



City of New Bedford
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MEMORANDUM

TO: New Bedford City Council
FROM: Mikaela A. McDermott, City Solicitor
DATE: February 5, 2016
RE: Judgments/Claims/Settlements Update

CITY CLERK
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CITY CLERKS OFFICE
NEW BEDFORD, MA

The purposes of this memorandum are to provide: (1) an overview of how the funds in the Judgments/Claims/Settlements line item in the General Government Unclassified account have been spent thus far in FY16; (2) an overview of the claims and litigation currently pending against the City; and (3) an estimate of how much additional funding will be needed for Judgments/Claims/Settlements line item for the remainder of FY16.

I. FY16 Expenditures in the Judgments/Claims/Settlements Line Item

The City Council allocated \$100,000 to the Judgments/Claims/Settlements line item for the FY16 budget. As of January 13, 2016, \$95,109.19 of that \$100,000 had been expended and in the following manner:

- \$53,822.15 was paid in deductibles to Trident Insurance Company for 13 matters that are covered by the City's insurance policies. The nature of those 13 insurance matters was as follows:
 - 9 matters were under the employment practices liability policy and involved the following departments: Police (2), School (2), Community Services (1), Personnel (1), Council on Aging (1), Health (1), and Traffic (1).
 - The remaining 4 matters were under the law enforcement policy and involved the Police Department.

- \$22,290.19 was paid to settle 23 property claims pending against the city. Of those 23 claims, the following departments were involved: Fire (10), DPI (8), Police (4), and DFFM (1).
- \$18,996.85 was paid to settle 3 pending lawsuits against the city. Of those three lawsuits, two were for personal injury and involved the Police Department, and one was for bodily injury and involved DPI.

II. Overview of Claims and Litigation Currently Pending against the City

Outstanding Claims

As of December 31, 2015, there were 68 claims pending against the City that were being handled in-house. Of these 68 claims, 58 were for property damage and involved the following departments: DPI (38), Fire (7), DFFM (6), Police (6), and School (1). Another 10 claims were for personal injury and involved the following departments: DPI (5), Police (4), and Fire (1).

As of December 31, 2015, there were 53 claims pending against the City that were being handled through the City's insurance policies. Of these 53 claims, 26 were for property damage and involved the following departments: DPI (16), EMS (5), Traffic (2), DPI (2), and Council on Aging (1).

Another 25 insurance claims were for personal injury and involved the following departments: DPI (10), School (5), Police (4), Zoo (3), DFFM (2), and Traffic (1). The remaining insurance claims involve an alleged civil rights violation by the Police Department and the alleged failure to plow a street by DPI.

Outstanding Litigation

There are currently 34 litigation matters in which the City is a defendant and could have to pay insurance deductibles, judgments, and/or settlements from the Judgments/Claims/Settlements line item in the General Government Unclassified account.

Of those 34 matters, 16 are covered by insurance, and the total maximum amount the City could have to pay in deductibles on them is \$177,820.83. The nature of these insurance matters is as follows:

- 9 cases are under the employment practices liability policy and involve the following departments: School (3), Traffic (1), Fire (1), Personnel (1), Council on Aging (1), Community Services (1), and Health (1).
- 3 cases are under the law enforcement policy and involve the Police Department.

- 3 cases are under the general liability policy, are for personal injury, and involve the School Department.
- 1 case is under the Auto policy, is for personal injury, and involves EMS.

The remaining 18 cases are not covered by insurance. The case on which the City faces the greatest potential financial exposure is the dispute with AFSCME Council 93 over employee furloughs imposed in 2009. We estimate that the maximum potential exposure in that case, which is currently pending before the Massachusetts Court of Appeals, is \$1.8 million.

The remaining 17 non-insurance cases break down as follows:

- 7 cases are for property damage and involve DFFM (2), EMS (2), DPI (2), and Police (1)
- 4 cases are for personal injury and involve the Police Department (3) and EMS (1)
- 2 cases are MCAD complaints; one involves the City Council, and the other involves Animal Control
- 2 cases allege constitutional violations by the Police Department. One case involves the Second Amendment, and the other alleges a violation of the right to travel.
- 1 case is a contract dispute and involves the City Council
- 1 case concerns the demolition of a building and involves Inspectional Services

III. Additional Funding Need of \$150,000

We are currently projecting a potential additional funding need of \$150,000 for the Judgements/Claims/Settlements line item in the General Government Unclassified account for FY 2016. Our rationale is as follows:

- Insurance deductibles: We believe, based on our outstanding insurance matters and past experience, that we will need approximately \$55,000 to pay insurance deductibles for the rest of the fiscal year. In FY15, we spent approximately \$118,000 on insurance deductibles, and in the first half of FY16, we have spent \$53,822.15 on insurance deductibles. As of now, we expect that we will incur insurance deductibles at the same rate for the rest of the fiscal year, so an extra \$55,000 in funding for that purpose seems prudent.
- Judgments/Claims/Settlements: We also believe we need an additional \$95,000 to pay judgments, claims and settlements in the second half of FY16. Of that \$95,000, we believe that we will need \$50,000 to settle a number existing claims for which the city is liable. We believe that we will need the remaining \$45,000 to pay a judgment in a matter that went to trial this fall. In that trial, which involved the city's demolition of a building, the jury reduced an earlier verdict of \$70,000 plus interest to \$18,000 plus interest.

The CFO's Office has identified savings in the Solid Waste Disposal contract through the assignment of a portion of costs to the State Recycling Grant, thereby reducing the funding need

for that line by \$100,000. This balance can be reassigned to meet the majority of the FY 2016 funding requirement for the Judgments/Claims/Settlements line item, although an additional transfer may be necessary near the end of the year.