

**MEMORANDUM
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TO: Ron Long, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: John J. Williams, Borough Mayor *T.J.W.*

FROM: ~~AAA~~ Colette Thompson, Borough Attorney

DATE: June 28, 2006

SUBJECT: Litigation Status Report

Following is a summary of the major lawsuits in which the borough and school district are involved. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the borough.

1. **Bashaw v. South Peninsula Hospital, et al.** Case No. 3KN-05-138 CI. Elizabeth Bashaw, a former employee of South Peninsula Hospital, Inc., filed suit against the borough, South Peninsula Hospital, and two surgeons alleging violation of the Alaska Whistleblower Act. Plaintiff settled with the borough for no payment.
2. **Dean v. KPB et al.** Case No. 3KN-05-60 CI. Ms. Dean filed suit against the borough for injuries she allegedly sustained when she slipped and fell on ice in her driveway. She claims that the ice was present as the borough road service area failed to adequately ditch the road, causing the ice to build up on her driveway. Discovery is in process, and trial is scheduled for October 2006. The court recently granted co-defendant's motion to add Phillip Ausman as a third-party defendant.
3. **Faulk v. KPB Board of Equalization.** Case No. 3KN-05-598 CI. In July 2005, David and Bonnie Faulk appealed the decision of the Board of Equalization concerning the assessment of Harbor Lights Condominium located in Seward Alaska. Briefing is in progress.
4. **Faulk v. KPB Board of Equalization.** Case No. 3KN-06-____ CI. David and Bonnie Faulk filed an appeal of the 2006 Board of Equalization decision. The notice of appeal was just received, and no further action has been taken.
5. **Hogg v. Raven Contractors, Inc.,** Case No. 3KN-03-361 CI. Donald W. Hogg sued Raven Contractors, Inc. and the Kenai Peninsula Borough for injuries he sustained from a fall at the Kenai transfer station. The case was tried in September 2004 and the jury ruled that the borough was not negligent and no funds were owed to Mr. Hogg. Mr. Hogg moved the

court for a new trial, which the court denied. An appeal to the Alaska Supreme Court was filed, and the court denied Mr. Hogg's appeal.

6. **KPB v. State Department of Natural Resources**, Case No. 3KN-00-30 CI. (Quartz Creek Appeal). The State Department of Natural Resources (DNR) issued an administrative decision that an RS 2477 trail exists in the Sunrise area. The borough challenges the existence of the trail and its location, which DNR has not surveyed. The trail may impact municipal entitlement lands, including lands that may have already been conveyed. The parties have negotiated a settlement and, and the State has approved a vacation of the purported RS2477 and rededication of the trail. A vacation plat may be necessary to finalize the matter.
7. **Larson v. KPB**. Case No. 3KN-05-814 CI. Mr. Leroy William Larson was hired by the school district to conduct a concert at Kenai Central High School in 2004. While the stage was being prepared for the performance, Mr. Larson stepped back and fell into the orchestra pit as it was being lowered. He has sued the district for his injuries sustained in that fall. Discovery is in process.
8. **M.P. v. KPBSD**. Case No. A05-194 CV. The school district was sued in federal court by a parent on behalf of her child for injuries allegedly sustained on school grounds caused by another student. Discovery is in process, and plaintiff filed an amended complaint alleging the school district violated the child's civil rights.
9. **McDermot-Johnston v. KPB, et al.** Case No. 3KN-04-864 CI. Ms. Johnston, a minor, through her parents has sued the borough and other parties for injuries sustained when she fell from the balcony of the fire safety house during the home show in April 1999. The AML/JIA is providing defense for the borough, and discovery is in process.
10. **Schade v. KPB**. Case No. 3HO-04-271 CI. Lloyd Schade filed suit against the Kenai Peninsula Borough for injuries sustained when he was driving on Brody Road and came upon the location where the bridge over the Ninilchik River had washed out. Mr. Schade claimed that he drove off of the bank and into the river. Discovery is in process, and the AML/JIA is providing defense for the borough. As Mr. Schade passed away last winter, this case is now being pursued by Mr. Schade's estate.
11. **Tesoro v. KPB**. Case No. 3AN-04-11092 CI. This case is an appeal of the 2004 board of equalization valuation decision of Tesoro's refinery and related lands. The court ordered that the matter be remanded for another appraisal, and the parties have since negotiated a settlement in principle and are finalizing the details.
12. **Tesoro v. KPB**. Case No. 3AN-05-11101 CI. This is an appeal of the 2005 board of equalization decision regarding valuation of Tesoro's refinery. Briefing has not yet started. The parties have negotiated a settlement in principle, and are in the process of finalizing details.
13. **Wade v. KPB**. Case No. 3KN-03-489 CI. Jesse S. Wade and Catherine Wade appealed a decision of the assessor denying a senior exemption based upon their lack of ownership of the subject property. The court entered an order remanding this tax exemption case to the

board of equalization. The borough filed a petition for review with the Alaska Supreme Court, which was denied. The parties have since settled this case.

14. **Warrington v. KPB.** Case No. 3KN-05-206 CI. Merriam Warrington, Helen Schwert, Connie Alderson, Earl Breyfogle, Steve Ebbert, and Neil Kinney appealed a board of adjustment decision which approved a conditional land use permit for gravel mining in Anchor Point issued to Cecil Jones. The court entered an order affirming the decision of the Board of Adjustment.