



TO: Members of the Troy City Council
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DATE: January 8, 2014
SUBJECT: 2013 Fourth Quarter Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the FOURTH quarter of 2013 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. 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. The Court ordered the City to file a response to the Motion for Reconsideration. On September 22, 2011, the Court denied the Plaintiff's Motion for Reconsideration. On September 29, 2011, Plaintiff filed an appeal with the Michigan Court of Appeals. On October 11, 2011, the Michigan Court of Appeals dismissed the claim of appeal, since there is no appeal of right from a post-judgment order. Grand Sakwa filed a Motion for Reconsideration on October 28, 2011, which was denied by the Court of Appeals on December 8, 2011. Prior to receiving this decision, Grand Sakwa also filed a Delayed Application for Leave to Appeal on November 22, 2011. The parties are now waiting for a decision from the Michigan Court of Appeals. On July 30, 2012, the Michigan Court of Appeals granted Grand Sakwa's delayed application for leave to appeal. Grand Sakwa filed its Brief on Appeal on September 19, 2012, and the City's Brief on Appeal must be filed on or before October 24, 2012. The legal briefs have been timely filed and the parties are now waiting for the Court to schedule oral argument. Oral argument was held on March 6, 2013, and the parties are now waiting for the Court's decision on appeal. The Court of Appeals released its opinion on May 2, 2013. The City filed a Motion For Reconsideration on May 23, 2013. Grand Sakwa filed a Motion for Immediate Effect the same day, seeking immediate possession of the property. The Court of Appeals denied both of these motions. The City has until July 26, 2013 to file an Application For Leave To Appeal with the Michigan Supreme Court. The City's Application For Leave to Appeal was filed on July 26, 2013. Grand Sawka filed a response on September 17, 2013. The City has until October 8, 2013 to file a reply to Grand Sakwa's response. **The City timely filed its reply, and on November 25, 2013, the Michigan Supreme Court issued an order denying the City's application for leave to appeal. This case is now concluded.**

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.

1. **Troy v. Grand Sakwa et. al.**- This condemnation case was initiated on December 16, 2013, to re-acquire the 2.7 acre transit center parcel from Grand Sakwa after the Michigan Supreme Court denied Troy's application for leave to appeal. Although the City was deeded the property in 2000, and initially prevailed against developer Grand Sakwa's motion seeking a reversion of the property, this decision was reversed by the Michigan Court of Appeals on the basis that the transit center was allegedly not funded by the June 2, 2010 reversion date in the consent judgment. Since the Court of Appeals decision became final upon the Michigan Supreme Court's refusal to hear the case, the condemnation complaint requests possession dating back to June 2, 2010. The independently appraised value for the property is \$550,000, which is well below the federal appropriation set aside for the project under the Federal Transit Administration.

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. **Alan A. May, as Personal Representative of the Estate of Jesus Gillard v. Bloomfield Township, Troy, et. al** – Plaintiff, Alan A. May, is the personal representative of the estate for the deceased Jesus Gillard. Gillard was involved in a police pursuit that was initiated in Bloomfield Township by its police officers. The pursuit ended in the City of Troy at the intersection of Big Beaver Road and Adams Road when Gillard's van collided with an SUV driven by a civilian. After the collision, Gillard continued to attempt to flee and elude police officers from both Bloomfield Township and Troy. He actively resisted the officers' attempts to subdue him and place him under arrest. At some time after Gillard was handcuffed, he stopped breathing. The defendants in the lawsuit are the City of Troy and individual officers from the police department as well as Bloomfield Township and individual officers from its police department. This wrongful death lawsuit alleges constitutional violations against the defendants, including failure to train and deliberate indifference to a serious medical need. The case was filed in the United States District Court for the Eastern District of Michigan and assigned to the Honorable Judge Robert Cleland. The parties are obtaining discovery in this matter. The parties continue to conduct discovery in this matter. Depositions of Plaintiff's expert witnesses have been scheduled and will continue through the beginning of November. The City plans to file a Motion for Summary Judgment on or before the cut-off date which is November 14, 2012. The City timely filed its Motion for Summary Judgment, and the parties are now awaiting oral argument before the Court. Oral argument is scheduled for April 3, 2013. On May 28, 2013, Judge Cleland issued an Opinion and Order granting summary

judgment in favor of the City of Troy and all of the individual Troy police officers except one. The Court also dismissed all but one of the claims raised by Plaintiff, and found that as to the one claim of excessive force, there was an issue of fact to be determined by a jury. The jury trial is scheduled to begin on October 21, 2013. The Court issued a new scheduling order, postponing the jury trial in this matter. **The parties subsequently engaged in facilitation of the case, and reached a settlement agreement which was approved on November 25, 2013. This case is now concluded.**

2. **Burley v. Gagacki. This is an excessive force case filed against a Troy police officer who was participating on a federal task force executing search warrants. The task force divided up and simultaneously executed search warrants on two houses located some distance from each other. Plaintiffs argue that they were injured by unidentified task force members at one of the houses. The incident report fails to specify which task force members were at Plaintiff's house and which task force members were simultaneously executing the search warrant at the other house. The Troy police officer and other task force members were initially represented by an Assistant U.S. Attorney, who obtained a dismissal of the case. Plaintiffs then successfully appealed to the Sixth Circuit Court of Appeals, which reinstated the case. The second trial is scheduled for February 2014. Due to a retirement of the Assistant U.S. Attorney and the possibility of conflicts between the task force team members, our office has assumed a more active role in the litigation, and will defend the Troy police officer task force member.**

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.

There are no pending personal injury and damage cases for this quarter.

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. Oral argument was held on August 3, 2011. On February 14, 2012, the Court of Appeals affirmed in part and reversed in part the decision of the Oakland County Circuit Court, and remanded the case. Plaintiff has now filed an application for leave to appeal with the Michigan Supreme Court. Both parties submitted briefs on the issues. The Michigan Supreme Court agreed with the City that the questions presented should not be reviewed by the Court and denied Plaintiff’s application for leave to appeal on July 25, 2012. The case was remanded to the Oakland County Circuit Court. Judge Bowman issued his opinion on remand on April 29, 2013, denying Plaintiff’s request for punitive damages. Plaintiff then appealed this decision to the Michigan Court of Appeals. Plaintiff filed his brief on September 30, 2013. The City’s responsive brief is due on or before November 5, 2013. **The pleadings were all timely filed, and the Court of Appeals has scheduled oral argument for January 14, 2014.**
2. 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, 2011. In the interim, the parties may engage in preliminary discovery in an attempt to resolve this matter. The parties are conducting discovery. The parties have completed discovery. Trial in this matter is scheduled for January 30, 2012. After being presented with motions for summary disposition, the Court ordered the parties to engage in mediation with a neutral municipal audit professional. Financial documents concerning this case are now being reviewed by an independent CPA. It is expected that the April 19, 2012 trial date will be postponed until after this review is complete. Mediation was unsuccessful in resolving this case, and therefore the Court is expected to issue an order on the pending Summary Disposition Motions. The trial date has been adjourned. On November 13, 2012, Oakland County Circuit Court Judge Shalina Kumar issued her order in favor of the City, and dismissed this case. Plaintiffs filed an appeal, which is now pending in the Michigan Court of Appeals. Appellant's brief is expected to be filed soon. The parties timely filed their appellate briefs, and are now waiting for the Court of Appeals to schedule a date for oral argument. The Court of Appeals has not yet scheduled oral argument for this case. **The parties are still waiting for a date for oral argument.**

3. *T.R. Pieprzak 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. The Court denied Plaintiff's Motion for Partial Summary Disposition. The case is now in discovery. Case evaluation for the case took place on November 17, 2011. The City and the Plaintiff each filed Motions for Summary Disposition at the close of discovery. The Court agreed with the amount the City claimed was due on the contract and entered an

Order on March 9, 2012 that dismissed Plaintiff's claims seeking damages in excess of that amount. The Order is a final order and closes the case. T.R. Pieprzak filed a Motion for Reconsideration on March 29, 2012. The Court has not yet issued an opinion on Pieprzak's Motion for Reconsideration. On January 17, 2013, Judge Nichols entered his Opinion and Order denying the Plaintiff's Motion for Reconsideration. The Plaintiff has now filed a Claim of Appeal with the Michigan Court of Appeals. Plaintiff filed its appellate brief, and the City's brief is due July 18th. The City has filed its responsive brief and Plaintiff filed a reply brief. The case will now be scheduled for oral argument. **The parties are still waiting for a date for oral argument.**

4. *Troy Police Officers Association v. City of Troy and Act 78 Civil Service Commission.* Plaintiff TPOA Union has filed this lawsuit against the City and also the Act 78 Civil Service Commission, seeking a hearing on behalf of one of its members, Todd Michael. Mr. Michael seeks a hearing before the Civil Service Commission, where he can have the chance to establish that he was constructively discharged from the City; or in the alternative that he was improperly disciplined by the City. In addition to seeking a court order mandating a hearing for Todd Michael, Plaintiff is also seeking an order requiring the City to amend its rules to allow for hearings in similar circumstances. The Amended Complaint was filed on May 21, 2012. On September 18, 2012, Plaintiff filed a Motion for Summary Disposition, which is scheduled for hearing on November 21, 2012. On December 5, 2012, the Court granted in part, denied in part the cross motions for summary disposition. This case is now pending in the Michigan Court of Appeals. Appellant's brief has been filed with the Court of Appeals. Appellee timely filed its brief, and the City filed a reply brief in response. The parties are now waiting for the Court of Appeals to schedule a date for oral argument. The Court of Appeals has not yet scheduled oral argument on this case. **The parties are still waiting for a date for oral argument.**

5. *Todd Michael v. City of Troy et. al.* Todd Michael has filed this lawsuit against the City, the Troy Police Department and the Troy Police Chief. Through this lawsuit, Plaintiff alleges that he was discriminated against in his employment with the City, in violation of the Americans With Disabilities Act. He also alleges that he suffered retaliation for his alleged disability. He is asking to be reinstated as a Troy Police Officer. He is also asking for additional compensation, punitive damages, costs and attorney fees. The answer to the complaint and affirmative defenses were filed on September 27, 2012. The Court has issued a scheduling order in this case, and discovery is on-going. The parties are continuing in the discovery phase. The Court has extended the discovery cut off in this matter, and the parties continue to take depositions in this case. The City will be filing a Motion for Summary Judgment. **A Motion for Summary Judgment was filed on October 14, 2013. Plaintiff filed its Response on November 21, 2013, and the City's reply brief was filed on December 12, 2013. The parties are**

now waiting for the Court to either issue an opinion or schedule a date for oral argument on the Motion.

6. Citizens United Against Corrupt Government v. Troy City Council- This is a lawsuit filed by the Citizens Against Corrupt Government, which is a Michigan Non-Profit Corporation formed by Robert Davis. In this lawsuit, Plaintiff alleges that the City violated the Open Meetings Act in holding a closed session on August 15, 2012, as part of the City Manager Search process. Through this lawsuit, Plaintiff is seeking a declaration that the City Council violated the Open Meetings Act. Plaintiff also asked for injunctive relief, and asked for an immediate hearing. The Court, after hearing arguments from the parties, denied the request for Injunctive relief with an order dated September 13, 2012. Immediately thereafter, Plaintiff attempted to schedule depositions of individual City Council members and other members of City Administration and the search consultant. The City filed a Motion for a Protective Order on September 28, 2012. On that day, the City also filed a Motion for Summary Disposition, arguing that Plaintiff does not have a viable case against the Troy City Council. On November 21, 2012, Judge O'Brien issued her order granting the City's Motion for Summary Disposition and dismissing this case. Plaintiff appealed this decision, which is now pending in the Michigan Court of Appeals. It is anticipated that Appellant will file its legal brief in the immediate future. Plaintiff missed the deadline for filing its appellate brief, but the Court of Appeals may allow a late brief. The Court allowed Plaintiff to file a late brief, but ordered that due to the late filing Plaintiff would not be allowed to present oral argument. The City timely filed its responsive brief. The Court will schedule the case for oral argument. **The parties are still waiting for a date for oral argument.**
7. Troy Police Officers Association v. City of Troy and Troy Employee Retirement System Board of Trustees- This lawsuit was served on the City on January 9, 2013. The Troy Police Chief, on behalf of former Troy Police Officer Todd Michael, filed a disability retirement request with the Troy Employee Retirement System Board of Trustees. Mr. Michael had not worked for the City since January 10, 2010, as a result of three independent neuropsychological examination reports. TPOA filed this lawsuit to prevent the Employee Retirement System Board of Trustees from considering this retirement request. An ex parte temporary restraining order was entered by the Court at the time that the complaint was filed, with a show cause hearing date of January 16, 2013. At that time, the parties agreed to engage in facilitation. The Court scheduled a court date for April 24, 2013 in the event that the case was not resolved prior to that time. Facilitation of this and companion cases was unsuccessful, and the Court scheduled a hearing for July 10, 2013, where Plaintiff would need to demonstrate entitlement to its requested relief. The Court rescheduled the evidentiary hearing for October 16, 2013. **The Court rescheduled the evidentiary hearing for February 12, 2014.**
8. Edward Belczak v City of Troy. This lawsuit was filed against the City on May 28, 2013. Through this lawsuit, Plaintiff seeks a reversal of an Order issued by a District

Court Judge which froze certain assets held in a Merrill Lynch account. The assets were frozen pending the investigation of a claim of embezzlement and other crimes against Plaintiff. In essence, Plaintiff claims his Fourth Amendment rights were violated because the assets in the account were illegally seized, and he was not afforded due process. Plaintiff seeks the return and/or “unfreezing” of the assets in the Merrill Lynch account. The parties are engaging in discovery. **Plaintiff filed a motion seeking to quash the subpoena, which was heard by the Court on December 18, 2013. At that time, the Court scheduled a hearing for January 2014.**

9. *Daniel E. Katayama v City of Troy*. Plaintiff filed this lawsuit under the Freedom of Information Act (FOIA) claiming that the City did not fully comply with a FOIA request he submitted on March 26, 2013. Plaintiff’s FOIA request sought particular documents related to his arrest on suspicion of driving while intoxicated. The City filed an Answer to the Complaint, and the parties are conducting discovery. **Discovery continues.**
10. *Center City Tennis v. City of Troy*. Center Court Tennis has filed this lawsuit, challenging the City’s contract with Troy Racquet Club, which does not expire until 2018. Prior to filing this lawsuit, Center City Tennis wrote a letter to City Administration and each of the individual City Council members, expressing interest in providing the services that have been provided by Troy Racquet Club since at least 1998. Center Court Tennis filed a similar lawsuit against the City of Birmingham. In this lawsuit, Plaintiff alleges that the City violated the Charter by refusing to accept competitive bids for the operation of the tennis bubble/tennis courts and tennis lessons, including the “bid” from Center Court Tennis, or in the alternative, the City violated the City Charter by allegedly failing to provide a public referendum process. As the City’s first responsive pleading, we filed a Motion for Summary Disposition. Oakland County Circuit Court Judge Denise Langford Morris has scheduled the oral argument on this motion for August 28, 2013. Oral argument was postponed until October 9, 2013. **On October 10, 2013, the Court granted the City’s Motion for Summary Disposition, resulting in a dismissal of this case. This case is now closed.**
11. *Chris-Anthony Gonzales v City of Troy*. Plaintiff has filed this claim and delivery action in the 52-4 District Court seeking return of firearms that were seized from his home by the Troy Police. The City has filed an Answer and a Response to Plaintiff’s Motion for Possession. A hearing was scheduled for September 23, 2013 on Plaintiff’s motion for possession. The Court denied Plaintiff’s Motion for Possession and scheduled the case for a pretrial on October 14, 2013. **On October 14, 2013, Mr. Gonzales agreed to a consent judgment allowing for the return of the firearms to a third party. The consent judgment provides that the firearms may not be returned to or possessed by Mr. Gonzales. The case is now closed.**
12. *Asset Management v. Troy*. In this Oakland County Circuit Court lawsuit, Plaintiff claims that the City wrongfully denied its request for commercial information

under the Freedom of Information Act. Plaintiff acknowledges that it was seeking City documents in order to solicit clients who had deposited money with the City at some point in time. We filed a Motion for Summary Disposition on September 23, 2013. Oral argument is scheduled for November 6, 2013. **The Court adjourned oral argument on the Motion to allow the parties to pursue settlement of the case, which was reached on December 15, 2013.**

13. *Mark R. Morin v City of Troy.* Plaintiff filed a small claims case against the City in the 52-4 District Court. This case involves repairs made to the sidewalk in front of Plaintiff's home at 6804 Meadow Court, for which he was invoiced in the amount of \$1,257.69. Plaintiff claims the repairs were unnecessary. Since Plaintiff's complaint did not specify the remedy he was seeking or the basis for his claim that the City should be liable, the City has filed a Motion for a More Definite Statement. **On October 29, 2013, the Court granted the City's Motion for a More Definite Statement. The Plaintiff filed a More Definite Statement alleging that City employees were negligent in determining that the repairs to the sidewalk were necessary. On November 22, 2013, the City filed a Motion for Summary Disposition. The hearing on the motion is scheduled on January 16, 2014 before Judge Bolle.**
14. *Georgia Lee Sasscer and Patrick Hoose v City of Troy.* Plaintiffs filed this lawsuit in the Oakland County Circuit Court, seeking return of firearms that were seized by the Troy Police from the home of Patrick Hoose in December 2004. The case was assigned to Judge Colleen O'Brien. **The Court has scheduled a trial date in this case for June 23, 2014.**
15. *John M. Boozer v City of Troy Police Department.* Plaintiff filed this claim and delivery action in the 52-4 District Court seeking the return of a pistol that was turned over to the Troy Police when it was found by Plaintiff's wife. Since the pistol has never been registered as required by law, there is no evidence as to its ownership. The City filed an answer to the complaint and a response to Plaintiff's motion for possession pending final judgment. **On December 19, 2013, Judge Bolle agreed with the City's position, and denied Plaintiff's interim motion for possession pending final judgment. The Court is expected to schedule a trial date on the remaining issues.**
16. *Helen Keats v Troy Police Department.* Plaintiff filed this claim and delivery action in the 52-4 District Court seeking the return of several firearms that were confiscated from her home when her husband was arrested for attempted murder. Her husband David Keats was convicted of Assault with Intent to Murder and sentenced to a minimum of 51 months in prison and a maximum of 20 years. Mr. Keats has appealed his conviction. **Because of this conviction, the weapon used in the commission of the crime cannot be returned. Mrs. Keats is asking for a return of the gun her husband used in the crime, as well as all other confiscated firearms. The City filed an answer to the complaint and a response to Plaintiff's interim motion for possession. On December 2, 2013,**

Judge Hartig agreed with the City's position, and denied Plaintiff's motion. At that time, the Court indicated that she would reconsider the motion if Mr. Keats were successful in his appeal and if Mrs. Keats could provide proof that she owns the firearms in question.

17. **Michael David Brani v City of Troy Police Department.** Plaintiff filed this claim and delivery action in the 52-4 District Court, seeking return of two pistols that were removed from his home when the police responded to a family trouble call. The City filed an answer to the complaint and a response to Plaintiff's motion for possession pending final judgment. A hearing was scheduled for January 2, 2014 before Judge Bolle. Prior to the scheduled hearing date, but after the City filed its response to the Complaint and the interim motion, the Plaintiff agreed to voluntarily dismiss the case. This case is now closed.

G. CRIMINAL APPEALS/ DISTRICT COURT APPEALS

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

1. **People v. Lisa Marie Brandt.** Ms. Brandt filed an appeal of her criminal jury trial conviction for assault and battery. In this appeal, her newly appointed public defender attorney argues that her jury trial conviction should be overturned because her previously retained attorney was ineffective during the jury trial. This argument is based on the attorney's alleged failure to subpoena all persons who were potential witnesses to testify at the trial. Oral argument is scheduled before the Honorable Judge Kumar on October 23, 2013. **On October 23, 2013, Judge Kumar denied Defendant's appeal and affirmed Defendant's conviction. This matter is now concluded.**
2. **People v. Tracey Rankin.** Ms. Rankin appealed a District Court decision finding her responsible after a Formal Hearing for two building code violations related to conditions on her residential property. She filed an appeal to Circuit Court arguing that the conditions on her property do not violate the Troy Building Code. Her argument is based on her view that the tall grass, weeds, trash and debris on her property is aesthetically pleasing to her. This matter is assigned to the Honorable Judge Denise Langford Morris who has not yet issued a briefing schedule. **The City timely filed its Brief on Appeal on November 20, 2013. On December 11, 2013, the Court issued a favorable Opinion and Order, denying Defendant's appeal and affirming the lower court's finding of responsibility for the two municipal civil infractions.**
3. **People v Frank Hakeem.** Frank Hakeem is charged with operating while intoxicated and possession of marijuana. He filed a motion to suppress evidence and dismiss charges, alleging that the Troy police officers did not have probable cause to arrest him. 52-4 District Court Judge William E. Bolle held an evidentiary hearing on September 24, 2013, after which he

denied Mr. Hakeem's motion, and the criminal case proceeded on the Court's docket. On November 12, 2013, Mr. Hakeem filed a delayed application for leave to appeal the Court's decision. Oakland County Circuit Court Judge Denise Langford Morris was assigned to the case. The City filed an answer to the delayed application for leave to appeal. On December 11, 2013, Judge Langford Morris issued a favorable order, denying Defendant's Application for Leave to 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. On August 9, 2011, the Administrative Law Judge held the case in abeyance, due to pending case at the Michigan Court of

Appeals. The parties will continue to provide status reports in the interim. The Court is continuing to receiving status reports, with the next one due on December 19, 2012. Status reports were timely filed on January 6, 2013 and March 22, 2013. Additional status reports were submitted on June 24 and 25, 2013. The Court issued an order on September 10, 2013, continuing to hold the matter in abeyance pending resolution of the constitutional issues. **Status reports were timely filed on December 18, 2013.**

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