit of Plaintiff in opposition, and numerous other exhibits submitted by the parties, on October 18, 2019, the Honorable Judge Robert Scola entered an Order Granting Summary Judgment in favor of Officer Bellinger on all claims.

**CODE ENFORCEMENT:** In October 2019 there were 153 code compliance, nuisance abatement, and ticketing matters before Boards and/or Special Masters.

### **NEW CASES OPENED IN OCTOBER 2019**

**APPEAL (CIVIL RIGHTS):** *Crespo, Ayinde v. City of Miami*, Third District Court of Appeal Case No. 3D19-1956 (**KLM**). Plaintiff filed suit in State Court against the City of Miami and City of Miami Police Officer Marcel Jackson alleging excessive force, negligence, negligent infliction of emotional distress, and intentional infliction of severe emotional distress as a result of his arrest on July 29, 2012 outside of the Gold Rush Gentlemen's Club, located at 29 NE 11th Street, Miami, Florida. The Plaintiff was arrested after he failed to pay cab fare after being driven to the arrest location. The Plaintiff was convicted of petit theft and placed on probation. The claim against Officer Jackson in his personal and official capacity. The City successfully had all claims against it resolved in its favor on motions to dismiss and for summary judgment. The court subsequently entered a final judgment in favor of the City. Plaintiff appeals that final judgment. The claims against Officer Jackson remain pending below.

**LAND USE MATTER (MAYORAL VETO):** *Babylon International Inc. v. City of Miami*, FLUEDRA Proceeding (**KLM/ALK**). In relation to the mayoral veto of the rezoning in the Babylon matter, the City was served with a claim to invoke a statutory dispute resolution process under the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA), Section 70.51, Florida Statutes. Under this process, a party that believes that their property rights have been adversely impacted by a land use decision by a municipality can enter into an alternative dispute resolution process to attempt resolution of the issue(s). This process suspends any deadlines for the party to file litigation related to the decision. As required under the act, the parties have selected a special magistrate-Craig Collier, who will facilitate the process. The City has also served all of the contiguous property owners with notice, required under the act, and filed a formal response to the claim.

**PUBLIC RECORDS MATTER:** *Luis Cedre v. City of Miami and Trident Engineering, LLC*, Miami-Dade County Circuit Court, Case No. 19-28316 CA 01 (**EJE**). The Plaintiff filed a complaint to enforce the Public Records Act, alleging the City and an engineering firm failed to produce traffic studies.

**REAL ESTATE MATTER:** *In Re: The Estate of Paul McClary (Deceased)*; Miami-Dade County Circuit Court (Probate Division), Case No. 13-0236 CP 02 (**CHG**). Petitioner, Luis Barreto, Esq., as Curator of the Estate of Paul McClary (Decedent), filed a Motion to Set Aside and/or Deem Void the Declaration of Restrictive Covenant running with the Land in relation to an interest in a real property located at 1915 NW 5th Place, Unit 392, in Miami, Florida. The Restrictive Covenant, executed on January 27, 2015 between the SEOPW CRA and Maurice McClary (Decedent's son), sets a limitation on the sale or lease of the property to "purchasers or lessors with a household income of no more than 80% of the area median income for Miami-Dade County." In addition to the aforementioned limitation, the Covenant also provides for the imposition of penalties for non-compliance. Petitioner seeks to set aside the Restrictive Covenant and proceed to sale of the property.

**WHISTLE BLOWER ACTION:** *Steven Miro v. City of Miami*, Miami-Dade County Circuit Court, Case No. 2019-30366 CP 01 (**KRJ/SKP**). Steven Miro filed a complaint in State court alleging a violation of Florida Statute 112.3187, Florida's Public Whistleblower Act. Miro alleges that he was terminated in retaliation for his cooperation with the State Attorney's Office investigation into alleged improper use of City funds. Miro exhausted his administrative remedy before the City's Civil Service Board, wherein the Board failed to sustain his allegations. The City has filed an answer and the matter is proceeding to the discovery phase.

**NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Lien C. Oramas, as Personal Representative of the Estate of Sixto Oramas Megias, v. MACA Corporation of Miami #1, d/b/a Maca Taberna Bar Billiard, d/b/a Maca Taverna Bar, Mubay Corporation, El Boduguero, Inc., Aladino Market, B % J Mini Market, Abelardo Torres Lorenzo, Adolis Barzaga Hermoza, City of Miami, and Miami-Dade County*, Miami-Dade County Circuit Court, Case No. 19-024757 CA 01 (06) (**CAG**). This is a wrongful death action arising out of a motor vehicle accident. Plaintiff alleged that on August 22, 2017, the decedent, Sixto Oramas Megias, visited a supermarket and bar located in a shopping center at 1400 S.W. 6th Street in Miami. Plaintiff alleged that while Megias was standing outside of the Taberna Bar, two cars collided and struck him causing his death. Plaintiff alleged the corner where the accident occurred had a history of motor vehicle accidents due to the design of the shopping center and adjacent street. Plaintiff alleges the City was negligent in failing to warn, protect, guard, and secure the safety of decedent from motor vehicle accidents.

**NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Jermaine Burse v. City of Miami*, Miami-Dade County Circuit Court, Case No. 19-028342 CA 01 (22) (**CHG**). Plaintiff Jermaine Burse alleges that on or about November 7, 2017, he was involved in a motor vehicle accident with Darien Pastor who was negligently operating a vehicle owned by Defendant City of Miami. As a direct and proximate cause of said accident, Plaintiff further alleges he suffered permanent and/or continuing bodily injuries.

**SUBROGATION ACTION (MOTOR VEHICLE ACCIDENT):** *State Farm a/s/o Justo Fernandez v. City of Miami*, Miami-Dade County Circuit Court, Case No. 19-27391 CA 01 (**RGD**). City of Miami employee Michelle Alfonso is alleged to have caused an accident at SR 821 (TP) at or near SW 266 Street.

**NEGLIGENCE ACTION (TRIP AND FALL):** *Aida Gomez v. City of Miami, City of Coral Gables, and Miami-Dade County*, Miami-Dade County Circuit Court, Case No. 19-007457 CA 01 (**JTM**). The Plaintiff filed suit against the City, County, and Coral Gables alleging that on August 6, 2017, at SW 33rd Ave. near SW 22nd St. (Coral Way), she tripped, fell, and was injured due to a broken and uneven sidewalk.

**NEGLIGENCE ACTION (TRIP AND FALL):** *Josefa Diaz, Parent/Natural Guardian for Bryan Orozo Diaz v. FDOT and City of Miami*, Miami-Dade County Circuit Court, Case No. 19-24530 CA 01 (**CHG**). Plaintiff Josefa Diaz, parent and natural guardian to Bryan Orozo Diaz, alleges that on June 27, 2016, his son Bryan tripped and fell on a construction barricade located on Flagler Street. Plaintiff further alleges that as a direct and proximate cause of this fall Bryan

sustained permanent bodily injuries. Plaintiff lastly alleges City was negligent in failing to warn and maintain said premises in a reasonably safe condition.

**NEGLIGENCE ACTION (DOWNED STOP SIGN):** *Tanika Raines v. City of Miami, Miami-Dade County & Florida Department of Transportation*, Miami-Dade County Circuit Court, Case No. 19-29385 CA 01 (**JTM**). The Plaintiff filed suit against the City, County, and FDOT alleging that on December 27, 2015, at SW 137th Ave. and SW 264th St. in Miami-Dade County, she was involved in a motor vehicle accident and injured due to a downed stop sign.

**NEGLIGENCE ACTION (TRIP AND FALL):** *Alison Ainsley v. City of Miami and Miami-Dade County*, Miami-Dade County Circuit Court, Case No. 19-28234 CA 01 (**JTM**). The Plaintiff filed suit against the City and County alleging that on August 2, 2018, near 175 NW 1st Ave. (Probate Court Building), she tripped, fell, and was injured due to a steel pole sticking out of a sidewalk.

**MISCELLANEOUS MATTERS:** During the month of October 2019, 2 foreclosure matters; 2 bankruptcy matters; and 3 quiet title actions were opened by this Office. The details of those matters are not included in this report. In addition, this report does not include new matters involving pre-litigation claims or investigations. 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 NOVEMBER 2019**

**HEARING - MOTION FOR SUMMARY JUDGMENT:** *1000 Brickell, Ltd. f/k/a 1000 Brickell, Inc. and KAI Properties, Ltd.*, Miami-Dade County Circuit Court, Case No. 14-1175 CA 23 (**CAG/EJE**). Plaintiffs have sued the City of Miami for quiet title and declaratory and injunctive relief alleging that the City violated a restrictive covenant requiring a parcel of property to be used for public park purposes. Plaintiffs have moved for summary judgment in their favor. The Court held a hearing on the motion for summary judgment on November 5<sup>th</sup>, and the parties are awaiting a decision.

**ARBITRATION – GRIEVANCE:** *Nicole Sweet adv. City of Miami*, Grievance 1-2019 (**SKP**). AFSCME Local 1907 filed a grievance on behalf of former Police Emergency Dispatcher Nicole Sweet, challenging Ms. Sweet's termination under Article 4 of the CBA. The City resigned Ms. Sweet after she failed to engage in the City's fitness for duty process to determine what, if any, accommodations the City can offer for Ms. Sweet to return to work. Ms. Sweet had missed multiple days of work (after exhaustion of FMLA leave) and had not been at work from November 4, 2018 through January 16, 2019. The City filed a motion to dismiss with the arbitrator for lack of arbitrability, but the motion was denied by the arbitrator. The arbitration was held on November 7<sup>th</sup>, and the parties are awaiting a decision.

**APPELLATE ORAL ARGUMENT – WHISTLEBLOWER MATTER:** *Igwe v. City of Miami*, Third District Court of Appeal, Case No. 3D18-2147 (**KLM**). Plaintiff, the former Independent Auditor General of the City, claimed that he suffered "adverse employment action", i.e., that his four (4) year contract was not renewed, as a result of his "protected behavior" under s. 112.3187(7), F.S., to wit: issuing audit reports critical of City financial decisions, his cooperation

with an SEC in an investigation of the City, and in other respects, resulting in lost wages, employee benefits and other damages. Following a jury trial on the matter, the jury entered a verdict in April 2018 in favor of Igwe, which awarded damages in the amount of \$931,587.70. The City filed motions to set aside the verdict and for a new trial. On October 14, 2018, the Court granted the City's motion to set aside the verdict, which was based on our argument that Igwe was precluded from bringing his suit because he failed to first exhaust his administrative remedies. The Court entered a final judgment in favor of the City. Igwe appealed from that final judgment. Following full briefing, the Court held oral argument for November 12<sup>th</sup>, and the parties are awaiting a decision.

**HEARING - PUBLIC RECORDS CASE:** *Robert Owusu v. City of Miami*, Miami-Dade County Circuit Court, Case No. 19-19658 (EJE/GKW). The Plaintiff filed a one-count complaint, alleging a violation of the Public Records Act. The City filed an answer and affirmative defenses, explaining that the Plaintiff failed to remit payment for the records as required by Florida law. After the initial hearing before the trial judge, the Plaintiff paid for public records, which were produced to him. He then sought a deposition regarding his public records request. The City moved for a protective order. The court held a hearing on the motion on November 14<sup>th</sup>. At the conclusion of the hearing, the Court granted the City's motion.

**ARBITRATION – GRIEVANCE:** *Sgt. Roberto Destephan adv. City of Miami*, Grievance 19-02 (SKP). The FOP filed a grievance on behalf of former Police Sergeant Roberto Destephan, challenging Destephan's termination under Article 4 of the CBA. The arbitration was held on November 14<sup>th</sup>, and the parties are awaiting a decision.

**HEARING - MOTION FOR SUMMARY JUDGMENT:** *1000 Brickell, Ltd. f/k/a 1000 Brickell, Inc. and KAI Properties, Ltd.*, Miami-Dade County Circuit Court, Case No. 14-1175 CA 23 (CAG/EJE). The Plaintiffs have sued the City of Miami for quiet title, declaratory and injunctive relief alleging that the City violated a restrictive covenant requiring a parcel of property to be used for public park purposes. The City moved for final judgment on the pleadings, arguing that all the Plaintiffs' causes of action are barred by the statute of limitations in section 95.36(1), Florida Statutes. The hearing was held on November 21<sup>st</sup>. At the conclusion of the hearing, the Court denied the motion without prejudice.

**HEARING - MOTION TO DISMISS:** *Shawn M. Fernandez v. City of Miami*, Miami-Dade County Circuit Court, Case No. 18-25251 (CAG/KRJ/EJE). The Plaintiff filed a four-count complaint, alleging the City failed to notify its insurance carrier of the Plaintiff's injuries in accordance with the Workers' Compensation Act and breached the Collective Bargaining Agreement by failing to pay certain Workers Compensation benefits. The City moved to dismiss the complaint for lack of subject matter jurisdiction. The hearing on the City's motion to dismiss was held on November 26<sup>th</sup>. At the conclusion of the hearing, the Court denied the City's motion. The City is considering its appellate options.