

MESSAGE FROM THE CITY ATTORNEY



On March 13, 2008, I was honored to be sworn in as Miami's City Attorney. Incorporated in 1896, the City of Miami is the largest of the 35 municipalities that make up Miami-Dade County. It is a City rich in cultural and ethnic diversity with an estimated resident population of 424,662. The City of Miami government with approximately 4,034 employees is one of the major employers in Miami-Dade County.

The Miami Charter specifies that the City Attorney serves as the general counsel for the City, and for all officers and departments thereof in matters relating to their official duties. The City of Miami Charter establishes the City Attorney as the Director of the Department of Law. By charter the City Attorney prosecutes and defends all lawsuits in which the City is named, and prepares all contracts, bonds and instruments. The Miami Charter places all attorneys employed by the City under the supervision of the City Attorney and gives the City Attorney exclusive authority over the appointment, removal and salary of the assistant city attorneys ("Staff Attorneys").

This report discusses the amount and nature of legal work handled by the Office of the City Attorney. It also highlights some of the most significant accomplishments obtained on behalf of our clients from January 1, 2008 thru June 30, 2009 (the "Reporting Period").

As our City prepares to address the significant budgetary challenges for Fiscal Year 2009-2010, due to the decline in revenues available to fund municipal operations, I am committed to focusing on fiscal responsibility while continuing to provide the full range of core legal services required to meet the substantial legal demands of the City's governing body and administration. Included in this report are specific actions that I am recommending for City Commission approval necessary to implement the anticipated budget cuts for FY 2010.



*I am privileged to represent this Commission
and the City of Miami.*

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MISSION STATEMENT

To serve as legal advisor and counsel to the City, and all Officers and Departments, thereof, in matters relating to their official duties and to prosecute and defend all suits for and on behalf of the City, and to prepare all contracts, bonds and instruments in which the City is concerned.

VISION

To provide a full range of legal services and representation to the City Commission, the Mayor and the Administration in a timely, efficient, and cost-effective manner.

GOALS 2009 – 2010

- Achieve significant budget reductions with minimum impact to the current level of services in the core functions of the law department.
- Implement a comprehensive protocol in the area of complex litigation including commercial litigation that ensures adequate staffing and allocation of resources including criteria for selection of outside counsel, if required, and the cost-effective management of outside counsel costs.
- Develop a cost-effective model for providing labor counsel including in-house expertise and competitive contracting of outside counsel services.
- Develop an aggressive real-estate litigation practice to address the unprecedented volume of foreclosures where the City is defending superior interests and prosecuting foreclosures of City liens and mortgages.



The Office of the City Attorney actual budget for fiscal year 2007 – 2008 was \$6,070,136 and the adopted budget for fiscal year 2008 – 2009 was \$6,582,604 for office operations and personnel expenses. Currently, about 93% of the budget is for the personnel costs of 59 full-time positions, including the 27 attorneys authorized by the City Commission, an office administrator, a special assistant to the City Attorney, a management information specialist, a legislative coordinator, an administrative assistant, 16 litigation assistants, 5 paralegals and 6 legal services staff. The administrative staff works directly with the City Attorney to oversee the daily operations, department personnel matters, the coordination of legislation and operation of information and document management systems.

The challenges of the 2009-2010 budget year require that the funding for the Office of the City Attorney be maintained at a level that is the same as the 2005-2006 budget year, which is close to a 25% decrease from last year. The core services as required in the City Charter will necessarily continued to be provided. Other services, over and above the Charter-mandated ones, have been examined and the following legal representations will be discontinued because of reduced staffing:

- Counsel to the Community Redevelopment Agencies (CRA) – The City Attorney currently serves as the Counsel for the agencies pursuant to an Interlocal agreement. Even though the agreement provides that City personnel serving the CRA are to be compensated, no budgetary

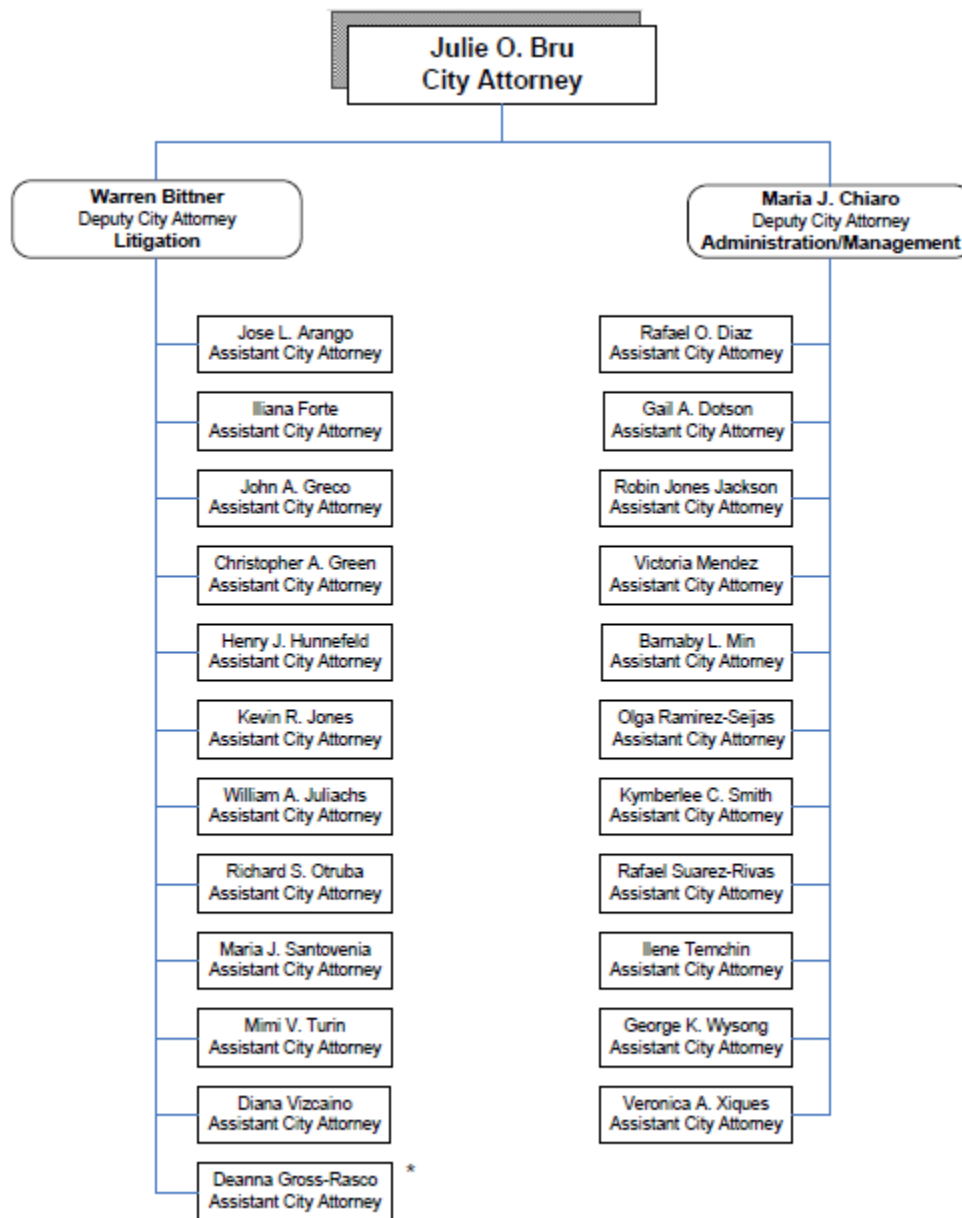
adjustment has been made for service by the City Attorney as counsel.

- Legal Counsel to the Downtown Development Authority (DDA) – The DDA has the authority to retain and fix the compensation of the general counsel to the DDA. The City Attorney has served in the capacity *gratis*.
- Counsel to Boards and Committees not established by Charter – Certain committees or boards benefit from representation by the City Attorney even though said boards or committees are not part of the core services required in the City Charter. During the upcoming fiscal year, any non-code established committees will cease to have representation at their meetings. We will also request that the City Code be amended to eliminate all board legal counsel unless legally essential.
- Eliminate all legal support services including legal consultants and paid law clerk programs.

If certain agencies provide compensation from their separate sources of revenues so as to allow for an adjustment to the budget of the City Attorney, then services could continue to be provided commensurably.

Further, we will embark on an aggressive program to find funding for two paid Law Clerk positions. The positions that were funded during past budget years have been removed. Therefore, to replace the vital need for research assistance, we will seek scholarships or grants from various sources

ORGANIZATIONAL CHART



* Part-time

OVERVIEW

During this Reporting Period the Office of the City Attorney handled a full range of legal services essential to support the operations and functions of all City departments, including Police and Fire, Public Works, Parks and Recreation, Public Facilities, Risk Management, Planning and Development, and Employee Relations. Significant legal services were provided to the City in the area of General Government which included preparing 130 Ordinances and 1,000 Resolutions, issuing 13 Legal Opinions, and keeping the City Commission and administration updated and informed on federal, state and county action affecting the conduct of municipal affairs. The City Attorney and Staff Attorneys also provided legal representation and advice at all meetings of the City Commission and approximately 36 City Authorities, Boards and Committees. Additionally, the City Attorney meets regularly with members of the City Commission, the Mayor and other City officials as well as department directors to discuss legal issues pertaining to their official duties.

The total number of matters that were opened during the Reporting Period

including all matters received pursuant to a Legal Services Request, and lawsuits and claims filed against or by the City was **5,222**. The volume of matters opened during this Reporting Period includes a significant number of high profile litigation such as the ***Braman*** litigation challenging the City and County on the development of a new baseball stadium for the Florida Marlins. Of the 150 new civil litigation matters filed during the Reporting Period, only 4 matters were outsourced to outside counsel due to conflict. Deputy City Attorney Warren Bittner and the seven litigators assigned to the Civil Litigation and Appeals section handled all of the remaining civil litigation matters.

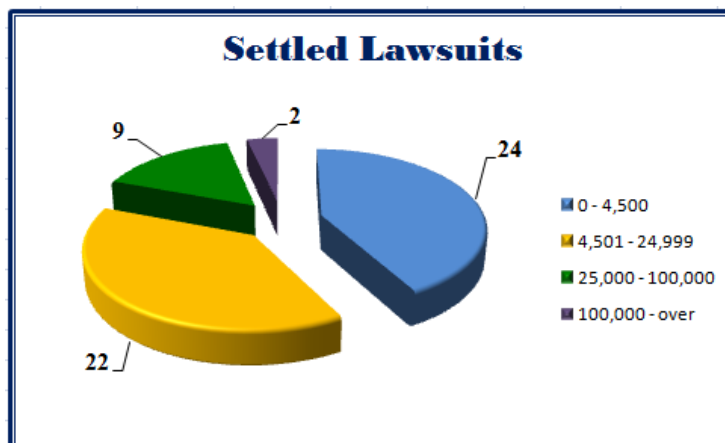


OPEN LITIGATION CASES AND CLAIMS AS OF JULY 31, 2009

AREA OF LAW	NO. OF OPEN MATTERS
Administrative - 115	2
Attorney's Fees -106c	1
Bankruptcy -103b	32
Civil Forfeitures & Vehicle Impoundment -112	40
Civil Rights -102	31
Civil Rights Appeals -102a	3
Civil Rights Claims -102c	0
Code Enforcement & Nuisance Abatement -110	21
Code Enforcement & Nuisance Abatement Appeal -110a	9
Code Enforcement Pre-Suit\Claims - 110c	1
Code Enforcement Hearings - 116	706
Collection – Judgments - 114	6
Collection - Account Receivables – 114b	0
Collection Pre-Suit\Claims – 114c	0
Collection – Liens – 114d	0
Commercial -103	34
Commercial & Bankruptcy Appeals -103a	1
Commercial & Bankruptcy Claims -103c	6
Commercial Other -103o	8
Eminent Domain -109	3
Foreclosure (City Defendant) -111a	865
Foreclosure (City Plaintiff) -111b	21
Foreclosure Claims -111c	49
Labor/Employment -106	112
Labor/Employment Appeals -106a	4
Land Use -104	21
Land Use Appeals -104a	1
Land Use Pre-Suit\Claims – 104c	0
Public Records/Sunshine/Election Law -107	7
Quiet Title (City Defendant) -113a	23
Quiet Title (City Plaintiff) -113b	5
Quiet Title Claims - 113c	22
Special Assessments/Fees - 105	14
Special Assessments/Fees Appeals - 105a	1
Special Assessments/Fees Claims - 105c	0
Subrogation -101s	29
Torts -101	123
Torts Appeals -101a	3
Torts Pre-Suit\Claims -101c	105
Workers' Compensation -108	172
Workers' Compensation Appeals -108a	1
Workers' Compensation Claims -108c	7
TOTAL NUMBER	2489

LITIGATION MATTER SUMMARY

Reporting Period:	1/1/08 – 6/30/09
Lawsuits	
New Lawsuits	152
Total Lawsuits Tried	11
Trial Wins	6
Trial Losses	5
Summary Judgments	23
Dismissals	50
Settlements	80
Appeals	
New Appeals	17
Total Appeals Resolved	38
Appeal Wins	33
Appeal Losses	5
Workers Compensation (WC)	
WC Tried	9
New WC Claims	45
WC Settled	59
WC Dismissed	17
Civil Service (CS)	
New CS Cases	52
CS Settled	8
CS Adjudicated	23



CIVIL LITIGATION AND APPEALS

The attorneys assigned to the Civil Litigation and Appeals Division defend the City and its various agencies, departments, divisions and employees in lawsuits filed in both Federal and State court. The bulk of the litigation handled by Staff Attorneys include cases involving personal injury, property damage, auto negligence, premises liability, breach of contract, false arrest, battery, malicious prosecution, violations of civil rights, and violations of the ADA (Americans with Disabilities Act). In addition, Staff Attorneys also handled litigation in the areas of: intergovernmental disputes, class actions, construction, real property, lease disputes, and public records. The Civil Litigation and Appeals Division also pursues affirmative litigation matters which seek to recover money due and owing the City for such matters as breach of contract, damage to City property, injuries suffered by City employees acting in the course and scope of their employment, as well as various debts or financial obligations owed to the City.

Significant resources were allocated this Reporting Period to the defense of the lawsuit challenging the constitutionality of the funding for the proposed 37,000-seat ballpark and parking garage being developed and built for the Florida Marlins, pursuant to a private/public venture between the City, Miami-Dade County and the team.

The successful defense of this lawsuit at the trial level was achieved by a team of attorneys from the County, the City and the Florida Marlins. The City's defense team, which also included pro-bono services provided by the firm of Cole, Scott & Kissane, were led by Deputy City Attorney

Warren Bittner and Assistant City Attorney Henry Hunnefeld.

Also, during this Reporting Period the Office of the City Attorney takes pride and recognizes the work of Assistant City Attorney Christopher Green, who in July 2009 obtained a jury verdict in favor of the City in the case of Wilfredo Acosta. In a separate case, successfully tried by Assistant City Attorney Green, the court entered a final judgment for fees and costs in the amount of \$12,622.61, representing an award to the City by the court of attorney's fees at an hourly rate of \$350.00. Since joining the Office of the City Attorney in October 2000, Assistant City Attorney Green has participated in 25 trials either as lead counsel or as co-counsel.

In addition to its significant litigation caseload, this Division is responsible for civil forfeitures, foreclosures, bankruptcy claims, and subpoenas for deposition and records in third party litigation. The Division won 63% of the cases taken to trial, and in addition, obtained favorable dispositive rulings in many other cases.

The following are the highlights of the cases tried by the Litigation Division during 2008 through June 30, 2009:

Fernando Aller v. City of Miami – Auto Accident - The City defended this case on grounds that the third party driver was the proximate cause of the accident. Furthermore, the City presented expert medical testimony that the Plaintiff did not sustain a permanent injury in the accident. On the first day of trial, the Plaintiff's attorney demanded \$25,000 to settle this case. However, the City offered Plaintiff \$4,500 and aggressively defended this case. *Plaintiff's counsel asked the jury to award approximately \$150,000 in damages. The jury rendered a defense verdict.*

Norman Braman v. Miami-Dade County, et al. - *Global Agreement Withstands Legal Challenges* - Automobile Dealer Norman Braman, sued the City, County, Omni CRA and Overtown CRA, alleging violations of the Florida Constitution, the Sunshine Law, and procedure. The purpose of the litigation was to stop the numerous major capital projects outlined in the Global Interlocal Agreement, especially the Marlins' baseball stadium. After a two-week bench trial in July, 2008, Final Judgment was entered by the Court on November 20, 2008. The City, County, Omni CRA and Overtown CRA prevailed on all claims. *The City will be filing a motion to tax its costs, which currently exceeds \$30,000. The Braman Plaintiffs' appeal is pending.*

Robert Burgess v. City of Miami – Petition for Workers Compensation Benefits - The claimant filed a Petition for Benefits requesting wage loss benefits and permanent total disability resulting from an automobile accident that occurred on February 9, 1987. *On June 17, 2009, the Judge of*

Compensation Claims entered a Final Order denying wage loss benefits after November 11, 2007, denying permanent total disability as of September 30, 2007, and denying requested interest, penalties, attorney's fees and costs.

Marta Estamponi v. City of Miami - *Award of Medical Expenses Minimized* - Eighty-two year old female who tripped and fell on a WASA water utility box in a decorative brick paver sidewalk in Coconut Grove, and suffered an open dislocation of the 5th metacarpo-phalangeal joint and tear of the volar plate, requiring surgery. She also suffered a large hematoma of the right orbit. Plaintiff's medical bills were just over \$27,000. Plaintiff asked the jury for over \$311,000 in total damages. The jury awarded Plaintiff \$78,069.35, and attributed 10% liability to the County and 90% liability to the City, giving the Plaintiff a **net recovery of \$70,569.35**, plus costs. Plaintiff's lowest pre-trial demand to the City was \$70,000.

Lylliam Garcia v. City of Miami - *Jury Verdict Minimized* - Fifty-nine year-old female who tripped and fell in allegedly concealed pothole, and suffered a torn meniscus was awarded \$50,841.79 in medical expenses and lost wages. The jury also found the Plaintiff 20% at fault, resulting in a **net verdict of \$40,673.43**. Plaintiff's offer to settle before trial in the amount of \$43,000 was rejected by City Commission.

Rafael Morejon v. City of Miami - Plaintiff allegedly suffered a torn rotator cuff when he slipped and fell on a wet tile in front of the Seybold Building on Flagler Street. The trial in this case was bifurcated on liability and damages. *Plaintiff's*

pretrial demand was \$100,000. The jury rendered a defense verdict.

Destiny Nyon v. City of Miami – Eight year-old girl claimed she suffered a lacerated kidney and broken ribs when she allegedly tripped and fell into a sidewalk tree planter on N.W. 3rd Avenue at 17th Street. The jury awarded the plaintiff **\$58,288.65** for past medical bills incurred for Plaintiff's hospitalization at Jackson Memorial Hospital, \$25,000 for her past pain and suffering, but nothing for future pain and suffering damages, and no award for future medical care.

Lazaro Rosales v. City of Miami – Seventy year-old Plaintiff was struck by a stolen police vehicle. Plaintiff allegedly sustained permanent injuries to his neck and back. Police vehicle was stolen when arresting officer left vehicle unattended with detainee in the back, and with the vehicle running. The detainee gained control of the vehicle, ran a red light and struck the Plaintiff's vehicle. *Plaintiff requested in excess of \$60,000. The jury rendered a defense verdict.*

Edward Salinetto v. City of Miami - Miami-Dade County Corrections Officer alleged that he sustained injury to his right knee, right shoulder, right elbow and right wrist when he stepped into an open manhole and fell while attempting to cross the street at Northwest 13th Street and Northwest 13th Court. *Plaintiff asked for over \$300,000 in damages. The jury rendered a defense verdict.*

United Automobile Insurance Company a/s/o Fernando Munoz and Fernando Munoz v. City of Miami – Plaintiffs claimed that their vehicle was involved in an automobile accident with a garbage truck owned by the City. Plaintiffs alleged that

the cause of the accident was the garbage truck. Plaintiffs' vehicle sustained property damage in the amount of \$1,789.89. The case was tried without a jury. The Court found in favor of the Plaintiffs. Judgment was issued in the amount of **\$1,789.89, plus costs of \$425.00.**

MONEY RECOVERED

Recovery in Breach of Contract Litigation

TOTAL RECOVERED: \$1 million

City of Miami v. Cone Constructors, Inc. and American Home Assurance Company

- City filed a lawsuit to recover its damages resulting from a breach of contract for Cone Constructors, Inc.'s failure to complete a project at the Dinner Key Boatyard-Marina Docks, Contract No. H-1088. Pursuant to a mediated settlement, the City received **\$500,000** in settlement of its claims for breach of contract and specific performance against Cone Constructors, Inc., the general contractor and American Home Assurance Company, the bonding company for Cone Constructors, Inc.

City of Miami vs. Bayside Center Limited Partnership

- Arbitration was filed by the City to recover for underpayment of rent pursuant to the parking garage lease with Bayside Center Limited Partnership, as determined by the Independent Auditor General's audit finding. As part of the City's settlement with Bayside, Bayside has agreed to pay the City **\$500,000** for past rents.

SUCCESSFULLY RESOLVED in

CODE ENFORCEMENT LITIGATION

Contrada of Miami, LLC. v. City of Miami

- The Third District Court of Appeal denied the Petition for Writ of Certiorari filed by the Appellant, thus affirming the Appellate Division of the Circuit Court's

Ruling in favor of the City of Miami. The Appellate Division of the Circuit Court held that the Code Enforcement Board was correct in finding that nine (9) trees had been removed without permits.

SUMMARY JUDGMENT OBTAINED in LAND USE LITIGATION

Buena Vista Historic Neighborhood Association, et. al. v. City of Miami - Neighbors and neighborhood homeowners group challenged two Class II Special Permits because they sought additional notice. The Court found that the City acted legally.

Jerin Associates, Ltd., Cimble v. City of Miami, et. al. - A series of cases brought by the landowner, Jerin, challenging numerous nearby special permits and rezonings in the Omni area. Jerin owns a print shop near the School Board building. All the cases were favorably disposed of by orders entered in favor of the City and the Developer or were settled by the Developer with Jerin without any further action or cost to the City.

FORECLOSURE AND REAL ESTATE

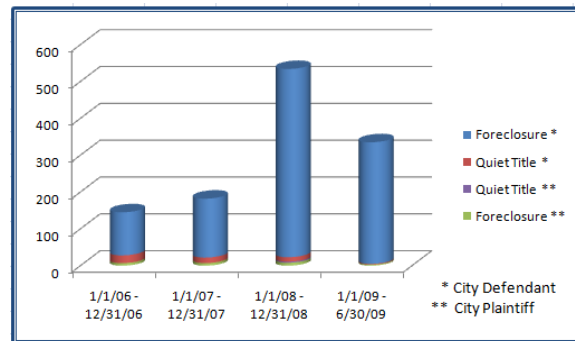
The foreclosure and real estate division is responsible for the filing of all claims against real property including foreclosure, quiet title and other litigation actions. The City files these actions as a result of the City’s interest in the property. Should the City be successful, the City will either acquire the property or receive payment for the outstanding interest.

This division also defends the City’s position in these same types of actions. As part of the litigation, the City protects superior interest in properties subject to foreclosure and/or tax deed sale or, in the alternative, protects the City’s interest in any

proceeds derived from foreclosure and/or tax deed sale.

Additionally, this division is responsible for filing actions, including cross claims, as part of the foreclosure action to obtain money judgments against property owners who do not comply with City liens and/or mortgages.

Due to the real estate meltdown, this office has received and is handling 523 new foreclosure and quiet title cases for the year 2008. As of June 30, 2009, the Office of the City Attorney has received 332 new cases and expects the trend to continue.



The Office of the City Attorney has collected **\$124,598.19 in 2008** as a result of foreclosure/quiet title matters. The figures for amounts collected as of June 30, 2009 are not available at this time.

CONTRACTS AND PROCUREMENT

Staff Attorneys work very closely with the City departments in the area of commercial and financial transactions. In 2008 approximately 1,176 contracts were reviewed totaling \$282,442,422 in valuation. The most significant matters included Capital Improvement Projects where attorneys provided the full range of legal services, including assisting in the preparation and drafting of solicitation documents, advising the client during the procurement process and drafting contracts, including professional services and construction contracts. As of June 30, 2009, 549 contracts have been reviewed with a value of \$40,762,827.

Extensive legal services in the area of contracts and procurement were provided for various client departments in connection with the following significant projects accomplished by the City during the Reporting Period:

- **Construction of the Water Park at Grapeland** which features two pools with slides, a winding river, and an open swim area - all designed by artist Romero Britto.
- **Demolition of the Miami Orange Bowl** - Demolition began in March 2008, and will eventually make way for a new 37,000 seat retractable roof baseball stadium that is scheduled to open as the home of the current **Florida Marlins** in 2012.
- **Courthouse Center Garage Site Demolition** on the 1.65-acre parcel of downtown property that will soon be partially occupied by its new Courthouse Center Garage, a mixed-use facility containing parking, offices and retail space.

Noteworthy during the Reporting Period in the area of municipal bond finance is the work of Assistant City Attorney Robin Jones Jackson. Her extensive experience in public finance on Wall Street and as an outside public finance counsel, and her particular expertise in bond compliance issues have made a significant impact for the City that has resulted in costs savings and positive contributions in the area of bond compliance. Working with City administration staff, financial advisors, outside bond counsel, underwriters counsel, and disclosure counsel, Assistant City Attorney Jackson represented the City's interests in the following public finance matters:

- Closing of \$20 million Sunshine State Governmental Financing Commission Loan for ERP, Land Use Management and Technology infrastructure projects, and negotiations for letter of credit provisions to address cost sharing
- Closing of \$30 million Health Facilities Authority Revenue Bonds Catholic Health East Series (restructuring earlier debt for a lesser interest rate) for Mercy Hospital/CHE to refund previously issued bonds which funded emergency room, parking garages, and other renovations; fees were paid to the City for services of the City's Finance Department as Health Facilities Authority Staff and to the City Attorney's Office as counsel to HFA as Issuer
- Closing of \$52 million Limited Ad Valorem Homeland Defense/Neighborhood Capital Improvement Bonds (for completion

of ongoing projects approved by voters in November 2001 Referendum).

- Closing of \$37 Million Taxable Pension Bonds (refinancing to convert earlier debt to fixed rate and to terminate an interest rate swap structure)
- Closing of \$80 Million Special Obligation Bonds (Street and Sidewalk Improvements Program).
- Closing of \$7 Million Sunshine State Governmental Financing Commission Loan for capital infrastructure and parks projects.
- Closing of \$15 Million Loan from the Sunshine State Governmental Financing Commission for capital infrastructure and parks projects.
- Closing of \$28 Million Loan from the Sunshine State Governmental Financing Commission for capital infrastructure and parks projects.

Staff Attorneys also provided significant legal representation to the Bayfront Park Management Trust in awarding a long-term contract to operate, manage and exclusively book one of the country's most beautiful outdoor venues, the 6,000 capacity Bayfront Park Amphitheater. The Bayfront Park Amphitheater overlooks the City skyline as well as Biscayne Bay. The Trust will make well over \$20 million during the course of the management agreement. As part of the agreement, Live Nation will, significantly

contribute to upgrading the venue, which operates year round.

Attorneys practicing in this section also assisted the City's efforts to maximize receipt of federal funds by providing legal advice and services related to Community Development Block Grant funds.

GENERAL GOVERNMENT & PUBLIC SAFETY

Although all attorneys who practice at the Office of the City Attorney provide advice to the elected and appointed officials in the area of Sunshine, Public Records, Ethics, and Conflict of Interest, two attorneys who practice in the area of General Government and Public Safety handle the bulk of this legal work. They also handle legal work required by the City's Community Redevelopment Agencies, and all legal issues related to conduct of municipal elections.

In the area of public safety, Assistant City Attorney George K. Wysong provides valuable counsel and advice to Police Chief John F. Timoney and his senior staff, who are responsible for the management and supervision of approximately 1,217 sworn police officers and 400 civilians. Additionally, as the police legal advisor, Mr. Wysong represented the City's legal interests in the following areas:

- Assisted the Public Information Office of the City Attorney with policy questions about the Miami Police Department;
- Assisted in the litigation of forfeiture cases;
- Served as the point person for public record requests propounded on the Miami Police Department;
- Represented the Office of the City Attorney at the Emergency Operations Center during emergencies and training exercises;
- Provided valuable input as a member of various police department work groups and committees (including the Policy Review Committee and the Firearms Review Board);
- Provided recruitment and in-service training, prepared Legal Bulletins and assisted the Police Training unit

in the dissemination of new policies and procedures;

- Provided on-scene advice to police officers during field operations or on certain crime scenes;
- Served as the Police Chief's designee as the point of contact between the Civilian Investigative Panel (CIP) and the Miami Police Department;
- Assisted the civil litigators with matters arising out of police tort litigation;
- Assisted the City's legislative team on the various legislative priorities of the City, including drafting new legislation and monitoring bills that are working their way through Congress or the Florida Legislature;
- Monitored and reviewed the agreement between the City and the State Attorney and Public Defender for the prosecution and defense of municipal ordinance violations.

Also, in the area of general government practice by interlocal agreement, the City Attorney serves as general counsel to the City of Miami's Community Redevelopment Agencies (CRA's). During the Reporting Period, the bulk of the legal work required by the CRAs was performed by Assistant City Attorney Gail Dotson.

Other highlights of the work performed in the area of general government law include:

- Drafted the New Markets Tax Credit and Enterprise Zone legislation;
- Amendments to the procurement ordinance;
- Drafted comprehensive legal opinions in matters relating to the People's Transportation Plan surtax;

County Commission on Ethics and
Public Trust.

- Drafted opinions relative to the Parking Surcharge Ordinance;
- Drafted opinions relative to the lobbyist regulations;
- Oversight of Ethics and Conflict of Interest matters;
- Presentations to officials, boards and administration relative to General Government issues such as the Sunshine Law, Gift Law, Cone of Silence, Ethics and Public Records;
- Participated as guest panelist/speaker in several workshops/seminars sponsored by the Miami-Dade

DEVELOPMENT AND AFFORDABLE HOUSING

During the reporting period Staff Attorneys were kept busy providing legal services in connection with several complex Private/Public Partnership projects which included representing the City's legal interests during the negotiations and legislative approval of the various agreements between the City, the County and the Florida Marlins for the construction, management and operation of a baseball stadium, parking garage and related facilities. Special recognition is warranted for the work performed by Assistant City Attorney Olga Ramirez-Seijas who along with the limited assistance of special outside counsel, represented the City's legal interests from commencement of the negotiations thru the preparation and final approval of the various agreements related to this monumental project.

Listed below are some of the significant accomplishments for this Reporting Period in the areas of Private/Public Partnership, Real Estate and Economic Development, Asset Management and Affordable Housing:

- Assisted in the negotiations, and drafted and prepared legislation for the approval of the leases and related documents between the City, the Miami Art Museum of Dade County Association and the Museum of Science, Inc., for the development and operation of the Museum Park Project.
- Guided the Coconut Grove Business Improvement Committee through an election process, leading to favorable results for the formation of the

Coconut Grove Business Improvement District.

Also, in the area of Affordable Housing attorneys prepared documents for projects worth a combined total of \$12 Million in new affordable housing construction loans and drafted a portfolio of standardized documents for the City's affordable housing construction loans, including:

- HOME (HUD)
- CDBG (HUD)
- HOPWA (HUD)
- SHIP (State of Florida)
- Affordable Housing Trust Fund (City of Miami)

LABOR AND EMPLOYMENT

Staff Attorneys with the collaboration of special outside labor counsel handled all legal work related to labor and employment including:

- Matters involving both individual employee disputes and those arising collectively in a union setting;
- Labor law matters, involving collective bargaining, union contract administration and grievances;
- All employment litigation in State and Federal court;
- Providing daily advice and counsel to the administration on the impact of the various employment laws and regulations applicable to the City.

During this Reporting Period, lawyers in this division represented the City in 56 civil service hearings, completed 85 Workers' Compensation claims, handled 13 labor arbitrations and grievances, concluded three litigated matters and 11 Unemployment Compensation appeals.

WORKERS' COMPENSATION

During this Reporting Period the Workers' Compensation Division continued to build on the legal department's past successes in workers' compensation. By continuing the team approach developed with Gallagher-Bassett Services, Inc., and the Department of Risk Management, the following was achieved:

- Savings from workers compensation reserves have approached approximately \$10 Million. This was achieved through a combination of victories in litigated cases, claim dismissals demonstrating extreme intolerance for frivolous or shotgun

claims, very significant reduction in liability for claimants' attorneys' fees and costs, and judicious negotiations on settlements and washouts of past and future benefits.

- By further streamlining team communication, we have greatly improved access to all pertinent medical records for timely advice on litigation issues. This was achieved by implementing regular travel to Gallagher-Bassett Services within days of the receipt of a new petition for benefits, to better develop action plans and impact statements to identify and coordinate services.
- Continued strategic training through periodic and timely reporting by email and mini-seminars on case law developments as new decisions are released, to assure timely and appropriate responses to claims and requests for benefits.
- Subrogation recoveries under F.S. 440.39 have been maximized from third party defendants responsible for injuries to City employees.
- The City's managed care system was revitalized under F.S. 440.134, to incorporate favorable changes to managed care.
- Each aspect of claim handling was reviewed and analyzed, and the many critical informational documents that are distributed to injured workers were actually re-drafted to comply with all statutory notice requirements.

QUALITY OF LIFE AND ENVIRONMENT

The Staff Attorneys who practice in this area are dedicated to assisting the City in achieving its goal of providing every resident a safe, sustainable and clean community.

This Division's practice areas include matters related to Land Use, Zoning, Planning, Building, Code Enforcement, Environmental Law, Nuisance Abatement, Historic Preservation, and Sustainable Initiatives.

Highly effective attorneys assisted the administration in all aspects of Code Enforcement. Leading this effort was Assistant City Attorney Barnaby L. Min responsible for prosecution of code enforcement cases. In 2008, the Code Enforcement Board "CEB" (and Special Masters) held 31 separate hearings; 807 cases were addressed by the Board and a total of 432 Final Administrative Enforcement Orders were issued. Since June 2009, the CEB held 28 separate hearings and addressed 698 cases. In 2008, the Ticketing Appeals Special Master held 11 hearings and addressed 216 cases. Since June 2009, the Ticketing Appeals Special Master held four hearings and addressed 75 cases. In October 2008, the Office of the City Attorney implemented a new program for collecting outstanding Code Enforcement liens. The Office of the City Attorney has worked with the Departments of Code Enforcement, Information Technology, and Hearing Boards to implement the system. Ninety days after a Code Enforcement lien is filed, the Office of the City Attorney will be notified to begin the collection process. This process includes sending demand letters to the property owner as well as conducting a title search and asset search on the parcel(s). When the title and asset searches are completed, a memorandum is sent to the City Manager informing him of the options

to collect the lien (foreclosure, money judgment, injunctive relief, etc.). The City Manager then makes a business decision and directs the Office of the City Attorney as to how to proceed with the matter.

In order to meet the City's goals for sustainability and a better environment, the Division members attended several Green sponsored seminars and events. Staff Attorneys have reviewed, revised, and assisted in drafting the City's first Green ordinances. These efforts were significant in adhering to the City's Green Initiatives: Green Fleet purchases, creating a Greenspace Management Fund, Green Procurement, Expedited Permitting for Green and LEED buildings, water restriction enforcement, etc.

Significant legal work was also performed in the area of comprehensive planning. Staff Attorneys represented the City in the Evaluation and Appraisal Report ("EAR") process, wherein the Department of Community Affairs ("DCA") reviewed the many EAR amendments to the City of Miami Comprehensive Neighborhood Plan ("MCNP"). The EAR is required every seven (7) years to assess the City's adopted MCNP. It was initiated by the City in late 2004 and involved the preparation of various reports and supporting data as to the elements in the MCNP, transmittals of the EAR report to DCA, addressing DCA's comments, re-submitting a revised EAR report to DCA, adoption of the report and later adoption of the comprehensive plan to implement the report recommendations. Procedurally, this involved various public hearings before the Planning Advisory Board and the City Commission. In the Fall of 2008, at the culmination of all these procedures, the City Commission adopted extensive amendments to the MCNP, thus implementing the EAR. In January of 2009, DCA issued a Notice of Intent to find the

EAR amendments in compliance (except the Miami River sub-element which was not found in compliance and is the subject of an adversarial administrative case).

Other significant accomplishments for this Reporting Period include:

- Drafted legislation for the exchange of non-developable land within the City to be included in the proposed modified boundary of the Miami-Dade County Enterprise Zone.
- Conducted numerous workshops for clients including the Planning Advisory Board, the Code Enforcement Board and Special Masters, Historic Preservation Board, and Zoning Board.
- Demolition of more than thirty (30) unsafe and deteriorating structures, including the old East Coast Fisheries, the Latin American Restaurant, and the Lerner Building, which were of great importance to the City Commission.
- Halted, via temporary injunction, an attempt by Miami-Dade County to demolish a property built with HOPWA funding that would have cost the City more than a million dollars, if allowed to be destroyed.
- Drafted legislation concerning the registration of abandoned properties and the regulation of murals, billboards, and handbills.
- Drafted legislation which created Art and Cultural districts within the City, one notable example is the Wynwood Café District.
- Drafted the legislation and the land use portions of the agreements for some of the most exciting projects in

the City: MUSP legislation for Museum Park and Marlins Stadium and the Development Agreement for the World Center.

- Provided advice and assistance to the Mayor and the Administration on the new proposed form-based Zoning Ordinance for the City of Miami: *Miami 21*.
- Aided in the enforcement of turbulent and noisy clubs in Park West.