

## KENAI PENINSULA BOROUGH

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**CHARLIE PIERCE  
BOROUGH MAYOR**

### MEMORANDUM

TO: Wayne Ogle, Assembly President  
Penny Vadla, President, Board of Education  
Members, Kenai Peninsula Borough Assembly  
Members, Kenai Peninsula Borough School District Board of Education

THRU: Charlie Pierce, Borough Mayor 

FROM: Colette Thompson, Borough Attorney 

COPY: Risk Management Committee

DATE: January 4, 2018

SUBJECT: Litigation Status Report – Quarter Ending 12/31/17

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Following is a summary of the non-routine litigation 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. *Hunt v. Kenai Peninsula Borough* — Case No. 3AN-16-10652CI. In this lawsuit the plaintiffs ask the court to declare the borough assembly's invocation policy violates the Alaska Constitution. They also seek a declaration that the plaintiffs are public interest litigants and request an award of full and reasonable attorneys' fees and costs as well as nominal damages. Both parties have filed motions for summary judgment and oppositions. The borough's reply to plaintiffs' opposition is due January 16, 2018. Oral argument has been requested. Trial call is scheduled for February 12, 2018, with trial scheduled for the week of February 26, 2018, in the Anchorage Superior Court. If the court grants summary judgment to either party on all legal issues the trial will be vacated.
2. *Interior Telephone Co. v. Kenai Peninsula Borough* - Case No. U-17-11; and, *Matanuska Telephone Assn. v. Kenai Peninsula Borough* - Case No. U-17-12. MTA and ITC filed formal complaints and requests for declaratory rulings against the Kenai Peninsula Borough before the Regulatory Commission of Alaska ("RCA"). They sought a ruling that the Kenai

3. Peninsula Borough is responsible to pay third-party costs associated with delivering their customers' calls from their telecommunication service areas to the Kenai Peninsula Borough's selective routers in Soldotna and Kenai. The borough filed answers and motions to dismiss in both cases. On April 18, 2017, the RCA published notice that it was dismissing the utilities' formal complaints and requests for declaratory rulings against the borough as they lack jurisdiction to resolve the complaints. The notice further stated that a formal investigation would not be opened by the RCA and a written order would follow. The RCA has issued written orders in both cases. Settlement negotiations are underway.
4. *Walden v. Kenai Peninsula Borough School District* – Case No. 3KN-1700741CI. A former student, Trevor Walden, brought suit against the school district for personal injuries allegedly suffered during a weightlifting class at Soldotna High School on February 25, 2015. The case has been assigned to Judge Anna Moran. The school district has filed an answer to the complaint and requested a trial by jury. The court has not yet scheduled a pretrial conference at which time the trial date, discovery and motion schedule will be determined.