

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: August 22, 2018

TO: Theodore Lipscomb, Sr., Chair, Milwaukee County Board of Supervisors
Anthony Staskunas, Chair, Committee on Judiciary, Safety and General Services
James Schmitt, Chair, Committee on Finance and Audit

FROM: Paul D. Kuglitsch, Deputy Corporation Counsel PK

SUBJECT: Status Update on Pending Litigation¹

Civil Rights / Jail / HOC / BHD

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
<i>Estate of Terrill Thomas v. Milwaukee County, et al.</i> (April 2016 inmate dehydration death)	E.D. Wis. 17-CV-355 (lead case) E.D. Wis. 17-CV-1128 (consolidated case)	Husch Blackwell; Leib Knott Gaynor, LLC; Crivello Carlson; Banks & Associates	Section 1983 - Failure to train, supervise, and monitor, negligence, failure to provide adequate medical and mental health care, deliberate indifference, and failure to reasonably accommodate mental illness	<ul style="list-style-type: none"> • 03/09/2017: Complaint filed in district court, 17-CV-355; • 12/22/2017: County filed a third-party complaint for declaratory judgement against WCMIC concerning insurance coverage; • 02/12/2018: DA's office issued charges against 3 former jail staff and Armor Correctional Health Services, Inc. as a corporate entity in circuit court. • 03/07/2018: Parties filed motions to stay proceedings pending criminal matters against the 3 former jail employees, • 04/20/2018: County filed motion for summary judgment as it relates to WCMIC coverage; WCMIC opposed, arguing criminal and/or deliberate wrongdoing excludes coverage. • 05/04/2018: Magistrate Judge Duffin denied motions to stay. • Case on hold while district judge considers appeal of Judge Duffin's denial.

¹ Please note: cases listed on previous reports that include updates have texts that appears in bold. New cases, previously not listed on the report appear entirely unbolded and are starred (*).

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<i>Christensen, et al. v. Sullivan, et al.</i>	96-CV-1835	Husch Blackwell	Jail population and health care	<ul style="list-style-type: none"> 03/29/2018: Report by National Institute of Corrections (NIC) issued – 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; 10/24/2018: Hearing scheduled wherein Dr. Shanksy will testify.
<i>Estate of Brandon Johnson v. Milwaukee County, et al.</i> (Patient death at BHD)	E.D. Wis. 16-CV-1043	Husch Blackwell	Section 1983 - Failure to train, discipline and provide medical attention, conditions of confinement, state-created danger, and <i>Monell</i> claims.	<ul style="list-style-type: none"> 08/08/2016: Complaint filed; 06/21/2018: Settlement negotiated and releases signed; 07/03/2018: Stipulation for dismissal of County filed with the Court -pending signed court order. Litigation as to Dr. Young and ProAssurance remains ongoing.
<i>Estate of Michael Madden v. Milwaukee County, et al.</i> (September 2016 inmate death)	E.D. Wis. 18-CV-758	Crivello Carlson	Section 1983 – Deliberate indifference, wrongful death, negligence, excessive force and <i>Monell</i> claim.	<ul style="list-style-type: none"> 05/17/2018: Mother of deceased filed complaint; 07/17/2018: Motion to dismiss Sheriff for lack of personal involvement filed and pending ruling. If granted, a <i>Monell</i> claim against the County, excessive force claims against a corrections officer, and deliberate indifference claims against Armor staff will remain.
<i>*Estate of Terry Williams v. Milwaukee County, et al.</i> (June 2017 death at lakefront)	E.D. Wis. 18-CV-1222	Crivello Carlson	Section 1983 – Unlawful arrest, denial of due process, deficient hiring/continued employment policy, failure to train and discipline	<ul style="list-style-type: none"> 08/09/2018: Complaint filed against County, Sheriff, and Deputy Sheriff. No parties have been served yet, so answer not yet due.

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<i>Estate of Kristine Fiebrink v. Milwaukee County, et al.</i> (August 2016 inmate death)	E.D. Wis. 18-CV-832	Crivello Carlson	Section 1983 – Inadequate and unconstitutional health care, negligence, and wrongful death	<ul style="list-style-type: none"> 05/31/2018: Complaint filed; 08/28/2018: Responsive pleadings due.
<i>Estate of James Perry v. Wenzel, et al.</i> (September 2010 death in booking room of Jail)	E.D. Wis. 12-CV-664 7th Cir. 16-2127	Husch Blackwell	Section 1983 – Deliberate indifference; negligence; cruel and unusual punishment; wrongful death; and <i>Monell</i> claims	<ul style="list-style-type: none"> 06/28/2012: Complaint filed; 05/06/2016: Order granting county’s motion for summary judgment and for sanctions; 05/13/2016: Appeal filed by plaintiffs with 7th Circuit Court of Appeals; 01/05/2017: Oral argument before 7th Circuit; 09/19/2017: 7th Circuit ruling 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; 12/15/2017: Petition for <i>certiorari</i> review to United States Supreme Court; denied on 4/2/18, so case returned to district court for adjudication; 07/02/2018: Trial adjourned for mediation with Judge Callahan to narrow legal issues and witness list. Mediation resulted in limited success, agreeing only to authenticity of most exhibits to be offered at trial. 08/08/2018: Case referred to Judge Stadtmueller for pretrial and trial, dates of which have not been set.
<i>Estate of Laliah Swayzer v. Milwaukee County, et al.</i> (2016 death of baby born to inmate)	E.D. Wis. 16-CV-1703	Leib Knott Gaynor	Section 1983 - Failure to properly train, supervise, and formulate investigative processes	<ul style="list-style-type: none"> 12/23/2016: Complaint filed; 12/31/2018: Discovery closes; 03/15/2019: Dispositive motion deadline.

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<i>Shonda Martin v. Milwaukee County, et al.</i> (Sexual assault of inmate by CO in jail)	E.D. Wis. 14-CV-200; 7th Cir. 17-3216; 7th Cir. 18-1060	Husch Blackwell	Section 1983 – Due process, misconduct, and failure to intervene	<ul style="list-style-type: none"> 02/21/2014: Complaint filed; 06/05-06/07/17: Jury trial and verdict that CO acted 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; 07/31/2017: Motions filed by County for reconsideration of verdict and to challenge WCMIC’s dismissal from suit; 09/28/2017: Order denying motions by County for reconsideration and cross-appeals on insurance coverage issue with commentary that WCMIC dismissal as to defendant Thicklen only; 10/25/2017: County filed appeal to the 7th Circuit Court of Appeals on scope of employment issue; 12/15/2017: County filed motion to stay execution of judgment with district court; 01/23/2018: District court denied motion to stay execution of judgment; 05/24/2018: Oral argument before 7th Circuit - pending written decision; 07/25/2018: Order entered in district court as to the stipulation² to stay the execution of judgment until the 7th Circuit issues a decision.
<i>Lloyd Johnson v. Milwaukee County, et al.</i> (Patient care at BHD)	E.D. Wis. 14-cv-1408; 7th Cir. 18-1321; 18-CV-1322	Husch Blackwell	Section 1983 – Inadequate mental health care and treatment, negligence, cruel and unusual punishment, and <i>Monell</i> claims	<ul style="list-style-type: none"> 11/05/2014: Complaint filed; 01/18/2018: Court dismissed case, granting County’s summary judgment motion; 02/14/2018: Plaintiff filed appeal with the 7th Circuit; 02/14/2018: Plaintiff also filed lawsuit in state court on negligence claims where there is a \$50,000 statutory cap for damages; 04/09/2018: Mandatory 7th Circuit mediation occurred, and is ongoing; any mediated resolution would encompass both the federal and state court claims.

² This stipulation resulted in the payment of \$50,000.00 from the County to the Plaintiff.

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<i>Rebecca Terry v. Milwaukee County, et al.</i> (delivery of baby while shackled)	E.D. Wis. 17-CV-1112	Leib Knott Gaynor	Section 1983 – Deliberate indifference, supervisory liability, failure to intervene, 14 th amendment due process violations, and state law <i>respondeat superior</i> claims against Armor in particular	<ul style="list-style-type: none"> 08/23/2017: Plaintiff filed suit; 08/31/2018: Dispositive motion deadline; 12/03/2018: Jury trial scheduled in the event the dispositive motions are denied.
<i>*Melissa Hall v. Milwaukee County, et al.</i> (delivery of baby while shackled)	E.D. Wis. 17-CV-379	Husch Blackwell	Section 1983 – Class action <i>Monell</i> claim;	<ul style="list-style-type: none"> 04/11/2017: Amended Complaint filed; 12/10/2019: County’s experts due; 02/11/2019: dispositive motion deadline.
<i>Estate of Antonio Cowser v. Milwaukee County, et al.</i> (2012 inmate dehydration death)	E.D. Wis. 17-CV-866	Husch Blackwell	Section 1983 - Inadequate and unconstitutional health and psychological care	<ul style="list-style-type: none"> 06/21/2017: Complaint filed; 10/12/2017: County filed motion to dismiss arguing the matter is time-barred – pending court ruling.
<i>*Dominique Heaggan-Brown v. Milwaukee County, et al.</i> (former MPD officer)	Pre-screened civil rights lawsuit	OCC ³	Section 1983 – deliberate indifference, due process and conditions of confinement	<ul style="list-style-type: none"> 07/06/2018: Former MPD Officer Dominique Heaggan-Brown filed suit <i>pro se</i>; The court has not yet screened this complaint, so no response is due at this time.

³ OCC is the Office of Corporation Counsel.

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* <i>Kevin Robinson v. Green, et al.</i>	Pre-screened civil rights lawsuit	OCC	Section 1983 – sexual misconduct	<ul style="list-style-type: none"> 05/18/2018: Former Milwaukee County Jail inmate filed complaint against female corrections officer alleging sexual misconduct. The court has not yet screened this complaint, so no response is due at this time.
* <i>Jordan Williams v. Milwaukee County, et al.</i>	E.D. Wis. 18-CV-1045	OCC	Section 1983 – deliberate indifference; <i>Monell</i> claims	<ul style="list-style-type: none"> 07/09/2018: complaint filed; 08/15/2018: answer filed.
* <i>Robert Tatum v. Clarke, et al.</i>	E.D. Wis. 11-CV-1131	Crivello Carlson	Section 1983 – Excessive force, due process, deliberate indifference, emotional distress, and RLUIPA federal claims, and negligence, invasion of privacy and assault & battery state claims	<ul style="list-style-type: none"> 12/13/2011: complaint filed; 07/23/2018: third summary judgment motion filed
* <i>Adam Locke v. Schmidt, et al.</i>	E.D. Wis. 18-CV-443	OCC	Section 1983 – conditions of confinement; <i>Monell</i> claims	<ul style="list-style-type: none"> 03/20/2018: Complaint filed; 10/31/2018: Dispositive motion deadline.
* <i>Karl Wright v. Brito, et al.</i>	E.D. Wis. 17-CV-64	OCC	Section 1983 – excessive force and sexual assault	<ul style="list-style-type: none"> 01/17/2017: Complaint filed; 05/21/2018: County filed summary judgment – pending court ruling.
* <i>Mark Girtler v. Wolf</i>	E.D. Wis. 15-CV-841	OCC	Section 1983 – excessive force	<ul style="list-style-type: none"> 07/13/2015: Complaint filed; 08/21/2018: Status conference scheduled.
* <i>Lee Bennett v. Sobek, et al.</i>	E.D. Wis. 16-CV-1403	OCC	Section 1983 – excessive force	<ul style="list-style-type: none"> 10/19/2016: Complaint filed; 10/02/2017: County filed summary judgment - pending court decision

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* <i>Ennis Brown v. Garth-Dickens, et al.</i>	E.D. Wis. 16-CV-241	OCC	Section 1983 – six different, unrelated claims	<ul style="list-style-type: none"> 02/29/2016: Complaint filed; 05/07/2018: County filed motion to dismiss based on misjoinder – pending court decision;
* <i>Earl Nelson v. Arthur Okoro</i>	E.D. Wis. 18-CV-183	OCC	Section 1983 – conditions of confinement	<ul style="list-style-type: none"> 02/05/2018: Complaint filed; 10/12/2018: Dispositive motion deadline.
* <i>Marcelus Goodwin v. Montano, et al.</i>	E.D. Wis. 17-CV-997	OCC	Section 1983 – excessive force	<ul style="list-style-type: none"> 07/19/2017: Complaint filed; 06/04/2018: County filed motion for summary judgment - pending court ruling.
* <i>Dante Ashley v. Jones, et al.</i>	E.D. Wis. 17-CV-1785	OCC	Section 1983 – failure to intervene	<ul style="list-style-type: none"> 12/21/2017: Complaint filed; 09/21/2018: Dispositive motion deadline.
* <i>Antonio Smith v. Turner, et al.</i>	E.D. Wis. 17-CV-668	OCC	Section 1983 – excessive force; failure to intervene	<ul style="list-style-type: none"> 05/11/2017: Complaint filed; 01/11/2019: Dispositive motion deadline.
* <i>Jason Farr v. Staat, et al.</i>	E.D. Wis. 17-CV-1341	Crivello Carlson	Section 1983 – excessive force	<ul style="list-style-type: none"> 09/29/2017: Complaint filed; 12/30/2018: Dispositive motion deadline.
* <i>Brent Ford Taylor v. Armor, et al.</i>	E.D. Wis. 17-CV-1519	OCC	Section 1983 – deliberate indifference	<ul style="list-style-type: none"> 11/03/2017: Complaint filed; 11/28/2018: Dispositive motion deadline.
* <i>Alfredo Garcia v. Aikens, et al.</i>	E.D. Wis. 17-CV-1075	Crivello Carlson	Section 1983 – deliberate indifference	<ul style="list-style-type: none"> 08/04/2017: Complaint filed; 04/20/2018: County filed summary judgment - pending court ruling
* <i>Octavius Jordan v. Hafemann, et a.</i>	E.D. Wis. 14-CV-987 7th Cir. 16-1820	Crivello Carlson	Section 1983 – conditions of confinement	<ul style="list-style-type: none"> 08/12/2014: Complaint filed; 03/15/2016: Summary judgment granted as to County and Armor; 04/06/2016: Notice of appeal filed; 02/27/2017: Remanded by 7th Circuit as to County defendants only, which added for the first time a <i>Monell</i> claim; 7/9/2018: Summary judgment as to <i>Monell</i> claim filed – pending court decision; Plaintiff’s court-appointed counsel is Reinhart Boerner Van Deuren s.c..

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<i>*Michael Winston v. Clarke, et al.</i>	E.D. Wis. 15-CV-1398 7th Cir. 17-3009	Crivello Carlson	Section 1983 – deliberate indifference and conditions of confinement	<ul style="list-style-type: none"> • 11/23/2015: Complaint filed; • 08/07/2018: 7th circuit oral argument - pending decision. • Plaintiff’s court-appointed counsel is Foley and Lardner.
<i>*Jonathan Wilke v. Behrendt</i>	E.D. Wis. 17-CV-1639	OCC	Section 1983 – RLUIPA/1st Amendment religion claims	<ul style="list-style-type: none"> • 11/27/2017: Complaint filed; • 10/26/2018: Dispositive motion deadline
<i>*Rod Steffen v. Village of East Troy, et al.</i>	E.D. Wis. 17-CV-22	OCC	Section 1983 – wrongful arrest	<ul style="list-style-type: none"> • 01/05/2017: Complaint filed; • 01/15/2019: Dispositive motion deadline.
<i>*Johnathan Wilke v. Montano</i>	E.D. Wis. 17-CV-1640	OCC	Section 1983 – due process	<ul style="list-style-type: none"> • 11/27/2017: Complaint filed; • 11/09/2018: Dispositive motion deadline.
<i>*Michael Cooper v. Haw, et al.</i>	E.D. Wis. 17-CV-1461	OCC	Section 1983 – due process	<ul style="list-style-type: none"> • 10/25/2017: Complaint filed; • 06/14/2018: County filed summary judgment – pending court decision
<i>*James McCoy v. Hannah, et al.</i>	E.D. Wis. 17-CV-1450	OCC	Section 1983 – due process	<ul style="list-style-type: none"> • 10/23/2017: Complaint filed; • 09/17/2018: Answer due
<i>*Rondale Tenner v. Jackson, et al.</i>	E.D. Wis. 18-CV-232	OCC	Section 1983 – conditions of confinement	<ul style="list-style-type: none"> • 02/14/2018: Complaint filed; • 10/01/2018: Dispositive motion deadline
<i>*Robert Clark v. Milwaukee County</i>	E.D. Wis. 18-CV-503	Leib Knott Gaynor LLC	Section 1983 – due process	<ul style="list-style-type: none"> • 03/30/2018: BHD civil rights complaint filed; • 08/07/2018: Motion to dismiss without prejudice granted; • 08/21/2018: Amended complaint deadline.
<i>*Markus Evans v. Schmidt, et al.</i>	E.D. Wis. 17-CV-1133	OCC	Section 1983 – conditions of confinement	<ul style="list-style-type: none"> • Case open for discovery only so Plaintiff can identify John Does; • 05/01/2018: Second amended complaint filed - pending screening by the Court.

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<i>*Bobby Ryan v. Schmidt, et al.</i>	E.D. Wis. 17-CV-1156	OCC	Section 1983 – deliberate indifference	<ul style="list-style-type: none"> 08/23/2017: Complaint filed; Case open for discovery only so Plaintiff can identify Nurse Doe; Milwaukee County/Sheriff will be dismissed once Nurse Doe is identified.
<i>*Ricky Harris v. Schmidt, et al.</i>	E.D. Wis. 18-CV-813	OCC	Section 1983 – illegal strip search	<ul style="list-style-type: none"> 05/25/2018: Complaint filed; Case open for discovery only so Plaintiff can identify John Doe corrections officers.

Contract Litigation

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
<i>*Dynamis Properties, LLC, et al. v. Milwaukee County</i>	16-CV-1379	Crivello Carlson	Breach of Contract - Parking lot near Bigg's Roadhouse	<ul style="list-style-type: none"> 02/18/2016: Complaint filed against County related to a parking lot lease in effect from 2006 to 2015. The lease included an “air space” provision that permitted the County and Wisconsin DOT the right of entry for maintenance and construction of the freeway, which was located next to and above the parking lot. In 2012, construction equipment appeared in the parking lot and remained there until the DOT purchased the restaurant from Dynamis in 2015. Dynamis seeks the \$25,568 in damages, as well as \$465,537.41 in alleged lost past business. 2/25/2019 jury trial scheduled.
<i>Milwaukee County v. UWM Real Estate Foundation, Inc., et al.</i>	18-CV-339	OCC	Breach of Contract – Prevailing wage	<ul style="list-style-type: none"> 01/11/2018: County filed complaint against UWM Real Estate Foundation, Inc., UWM Innovation Park, LLC, Tosa Hotels, LLC and Core Construction Indiana LLC for failure to pay proper prevailing wage for Residence Inn development project at the UWM Innovation Campus; 07/31/2018: Settlement reached.

Personal Injury

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
*Harold Mehlberg v. Milwaukee County, et al.	17-CV-1500	OCC	Highway injury involving deputy	<ul style="list-style-type: none"> • 02/21/2017: Complaint filed; • 07/11/2018: Hearing on summary judgment motion – pending court ruling; • \$175,000 in special damages; statutory cap argued in summary judgment briefing.
*Laura Skoff v. Milwaukee County, et al.	17-CV-949 (Waukesha County)	OCC	Zoo injury	<ul style="list-style-type: none"> • 06/06/2017: Complaint filed • 09/13/2018: Hearing on County’s summary judgment motion. • \$140,000 in special damages, \$50,000 statutory cap.
*Naythan Schwab v. Milwaukee County	16-CV-4218 16-AP-1717	Leib, Knott and Gaynor	Slip and fall in the jail	<ul style="list-style-type: none"> • 03/18/2016: Complaint filed; • 09/27/2018: Dispositive motion deadline; • \$50,000 statutory cap.
*Jerome Gates v. Milwaukee County, et al.	18-CV-441	OCC	Highway auto accident with snow plow	<ul style="list-style-type: none"> • 01/16/2018: Complaint filed; • 12/14/2018: Dispositive motion deadline; • \$25,000 in special damages; \$250,000 statutory cap.

Employment/Human Resources Matters⁴

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
* <i>Dameion Perkins v. Milwaukee County, et al.</i> (Refusal to hire due to status as “Dontre Hamilton’s brother”)	E.D. Wis. 18-CV-179	Crivello Carlson	First Amendment – Free Speech	<ul style="list-style-type: none"> • 02/01/2018: Complaint filed; • 04/04/2018: Order granting County’s motion for judgment on the pleadings as it relates to Equal Protection clause under 14th Amendment; • 09/14/2018: Dispositive motion deadline as to remaining claims; • 01/22/2019: Trial scheduled
* <i>Latoria Armstrong v. Milwaukee County</i>	E.D. Wis. 18-CV-7	OCC	FLSA – expression of breast milk	<ul style="list-style-type: none"> • 01/02/2018: Complaint filed; • 10/04/2018: Mediation scheduled.
* <i>Douglas Felde v. Milwaukee County</i>	E.D. Wis. 18-CV-84	Mallery & Zimmerman	Title VII sex discrimination; retaliation	<ul style="list-style-type: none"> • 01/16/2018: Complaint filed; • 07/05/2018: County filed motion to dismiss – pending court ruling.
* <i>Kristi Kendrix v. Milwaukee County</i>	E.D. Wis. 17-CV-1391	Lindner and Marsack	ADA – Failure to Accommodate	<ul style="list-style-type: none"> • 10/12/2017: complaint filed; • 08/31/2018: discovery closes; • 09/18/2018: dispositive motion deadline.
* <i>Susan Born v. Milwaukee County</i>	E.D. Wis. 17-CV-1783	OCC	ADA – Termination; FLSA	<ul style="list-style-type: none"> • 08/02/2018: Second amended complaint filed; • 08/23/2018: Answer due.
* <i>State of Wisconsin v. Milwaukee County</i>	17-CX-7; 17-CX-8	OCC	Complex forfeitures - violations of Wis. Stat. § 103.13 requests for personnel files	<ul style="list-style-type: none"> • 08/15/2017: Complaints filed; • Settlement reached, but pending further discussions with Attorney General before remittance.

⁴ In addition to employment matters filed in federal court, the County is also handling numerous complaints filed with the Equal Employment Opportunity Commission and the State of Wisconsin Department of Workforce Development – Equal Rights Division. Currently, the OCC and outside counsel are, respectively, handling 17 and 11 of these cases. In addition, the OCC handles matters before the Civil Service Commission and the Personnel Review Board, the number of which fluctuates significantly from month-to-month.

Miscellaneous Litigation

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
<i>Milwaukee Riverkeeper, et al. v. Milwaukee County, et al.</i>	11-CV-8784 (lead case) 16-CV-2268 (consolidated case)	OCC; Crivello Carlson as to class action	Miscellaneous Litigation: Estabrook dam public nuisance and declaratory judgment, injunction	<ul style="list-style-type: none"> • 06/01/2011: Complaint filed; • 05/24/2012: Court found dam a nuisance and ordered repair or removal—County ultimately opted for removal; • 11/22/2016: Hearings held on public purpose doctrine and status of rezoning by City of Milwaukee and authority for CEX to sell parcel to MMSD; • 04/04/2018: Class action complaint filed against County and MMSD; • 08/28/2018: Status conference scheduled.
<i>Lipscomb and Milw. Cnty. Bd. of Supervisors v. Abele</i>	16-CV-2888 17-AP-1023	Pines Bach; Mallery and Zimmerman	Miscellaneous Litigation: Declaratory judgment as to County Board and Executive Authority	<ul style="list-style-type: none"> • 04/15/2016: Complaint filed; • 12/09/2016: Summary/declaratory judgment motions filed; • 04/24/2017: Order ruling in favor of the Board with respect to employee compensation and CEX attendance at Board meetings; • 05/26/2017: Notice of Appeal filed by CEX; • 06/26/2018: Oral argument held; • 08/02/2018: Court of Appeals issued decision; • 09/03/2018: Deadline to file a petition for certiorari review with the Wisconsin Supreme Court.
<i>In the Matter of the Burial Site Disturbance Permit Application of Froedtert Hospital</i>	State of Wisconsin – Division of Hearings and Appeals Case No. SHS-13-0001	OCC	Miscellaneous Litigation	<ul style="list-style-type: none"> • Petition granted by the State.

Pension Litigation⁵

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
<i>Milwaukee District Council 48 v. Milwaukee County</i>	11-CV-16826; 16-AP-1525	OCC and Lindner & Marsack	Rule of 75	<ul style="list-style-type: none"> Dispute over whether county ordinances passed in wake of Act 10 granted subset of AFSCME employees Rule of 75 benefit for which they had previously been ineligible. County lost in trial court and at Court of Appeals, matter is now being considered by the WI Supreme Court. 09/24/2018: Supreme Court oral arguments.
<i>Susan L. Baldwin, et al. v. Milwaukee County, et al.</i>	15-CV-9354 Court of Appeals No. 16-AP-2380	OCC, Anne Kearney, Polsinelli, and Lindner & Marsack Reinhart (Trial Court and Court of Appeals levels)	Purchase of service credit enhanced benefit by six figures	<ul style="list-style-type: none"> 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 subsequently determined purchase was permitted in error. Baldwin appealed determination to recoup overpayments; lost at Pension Board and before circuit court. Prevailed at Court of Appeals. Matter now before WI Supreme Court.
<i>*James Kubicek LCSW v. Milwaukee County</i>	16-CV-1031	Lindner & Marsack	Discharge of employee who became probationary pool employee to obtain Rule of 75 benefit while full time employee elsewhere.	<ul style="list-style-type: none"> Kubicek sought to continue as a pool employee to gain a Rule of 75 benefit after taking a full-time position elsewhere. Jury trial on wrongful discharge and promissory estoppel held July/August 2018; verdict favorable to Kubicek on 8/2/18.

⁵ In addition to pension matters filed in state and federal court, the County is also handling four appeals filed with the Pension Board. The OCC and outside counsel, namely Reinhart, collaborate to prepare appeal materials for the Pension Board's review.

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
<i>*Tietjen v. Milwaukee County and ERS</i>	12-CV-11616; 13-CV-3154	Lindner & Marsack; Reinhart Boerner Van Deuren s.c.	Eligibility to receive a normal retirement benefit and a backDROP benefit after termination.	<ul style="list-style-type: none"> Two cases, recently consolidated but remain stayed pending outcome of underlying employment litigation. Cases hinge on whether Tietjen (now deceased) was terminated and thus ineligible for a normal retirement and backDROP because he did not retire from active service.
<i>Dennis Dietscher v. Pension Board of the Employees' Retirement System</i>	17-CV-4717 Court of Appeals No. 18-AP-518	OCC; Polsinelli	Revocation of pension benefits following misconduct in office conviction	<ul style="list-style-type: none"> Dispute over whether Pension Board properly denied Dietscher his pension because of crimes he committed while a County employee. Dietscher prevailed in circuit court and the matter is now awaiting a decision in the Court of Appeals.
<i>*Jennifer Aleman v. Employees' Retirement System of the County of Milwaukee</i>	18-CV-6291	OCC	Offset of worker's compensation benefits from survivor pension benefits	<ul style="list-style-type: none"> Mandamus action to stop ongoing recoupment of overpayments to Jennifer Aleman, the widow of Deputy Sergio Aleman. The pension survivor benefits received by Mrs. Aleman should have been offset by worker's compensation benefits that she was simultaneously receiving; however, no offset was taken until 2017, resulting in an overpayment of approximately \$140,000.
<i>*Willie Watkins v. Pension Board</i>	18-CV-1839	OCC	Ineligibility for City-County reciprocity provisions and retirement under the County's "Rule of 75" due to County employment commencing after cut-off date	<ul style="list-style-type: none"> <i>Certiorari</i> review of the Pension Board's decision to deny Mr. Watkins' appeal regarding the "Rule of 75." Watkins maintains that his prior City of Milwaukee employment date qualifies him for the Rule of 75, even though he did not start working for the County until after the applicable cut-off date.
<i>*Kevin Walker, et al. v. Milwaukee County, et al.</i>	15-CV-6288	Lindner & Marsack; Reinhart Boerner Van Deuren s.c.	Improperly paid survivorship benefits	<ul style="list-style-type: none"> Dispute over survivor benefits incorrectly paid to grandchildren of deceased County employee. Only claims that survive relate to open records requests; remaining claims dismissed. Defendants have filed dispositive motions in open records matter.

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
<i>*Carol Couturier v. Pension Board of the Employees' Retirement System of Milwaukee County</i>	17-CV-11353 18-AP-1351	OCC	Improperly paid beneficiary benefits requiring recoupment.	<ul style="list-style-type: none"> Overpayment (approx. \$18K) to beneficiary of deceased County employee was discovered. Beneficiary disputes ERS's ability to recoup overpayment based on six-year contract SOL. Pension Board denied appeal; was affirmed in circuit court. Couturier has now appealed to Court of Appeals.
<i>*Michael Hoffmann v. Milwaukee County</i>	E.D. Wis. 17-CV-524; Milwaukee County Circuit Court Case No. 17-CV-11634	OCC	Incomplete purchase of prior service credit	<ul style="list-style-type: none"> Dispute over incomplete purchase of approx. 3 pension service credits. Proceedings in both state and federal court. Federal action pending motion to dismiss. State action in discovery.

Claims That Have Yet to Be Filed in Court

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
<i>Estate of Christopher Weber</i>	Notice of Claim	OCC	12/19/2016 vehicular death on Hoan Bridge	<ul style="list-style-type: none"> 04/13/2017: Notice of claim filed concerning allegations of breach of duty related to snow accumulation/removal under County contract with State to maintain roadway, clear snow from shoulder, etc.
<i>Estate of Jose L. Torres, Jr.</i>	Notice of Claim	OCC	10/27/2017 inmate death	<ul style="list-style-type: none"> 02/23/2018: Notice of claim filed concerning claims against Milwaukee County and Armor Correctional Health Services, Inc. for inadequate medical care and staffing.
<i>Estate of Clarence Wilson, Jr.</i>	Notice of Claim	OCC	08/29/2017 inmate death	<ul style="list-style-type: none"> 12/22/2017: Notice of claim filed concerning claims against Milwaukee County and Armor Correctional Health Services, Inc. for deliberate indifference to serious medical needs
<i>Jennifer Jawson and her deceased child</i>	Notice of Claim	OCC	12/10/2016 stillborn birth by inmate	<ul style="list-style-type: none"> 04/11/2017: Notice of claim filed concerning allegations of 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 ultimate still born birth of child on 12/10/16.

<u>Case Name</u>	<u>Case Number</u>	<u>Firm</u>	<u>Description</u>	<u>Case Status</u>
*Paula McEwen	Notice of Claim	OCC	06/11/2017 passenger of vehicle involved in lakefront shooting	<ul style="list-style-type: none"> 10/05/2017: Notice of claim filed by passenger of the vehicle driven by Terry Williams. Mr. Williams fled a traffic stop on 6/11/17 on N. Lincoln Memorial Dr. Mr. Williams was ultimately shot and killed by a deputy sheriff. Ms. McEwen was also shot and injured by said deputy.