


**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

DATE: July 12, 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 (Updated)

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 Rule of 75 eligibility; 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)
2. *Trapp et al. v Milwaukee County et al.*  
Case No. 15-CV-0019 (Milw. County Circuit Court; stayed pending IRS approval of pension ordinance amendments)
3. *Wosinski et al. v. Advance Cast Stone et al. (O'Donnell Park)*  
**Case No. 11-CV-1003 (Jury Verdict; appeals filed by ACS and Liberty; County et al. response brief filed on 2/25/16; Attorney Michael Brennan of Gass Weber Mullins filed notice of appearance (along with Corporation Counsel) to Wisconsin Court of Appeals on 8/1/16; 10/24/16 mediation; Court of Appeals oral argument on 1/31/17 at 9:00 a.m.; Court of Appeals decision on 7/11/17 remanding Milwaukee County damage claim to trial court for itemization of allowable damages and determination of \$10 million policy limit based on trial court's erroneous bad faith ruling against insurance company)**
4. *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 at 3:00 p.m.; 2/2/17 status conference at 10:00 a.m. on staffing)**

- issues; 6/29/17 status conference with updated report from Dr. Shansky; August 14, 2017 status conference scheduled)
5. ***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; next status conference on 9/14/17)
  6. ***Nenn and Milwaukee Riverkeeper. v. WDNR, et al.*** (Judicial review of WDNR plan approval for county plans to repair dam) Case No. 16-CV-4669 (RK seeks judicial review of WDNR's Plan Approval; WDNR defending; county intervening; (status set for 5/17/17 at 8:30 a.m.); case dismissed via stipulation and order for dismissal on 3/9/17)
  7. ***Milwaukee Riverkeeper v. WDNR*** (Estabrook Dam permit) (filed 5/23/16 in Dane County, seeking judicial review of WDNR's environmental impact statement/permitting process; does not halt work toward repair remedy; stipulation by parties to change venue from Dane to Milwaukee County; Milwaukee County and City of Milwaukee are intervening parties) (Case No. 16-CV-6454) (briefs submitted, court decision based upon record and without oral argument) (case combined with above Case No. 16-CV-4669 and dismissed via stipulation and court order as noted)
  8. ***Nenn and Milwaukee Riverkeeper v. Milwaukee County Board of Supervisors*** (open meetings) Case No. 15-CV-5131 (3/24/16 jury demand; 8/31/16 pretrial conference; 9/29/16, 1:30 p.m. motion hearing on motion to compel at which court scheduled status conference for 7/10/17 at 10:00 a.m.; telephone conference scheduled for 7/24/17 and 9/14/17 motion for summary judgment hearing date)
  9. ***Midwest Development Corporation v. Milwaukee County*** (Crystal Ridge) Case No. 12-CV-11071 (court dismissed both side's claims; Midwest filed appeal; County cross-appeal filed)
  10. Froedtert Hospital petition to disturb burial sites – petition granted by State
  11. ***Orlowski v. Milwaukee County*** (2007 death of inmate in HOC)

Case No. 13-C-994 (E.D. Wis. federal court; court granted County's motion for summary judgment on 4/21/16. Oral argument before 7<sup>th</sup> Circuit on 11/7/16)

12. ***Jane Doe v. Milwaukee County (sexual assault by CO in jail)***  
**Case No. 14-CV-200 (E.D. Wis. federal court; 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)**
13. *Johnson v. Milwaukee County et al. (patient care at BHD)*  
14-CV-1408 (E.D. Wis. federal court) (discovery phase)
14. ***Johnson v. Milwaukee County et al. (2012 patient death at BHD) 16-CV-01043 (E.D. Wis. federal court) (complaint filed 8/8/16; 8/10/17 mediation before Federal Court Magistrate Judge Nancy Joseph)***
15. *Estate of James Perry v. Wenzel et al. (death in booking room of jail)*  
Case No. 12-C-664 (E.D. Wis. federal court; 5/6/16 order granting county's motion for summary judgment and for sanctions; appeal filed by plaintiffs with 7<sup>th</sup> Circuit Court of Appeals; oral argument before 7<sup>th</sup> Circuit on 1/5/17 at 9:30 a.m.)
16. *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)*
17. *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 may seek certiorari review in circuit court per Chapter 227, Wis. Stat. )*
18. *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)*

19. *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)
20. *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))
21. *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)
22. *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.)
23. ***Candy Lab, Inc. v. Milwaukee County (First Amendment challenge) Case No. 2017-CV-569-JPS (Prior restraint on speech, First Amendment challenge to county's augmented reality game ordinance, including motion for preliminary injunctive relief; scheduling order with April 2018 trial date)***