

July 21, 2022

**VIA E-MAIL [Nicholas.Hoeft@sao.wa.gov]**

Nicholas Hoeft  
Auditor in Charge  
Washington State Auditor's Office  
9611 NE 117th Avenue, Suite 2890  
Vancouver, WA 98662

**RE: Response to Auditors' Request for Information**

Dear Mr. Hoeft:

I am responding to your letter to Mr. Jonathan Young, Vancouver's City Attorney, dated July 13, 2022, requesting certain information on claims against the city that existed as of December 31, 2021 and those that arose subsequent to December 31, 2021, up to the date of this letter.

Mr. Young requested that I respond on behalf of the City of Vancouver. I am an Assistant City Attorney and I handle the majority of the City's litigation. I also assist our Risk Department in managing and adjusting claims when requested. In that capacity, I have reviewed litigation and claims threatened, asserted or reasonably anticipated involving the City of Vancouver and have consulted with outside legal counsel with respect thereto where I have deemed it appropriate.

The City has authorized and requested that I provide a letter to you with regard to litigation and claims threatened or unasserted against the City. You have requested the following:


1. A list of all litigation, claims and assessments, including threatened or unasserted claims that are probable of assertion and that, if asserted, would have at least a reasonable possibility of an unfavorable outcome. The list may be limited to matters involving amounts over \$50,000 individually or in the aggregate. For each matter, the list should include:
  - a. A description of the matter, including the period in which the underlying cause for legal action occurred.
  - b. Progress of the matter to date and how the government is responding or intends to respond, if applicable (for example: seeking arbitration, contesting the case, appealing the verdict, seeking an out-of-court settlement, etc).







- c. Whether the matter has been referred to external legal counsel.
2. A statement regarding whether any of the matters listed have a reasonable possibility of resulting in a loss of more than \$50,000 or a loss that cannot be estimated. If any such matters exist, please either include the following information for each matter with the list or arrange for a time to discuss this information verbally with the auditor:
  - a. The likelihood of an unfavorable outcome.
  - b. The estimated amount or range of the potential loss before insurance coverage is applied.
  - c. The extent to which losses will be covered by insurance or a risk pool and whether there are any disputes, disagreements or uncertainties regarding whether the insurer will pay the claim as expected.
3. The nature and reasons for any limitation in your response.





Below is a list of claims existing as of December 31, 2021, as well as those that arose subsequent to that date up to the date of this letter. With respect to matters which have been specifically identified above and as contemplated Paragraph 5 of the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, I advise you that the ability to accurately estimate the range of potential loss on any claim is limited. According to the ABA Policy it is only appropriate for a lawyer to opine on the value of a claim "if the probability of inaccuracy ... is slight." The comments to the ABA Policy further indicate that "as a general rule, it should not be anticipated that meaningful quantifications of 'probability' of outcome or amount of damages can be given by lawyers in assessing litigation."

With respect to matters that have a reasonable possibility of a loss exceeding \$50,000.00, I advise you of the following matters that existed as of December 31, 2021, or arose subsequent to that date. Unless otherwise noted, each of the following claims/cases is being handled internally either by me or by Assistant City Attorney Sara Baynard-Cooke:



**Cases pending as of December 31, 2021:**

-  *Quinn v. City of Vancouver*: Plaintiff claimed workplace discrimination on the basis of gender. As of December 31, 2021, the lawsuit was pending in the United States District Court for the Western District of Washington. The City was represented by Colleen Kinerk, and the individually named defendants were represented by Sheryl Willert of Williams Kastner and Jayne Freeman of Keating Bucklin & McCormick. Following mediation in early 2022, the case settled for \$475,000, \$50,000 of which coming by way of a "write-off" due to a sanctions order against Ms. Quinn. The remainder of the settlement (\$425,000) was paid by the City's excess insurance carrier as the City exhausted its self-insured retention. The matter is now closed.

-  *Reed v. City of Vancouver*: Plaintiff claimed disability discrimination associated with her termination from employment with the City. As of December 31, 2021, the lawsuit is pending in the United States District Court for the Western District of Washington. The claims against the individual defendants were dismissed on summary judgment. The City was represented by Ms. M. Quinn Oppenheim of Summit Law. Following mediation in early 2022, the case settled for \$300,000. The matter is now closed.
-  *Ballou v. City of Vancouver*: Plaintiff, a member of the police department, is claiming discrimination and retaliation after being passed over for promotion to the rank of sergeant on three separate occasions and being the subject of several internal affairs investigations. This lawsuit is pending in the United States District Court for the Western District of Washington on remand from the United States Court of Appeals for the Ninth Circuit. The City is defending itself in-house through the City Attorney's Office. There currently is no trial date, and we do not expect trial to occur prior to 2023. Plaintiff seeking economic damages in the amount of \$17,111 and noneconomic damages of approximately \$2 million.
-  *Estate of Abbe v. City of Vancouver*: Plaintiff is the daughter of William Abbe, who was shot and killed by Vancouver Police Officers on April 28, 2020. The lawsuit is pending in the United States District Court for the Western District of Washington. Plaintiff is claiming excessive force and negligence in connection with the incident. In her tort claim, Plaintiff alleged entitlement to \$5 million. The City is defending itself in-house through the City Attorney's Office. Excess carriers have been notified. Trial is set for June 20, 2023, in Seattle before Judge Lauren King.
-  *Gellis v. City of Vancouver*: Plaintiff alleges personal injuries arising from a trip and fall on a Vancouver sidewalk. Plaintiff alleged entitlement to \$750,000 in his tort claim. The City defended itself in-house through the City Attorney's Office. This matter settled in June 2022 for \$80,000 and is now closed.
-  *Hartford Ins. Co. v. City of Vancouver/Triple J Towing*: Hartford Insurance Company insured the Aveda Institute, a commercial business where a sewer backup occurred. Hartford has brought a subrogation claim against the City and the entity believed to have caused the sewer backup (Triple J), seeking damages in excess of \$150,000. The City settled this claim in early 2022 for \$5,000. The City defended itself in-house through the City Attorney's Office. The matter is now closed.
-  *Christine Troutt (Estate of Robert Smith) v. City of Vancouver*: Plaintiff is the sister of Robert Smith, an individual who was found deceased along a sidewalk in January 2020. Plaintiff claimed Mr. Smith tripped on a Vancouver sidewalk, and the trip caused the death. The City denied liability. The City defended itself in-house through the City Attorney's Office. The Court granted summary judgment to the City in January 2022 and dismissed the lawsuit. There was no appeal, and the matter is now closed.

-  *Campbell v. Michels Corporation/City of Vancouver*: Plaintiff alleges that a contractor hired by the City of Vancouver negligently performed work that resulted in a sewer backup in his home. The City tendered this lawsuit to the contractor's insurance carrier pursuant to a defense and indemnification clause in the contract. The City is being defended by Smith Freed Eberhard at the contractor's/insurer's expense. It is not anticipated the City will have to contribute to this lawsuit given the defense and indemnification clause in the public works contract.
-  *DiRaimo v. City of Vancouver*: Plaintiff claims personal injuries from a trip and fall incident in December 2017. She filed a lawsuit just before the statute of limitations expired, naming the City and the abutting property owners. The case settled at mediation in January 2022, with the City contributing \$29,750 toward a global settlement of \$59,500. The City defended itself in-house through the City Attorney's Office. The case is now closed.
-  *Passant v. City of Vancouver*: This was a workers' compensation appeal from a decision of the Board of Industrial Insurance denying benefits to a former City of Vancouver employee. On March 1, 2022, a jury found in favor of the worker and reversed the decision of the Board. It is anticipated that the claimant will seek a pension with the Department of Labor & Industries. If a pension is awarded, and at this point it is uncertain whether that will be the case, the City would be required to contribute roughly \$421,000 to the State pension fund. The City was represented by Steve Reinisch of Reinisch Wilson Weier.
-  *Sims v. City of Vancouver*: Plaintiff is a firefighter who claims he was injured during a training exercise in 2018. Although he received benefits under Washington's workers compensation laws, state law allows him to sue in tort for any damages "in excess" of what he received or will received through workers' compensation. The City is defending itself in-house through the City Attorney's Office.

With regard to lawsuits that were filed on or after January 1, 2022, that have reasonable possibility of a loss exceeding \$50,000.00, I advise you of the following:

-  *Hunter v. City of Vancouver*: Plaintiff is the father of Carlos Hunter, who was shot and killed by both federal and Vancouver Police Officers on March 7, 2019. The lawsuit is pending in the United States District Court for the Western District of Washington. Plaintiff is asserting state law claims of negligence and outrage in connection with the incident; all federal claims were withdrawn. In his tort claim, Plaintiff alleged entitlement to \$5 million. Excess carriers have been notified. There is no trial date scheduled. The City and the involved officers are represented internally by me and Sara Baynard-Cooke.
-  *Nguyen v. City of Vancouver*: Plaintiff is claiming injury as a result of an officer-involved shooting and police pursuit on February 5, 2019. The lawsuit is pending in the United States District Court for the Western District of Washington. Plaintiff is claiming excessive force under 42 U.S.C. § 1983. Plaintiff has not alleged any amount in damages to date.

There is no trial date scheduled. The City is defending itself internally through the City Attorney's Office.

**Claims filed, no active litigation**

- *Bushman, Jacob*: Claimant alleges property damage stemming from a SWAT operation that used chemical munitions to extract Claimant's cousin from the residence pursuant to a felony arrest warrant. Claimant's attorney was notified that many of the actions about which he complains were carried out by other agencies. The City is disputing liability. It is unknown whether the Claimant will pursue this matter further against the City of Vancouver.



The City of Vancouver is self-insured, but has excess insurance which is applicable to each of the above-described claims. There is a \$1,000,000.00 self-insured retention for each claim.

With regard to claims that are threatened or unasserted that are of probable assertion, the City discloses the following:

- An officer-involved shooting occurred October 4, 2020, resulting in a death. It is unknown whether the family has retained counsel or whether the family intends to pursue a claim.
- An officer-involved shooting occurred November 26, 2020, resulting in the suspect's paralysis. It is unknown whether the family has retained counsel or whether the family intends to pursue a claim.

Consistent with the request from the City of Vancouver Chief Financial Officer to provide the above information, this is to advise that the City does not intend to waive the attorney-client privilege or the work product privilege/immunity, and neither the request nor this response shall be deemed a waiver of either such privilege.

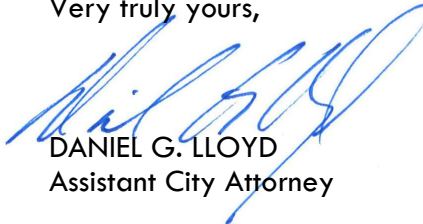
This response is limited by, and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information together with its commentary. Without limiting the generality of the foregoing, the limitations set forth in the ABA Statement on the scope and use of this response (Paragraphs 2 and 7), are specifically incorporated herein by reference, and any description herein of "loss contingencies" is qualified in its entirety by Paragraph 5 of the Statement and the accompanying Commentary which is an integral part of the Statement.

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Mr. Nicholas Hoeft  
July 21, 2022  
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If you have any questions or wish to discuss this letter further, please do not hesitate to contact me.

Very truly yours,



DANIEL G. LLOYD  
Assistant City Attorney

DGL/dgl

cc: Lisa Brandl, Deputy City Manager (*via email*)  
Jonathan Young, City Attorney (*via email*)  
Nena Cook, Chief Assistant City Attorney (*via email*)  
Brent Waddle, Risk and Safety Manager (*via email*)  
Natasha Ramras, Chief Financial Officer (*via email*)  
Cyndi Turner, Accounting Manager (*via email*)  
Jordan Sherman, Internal City Auditor (*via email*)

*For more information, or to request alternate formats of this letter, please contact our department at (360) 487-8500 (TTY: 360-487-8602) or by email at [vanlaw@cityofvancouver.us](mailto:vanlaw@cityofvancouver.us).*