

18-9

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: December 29, 2017

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)
2. *Trapp et al. v Milwaukee County et al.*
Case No. 15-CV-0019 (Milwaukee County Circuit Court; matter is stayed pending IRS approval of pension ordinance amendments)
3. *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)
4. *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 4/26/18)

5. Froedtert Hospital petition to disturb burial sites – petition granted by State
6. ***Orlowski v. Milwaukee County (2007 death of inmate in HOC)***
Case No. 13-C-994 (federal court for the Eastern District of Wisconsin; court granted County's motion for summary judgment on 4/21/16; oral argument before 7th Circuit on 11/7/16; 7th Circuit ruling on 9/19/17 reversing summary judgment as to qualified immunity for correctional officers with remand to federal court for the Eastern District; petition for certiorari to United States Supreme Court filed on 12/15/17)
7. ***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 7th circuit on scope of employment issue - initial brief due on 1/22/18 and reply brief due on 3/7/18)
8. ***Lloyd Johnson v. Milwaukee County et al. (patient care at BHD)***
14-CV-1408 (federal court for the Eastern District of Wisconsin) (discovery phase; summary judgment ruling pending)
9. ***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)**
10. ***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)

11. *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)
12. ***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 2017CV471; set for calendar call before Judge Dallet on 1/16/18)**
13. *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)
14. *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 Chisholm to now determine whether criminal charges warranted)
15. ***Estate of Terrill Thomas v. Milwaukee County, et al.* (inmate dehydration death – 2nd lawsuit) Case No. 17-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 implications for Jane Doe matter at #7))

16. ***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)**
17. *Estate of Kristine Fiebrink v. Milwaukee County, et al.; Estate of Michael Madden* (Notices of Claim/Circumstance filed with the County Clerk (precursors to state court lawsuit))
18. *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)
19. *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)
20. *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.)