

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: June 26, 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 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.)
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; 4/11/17 status conference rescheduled to 6/29/17 at 9:30 a.m. – updated report from Dr. Shansky received)

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)
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)
7. *Milwaukee Riverkeeper v. WDNR* (Estabrook Dam permit)
Case No. 16-CV-1396 (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)
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.)
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 7th 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) – pending 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 7th Circuit Court of Appeals; oral argument before 7th 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 May 26, 2017**
17. *Voces de la Frontera, Inc. v. Clarke, L.C.* (public records claim) Case No. 2015CV2800 (June 15, 2016 Order from the Wisconsin Supreme Court granting petition for review; briefs filed by county on 8/11/16; oral argument before Wisconsin Supreme Court scheduled for 11/3/16; 2/24/17 Wisconsin Supreme Court decision reversing lower court rulings and ordering writ of mandamus quashed)
18. *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.)
19. *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)

20. *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 April 24, 2017 and concluded on May 1, 2017 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)
21. *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)
22. *Jennifer Jawson and her deceased child* - notice of claim served on April 11, 2017 (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 December 10, 2016)
23. *Estate of Christopher Weber* - notice of claim served on April 13, 2017 (December 19, 2016 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.)
24. ***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***