



TO: Members of the Troy City Council

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SUBJECT: 2011 Second Quarter Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the SECOND quarter of 2011 are in bold.**

A. ANATOMY OF THE CASE

Once a lawsuit has been filed against the City or City employees, the City Attorney's office prepares a memo regarding the allegations in the complaint. At that time, our office requests authority from Council to represent the City and/or the employees. Our office then engages in the discovery process, which generally lasts for several months, and involves interrogatories, requests for documents, and depositions. After discovery, almost all cases are required to go through case evaluation (also called mediation). In this process, three attorneys evaluate the potential damages, and render an award. This award can be accepted by both parties, and will conclude the case. However, if either party rejects a case evaluation award, there are potential sanctions if the trial result is not as favorable as the mediation award. In many cases, a motion for summary disposition will be filed at the conclusion of discovery. In all motions for summary disposition, the Plaintiff's version of the facts are accepted as true, and if the Plaintiff still has failed to set forth a viable claim against the City, then dismissal will be granted. It generally takes at least a year before a case will be presented to a jury. It also takes approximately two years before a case will be finalized in the Michigan Court of Appeals and/or the Michigan Supreme Court.

B. ZONING CASES

These are cases where the property owner has sued for a use other than that for which the land is currently zoned and/or the City is suing a property owner to require compliance with the existing zoning provisions.

1. Laja, LLC v City of Troy. This case involves an appeal of a decision of the City of Troy Board of Zoning Appeals (BZA). On February 15, 2011, the BZA granted three variances to the property owner of 405 E. Maple, which will allow the owner to enlarge an existing building proposed to be used as a dental office. The Appellant in this case is Lala, LLC, the owner of an adjacent parcel located at 415 E. Maple. The attorney for Lala, LLC appeared at the BZA meeting and objected to the variances. The Appellant filed a Claim of Appeal with the Oakland County Circuit

Court on February 23, 2011 challenging the granting of the variances. The case has been assigned to Judge Daniel P. O'Brien. The City will be filing an appellate brief in support of the BZA decision. Thereafter, the case will be scheduled for oral argument before the Judge. **The City and Dr. Sandulache, who was permitted to intervene in the lawsuit, have filed briefs on appeal. The Court entertained oral argument on June 22, 2011, and after the hearing, Judge O'Brien affirmed the decision of the BZA. This case is now concluded.**

2. Grand Sakwa v. City of Troy-

Grand Sakwa filed this case, seeking relief from the Court, which had jurisdiction of the matter based on a Consent Judgment that allowed for the highly intense commercial and residential development on approximately 77 acres of property known as Midtown. The Consent Judgment provided that a small parcel to the rear of the shopping center was donated to the City for transportation center purposes. The Consent Judgment required the transportation center to be "funded" on or before June 2, 2010. If this condition was not satisfied, then the property would revert to Grand Sakwa. Shortly after the June 2, 2010 date, Grand Sakwa filed this action, seeking a Court ordered reversion of the property. Grand Sakwa argued that the transit center was not funded by June 2, 2010, as required by the Consent Judgment. The City countered by relying on the City's budgetary allocations since 2006, and also the federal funding, where 8.4 million dollars was awarded under the American Recovery Reinvestment Recovery Act of 2009- High Speed Intercity Passenger Rail Program (HSIPR) and 1.3 million dollars was appropriated in the December 16, 2009 Transportation, Housing and Urban Development Appropriations Act, Bus and Bus Facility Program. The City also argued that the language of the consent judgment did not require "full funding" or "irrevocable funding" or preclude the use of a reimbursable grant in satisfaction of the terms of the judgment. **On May 25, 2011, the Oakland County Circuit Court entered an order in favor of the City, and denied Grand Sakwa's request for a reversion of property. On June 15, 2011, Grand Sakwa filed a Motion for Reconsideration.**

3. Lamar Advertising v. City of Troy. Plaintiff Lamar Advertising unsuccessfully requested variances from the Troy Building Code Board of Appeals, in order to allow the erection of two separate billboards along I-75. Plaintiff has filed an appeal of the Building Code Board of Appeals decision and a simultaneous lawsuit, arguing that Troy's ordinances are unconstitutional. The City has timely supplied the record to the Court for the appeal.

C. EMINENT DOMAIN CASES

These are cases in which the City wishes to acquire property for a public improvement and the property owner wishes to contest either the necessity or the

compensation offered. In cases where only the compensation is challenged, the City obtains possession of the property almost immediately, which allows for major projects to be completed.

ROCHESTER ROAD IMPROVEMENT PROJECT

1. City of Troy v Safeway Acquisition Co. After obtaining a possession and use agreement, the City was unable to voluntarily purchase the necessary property required for the Rochester Road Improvement Project from the gas station at 3990 Rochester Road. The City therefore filed this condemnation action on January 19, 2010. The City has acquired title to the subject property and the only remaining issue is the amount of just compensation to be paid. The case is now in the discovery phase. Discovery is continuing. Case evaluation is scheduled for September 2010. Trial is scheduled for January 4, 2011. Discovery continues. The Court granted a motion filed by Defendants to adjourn the trial and delay case evaluation. Case evaluation is now scheduled to take place in April 2011. The trial is now scheduled for June 20, 2011. The Court scheduled case evaluation for April 13, 2011. **A consent judgment, reflecting the case evaluation award, was entered on June 8, 2011. This case is now closed.**

D. CIVIL RIGHTS CASES

These are cases that are generally filed in the federal courts, under 42 U.S.C. Section 1983. In these cases, the Plaintiffs argue that the City and/or police officers of the City of Troy somehow violated their civil rights.

1. David J. Smith v. Gregory Stopczynski – Plaintiff filed this lawsuit in the 52-4th District Court against Troy Police Officer Gregory Stopczynski, who stopped Mr. Smith on October 5, 2009. Stopczynski completed an investigation to determine whether Plaintiff was a drunk driver. Although Plaintiff was not charged with drunk driving, he was issued a citation for disobeying a stop sign and failing to yield. Mr. Smith unsuccessfully challenged the traffic tickets in a formal hearing, which was held on January 11, 2010. Judge Drury found Mr. Smith responsible for both traffic violations. Mr. Smith has now filed this lawsuit, seeking damages under 42 U.S.C. Section 1983 for an alleged civil rights violation. **The Court granted the City's Motion to Dismiss this case on April 29, 2011. This case is now closed.**
2. M. Amelia (Neal) Jermano v City of Troy Police Department - Plaintiff M. Amelia (Neal) Jermano filed a lawsuit against the City of Troy Police Department and individual officers, as well as Troy Civil Service Commission Member David Cannon (improperly identified in the lawsuit as the Troy Police Commissioner) and several other individuals and entities

from other jurisdictions. The Plaintiff is not represented by an attorney. The lawsuit alleges 25 separate counts based on various legal theories. Her claims against Troy all relate to a valid arrest made on February 20, 2009 after a traffic stop on Coolidge Road near Big Beaver Road. Plaintiff was arrested after the officers received verification of a felony warrant out of Oak Park for Plaintiff's arrest on the charge of aggravated stalking. Essentially, Plaintiff's claims against Troy are based on an allegation the arrest was improper and that she was threatened and harassed by Troy Police officers. The case was filed in the United States District Court for the Eastern District of Michigan and assigned to Judge Avern Cohn. The City has filed a motion to dismiss and/or summary judgment as its first responsive pleading. The Court ordered the Plaintiff to file a response to the motion by July 5, 2011.

E. PERSONAL INJURY AND DAMAGE CASES

These are cases in which the Plaintiff claims that the City or City employees were negligent in some manner that caused injuries and/or property damage. The City enjoys governmental immunity from ordinary negligence, unless the case falls within one of four exceptions to governmental immunity: a) defective highway exception, which includes sidewalks and road way claims; b) public building exception, which imposes liability only when injuries are caused by a defect in a public building; c) motor vehicle exception, which imposes liability when an employee is negligent when operating their vehicle; d) proprietary exception, where liability is imposed when an activity is conducted primarily to create a profit, and the activity somehow causes injury or damage to another; e) trespass nuisance exception, which imposes liability for the flooding cases.

1. *Nancy Huntley, Legal Guardian of Carolyn Huntley, a Protected Person v. City of Troy*- This lawsuit was filed in the Oakland County Circuit Court. Plaintiff alleges that on June 29, 2007, Carolyn Huntley was walking on the sidewalk located in front of 511 Cardinal, Troy, Michigan when she tripped and fell on an elevated concrete slab. Plaintiff alleges that Troy was negligent in failing to maintain the sidewalk; to provide adequate inspections; to give notice of a dangerous condition; and to use reasonable care in the design of the sidewalk. The City filed an Answer and Affirmative Defenses and also filed a Motion for Summary Disposition, arguing that Plaintiff failed to provide notice, as required by MCL 691.1404. Plaintiff's response to this motion is due on October 7, 2009, and Judge Rudy Nichols has scheduled oral argument for October 28, 2009. The parties are waiting on the Court's decision on the motion. On March 9, 2010, the Court issued its written opinion, granting in part and denying in part our motion for summary disposition. As a result, the public nuisance and nuisance per se claims are now dismissed. The parties are conducting discovery on the alleged defective highway claim. Jury trial is scheduled for December 6, 2010. The parties are now preparing for trial in this matter. The Court subsequently

mandated case evaluation (date to be scheduled) and adjourned the jury trial to March 28, 2011. **After another adjournment, this case proceeded to jury trial, and the jury found in favor of the City. An order dismissing this case was entered by the Court on April 21, 2011. This case is now closed.**

F. MISCELLANEOUS CASES

1. Frank Lawrence v City of Troy – Mr. Lawrence is the brother of Thomas Lawrence who was issued two civil infraction traffic citations on October 4, 2008 for “no proof of insurance” and “failure to change address on driver’s license”. Frank Lawrence filed a FOIA request with Troy Police Department asking for a number of items, including but not limited to: all video recordings, radio transmissions, records and the officer’s disciplinary file (if any), and the police policy on issuing “quota’ tickets. Under Michigan Court Rule 2.303 (A)(3) discovery is not permitted in civil infraction actions. Additionally, FOIA does not require the release of information which would constitute an unwarranted invasion of personal privacy or law enforcement information such a, but not limited to, disciplinary files of police officers, personal telephone numbers, and operational manuals. Mr. Lawrence’s FOIA was denied for these reasons. Instead of filing an appeal of the FOIA denial to the City Manager, Mr. Lawrence appealed the denial to the Oakland County Circuit Court. Mr. Lawrence filed a Motion for Summary Disposition and the City responded. Without requiring oral arguments, Judge Steven Andrews denied Mr. Lawrence’s Motion for Summary Disposition in an Opinion and Order dated December 1, 2008. Judge Andrews also granted Summary Disposition in the City’s favor. Mr. Lawrence filed a Claim of Appeal with the Michigan Court of Appeals on December 22, 2008. The Court of Appeals in an unpublished opinion partially reversed the trial court, and remanded the matter for further proceedings including a determination by the trial court of whether or not specific documents are exempt from disclosure. The parties are waiting for the Court to schedule a court date. The Court held an evidentiary hearing on June 17, 2010, and has indicated that a written opinion will be issued. The Court granted in part, denied in part Plaintiff’s request for information. Plaintiff also filed a Motion for Reconsideration, which the Court denied. **The Court entered a final order, which was appealed by Plaintiff to the Michigan Court of Appeals. The parties have filed appellate briefs, and are now waiting for an oral argument date.**
2. Sean Steven Seyler v. City of Troy and Troy Police Department. Mr. Seyler filed this Freedom of Information Act case against the City, seeking the police report and his lab test results, which were also simultaneously requested as criminal discovery within 48 hours of Mr. Seyler’s drunk driving arrest. The City has filed a Motion for Summary Disposition, arguing that the documents requested were either already provided as criminal discovery or are otherwise exempt from disclosure. The Court will issue a scheduling order setting the date for oral argument. The Court entertained oral arguments on March 24, 2010, and granted our motion for dismissal.

The Plaintiff filed an application for leave to appeal with the Michigan Court of Appeals on April 14, 2010. The parties are waiting for the Michigan Court of Appeals to schedule the date for oral argument. **The Court heard oral argument on June 14, 2011, and is expected to issue a written decision.**

3. *James F. Cichy and Diane Rzepecki v City of Troy*. This claim and delivery action was filed in the Oakland County Circuit Court on December 2, 2010 and assigned to Judge Edward Sosnick. The Plaintiffs are seeking the return of a pistol, 2 shotguns, 3 rifles and ammunition that were confiscated from Plaintiff James F. Cichy when the police responded to the Plaintiffs home, at the request of Plaintiff Diane Rzepecki. The City has filed an answer and is awaiting a court date for a pretrial or trial. **The Court entered a conditional order returning the firearms to a relative of Mr. Cichy. This case is now concluded.**

4. *Michigan Association of Home Builders; Associated Builders and Contractors of Michigan; and Michigan Plumbing and Mechanical Contractors Association v. City of Troy* – The Plaintiffs filed a complaint for Declaratory and Injunctive Relief in the Oakland County Circuit. On the date of filing the Plaintiffs also filed a Motion for Preliminary Injunction and Order to Show Cause. The Plaintiffs allege that the City of Troy has violated Section 22 of Michigan’s Stille-DeRossett Hale Single State Construction Code Act by collecting fees for building department services that are not reasonably related to the cost of providing building department services. They are alleging that the City of Troy has illegally entered into a contract with Safe Built of Michigan, Inc. for building services that provides that 20% of each building permit fee be returned to the City to cover services that are not “reasonably related to the cost of building department services,” as required by state statute. The Plaintiffs also assert a violation of the Headlee Amendment, arguing that the 20% returned to the City is a disguised tax that was not approved by voters. The Plaintiffs are asking for a declaratory judgment, as well as a return of any “surplus” building department service funds collected to date. Plaintiffs also request an order requiring the City to reduce its building department fees. The City of Troy was served with the Complaint and the Motion for Preliminary Injunction and Order for Show Cause on Wednesday, December 15, 2010. The parties were required to appear at Court on Wednesday, December 22, 2010, but the Court did not take any action at that time. Instead, the Court adjourned the matter to January 19, 2010. In the interim, the parties may engage in preliminary discovery in an attempt to resolve this matter. **The parties are conducting discovery.**

5. *Michael Joseph Burns v City of Troy*. Plaintiff Michael Joseph Burns filed a claim and delivery lawsuit against the City of Troy and the Troy Police Department. It was filed in the 52-4 District Court and assigned to Judge Bolle. The Plaintiff is seeking return of a pistol that is presently in the possession of the Police Department. Plaintiff’s wife, Debra Burns, asked the Police Department to hold the gun until after her divorce proceeding is final. In her statement, she states that she “didn’t want the gun in our house for safety issues.” The Plaintiff appeared at the Troy Police Department and requested

the weapon be returned to him. Based on the circumstances (the concern of Mrs. Burns for her safety), the Plaintiff was advised the gun would not be returned in the absence of a court order. The Plaintiff then filed this law suit and a motion seeking possession of the pistol pending a final resolution of the case. The hearing on the motion is scheduled for April 21, 2011. **On April 21, 2011, the Court entered a judgment, allowing for the return of the gun to the Plaintiff, subject to the condition that he can never possess the gun at the residence of Debra Burns, and the gun must be stored in a locked case with a trigger lock when not in use. The case is now closed.**

5. **Walter N. Ament v City of Troy.** Plaintiff Walter N. Ament filed a claim and delivery lawsuit against the City of Troy. It was filed in the 52-4 District Court and assigned to Judge Hartig. The Plaintiff is seeking the return of four pistols, two pellet guns, three shotguns and three long rifles that belong to Plaintiff's 41 year old son Mark Ament. The weapons were confiscated by the Troy Police Department after they were dispatched to Plaintiff's home on a report of irrational behavior by Mr. Ament. Upon arrival at the residence, the officers were confronted with an individual who exhibited a high state of mental agitation leading to involuntary commitment. All the weapons that were seized by the Troy police belonged to Mark Ament. The Plaintiff filed this lawsuit along with a motion seeking possession of the weapons pending final resolution of the case. A hearing on the motion was scheduled for May 16th. After the initial hearing, the Court denied the Plaintiff's motion for return of the firearms. The Judge agreed to reconsider the motion if Plaintiff returned to Court with his son Mark Ament so she could question him. The Plaintiff appeared at Court on May 17th with his son, and the Court conducted another hearing. After the hearing, the Court entered an Order allowing the weapons to be returned to Plaintiff subject to the condition the weapons be kept in a locked case and secured in a location that is not accessible to Mark Ament, and subject to an additional condition prohibiting Plaintiff from allowing the weapons to be possessed by his son. The case is now closed.
6. **T.R. Pieperzak v. City of Troy.** This case has been filed by the successful bidder for the Section 9 water main replacement contract, seeking approximately \$900,000 over the contract bid for alleged additional work, unanticipated conditions and delays that Plaintiff attributes to the City of Troy. Plaintiff filed a Motion for Partial Summary Disposition, which the City responded to. Argument on this Motion is scheduled for July 6, 2011.
7. **Robert and Michelle Riddle v. City of Troy.** Plaintiff Robert Riddle alleges that he fell off his bicycle when the tires got caught in a gap in the sidewalk in front of Firefighter's Park. He alleges injuries to his left shoulder, left hand and his elbow and wrists. His wife, Michelle Riddle, claims damages for loss of Robert Riddle's services, companionship and consortium. The

City has filed an Answer and Affirmative Defenses, and have commenced discovery.

8. **Lloyd Peach v. City of Troy-** This is another claim and delivery lawsuit seeking a return of firearms that were confiscated from a defendant in a domestic assault and battery case. The Defendant successfully completed probation, and therefore the Court entered a conditional order returning the firearms to the Defendant.
9. **Margaret and Robert Black v. City of Troy.** Plaintiff Margaret Black alleges that she tripped and fell on a raised portion of sidewalk at 4637 Fairmont injuring her left shoulder, right hip and lumbar spine. Robert Black is claiming damages for loss of Margaret Black's services, companionship and consortium. This lawsuit is filed under the defective highway exception to governmental immunity.
10. **CitiMortgage, Inc. v. RBS Citizens and City of Troy et. al.** In this lawsuit, the Plaintiff, CitiMortgage, is seeking clarity as to the property rights of the City, the Mortgage companies, and individuals in the property at 650 Quill Creek Drive, in the City of Troy. Plaintiff filed a Motion for Partial Summary Disposition and a Motion for Preliminary Injunction, which were denied by the Court on June 29, 2011.

G. CRIMINAL APPEALS

These are cases involving an appeal from a decision of the 52-4 District Court in an ordinance prosecution case.

1. **People of the City of Troy v Jennie Yi.** The Defendant is charged with possession and/or use of marijuana. The Defendant's motor vehicle was stopped by Troy Police for suspicion of operating a motor vehicle while intoxicated. After the traffic stop, a Troy Police Officer conducted a pat down search of Defendant for weapons, and discovered that Defendant had marijuana in her coat pocket. The Defendant filed a motion in the District Court to suppress the marijuana claiming that it was discovered as a result of an unlawful search. After an evidentiary hearing, District Court Judge Dennis C. Drury denied the motion. The Defendant has now filed a Delayed Application for Interlocutory Leave to Appeal the decision of Judge Drury. The appeal was assigned to Oakland County Circuit Court Judge Rae Lee Chabot. A hearing was held on March 16, 2011 on the Application for Leave to Appeal. The Court granted the Application for Leave to Appeal, which allows the Defendant to pursue the appeal. The parties will each file an appellate brief and the case will be scheduled for oral argument. After oral argument, the Court will enter a decision to either affirm or reverse the decision of Judge Drury. **Based on Defendant's**

plea to a criminal charge, this matter will likely be dismissed after sentencing.

2. **People v Steve Habib.** The Defendant is charged with operating a motor vehicle while intoxicated. The Defendant filed a motion in the District Court to suppress evidence and dismiss the case. The Defendant claimed that there was no valid reason for the traffic stop. Additionally, the Defendant claimed his due process rights were violated because the in car video that he was provided showed only a portion of the defendant's driving, as observed by the police officer. After an evidentiary hearing, the District Court Judge granted the Defendant's motion and dismissed the case. The City has filed a claim of appeal. The City has filed its Brief on Appeal.
3. **People v. Michael Maluzhinsky.** The Defendant is charged with operation of a motor vehicle while intoxicated. The Defendant filed a motion in the District Court to suppress evidence and dismiss the case. The Defendant claimed that there was no valid reason for the traffic stop and the field sobriety tests, including the preliminary breath test, should be excluded as improperly performed. After an evidentiary hearing, the District Court Judge granted the Defendant's motion in part, suppressing the preliminary breath test and some of the field sobriety tests. Although the Judge found that there was probable cause for the stop of the vehicle, the Judge held that there was no evidence to establish reasonable suspicion for an arrest for operating while intoxicated and dismissed the case. The City appealed the decision of the court to the Oakland County Circuit Court.
4. **People v. Munley.** The Defendant is charged with operating a motor vehicle while intoxicated. The Defendant filed a motion in the District Court to suppress evidence and dismiss the case. The Defendant claimed that there was no valid reason for the traffic stop or the subsequent arrest. After an evidentiary hearing, the District Court Judge denied the Defendant's motion. Defendant filed a claim of appeal.

ADMINISTRATIVE PROCEEDINGS

1. **In the matter of the Petitions on National Pollution Discharge Elimination Systems (NPDES Phase II General Permits).** The City has joined several other municipalities in challenging several of the mandates in the NPDES Phase II General Permit, which was recently issued by the MDEQ. The new NPDES permit requires some storm water management techniques that exceed the federal mandates, and/or are not justified, based on the high cost of the mandate, in relation to the nominal environmental benefits. A status conference for the parties is set for October 1, 2008. The municipalities are currently exploring the coordination of efforts with other parties. Community representatives are meeting with representatives from the MDEQ to discuss

possible resolutions of this matter without the necessity of a full blown administrative hearing. The parties are continuing to negotiate with the MDEQ. The City of Riverview filed a class action complaint in the Ingham County Circuit Court, challenging the permit requirements as unfunded mandates. The petitioners to the NPDES permit administrative proceeding are named as participants in the proposed class action lawsuit. As a result, the class action determination may have an impact on the administrative proceeding. The motion for class certification is scheduled for October 15, 2009. Class certification was granted. Hearings regarding the procedure for the new class action are set for January 2010. The Court granted class action status, and the administrative proceedings are now being delayed. Status reports have been filed and reviewed, and we continue to monitor any new developments. On October 14, 2010, the Michigan Court of Appeals reversed the order granting a stay of the contested cases. On November 19, 2010, the Ingham County Circuit Court (the class action lawsuit) entered an order granting in part the dismissal of some of the claims. The remaining claims, including a Headlee claim, will be decided by the Court. Subsequently, the Assistant Attorney General, on behalf of the Michigan Department of Natural Resources and Environment (MDNRE) attempted to withdraw all of the remaining NPDES permits, which would mean that the whole process would need to be started from scratch. Since this action would likely result in a significant delay and a duplication of all efforts to date, several municipalities filed objections to this unilateral action. The MDNRE was given until December 22, 2010 to file a formal motion seeking a dismissal of the remaining NPDES permits.

If you have any questions concerning these cases, please let us know.