

COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION

DATE: June 22, 2018
TO: Theodore Lipscomb, Sr., Milwaukee County Board Chairman
FROM: Colleen Foley, Deputy Corporation Counsel CF
SUBJECT: Request to Initiate Lawsuit

Per Milwaukee County General Ordinance (MCGO) § 1.11(c)(4)2(b), the Office of Corporation Counsel requests approval to initiate a lawsuit against the State of Wisconsin Local Government Property Insurance Fund concerning the payment of remaining monies owed from the July 6, 2013 courthouse fire.

Milwaukee County (“the County”) is the insured under policies of insurance issued by the State of Wisconsin Local Government Property Insurance (“the Fund”). Specifically, the matter involves policy number 1200030 for a policy term effective January 1, 2013 to January 1, 2014 (“the Policy”).

During the applicable policy period, the County sustained damage to, and loss of use of, the courthouse, located at 901 N.9th Street in Milwaukee. The County submitted proofs of loss in the amount of \$19,115,454.66 for which the Fund indemnified the County in the amount of approximately \$18,314,954.66, but without itemizing payments to correspond to claimed items of repair or costs or describing what portions of any claims were denied. Significantly, the Fund characterized the loss as covered by the policy and the payments as reasonable and necessary as to amounts.

The Fund and Lexington Insurance Company (“Lexington”) were also parties to an insurance agreement whereby Lexington provided insurance coverage to the Fund and indemnified Milwaukee County’s courthouse fire claim in the amount of \$5,000,000.00. During the applicable policy period, the County was also insured under a Cincinnati Insurance Company (“Cincinnati”) policy. The County invoked a “Joint Loss Agreement” under that policy between the County, the Fund, and Cincinnati that required Cincinnati to pay \$800,000.00 towards the County’s courthouse fire claim.

In December 2014, the Fund initiated legal action that ultimately resided in federal court in the Eastern District of Wisconsin in case number 15-CV-142 (“the Litigation”). That litigation named the County, Lexington, and Cincinnati as defendants and sought a declaration that reimbursement and/or coverage payment obligations were owed to the Fund from Lexington and/or Cincinnati. Despite naming the County in the litigation, the Fund did not assert an actual claim against it.

In September 2015, during that litigation, the County filed with the Fund an updated “Statement of Loss” for the unpaid balance of \$908,673.07. The Fund neither denied, paid, nor adjusted that portion of the claim.

Thereafter, the County sought dismissal from the litigation based on the Fund’s failure to state a claim against it as noted. The Court then provided the Fund with an opportunity to assert claims against the County before issuing its ruling. The Fund did not do so, and the Court dismissed the County from the litigation on October 31, 2017. That ruling did not address whether the Fund waived or reserved the right to later assert such claims against the County.

Since November 2017, the Fund has requested additional supporting materials for the County’s “Proof of Loss” for the \$908,673.07 balance owed, which the County has promptly provided. Ultimately, in December 2017, the Fund, Lexington, and Cincinnati entered a stipulation to dismiss the litigation after resolution of their coverage disputes, which the Court entered.

It is the opinion of the Office of Corporation Counsel in consultation with outside counsel, Husch Blackwell that the Fund’s continuing failure to pay the remaining \$908,673.07 for the courthouse fire damages warrants legal action for breach of contract and the duty of good faith and fair dealing.

MCGO § 1.11(c)(4)2(b) requires that the Judiciary, Safety and General Services Committee and the Milwaukee County Board approve the initiation of lawsuits by the County where there is a potential fiscal impact exceeding \$10,000.00. This memorandum constitutes that formal request.

The Office of Corporation Counsel deems this matter critical in terms of ensuring that the Fund honor its obligations under the policy. It also requests that this item be marked for closed session pursuant to Wis. Stat. § 19.85(1)(g), so that committee members may receive confidential advice and updates from counsel in this matter.

Cc: Kelly Bablitch
Raisa Koltun
Stephen Cady
Allyson Smith