

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Victoria Méndez, City Attorney
DATE: June 6, 2016
RE: Office of the City Attorney - General File for FY 2015-2016
Monthly Litigation Report
Matter ID No.: 15-2290

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 obtained in May 2016, new cases filed against or by the City of Miami during the month of May 2016, and other significant updates. My attorneys and I remain available to update you or discuss any of these matters in further detail at your convenience.

SIGNIFICANT RESULTS

1. **CODE ENFORCEMENT MATTERS:** In the month of May 2016, this Office handled 89 Code Enforcement and Nuisance Abatement matters before the Code Enforcement Board and special masters.

2. **REGULATORY CHALLENGE:** *In the Matter of Florida Power & Light Co. Turkey Point Nuclear Generating, Units 3 & 4*, U.S. Nuclear Regulatory Commission, 50-250-LA and 50-251-LA (KLM): The City has filed a petition to intervene in license amendment proceedings before the United States Nuclear Regulatory Commission ("NRC") involving FPL's operations of the existing reactors at Turkey Point. The cooling canal system which services the existing reactors, and cools the water used in the nuclear fusion process, is presently permitted under FPL's existing license from the NRC to run at temperatures of up to 100°F. In May 2013, FPL received permission from the NRC to run the existing reactors in a manner that would allow the reactors to generate more power ("the uprate"). Following the uprate, the cooling canals became increasingly hot and saline, and have suffered a number of deleterious effects. But because of the increased temperature of the canals resulting from the uprate, FPL runs the risk of having to implement cold shutdowns of the reactors if the cooling canal temperatures exceed the 100°F currently allowed by the NRC. FPL has asked the NRC to allow them to run the canals at higher temperatures. In March 2016, Miami-Dade County published a study of the cooling canal system that concluded that the canals have been leaching saline and radioactive effluent into area surface

and groundwater for years, and that the recent increase in the temperature of the canals has exacerbated and accelerated this problem. Within the license amendment proceedings, the NRC has invited interested parties to file petitions explaining why this new study should be considered in its determination of whether to grant the license amendment. In response to that order, on April 6, 2016, the City filed a petition asserting a number of reasons why the study was pertinent to the NRC's analysis of FPL's license amendment application. The NRC subsequently denied the City's petition, and has since issued a ruling on the license amendment application, which concluded that although the NRC improperly failed to consider recent evidence with respect to the cooling canal system's many environmental issues in giving FPL permission to run the canals at a higher temperature, the recent activities to remediate the canals should address the prior issues such that no serious environmental concerns were presented by FPL's license amendment application.

3. **INTERGOVERNMENTAL APPEAL:** *City of Miami v. Village of Key Biscayne, et al.*, Third District Court of Appeal, Case No. 3D16-866 (KLM): The Village sued Miami-Dade County challenging a permit granted to the National Marine Manufacturer's Association for temporary boat slips for the International Boat Show. The case was abated for the parties to exhaust the Intergovernmental Dispute Resolution process outlined under Chapter 164, Florida Statutes. The City sought to intervene in the case. The trial court deferred ruling on the City's motion until after the Village and the County exhausted the process under Chapter 164, effectively denying the City's request to participate in the process. The City has filed a petition for writ of mandamus challenging the trial court's ruling. The petition was filed on or about April 18, 2016. On May 11, 2016, the Third District Court of Appeal denied the City's petition, holding that Chapter 164 left no role for judicial involvement in the initiation of the intergovernmental dispute resolution process. The City has filed a motion for rehearing & rehearing en banc, asserting that the judiciary always has a role in determining whether discretionary authority vested in an entity by a statutory scheme has been exercised in an arbitrary and capricious manner so as to deny another party due process.

4. **NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Leydis Iturralde v. City of Miami*, Miami-Dade County Circuit Court, Case No. 14-11948 CA 09 (RSO/CHG): The Plaintiff alleged that she was involved in a motor vehicle accident with a City-owned vehicle operated by a City employee at or near NW 32nd Street and NW 21st Avenue. Police Officer Lilian Bethencourt failed to stop at the stop sign on NW 21st Avenue and struck the Plaintiff's vehicle. The Plaintiff was transported to Jackson Memorial Hospital where she was diagnosed with a comminuted intra articular fracture of the distal radius and an ulnar styloid wrist fracture and admitted for three days. She underwent Open Reduction Internal Fixation (ORIF) surgery, where a metal plate and nine screws were attached to her wrist bones to hold them together, and she was fitted for a cast. The Plaintiff wore the cast for six weeks, during which time she could not drive and needed assistance with bathing, dressing, and other activities of daily living. After

the cast was removed, the Plaintiff treated with Dr. Roberta Moya, a Board Certified orthopedic surgeon. She underwent 12 weeks of physical therapy. The Plaintiff was left with a 3% permanent impairment and incurred \$36,969.00 in medical expenses. Additionally, Dr. Moya opined that the Plaintiff would need future medical care for pain and exacerbation over her lifetime (56 years) at a cost of approximately \$100,000.00. The case was tried before a jury on April 18th and 19th, 2016 before Judge Jerold Bagley. The City stipulated to liability, but contested causation, permanency, and damages. The Plaintiff was seven months pregnant at the time of trial. The Plaintiff requested \$276,969.00 in total damages from the jury. The jury awarded \$150,000.00 in total damages to the Plaintiff.

5. **WORKERS' COMPENSATION CLAIM:** *Jose Manuel Gonzalez v. City of Miami*, 16-007708ERA (WAJ): The Claimant is a police lieutenant for the City who claims he had an occupational disease condition covered by the presumption in F.S. 112.18(1). The City has investigated the claim and it appears that no benefits have been paid. A petition for benefits was filed seeking medical benefits, attorney's fees, and costs on or about March 31, 2016. After the City Attorney's office pointed out the facts of the claim to opposing counsel, the claimant agreed to file a notice of voluntary dismissal on May 17, 2016 with the City preserving its denial of the compensability of the claim.

6. **MOTOR VEHICLE ACCIDENT CASE:** *Phillip R. Sullivan v. City of Miami*, Miami-Dade County Circuit Court, Case No.: 13-038130-CA-01 (DAH & CHG): The Plaintiff alleges that on January 26, 2013, he was involved in a motor vehicle accident with a City of Miami police vehicle operated by Ofc. Elvin R. Guzman, at or near NW 27th Avenue and Flagler Street in Miami. The Plaintiff further alleges he was injured due to the negligence of the City driver. This case was tried before a jury on May 1 and 2, 2016. After the court reserved ruling on the City's motion for directed verdict based on sovereign immunity, the Plaintiff voluntarily dismissed his case against the City.

7. **PUBLIC RECORDS ACT APPEAL:** *Stephen Herbits v. City of Miami*, Third District Court of Appeal, Case No. 3D14-2749 (FLA): On July 2, 2013, Mr. Herbits filed a lawsuit alleging that the City violated the Public Records Act. On December 5, 2013, the trial court concluded that the City did not violate the Public Records Act and denied Mr. Herbits's motion for attorney's fees (the "December Order"). Mr. Herbits subsequently appealed that decision which he characterized as a "final order" (ultimately per curiam affirmed by the Third District Court of Appeal on May 13, 2015). On January 14, 2014, while the appeal from the December Order was pending, Mr. Herbits made a new public records request. Without filing a new lawsuit or requesting the Third District to relinquish jurisdiction back to the trial court, Mr. Herbits sought mandamus relief alleging that the City failed to provide records in response to his January 14, 2014 public records request. The trial court granted the motion for mandamus, as well as Mr. Herbits's motion for attorney's fees stemming from the motion for mandamus. Prior to a hearing

on attorney's fees, the City filed a motion to vacate both orders on the grounds that the trial court lacked subject matter jurisdiction to enter them during the pendency of the appeal of the December Order. The trial court agreed and vacated the orders which Mr. Herbitts appealed. On May 4, 2016, the Third District affirmed the trial court's order.

8. **WRONGFUL DEATH CLAIM:** *Hon. (retired) Judge Norman Gerstein, as Personal Representative of the Estate of Jesus Meneses vs. Florida Power & Light Company and the City of Miami*, Miami-Dade County Circuit Court, Case No. 14-29136 CA 24 (CAG): Plaintiff brought this wrongful death action on behalf of 17-year old Jesus Meneses who was electrocuted on October 27, 2014, when he allegedly gained access to an FPL substation to retrieve a basketball that had gone over the fence while playing ball at Kinloch Park. Plaintiff alleged the City was negligent in failing to secure the park's perimeter and in failing to warn members of the public about the dangers of the substation. Plaintiff further alleged the City failed to notify FPL of hazardous conditions which posed a threat to park patrons. On February 25, 2016, Circuit Court Judge Eric Hendon granted the City's motion to dismiss the amended complaint with prejudice, and denied FPL's motion to dismiss in part. On May 8, 2016, the Court entered an Order denying Plaintiff's motion for rehearing on the City's motion to dismiss.

9. **WORKERS' COMPENSATION CLAIM:** *Mario Rodriguez v. City of Miami*, OJCC No. 13-012176KAS & 13-012193KAS (WAJ): The claimant is a police officer with the City of Miami. He was hired on April 1, 1987 and appears to be still employed as a City of Miami police officer. The claimant alleged two on-the job occupational conditions covered by the presumption found in F.S. 112.18(1), dated June 10, 2006 and September 26, 2012. The claimant filed petition for benefits on May 29, 2013, one for each date of accident, and the City of Miami ultimately issued payment for benefits claimed in the petition for benefits beyond the 30-day grace period to make such a payment and avoid exposure for E/SA paid attorney's fees and costs. After extensive negotiations, the parties agreed to resolve all outstanding claims for attorney's fees and costs for \$2,800.00.

10. **NEGLIGENCE ACTION:** *Laurinda Lee Francis v. City of Miami, Miami-Dade International Airport, Miami-Dade County, and the State of Florida*, United States District Court, Southern District of Florida, Case No. 16-cv-21653-KMW (DAH): Pro Se Plaintiff filed suit in Federal Court, under the Federal Tort Claims Act (FTCA), alleging that on October 3, 2013, she fell and fractured her leg after stepping off a curb at a parking garage at Miami International Airport. On May 11, 2016, the Federal Court dismissed the case three (3) days after the case had been filed, finding that the FTCA only applied to claims against the United States and not claims against the state and local government entities named in the complaint. The court also ordered that the Plaintiff has until June 13, 2013 to file an Amended Complaint and ordered the Clerk of Court to close the case for administrative purposes.

11. **CIVIL RIGHTS ACTION:** *Aaron McKinney v. City of Miami and Officer David Carpenter*, United States District Court, Southern District of Florida, Case No. 15-CIV-KING

(DAH): Plaintiff alleges he was subjected to a false arrest, First Amendment retaliation for the taking of a cellular phone, malicious prosecution, and violations of his civil rights on June 27, 2012 at 1791 NW 51st Street, Miami, Florida. Plaintiff alleged civil rights violations under 42 U.S.C. section 1983 when he was arrested for disobeying an officer that told him to leave a police perimeter near his home wherein armed robbery subjects "bailed out" after crashing their get-away car and fled the scene. Mediation resulted in successful settlement of the matter.

COLLECTIONS IN MAY 2016

1. \$159,136.13 IN OUTSTANDING LIENS, FEES, & ASSESSMENTS COLLECTED:

The City Attorney’s Office was tasked with the collection of unsafe structure liens and lot clearing liens in 2012. Since 2012, this Office’s collection efforts have expanded to include the collection of all liens, fees, and assessments imposed on all properties, including properties that are the subjects of foreclosure actions, tax deed sales, bankruptcy proceedings, or various other actions or proceedings before judicial or quasi-judicial bodies. The City Attorney’s Office sent letters to the owners of record and their registered agents, if applicable, and threatened to pursue any and all legal remedies available to the City of Miami if the liens, fees, or assessments were not paid. During the month of May 2016, the owners of the following properties paid outstanding liens, fees, or assessments in the amounts indicated which totaled **\$159,136.13**:

- 24 NW 29 Street.....\$1,180.25
Violation(s): BID Assessment Fee
- NW 22 Street between 1 Place and 1 Court.....\$569.25
Violation(s): BID Assessment Fee
- 2111 NW 1 Place.....\$8,205.14
Violation(s): BID Assessment Fee
- 155 NW 21 Street.....\$1,447.74
Violation(s): BID Assessment Fee
- 62 NE 27 Street.....\$11,248.50
Violation(s): BID Assessment Fee
- 3660-62 SW 24 Terrace.....\$2,644.97
Violation(s): Code Enforcement and Unsafe Structure Liens
- 3229 Day Avenue.....\$3,302.98
Violation(s): Code Enforcement Lien
- 135 SW 6 Avenue.....\$3,884.78
Violation(s): Code Enforcement Lien
- 298 NW 55 Court.....\$5,858.45
Violation(s): Unsafe Structure Lien
- 160 NE 50 Terrace.....\$1,309.17
Violation(s): Code Enforcement Lien
- 95 NW 52 Street.....\$18,490.10
Violation(s): Code Enforcement Lien

- 3208 NW 9 Avenue\$13,231.72
Violation(s): Unsafe Structure Lien
- 2838 NW 1 Avenue\$420.62
Violation(s): BID Assessment Fee
- 73 NW 29 Street\$761.76
Violation(s): BID Assessment Fee
- 81 NW 29 Street\$761.76
Violation(s): BID Assessment Fee
- 95 NW 29 Street\$7,973.31
Violation(s): BID Assessment Fee
- 10 NE 29 Street\$396.75
Violation(s): BID Assessment Fee
- 285 NW 27 Terrace\$632.50
Violation(s): BID Assessment Fee
- 275 NW 27 Terrace\$431.25
Violation(s): BID Assessment Fee
- 269 NW 27 Terrace\$632.50
Violation(s): BID Assessment Fee
- 2801 NW 3 Terrace\$2,962.52
Violation(s): BID Assessment Fee
- 286 NW 29 Street\$2,981.26
Violation(s): BID Assessment Fee
- 268 NW 29 Street\$1,666.12
Violation(s): BID Assessment Fee
- 252 NW 29 Street\$9,040.27
Violation(s): BID Assessment Fee
- 413 NW 25 Street\$534.75
Violation(s): BID Assessment Fee
- 2000 N Miami Avenue\$3,508.08
Violation(s): BID Assessment Fee
- 2021 NW Miami Court\$817.65
Violation(s): BID Assessment Fee
- 2010 N Miami Avenue\$1,527.55
Violation(s): BID Assessment Fee
- 2025 NW Miami Court\$903.90
Violation(s): BID Assessment Fee
- 345 NW 24 Street\$768.55
Violation(s): BID Assessment Fee
- 137 NW 23 Street\$575.00
Violation(s): BID Assessment Fee
- 337 NW 25 Street\$936.59
Violation(s): BID Assessment Fee
- 143 NW 23 Street\$1,178.75
Violation(s): BID Assessment Fee

- 510 NW 46 Street.....\$500.00
Violation(s): Code Enforcement and Unsafe Structure Liens
- 34 NW 29 Street.....\$793.50
Violation(s): BID Assessment Fee
- 6830 NW 2 Avenue.....\$1,211.80
Violation(s): Solid Waste – Garbage Fee
- 300 NW 12 Avenue.....\$3,745.15
Violation(s): Mortgage and various liens
- 131 NW 29 Street.....\$1,170.36
Violation(s): BID Assessment Fee
- 137 NW 29 Street.....\$1,086.52
Violation(s): BID Assessment Fee
- 119 NW 29 Street.....\$1,232.80
Violation(s): BID Assessment Fee
- 7621 NW 7 Avenue.....\$1,000.00
Violation(s): Code Enforcement Lien
- 7520 NE 3 Court.....\$1,050.00
Violation(s): Code Enforcement Lien
- 3053 New York Avenue.....\$1,000.00
Violation(s): Code Enforcement Lien
- 1612 NW 38 Street.....\$500.00
Violation(s): Code Enforcement Lien
- 1501 NW 37 Avenue.....\$2,500.00
Violation(s): Code Enforcement Lien
- 4100 NW 1 Avenue.....\$2,000.00
Violation(s): Code Enforcement Lien
- 785 NW 70 Street.....\$3,750.00
Violation(s): Code Enforcement Lien
- 29 NE 24 Street.....\$805.00
Violation(s): BID Assessment Fee
- 126 NW 33 Street.....\$565.42
Violation(s): Unsafe Structure Lien
- 1346 NW 44 Street.....\$12,568.79
Violation(s): Unsafe Structure Lien
- 1520 NW 7 Avenue.....\$4.22
Violation(s): Unsafe Structure Lien
- 123 NW 23 Street.....\$689.43
Violation(s): BID Assessment Fee
- 1421 NW 1 Court.....\$6,296.58
Violation(s): Lot Clearing, Code Enforcement and Solid Waste Fees Liens
- 7500 NE 4 Court.....\$500.00
Violation(s): Unsafe Structure Lien
- 3033 NW 8 Avenue.....\$3,750.00
Violation(s): Unsafe Structure Lien

- 801 NW 63 Street\$1,631.99
Violation(s): Lot Clearing Lien

Total Collected to-date for Fiscal Year 2015-2016 **\$893,166.19**

October 2015	\$56,838.20
November 2015	\$106,343.92
December 2015	\$106,081.73
January 2016.....	\$110,984.22
February 2016.....	\$129,142.62
March 2016.....	\$146,929.80
April 2016.....	\$77,709.57
May 2016.....	\$159,136.13

Total Collected by the City Attorney’s Office Since 2012 **\$2,511,662.73**

NEW CASES OPENED IN MAY¹

1. **NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Rosa Cardona, individually and as personal representative of the estate of Elizabeth Cardona, deceased, vs. City of Miami, a Florida governmental entity; Miami-Dade County, a Florida governmental entity, David Joseph Rodriguez, and Vilma Irene Lopez, Miami-Dade County Circuit Court, Case No. 16-8347 CA (05) (CAG):* Plaintiff alleged her 22-year-old daughter died as a result of injuries suffered in a motor vehicle accident near her home on N.W. 13th Street after her car was struck by a speeding vehicle operated by Defendant Joseph Rodriguez and owned by Defendant Vilma Irene Lopez. Plaintiff claims the City was negligent in failing to safeguard against frequent speeding vehicles on the residential street after prior notice of the danger.

2. **NEGLIGENCE ACTION (TRIP AND FALL):** *Joseph Nazzaro v. City of Miami, Miami-Dade County Circuit Court, Case No. 16-10410 CA 32 (CAG):* Pro Se Plaintiff alleges that he tripped and fell on uneven and mis-leveled portion of the sidewalk located at or near the intersection of S.E. 4th Street and S.E. 1st Avenue, Miami, Florida on May 10, 2012. He is suing the City for negligence due to failure to maintain the sidewalk and allowing for a dangerous condition to exist.

3. **NEGLIGENCE ACTION (TRIP AND FALL):** *Maria Menendez v. City of Miami, Miami-Dade County Circuit Court, Case No. 16-011292 (CAG):* Plaintiff Maria Menendez sued the City of Miami for alleged damages she sustained brought about by a trip-and-fall accident which purportedly occurred on March 13, 2015. Plaintiff claims that the City of Miami

¹ During the month of May 2016, nine (9) foreclosure cases and three (3) bankruptcy cases were received by this Office. A summary of those matters is 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.

negligently maintained the sidewalk located on the north side of 2451 SW 25th Street which was uneven, creating an inherently dangerous condition, whereby she tripped and fell sustaining injuries.

4. **LABOR/DISCRIMINATION CASE:** *Keith Carswell v. City of Miami, et al.*, United States District Court, Southern District of Florida, Case No. 16-21493-Civ-King/Torres (KRJ): The Plaintiff, a former Director of the Solid Waste Department, filed a lawsuit in Federal Court alleging that he was discriminated against on the basis of race and national origin in violation of Title VII of the Civil Rights Act.

5. **LABOR/DISCRIMINATION CASE:** *Judith Marsie-Hazen v. City of Miami*, United States District Court, Southern District of Florida, Case No. 16-CV-21536- King/Torres (KRJ): The Plaintiff, a former employee of the City, has filed a lawsuit in Federal Court alleging that she was discriminated against on the basis of race and national origin in violation of Title VII of the Civil Rights Act.

6. **CIVIL THEFT:** *City of Miami v. Michael Bannister, et al.*, Miami-Dade County Circuit Court, Case No. 16-7761 CA 25 (ANF): This is a claim for civil theft against Michael Bannister and Michael Bannister Adult Family Care Home (AFCH). Employee Edward Meeks resided at the AFCH from 2002 through 2010. The City paid for Meeks' care at the AFCH because he was on workers' compensation. While on workers' compensation, Meeks was made a ward of the court and appointed a guardian in 2002. The Defendant charged the City \$1,250.00 per month for Meeks' care at the AFCH and charged the guardianship program \$1,350.00 per month for Meeks' care while at the AFCH. The Defendant double-billed the guardianship program as well as the City for Meeks' care and provided no additional services. The City has since filed an action against the Defendants for civil theft. The actual damages sustained by the City are \$115,000.00. The complaint was filed on or about March 28, 2016.

7. **NEGLIGENCE ACTION (PREMISES LIABILITY):** *Olivia Battle v. World Healing Center Church, Inc., City of Miami, and SMG Worldwide Entertainment and Convention Venue Management*, Miami-Dade County Circuit Court, Case No.: 16-003011 CA 05 (RSO): The Plaintiff alleges that on February 24, 2012, she was attending an event at the James L. Knight Center when she tripped and fell on unlighted steps in a dark stairwell located at or near the auditorium, fell backwards down the stairs, sustaining injury. Plaintiff further alleges that the City negligently failed to maintain the stairway, creating a dangerous condition and the City failed to warn the Plaintiff of the dangerous condition. The complaint also names World Healing Center Church, Inc. and SMG Worldwide Entertainment and Convention Venue Management as defendants. Although SMG Worldwide currently handles the management and operation of the Miami Convention Center/James L. Knight International Center, at the time of the accident it was handled by Global Spectrum LP, pursuant to a management agreement with

the City of Miami. World Healing Center Church, Inc. rented the premises at the time of the accident.

8. **NEGLIGENCE ACTION (PREMISES LIABILITY):** *Irene Valentin v. Gator 3505-3535 NW 17th Ave., LLC, 3H Communications, Inc., Dolphin Plaza, L.C., 1744 NW 36th Street, Ltd., 1744 NW 36 ST, L.C., Real Property Care, Inc., Murray Property, LLC, RJR Property Enterprises LLC, City of Miami, Miami-Dade County, and Florida Department of Transportation*, Miami-Dade County Circuit Court, Case No. 16-5109 CA 31 (RSO): The Plaintiff alleges that on or about April 12, 2012, she was approaching the entrance to the storefront for Metro PCS/3H Communications located at 3525 NW 17th Avenue in Miami when she tripped and fell on an uneven sidewalk, sustaining injury. Plaintiff further alleges that the City negligently failed to maintain the sidewalk, creating a dangerous condition and the City failed to warn the Plaintiff of the dangerous condition. The complaint names Gator 3505-3535 NW 17th Ave., LLC, 3H Communications, Inc., Dolphin Plaza, L.C., 1744 NW 36th Street, Ltd., 1744 NW 36 ST, L.C., Real Property Care, Inc., Murray Property, LLC, RJR Property Enterprises LLC, City of Miami, Miami-Dade County, and Florida Department of Transportation as defendants.

9. **PETITION FOR WRIT OF PROHIBITION REGARDING BOAT SHOW:** *City of Miami v. Village of Key Biscayne*, Third District Court of Appeal, Case No. 3D16-1019 (JAG): The Village of Key Biscayne sued the City of Miami challenging the revocable license agreement between the City and the National Marine Manufacturer's Association (NMMA) and sought to enjoin the Boat Show. The City moved to dismiss based upon numerous grounds including the failure to join the NMMA as an indispensable party. The trial court denied the motion to dismiss. The City filed a petition for writ of prohibition with the Third District Court of Appeal seeking to prohibit the trial court from continuing with the proceedings without the joinder of the NMMA.

10. **PETITION FOR DEMOLITION PERMIT:** *Babylon International, Inc. v. City of Miami, et al.*, Miami-Dade County Circuit Court, Case No. 16-010409 CA 01 (ALQ): Plaintiff Babylon International filed a Complaint seeking (1) a writ of mandamus to require the City to immediately issue a demolition permit for the property located at 240 SE 14 Street and (2) to declare Sections 23-4(c)(1)(a) and 23-4(c)(1)(b) of the Historic Preservation Ordinance unconstitutional. The building at 240 SE 14 Street was declared unsafe by the Unsafe Structures Board, and Babylon was required to repair or demolish the building within 300 days and to obtain necessary permits within 120 days. After the deadline to obtain permits passed, Babylon applied for a demolition permit. Approximately three weeks later, at the April 5, 2016 Historic and Environmental Preservation Board meeting, member Lynn Lewis directed staff to prepare a preliminary evaluation of the merits of historic designation of the property because it is

purportedly the first Arquitectonica building in Miami. On April 6, 2016, the City mailed notices of the HEPB's intent to consider the preliminary designation.

11. **NEGLIGENCE ACTION (TRIP AND FALL):** *Magaly Nunez v. City of Miami*, Miami-Dade County Circuit Court, Case No. 16-11905 CA 01 (20) (DAH): Plaintiff filed suit against the City of Miami alleging that on January 29, 2015, she tripped and fell while walking on an uneven, raised flag of the sidewalk between the fenced area around Grapeland Water Park and the parking lot and injured herself.

CASES SET FOR TRIAL, HEARING, OR MEDIATION IN JUNE

1. **CIVIL RIGHTS ACTION:** *Pedro Brito, Carlos Brito and Cristina Fossati v. Klimpton Hotel & Restaurant Group, LLC, Dusk till Dawn, LLC, d/b/a The River Lounge, and the City of Miami*, Miami-Dade County Circuit Court, Case No. 14-10961 CA (30) (CAG): Plaintiffs allege that on June 27, 2010, they were battered and falsely arrested by Officers Walter Byars and Moses Martinez while Plaintiffs were waiting for their car at the valet ramp at the Epic Hotel. This case is scheduled for the three-week trial docket commencing **June 6, 2016**, before Judge Norma Lindsey.

2. **NEGLIGENCE ACTION (TRIP AND FALL):** *Luisa Nunez and Oscar Nunez, her husband v. City of Miami*, Miami-Dade County Circuit Court, Case No. 14-002523 CA 01 (CAG): Plaintiff filed suit against the City of Miami alleging she sustained injuries when she tripped and fell on the stretch of sidewalk on the north side of N.W. 14 Street west of the intersection at N.W. 12 Avenue on December 8, 2011. Plaintiff's husband filed a claim for loss of consortium. This case is scheduled for the three-week trial docket commencing **June 20, 2016**, before Judge Michael Hanzman.

3. **LABOR CASE CHALLENGING PROMOTIONAL EXAM:** *Fraternal Order of Police, et al v. City of Miami*, Miami-Dade County Circuit Court, Case No. 98-7760 CA 27 (KRJ/KLM): In this case, the Fraternal Order of Police, along with several individual officers, sued the City of Miami alleging that the promotional exam offered in 1994 did not comply with the Civil Service Rules. This case was one of several stemming from that promotional exam. Based on a determination in another case that the oral portion of the test was flawed, and did not comply with Civil Service Rules, the judge in this case entered a partial final judgment on the issue of liability in 2007, declaring that the City had violated the Civil Service Rules. The case then moved onto the damages phase. In that phase, the City filed motions challenging the standing of FOP, in its associational capacity, to collect monetary damages on behalf of its individual members. The court ruled that it did not. Several years later, FOP filed a motion for reconsideration of that order, which was never set for hearing by FOP. After the City recently brought the motion to the attention of the Court, a special set hearing to address that motion was set for **June 2, 2016**. If the City is successful, the City intends to urge the court to issue a final

judgment with regard to FOP, finding that FOP was granted the declaratory relief it sought, and that FOP has no standing to get individualized monetary damages on behalf of its members.

4. **LABOR/DISCRIMINATION CASE:** *Lourdes Gonzalez v. City of Miami*, Miami-Dade County Circuit Court, Case No. 12-49778 CA 20 (KRJ): Lourdes Gonzalez, a former Feeding Coordinator for the City of Miami filed a Complaint for Damages in the Circuit Court alleging violations of the Florida Civil Rights Act. Specifically, Ms. Gonzalez claims she was discriminated against because of her sex and then retaliated against after she complained of disparate treatment. Plaintiff seeks declaratory and injunctive relief, back pay, front pay, punitive damages, costs and attorney's fees. Trial is scheduled for the **third week in June, 2016**.

5. **CLASS ACTION/ TAX EXEMPTIONS:** *346 NW 29 Street, LLC d/b/a Museo Vault v. City of Miami, et al.*, Miami-Dade County Circuit Court, Case No. 13-37260 CA (HJH/KLM/JAR): This is a certified class action brought on behalf of businesses that applied for the City's enterprise zone ad valorem tax exemption program between the years 2001 and 2011. The class alleges that the City violated the City Code by failing to process any of the applications submitted by the class members. The City opposed class certification and took an appeal from the class certification order. The matter has now been remanded to the trial court following the Third District Court of Appeal's affirmance of the class certification order. Both parties have moved for summary judgment (the class as to liability only, the City as to the entire complaint), and a two-hour special set hearing is set for **June 8, 2016**.

6. **MARITIME/CIVIL RIGHTS ACTION:** *James Edward Hoefling, Jr. v. City of Miami, Ricardo Roque and Jose Gonzalez*, United States District Court, Southern District of Florida, Case No. 11-22358-Civ-Lenard (DAH/FLA): Plaintiff was the owner of a 29.7 foot sailboat, "Metis O", that was anchored in the open water of the City. Plaintiff alleges that on May 27, 2010, he was issued a Florida Uniform Boating Citation for not having a working marine sanitary device and a separate Code Enforcement Notice. Later, Plaintiff alleges that his vessel was destroyed without warning or notice. Plaintiff asserts maritime claims for: (a) intentional destruction of property; (b) negligent destruction of property; and (c) a civil rights violation for deprivation of due process. City obtained dismissal on a motion to dismiss, which was subsequently reversed by the Eleventh Circuit Court of Appeals. The case is now back before the district court on remand. Mediation is set for **June 6, 2016**.

7. **NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT):** *Carline Deravil v. City of Miami*, Miami-Dade County Circuit Court, Case No. 15-022393 CA (22) (DAH): Plaintiff claims that City of Miami Police Officer Sonia Augustin crashed into the car that the Plaintiff was driving on June 14, 2014. Plaintiff alleges Officer Augustin negligently operated the City vehicle causing it to collide with the Plaintiff's vehicle. This case is presently set for trial on the **June 20, 2016** three-week trial calendar.