

**CITY OF RYE  
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Marcus Serrano, City Manager

SUBJECT: Enclosures - Council Packet

DATE: September 21, 2018

Enclosed with this memorandum are the following items:

9-21 Legal Department Update from the Corporation Counsel dated September 21, 2018.

9-21 Meeting notice for the week of September 21, 2018 is available on the City website, [www.ryeny.gov](http://www.ryeny.gov) under Calendar.

**CITY OF RYE  
MEMORANDUM**

TO: Honorable Mayor and Rye City Council  
FROM: Kristen K. Wilson, Corporation Counsel  
SUBJECT: Litigation Update  
DATE: September 21, 2018

**TAX CERTIORARI/SMALL CLAIMS ASSESSMENT REVIEW PROCEEDINGS**

**THE TOWN OF RYE AND THE RYE TOWN PARK COMMISSION v. THE ASSESSOR and Board of Assessment Review of the CITY OF RYE**

The Appellate Division, Second Department, handed down a Decision and Order reversing the lower court and granting the City's cross-motion for summary judgment. Notice of Entry was served on July 28, 2016. The Decision and Order confirms the City's ability to tax that portion of Rye Town Park which is occupied by Seaside Johnnies. On September 6, 2016, the City was served with a Motion for Leave to Appeal to the Court of Appeals by both the Town of Rye and the Rye Town Park Commission. The City filed its opposition papers on September 16, 2016. The Second Department and the New York State Court of Appeals have denied the Town's Motions for Leave. The Second Department Decision is the final decision on this matter.

**181 NEW ENGLAND SEAFOOD CORP. v. NOREEN WHITTY, et al**

I appeared at a court conference with Judge Tolbert and his law clerk on April 21, 2015. Motions for summary judgment are still pending. I attended a court conference last week and updated the Court on the status of The Town of Rye, et al. v. City of Rye, et al. The Judge is still reviewing the papers.

**LITIGATION**

**VENUS IRIZARRY V. CITY OF RYE, JOHN COUCH, ELIZABETH FORSTMANN, PEACHWAVE, ABC CORPORATION AND ABC PARTNERSHIP**

Plaintiff filed a summons and verified complaint naming the City of Rye as one of the defendants. Plaintiff allegedly fell outside of Peachwave and sustained damages while walking on or near the parking lot and sidewalk on March 17, 2017. This week, a preliminary conference was held after and depositions are scheduled for May 2018.

**CROWN CASTLE v. CITY OF RYE, ET AL.** – Federal Court

Crown Castle filed a summons and complaint in the Southern District of New York against the City of Rye and the City Council alleging various causes of action under the Telecommunications Act and breach of contract. On Friday May 12, 2017, Plaintiffs moved by

Order to Show Cause for a Temporary Restraining Order and preliminary injunction. A TRO was granted preserving the status quo until a decision on the motion for a preliminary injunction is decided. On June 18, 2017, Plaintiff's motion for a preliminary injunction was fully submitted. On June 23, 2017, the City's motion to dismiss was fully submitted. A settlement conference was held with Magistrate Davison on July 18, 2017. The case did not settle. Plaintiff served a letter motion requesting that discovery proceed while the motions are pending. On September 15, the City opposed the motion and on September 19, 2017, the Judge denied Plaintiff's motion and indicated that discovery is stayed until the pending motions are decided. On Thursday October 26, 2017, Plaintiff submitted a letter motion requesting the Judge to expedite his review of the pending motions and render a decision soon as Plaintiff alleged that the City was continuing to violate the Telecommunications Act. On Thursday evening, Judge Bricetti rendered a decision stating that such motion is denied and that Plaintiff's continuing requests for an expedited review is not helping its case. On Friday December 8, 2017, Judge Briccetti dismissed the Complaint finding that the City properly started the environmental review process under the State Environmental Quality Review Act and did not deny Crown Castle's request. Plaintiff filed a Notice of Appeal to the Second Circuit Court of Appeals. Plaintiff withdrew its Appeal and there is no pending matter in the Second Circuit Court of Appeals.

CROWN CASTLE v. CITY OF RYE, ET AL. -State Court

Plaintiff filed a hybrid Article 78/Declaratory Judgment action in Westchester Supreme Court. Plaintiff has asked that the matter be assigned to the Environmental Claims Part. Plaintiff alleges that the City Council was arbitrary and capricious when it classified the action as Type II, rendered a positive declaration and started the SEQRA process. Plaintiff also argues that the City breached its obligations under the Right of Way Use Agreement when it did not issue the necessary approvals pursuant to Plaintiff's request to install additional DAS nodes throughout the City. Crown Castle filed its Memorandum of Law and Affirmation in Support of the Petition on Friday March 9, 2018. The City of Rye filed a motion to dismiss on Monday, April 9, 2018. Crown Castle filed and served its opposition to the City's Motion to Dismiss and Cross-Motion to convert the Motion to Dismiss into a Motion for Summary Judgment. On Wednesday June 13, 2018, the City served its reply papers in further support of its motion. **By Decision and Order dated August 20, 2018, Judge Susan Cacace dismissed the action for Crown Castle's failure to establish it had standing. Notice of Entry was filed and served on August 22, 2018. To date, no Notice of Appeal has been served.**

CITY OF RYE, ET AL. v. COUNTY OF WESTCHESTER, ET AL.

The Petitioners filed a Notice of Appeal on April 24, 2017 with the Appellate Division, Second Department. Petitioners have six (6) months to perfect their appeal. The City filed and served its appellate brief. County and Standard Amusements have requested a brief extension of time to file their opposition. A new briefing schedule was agreed to by all parties. The County and Standard Amusements filed their briefs. The City of Rye filed its reply brief on January 23, 2018. The matter is now fully submitted. **A letter motion was submitted to the Clerk of the Appellate Division requesting an expedited oral argument date.**

## JOHN LYONS, ET AL. v. CITY OF RYE

Plaintiffs, three Rye Golf Club couples, filed and served a summons and complaint in Westchester County Supreme Court alleging the City of Rye breached the contract (membership agreement for 2015) when the golf club had to close portions of the course as a result of damage to the golf greens. Plaintiffs are seeking full reimbursement of their 2015 comprehensive non-resident membership dues, in addition to other damages. An answer with affirmative defenses was filed and served. Depositions have been completed and the case has been certified. The City filed a motion for summary judgment and, in the alternative, a motion to change venue to Rye City Court in the event summary judgment is denied. This matter is fully submitted.

## CITY OF RYE v. TRAVELERS

The City of Rye filed and served a summons and complaint in Westchester County Supreme Court against Travelers Insurance Company as a result of a breach of contract when Travelers failed to compensate the City under the terms of the Insurance Policy. The City submitted a claim to Travelers for damage sustained to the roofs on the buildings at Rye Golf Club. The damage was sustained as a result of snow, ice and ice damming damage during the winter months in 2014 and beginning of 2015. The City is seeking compensatory damages in excess of \$1 Million, among other damages. Defendant filed a Notice of Removal to the United States District Court, Southern District of New York based on diversity of citizenship and the amount in controversy exceeding \$75,000. Travelers filed an answer with affirmative defenses. Counsel appeared at a case management conference on May 12, 2017. City responded to Defendant's interrogatories and depositions are on-going.

## WILTON VALDEZ v. CITY OF RYE, RYE FIRE DEPARTMENT and MILTON FIREHOUSE

Plaintiff filed suit in Westchester County Supreme Court seeking damages he sustained while working at the Milton Firehouse. Plaintiff was injured when he fell off of a ladder while he was repairing a garage bay door. Plaintiff alleges that the ladder that he borrowed from the Milton Firehouse was defective and that such defect caused him to fall. Plaintiff commenced this action under the New York Labor Law Sections 200, 240, and 241(6). Depositions were held and the City filed a motion for summary judgment. Judge Ecker rendered a Decision and Order dismissing Plaintiff's claim under New York Labor Law § 241(6) but allowing Plaintiff's New York Labor Law § 240(1) to continue. The parties have agreed to mediate this matter on July 18, 2018. **The mediation resulted in a settlement and this matter has now concluded.**

## DeBORBA v. CITY OF RYE

Plaintiffs commenced suit against the City of Rye alleging a serious injury when Luis DeBorba tripped and fell on a sidewalk abutting 2 School Street, Rye, New York. The Summons/Complaint has been forwarded to our insurance carrier for a determination. A preliminary conference was held on January 18, 2017 and a discovery schedule was agreed upon by all parties. On August 22, 2017, I attended a compliance conference. Plaintiff must send out medical authorizations by this Friday, August 25, 2017. Deposition of plaintiff took place and discovery demands have been exchanged. The deposition of the City of Rye took place on

December 28, 2017. Co-Defendant failed to show. Plaintiffs' counsel has moved to amend the Summons and Complaint by adding two additional defendants.

BOARD OF MANAGERS OF THE IVES AT RYE v. CITY OF RYE

The City has served its Answer with Affirmative Defenses.

GORDON and MARIA HARGRAVES v. CITY OF RYE ZONING BOARD OF APPEALS, WALTER & MARGARET NELSON, and ROBERT TALT

Judge Cacace dismissed Petitioners' Petition finding that the Respondent ZBA acted reasonably, properly considered the statutory criteria that must be met in order for a variance to be granted and relied on substantial evidence in the record. Notice of Entry was served on October 21, 2015. Petitioners filed a Notice of Appeal. Petitioners requested an additional one-month enlargement of time to perfect their appeal. Petitioners perfected their appeal and served respondents with the record on appeal and appellate brief. Respondents filed their opposition brief on September 19, 2016. **The Appellate Division, Second Department affirmed the lower court's decision that the City's ZBA acted properly and dismissed the petition. Notice of Entry was filed and served.**

LINDA COLLINS v. CITY OF RYE and CONSOLIDATED EDISON

Plaintiff served the City of Rye and Consolidated Edison with a Summons and Complaint alleging personal injuries when she fell crossing the street in the area of Purchase Street and Smith Street on July 26, 2014. The matter is venued in Westchester County Supreme Court. A compliance conference was held in May and a discovery schedule was established. Depositions have been completed. The City's attorney made a motion for summary judgment and the motion was denied. A notice of appeal has been filed.

AGUIRRE and SANCHEZ v. COUNTY OF WESTCHESTER, ET AL.

Plaintiffs commenced a federal lawsuit in the Eastern District of New York alleging violations of their civil rights under the Constitutions of the United States and New York State. Plaintiffs were arrested in Queens and subsequently indicted in Westchester County Supreme Court for Assault in the Second Degree and Robbery in the Second Degree. On November 26, 2012, Westchester County Court Judge Hubert issued a decision and order dismissing the indictment. On October 25, 2016, a revised discovery schedule was set and Plaintiffs' counsel had until November 2, 2016 to perfect service and until November 10 to serve responses to Plaintiffs' discovery demands. On November 8, 2016, Judge Ross rendered an Opinion and Order granting, in part, and denying, in part, the Defendants' motion to dismiss. Plaintiffs' claims against all of the unidentified John Does and against County Sgt. Hess are dismissed with prejudice. In addition, Plaintiffs' "Deprivation of Civil Rights" and "monell" causes of action are dismissed with prejudice as to all Defendants. Plaintiffs' false arrest claim against Chittenden is dismissed with prejudice but remains as to County Officers Lopez and Mohl. Also, Plaintiff Aguirre's claims for malicious prosecution and fair trial claims remain as to all three (Chittenden, Lopez, and Mohl). Judge Scanlon signed an amended Order to allow the New York State Department of Corrections more time to transfer Plaintiff Aguirre to Sing Sing Correctional Facility. The deposition of Melissa

Sanchez took place on January 24, 2017. The deposition of Christian Aguirre took place on February 13, 2017 at Sing Sing Correctional Institute. The depositions of non-parties will take place over the next two to three weeks. A status conference was held on March 24, 2017 and discovery deadlines were amended. A stipulation of dismissal was filed and “so ordered” by the Judge and the releases have been signed.

CONNECTICUT FUND FOR THE ENVIRONMENT D/B/A SAVE THE SOUND v. WESTCHESTER COUNTY, ET AL.

Save the Sound commenced a federal action alleging violations of the Clean Water Act in the United States District Court for the Southern District of New York against the County of Westchester, the City of Rye, and numerous other municipalities. Save the Sound is alleging violations of the Clean Water Act for exceeding effluent limits under the City’s SPDES permit and in violation of its MS4 permit. I submitted this matter to the City’s insurance carrier for a coverage determination. Save the Sound has consented to an additional ninety day (90) adjournment in order to allow the defendants’ time to answer or otherwise submit a request for permission to file a motion to dismiss. Judge Seibel has “so ordered” the new schedule. Defendants participated in an initial settlement meeting on February 25, 2016 and a subsequent settlement conference on March 17, 2016.

There have been numerous Defendants-only strategy meetings and also two settlement meetings with all parties. On Wednesday, April 20, all parties appeared in front of the Honorable Cathy Seibel in the Southern District of New York for a formal status conference and update. At the conference, the parties requested more time to conduct system wide studies regarding the condition of the infrastructure. The enlargement of time would delay the requirement for defendants to answer. The Judge agreed to this approach and was pleased that the parties appeared to be working together in a productive fashion. Plaintiffs submitted the first, second, third and fourth quarterly status reports to the Judge. The City’s SSES has been prepared and submitted for review by DEC. The City submitted its responses to DEC on December 21, 2017. A conference call with Save the Sound took place on January 30, 2018 and a meeting took place on March 2, 2018 between all the municipal defendants and Save the Sound pursuant to the SO. An extension of time for the next quarterly status report was requested on behalf of all parties until the end of April and same was submitted. Since the last meeting, the City completed its Phase II of the SSES and a proposed Phase III work plan. The quarterly status report was filed on June 29, 2018.

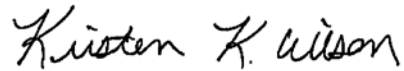
ANDERSON v. CITY OF RYE, ET AL.

Melissa Anderson filed a summons and complaint against the City of Rye, the Rye Neck Union Free School District and the Village of Mamaroneck seeking damages for personal injuries sustained while on the playground at Rye Neck Middle School. The City’s insurance carrier has been notified and denied defense and indemnification since this property is not owned by the City and the City does not maintain or operate the playground equipment. During the week of May 9, 2016, I submitted an affirmation establishing ownership and maintenance of the playground property. On November 29, 2017, I attended a Court conference and will be making a motion to be dismissed from the case at this time.

**RYE CITY COURT**

Routine NYS Vehicle and Traffic law calendar with no unusual dispositions. There has been an increase in tickets issued under the Transportation Law to commercial truck drivers found to be operating without the proper inspections, safety equipment, medical certificates, and other similar requirements.

Respectfully submitted,

A handwritten signature in black ink that reads "Kristen K. Wilson". The signature is written in a cursive, flowing style.

Kristen K. Wilson  
Corporation Counsel

KKW/kkw