

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: June 22, 2018

TO: Milwaukee County Board Chairman Theodore Lipscomb
Chair, Committee on Judiciary, Safety and General Services
Chair, Committee on Finance, Personnel and Audit

FROM: Colleen Foley, Deputy Corporation Counsel 

SUBJECT: Status update on pending litigation

The following is a list of some of the significant pending cases that may be of interest to the Committees. New information and additions to the list since the last committee meetings are noted in **bold**. However, our office is prepared to discuss any pending litigation or claim involving Milwaukee County, at your discretion.

1. *DC48 v. Milwaukee County* (Rule of 75)
Case No. 11-CV-16826 (Judge Rothstein issued 5/27/16 decision against county on renewed motions for summary judgment holding that plaintiffs were not covered by terms of a CBA as used in Ordinance 11-15 for purposes of evaluating the Rule of 75 and therefore eligible for earlier retirement; final order issued by circuit court on 6/17/16; Order to stay execution of judgment issued on 6/27/16; Notice of Appeal filed with Wisconsin Court of Appeals on 7/19/16; Court of Appeals 11/6/17 affirmance of summary judgment ruling in favor of DC 48 and against Milwaukee County; 12/7/17 appeal to Wisconsin Supreme Court, accepted on March 13, 2018) – County’s initial Supreme Court brief was filed April 25, 2018)
2. *Christensen et al. v. Sullivan et al.* (jail population and health care)
Case No. 96-CV-1835 (May 2016 status report on Jail/HOC following 5/16/16 jail tour and 5/18/16 HOC tour; 10/31/16 jail and HOC tour; 11/21/16 status conference; 2/2/17 status conference; 6/29/17 status conference with updated report from Dr. Shansky; 9/25/17 status conference; 1/11/18 status conference; next status conference June 20, 2018; report by National Institute of Corrections (NIC) issued on 3/29/18 – Sheriff’s Office addressed 15 of 17 recommendations before issuance of report and remaining 2 recommendations being addressed regarding a staffing analysis (to be completed with NIC direction and by an outside consultant) and a complete policy update; next status conference is August 19, 2018)
3. *Milwaukee Riverkeeper v. Milwaukee County, et al. & Nenn, et al. v. Milwaukee County Board of Supervisors* (Estabrook dam public nuisance case & declaratory judgment/injunction case) Cases No. 11-CV-8784 & 16-CV-2268 (court found dam a nuisance and ordered repair or removal; 6/30/16 status conference; 8/12/16 hearing held at which court ruled no evidentiary hearing required to test viability)

of abatement issue; no special district required; 11/22/16, 3:00 p.m. hearing on public purpose doctrine and 4:00 p.m. hearing on status of rezoning by City of Milwaukee and authority for CEX to sell parcel to MMSD; 1/26/17, 2:30 p.m. status conference regarding DNR plans for the dam; 5/26/17, 9:30 a.m. status on MMSD regarding WDNR permits to remove dam, any contested hearings related thereto; status conference on 12/19/17; next status conference set for 8/18/18)

4. Froedtert Hospital petition to disturb burial sites – petition granted by State
5. *Jane Doe v. Milwaukee County* (sexual assault by CO in jail)
Case No. 14-CV-200 (federal court for the Eastern District of Wisconsin; County motion for partial summary judgment filed; jury trial 6/5-6/7/17 and verdict that CO acting within scope of employment with compensables awarded at \$1.7 million and punitives at \$5 million; jury did not award damages for jail's shackling policy; motions filed by county for reconsideration of verdict and to challenge WCMIC's dismissal from suit; Court ruling on 9/28/17 denying motions by County for reconsideration and cross appeals on insurance coverage issue with commentary that WCMIC dismissal as to defendant Thicklen only; Milwaukee County filed appeal to the 7th Circuit Court of Appeals on scope of employment issue - initial brief due on 1/22/18 and reply brief due on 3/7/18; 7th circuit denied motion to stay execution of judgment on 2/12/18 so comptroller proceeding with necessary next steps regarding payment; oral argument before 7th Circuit Court of Appeals on May 24, 2018 regarding scope of employment issue)
6. *Lloyd Johnson v. Milwaukee County et al.* (patient care at BHD)
14-CV-1408 (federal court for the Eastern District of Wisconsin) (discovery phase; Court dismissed case on 1/18/18 based on County's summary judgment ruling, after which county submitted a bill of costs against plaintiff in the amount of \$12,316; plaintiff filed appeal of dismissal to the 7th Circuit Court of Appeals on 2/14/18; mandatory 7th Circuit mediation occurred on April 9, 2018 and will be continued to a date to be determined; plaintiff has filed lawsuit in state court on negligence claims where there is a \$50,000 statutory cap for damages; any mediated resolution would encompass both the federal and circuit court claims)
7. *Brandon Johnson v. Milwaukee County et al.* (2012 patient death at BHD) 16-CV-01043 (federal court for the Eastern District of Wisconsin) (complaint filed 8/8/16; discovery ongoing; settlement negotiated and approved by Board but delayed due to a dispute among plaintiffs' firms; final resolution of dispute per signed releases received on June 21, 2018)
8. *Estate of James Perry v. Wenzel et al.* (death in booking room of jail)
Case No. 12-C-664 (federal court for the Eastern District of Wisconsin; 5/6/16 order granting county's motion for summary judgment and for sanctions; appeal filed by plaintiffs with 7th Circuit Court of Appeals; oral argument before 7th Circuit on 1/5/17 at 9:30 a.m.; 7th Circuit ruling on 9/19/17 reversing

summary judgment as to qualified immunity for county nurses and for re-assessment of sanctions via remand to federal court for the Eastern District; petition for certiorari to United States Supreme Court filed on 12/15/17 and denied on 4/2/18, therefore case will return to district court for adjudication with trial date set for 7/2/18)

9. ***Lipscomb and Milwaukee County Board of Supervisors v. Abele* (County Board and Executive authority) Case No 2016-CV-2888 (Action filed 4/15/16; Answer and Counterclaims filed on 6/13/16; Scheduling Conference held 8/11/16; amended counterclaim filed by CEX on 8/15/16; summary/declaratory judgment motions by 12/9/16; summary/declaratory judgment replies by 1/10/17; hearing on all motions for summary/declaratory judgment on 2/13/17 at 1:30 p.m.; 4/24/17 ruling on the issues to be detailed at committee; Notice of Appeal filed by CEX on 5/26/17; oral argument scheduled for 6/26/18 at 10am before District 4 panel of Court of Appeals and to be held at State Capital building)**
10. *State v. Dennis Dietscher* (official misconduct) Case No. 2014CF3620 (Defendant pled guilty to accepting bribes and making false statements on 7/1/16; sentenced on 10/7/16 to 18 months in prison with 24 months on probation/supervision thereafter; on 10-0 reconsideration vote on 11/16/16, Pension Board suspended pension and recommended recovery of backdrop benefit and monthly payments paid out to date; on 1/18/17, Mr. Dietscher's counsel appealed that determination; on 4/26/17, Pension Board affirmed that earlier determination by unanimously denying Mr. Dietscher's appeal for which he has filed petition for a Chapter 227 Wis. Stat. certiorari review in circuit court case number 2017CV4717; 1/29/18 court decision reversing pension board revocation of pension as arbitrary and capricious; Notice of Appeal filed on 3/21/18) – Pension Board's initial brief due May 14, 2018)
11. *Shade Swayzer and her deceased child v. Milwaukee County, et al.* (death of baby born to inmate) Case No. 2016CV1703 (Plaintiff filed suit in federal court for the Eastern District of Wisconsin alleging constitutional and civil rights claims against Milwaukee County, et al. for failure to properly train, supervise, formulate investigative processes)
12. *Estate of Terrill Thomas v. Milwaukee County, et al.* (inmate dehydration death) Case No. 2017CV355 (Plaintiff's 2 adult and 1 minor son filed suit in federal court for the Eastern District of Wisconsin alleging constitutional and civil rights violations for failure to properly train, supervise, and monitor, and for negligent and deliberate indifference to medical needs; Special inquest by the District Attorney's Office commenced on 4/24/17 and concluded on 5/1/17 with an advisory verdict that probable cause of a crime exists by 7 jail officials (a major, a lieutenant, and 5 correctional officers) under a felony statute prohibiting abuse, neglect, and ill treatment of inmates; DA's office ultimately issued charges against

3 former jail staff and Armor Correctional Health Services, Inc. as a corporate entity)

Estate of Terrill Thomas v. Milwaukee County, et al. (inmate dehydration death – 2nd lawsuit) Case No. 2017-CV-1128 (Tiffany Robertson, Special Administrator of Estate, filed suit in federal court on 8/14/17 for the Eastern District of Wisconsin alleging constitutional and civil rights violations against defendants for failure to provide adequate medical and mental health care, life necessities (water, food, bedding, safe and sanitary living environment), deliberate indifference to needs, and failure to reasonably accommodate mental illness; Milwaukee County filed 3rd party complaint for declaratory judgment against WCMIC on 12/22/17 concerning policy coverage (with related insurance coverage implications for Jane Doe matter at #7))

District Court has now consolidated 2 lawsuits; settlement demands made by plaintiff firms collectively

13. *Estate of Antonio Cowser v. Milwaukee County, et al.* – (inmate dehydration case) Case No. 17-CV-866 (Civil rights complaint alleging inadequate and unconstitutional health and psychological care and alleged in-custody jail death by dehydration; awaiting court ruling on motions and briefing that matter is time-barred)
14. *Estate of Kristine Fiebrink v. Milwaukee County, et al.* (Notices of Claim/Circumstance filed with the County Clerk (precursors to state court lawsuit); lawsuit filed on 5/31/18 relating to August 28, 2016 jail death and alleging civil rights claims for inadequate and unconstitutional health care, negligence, and wrongful death against the Sheriff, correctional officers, and Armor staff and seeking related compensatory and punitive damages)
15. *Jennifer Jawson and her deceased child* - notice of claim served on 4/11/17 (Section 1983 deliberate indifference to medical need claims regarding jail's and Armor's alleged failures to deliver inmate to methadone clinic, alleged failure to provide medical care for cramping, alleged administration of Tylenol 3, and still born birth of child on 12/10/16)
16. *Rebecca Terry v. Milwaukee County, et al.* – (shackling lawsuit) Case No. 17-CV-1112 (Plaintiff filed suit on 8/23/17 in federal court for the Eastern District of Wisconsin - asserts claims for deliberate indifference, supervisory liability, failure to intervene, 14th amendment due process violations, and state law respondeat superior claims against Armor in particular)
17. *Estate of Christopher Weber* - notice of claim served on 4/13/17 (12/19/16 vehicular death on Hoan Bridge and associated allegations of breach of duty related to snow accumulation/removal under County contract with State to maintain roadway, clear snow from shoulder, etc.)

18. *Estate of Jose L. Torres, Jr.* – notice of claim served on 2/23/18 (Claim regarding individual who died in custody at the Milwaukee County Jail on 10/27/17 and related assertions against Milwaukee County and Armor Correctional Health Services, Inc. for inadequate medical care and staffing)
19. *Estate of Clarence Wilson, Jr.* – notice of claim filed on December 22, 2017 (Claim regarding individual who died in custody at the Milwaukee County Jail on 8/29/17 and related assertions against Milwaukee County and Armor Correctional Health Services, Inc. for deliberate indifference to serious medical needs)
20. *Susan L. Baldwin & Leverett F. Baldwin v. Milwaukee County & Employees' Retirement System of the County of Milwaukee (pension lawsuit)* Circuit Court Case 2015-CV-9354, Court of Appeals Case 2016-AP-2380 (pension benefits case related to the purchase of service credit (“buy-in/buy-back”) program wherein former employee Susan Baldwin purchased service credit from summer job in 1969 that enhanced her benefits by six figures when she retired in 2003; RPS determined this was an error and initiated correction and recovery of overpayment; Pension Board denied Baldwin’s appeal; Circuit Court affirmed Pension Board on certiorari review October 2016, which Court of Appeals reversed April 2018; County and ERS/Pension Board intend to seek Supreme Court review via petition for review due May 21, 2018).
21. *Estate of Michael Madden v. Milwaukee County, et al. (jail death)* United States District Court for the Eastern District of Wisconsin (2:18-cv-758) (civil rights and wrongful death lawsuit filed on May 17, 2018 alleging deliberate indifference and negligence relating to Mr. Madden’s death in jail on September 29, 2016).