



**WEISS SEROTA HELFMAN  
COLE & BIERMAN**

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

## MEMORANDUM

**To:** City Council, Marco Island, Florida  
**From:** Alan L. Gabriel, City Attorney *Alan L. Gabriel*  
**Copy to:** Michael A. McNees, City Manager  
**Re:** City Attorney Matter Review  
For January 21, 2020 Council Meeting  
**Date:** January 13, 2020

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During the period commencing from December 1, 2019 through December 31, 2019, the City Attorney's Office has participated in or has been working on the following matters:

- **General City Business**
  - Marco Island Academy Sewer Utility
  - Public Records Requests:
    - Snyder Public Records Request
    - Patel Public Records Request
    - Media Public Records Request
- **For Council Agenda Approval**
  - Statewide Mutual Aid Agreement
  - Marco Town Center Resolution Of Approval
  - Code Enforcement Magistrate Contract Renewal
  - Safe Harbor Agreement For Urban Florida Burrowing Owls
  - Resolution Approving Marco Island Community Parks Foundation
  - Marco Island Community Article Of Incorporation For Parks Foundation
- **Council Matters/Inquiries**
  - Magistrate Renewal
  - Burrowing Owls Agreement
  - City Parks Foundation
  - Property Preservation Fund
  - MICA Deed Restrictions
- **Planning Board**
  - Empire Bagel – Zoning Certificate, Use Assignment, Vested Rights
  - Hideaway Beach Landscape Buffer Variance
  - Comprehensive Plan Amendment Ordinance
  - Shops of Marco Island Site Development Plan Amendment

- **Code Enforcement**
  - December Hearings Were Cancelled
  - Mitigation Request Re 1909 Sheffield Avenue
- **Miscellaneous Police and Fire Labor and Employment Matters**
  - Administrative Investigation - Internal Discrimination Complaint
  - Arbitration Hearing, Petition to Reopen Hearing, And Post-Hearing Brief - Terminated Police Officer
  - Arbitration Hearing - Officer Qualifications
  - Internal Investigation - Firefighter Misconduct
  - Internal Investigation – Sworn Officer
  - Public Records Law And Active Investigations
  - Trademark Inquiry
  - Public Records Exemptions
  - Trespass On Public Property
- **Litigation Matters**
  - ***Heather Comparini v. The City of Marco Island, The Marco Island Police Department, and Alfred Schettino (PGIT Claim No. 351577)***

On September 25, 2019, Plaintiff Comparini, served Defendants with her lawsuit in the Collier County Circuit Court. Her complaint alleged violations of Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(f)(3), and Florida Statute Section 760, the Florida Civil Rights Act of 1992. On October 25, 2019, we removed this matter to Federal Court based upon federal question jurisdiction. Defendant's Motion to Dismiss was filed on November 1, 2019. In response, Plaintiff amended her Complaint to allege claims for constructive discharge, retaliation, negligent supervision and retention, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, and violations of Florida Statute Section 119. Concurrently, we have been engaged in settlement negotiations and have reached an agreement to settle which is contingent upon execution of a Settlement Agreement and Release and formal approval by the City Council. City Council approved of the parties' settlement on December 2, 2019. The Parties have signed the Settlement Agreement and Release. On December 17, 2019, Plaintiff filed a Voluntary Dismissal, With Prejudice, of all claims. The Court has entered a Final Order of Dismissal. This matter is now closed.
  - ***Picayune Strand / Belle Meade Acquisition by South Florida Water Management District (File No. 2016-028-106)***

The subject 162 Acre parcel is owned by the City to be used as an alternate reliability water wellfield source should the City's Henderson Creek/Marco Lakes water source facility become disabled, contaminated or otherwise be unavailable to the City as its current water supply source. A joint meeting was held with SFWMD



Officials On February 24, 2017 to discuss possible options. This matter remains open, pending formal action by the District.

- ***Sonia Rodriguez v. City and Coastal Concrete Products***

On January 23, 2017, the City received notice of a personal injury claim from lawyers representing Sonia Rodriguez. She was allegedly injured on October 7, 2015 in a bicycle accident. The purported cause of the accident is defective construction or lack of construction hazard warnings at a location being worked on by Coastal Concrete. The City was sued on April 20, 2018 after being placed on notice. Because the accident site was within a construction area being managed by Coastal Concrete under contract with the City, we placed Coastal Concrete and its insurer on notice of the claim and, now, the lawsuit, expecting them to defend it and indemnify the City.

The City has approved defense counsel appointed by Amerisure, the insurance company for Coastal Concrete. Coastal has undertaken the City's defense as required by the contract. The City Attorney will serve as the client contact for the insurance defense counsel going forward. Stipulation to substitution of counsel to allow Coastal Concrete to undertake City's defense is forthcoming.

The Court has entered an Order Granting Stipulated Dismissal, without prejudice, of Cross Claim against Coastal Concrete. We will continue to monitor this action as warranted.

- ***Osborn v. City of Marco Island and Braun***

This is a matter involving a trip-and-fall at a displaced sidewalk. The insurance adjuster for the co-defendant homeowner contacted us to find out information. It appears that a section of the sidewalk settled, significantly, over a back-filled trench following a sewer project in 2012. The work was performed by a City contractor who agreed pursuant to the contract to defend and indemnify the City. The contractor has rejected the initial tender of defense, asserting that it turned over the sidewalk to the City and it has no further obligation.

The relevant documents were provided to the insurance adjuster. No lawsuit has been served against the City at this time, but a notice of intent required by Florida Statutes Section 768.28 was sent to the City on January 27, 2017 and the plaintiff has sent demand letters to potential defendants, including the City. The claimed date of loss is December 29, 2016. We will continue to monitor this action as warranted.

- ***Scott Edson v. City of Marco Island (Johns Eastern Claim #90223)***

The last petition filed has been resolved and all court dates have been canceled, as there are no pending issues. Claimant is continuing to treat with his authorized treating physicians. We have discussed our plan and will be proceeding to have a

doctor review claimant's medical records to assist us with the handling of this matter.

- ***Joseph Mack v. City of Marco Island***

This matter was inactive for a considerable amount of time. Claimant recently moved to Montana, filing a Notice of Change of Address on 12/3/19. Claimant also filed Petition for Benefits on 12/3/19 requesting authorization for a follow up appointment with a primary care physician in Great Falls Montana (City where he moved). Johns Eastern has authorized the requested treatment. Due to the Filing of the Petition, the Court has set a mediation for 3/10/20 and a Final Hearing for 5/20/20.

- ***Chadd Chustz v. City of Marco Island (PGIT Claim # 329498)***

Plaintiff, Chadd Chustz, initiated this action in the United States District Court for the Middle District of Florida on September 4, 2018. Plaintiff seeks to hold the City liable for allegedly terminating him from his employment with the City in retaliation for exercising his First Amendment right to freedom of speech. On November 2, 2018, the City moved to dismiss Plaintiff's Complaint. Four days later, Plaintiff filed an Amended Complaint, and the City again moved to dismiss that amended pleading. On January 22, 2019, the Court denied the City's motion to dismiss the Amended Complaint, based solely upon the requirement that the Court view the Amended Complaint in the light most favorable to Plaintiff. The City filed its Answer and Affirmative Defenses on February 5, 2019. The parties attended Court-ordered mediation on January 3, 2020, which ended in an impasse. On January 10, 2020, the City moved for summary judgment. The case is set for trial on the two-week trial term commencing on May 1, 2020.

- ***In Re: Risk Protection Order Marco Island Police Dept. v Tremont***

Tremont Risk Protection Order, the Respondent was recently Baker Acted again, and an affidavit attesting to such was filed with the court, for their consideration when time comes for the expiration of the final order. **Update:** The mother of Respondent Tremont recently took out a restraining order protecting her from harm from the Respondent. A copy of the Restraining Order was filed with the Risk Protection Order Court, for evidence of City's Motion for Extension of the Risk Protection Order, which Order was extended for another year.

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Tessarolo***

The City Police Department pursued a risk protection order against Mr. Robert Tessarolo, after he used a firearm in an attempt to kill himself. All of Mr. Tessarolo's firearms were seized. Efforts by the police department lead to the judge issuing a final order of protection, which is good for one year expiring May 2020. We will continue to monitor for compliance.



- ***In Re: Risk Protection Order Marco Island Police Dept. v. Jonathan Deak***  
On November 15, 2019, Jonathan Deak expressed to family a threat to kill himself, and to shoot his girlfriend. Mr. Deak was Baker Acted by the Police. Temporary, then Final Orders of Protection were granted by the Court. We will continue to monitor for the next year for compliance.
- ***In Re Risk Protection Order Marco Island Police Department v. Everett J. Cook.***  
Mr. Cook, who suffers from dementia, and multiple health issues for which he takes multiple medications, threatened to kill himself. He owns several firearms. Police were called, Baker Acted Mr. Cook, and took his firearms in for safekeeping. The Court granted Temporary and Permanent Risk Protection Orders. Police will monitor compliance with Court Order for the coming year.
- ***Wienclaw v. City of Marco Island, et. al. (PGIT Claim #351992)***  
Plaintiff claims to have tripped and fallen on a cracked sidewalk located in front of 124 Landmark Street. Plaintiff is said to have hit her head and suffered a large contusion on her forehead, along with neck and back pain, mental anguish, disability, disfigurement, permanent and significant scarring, medical expenses, etc. The homeowners were brought in as co-defendants. Complaint answered and discovery responded to. Discovery remains ongoing.
- ***Cristena B. Yeutter, as Trustee v. City of Marco Island ("City") Bert J. Harris Act Claim (PGIT Claim # 347250)***  
The Trustee owns the residential property located at 764 Hull Court, Marco Island, Florida ("property"). In 1989, a dock was constructed on the property, and in 1992 a single-family residence was constructed on the property. In 2005 the residence on the property was demolished, leaving the dock as the only remaining improvement on the property. The City cited the Trustee for a code violation under section 54.110. To cure the code violation, the Trustee would either have to construct a single-family residence on the property or would have to demolish the dock. On December 26, 2018, the City received a section 70.001, Florida Statutes ("Bert Harris Act") notice from the Trustee claiming that the City's application of section 54.110 to the property burdens the Trustee's alleged right to maintain the boat dock on the property, which the Trustee claims is a legal non-conforming use because the dock was constructed in 1989. The claim has been submitted to the City's insurance carrier, and the City is developing a response to the claim. Trustee's counsel did submit a proposed settlement agreement, the City Attorney and City Manager have evaluated the proposal and offered alternatives to the Trustee's counsel; however, these discussions were not worthwhile. A Statement of Allowable Uses and settlement offer were emailed on June 21, 2019 and received June 24<sup>th</sup>, 2019. There has been no further activity to date.
- **Lydia Moers – 1049 San Marco**  
As of May 13, 2019, Lydia Moers (and the 1049 San Marco property) is not subject to bankruptcy protection. The bankruptcy case is dismissed. Specifically, a



dismissal effected pursuant to an Order Granting Motion to Dismiss Case on March 22, 2019, went into effect on April 6, 2019. While the Court gave Ms. Moers the opportunity to redeem the bankruptcy, subsequently and to date, no further action has been taken by or on behalf of the Debtor to reinstate the case. Trustee has issued a final report. We will continue to monitor this action as warranted.

- **Foreclosure Actions**

- **Bank of New York v. Vazquez, et al – 910 Ruby Court**

This foreclosure action was filed by Bank of New York, the mortgagee, for foreclosure due to a default by Vazquez, the mortgagor, regarding 910 Ruby Court, Marco Island, FL 34145. The City was named as a Co-Defendant due to several liens it has against the subject property. On February 18, 2019, the City filed its Answer & Affirmative Defenses in which it asserted it has pending and valid liens against the subject property. Further, the City also filed a motion to vacate an improperly entered Clerk's default. A hearing on the City's Motion to Vacate was heard on Thursday, April 18, 2019. The Magistrate granted the City's Motion to Vacate, and, on May 7, 2019, the Court entered a written Order vacating the Clerk's Default finding that the City's Answer and Affirmative Defenses to have been timely filed on February 18, 2019 in accordance with the Magistrate's ruling. A non-jury trial was held on November 25, 2019, and a Final Judgment was entered setting a foreclosure sale date of December 30, 2019. The December 30, 2019 foreclosure sale proceeded. On January 10, 2020, a Certificate of Disbursement was entered by the Clerk of Court indicating that there were no surplus funds to disburse to parties claiming an interest in the property. This case has concluded.



**WSH Legal Services Billings Summary**  
**Bills Dated December 6, 2019, for November, 2019 Legal Services**

2914.001	Retainer	Inv. # 223228	\$10,131.71
2914.003	Labor and Employment	Inv. #223229	\$3,608.00
2914.003-6	Thompson, Tige Employment Matter	Inv. #223232	\$10,959.40
2914.004	Hennings, Kevin-Grievance Re Termination	Inv. #223230	\$2,122.50
2914.006	Miscellaneous Matters	Inv. #223233	\$4,281.45
2914.007	Planning	Inv. #223234	\$5,437.40
2914.008	Code Enforcement	Inv. #223235	\$550.00
2914.009	Litigation – Miscellaneous	Inv. #223236	\$264.00
2914.022	Mack, Joseph – Worker’s Comp	Inv. #223237	\$83.00
2914.026	Vazquez, Robert – Defense of Foreclosure	Inv. #223238	\$242.00
2914.027	Edson, Scott – Worker’s Comp	Inv. #233239	\$8,785.76
2914.029	Deak, Jonathan Attila – Risk Protection Order	Inv. #223240	\$4,554.00