TO: Members of the Troy City Council

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SUBJECT: 2008 First Quarter Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the FIRST quarter of 2008 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. *Troy v. Papadelis and Papadelis v. Troy* - This is a case filed by the City against Telly's Nursery, seeking to enjoin the business from using the northern parcel for commercial purposes. After a lengthy appellate history, an order was entered in the Oakland County Circuit Court, requiring compliance on or before April 29, 2002. The Papadelis family failed to comply with the court's order, and therefore

a Contempt Motion was filed. Oakland County Circuit Court Judge Colleen O'Brien determined that the defendants were in contempt of court, and required them to pay $1,000 to the City of Troy. However, the court also determined that the defendants were in compliance with the City of Troy zoning ordinances as of the date of the court decision. The Troy City Council authorized an appeal of this decision to the Michigan Court of Appeals. It was filed on September 27, 2002. The neighbors filed an application for leave to appeal, which was denied by the Michigan Court of Appeals on 2/10/03. After receiving criminal citations from the City for expansion of the business, Papadelis filed a federal lawsuit against the City of Troy, alleging civil rights violations and seeking an injunction against the prosecution and/or further expansion. The neighboring property owners filed a Motion to Intervene, which was granted by Federal US District Court Judge Arthur Tarnow**.** Troy filed a counterclaim in the Federal Court case but it was dismissed by Judge Tarnow, who refused to exercise jurisdiction over the counter-complaint, since it would require him to interpret the opinion of the Oakland County Circuit Court Judge. Troy has subsequently filed two separate motions to dismiss the Papadelis complaint. One of the motions asserted the same jurisdictional claim that was raised against the counter-complaint. The Court granted Troy's motion based on jurisdictional issues and dismissed the case without prejudice. The court did not rule on the other motion, but instead, directed the Papadelises to re-file their case in state court. The Papadelis family then re-filed its lawsuit in Oakland County Circuit Court. Troy filed an answer and a counterclaim. Troy also immediately filed a motion for summary disposition seeking dismissal of the complaint and a judgment in favor of Troy. The counterclaim seeks an order requiring the Papadelis family to remove two greenhouses and other structures that have been built upon the property without approvals that are required under the zoning ordinance. The Court scheduled an early intervention conference (settlement conference) for October 18, 2005. The Court has set the hearing date for the Motion for Summary Disposition for January 4, 2006. Subsequent to the filing of Troy's Motion for Summary Disposition, Plaintiffs' filed a Cross Motion for Summary Disposition, and the hearing was rescheduled for January 18, 2006. On February 17, 2006, the Court entered its written Opinion and Order, dismissing the Papadelis claim for money damages and their claim for injunctive relief. However, the Court also granted Summary Disposition in favor of the Plaintiffs on their claim for declaratory relief, and held that "retail" activity was not occurring on the northern parcel, and that the "agricultural" activities on the northern parcel were protected under the Right to Farm Act. Additionally the Court ruled the Plaintiffs' were exempt from City permitting requirements under the agricultural building permit exemption of the State Construction Code Act. The Court also dismissed the City's counterclaim. Troy has filed an appeal with the Michigan Court of Appeals. Plaintiffs' have filed a cross appeal challenging the dismissal of their claims for money damages and injunctive relief. All the required briefs have been filed with the Court of Appeals, which will either schedule an oral argument or will inform the parties that the case will be decided without oral argument. Since this case was assigned to the expedited track for summary disposition appeals, a final decision on appeal is

expected before the end of September of this year. On June 16, 2006, the Building Department discovered that the Papadelis family was erecting a new, large pole barn structure on the property at 3301 John R. Road. This structure was likely in violation of local and/or state law. The Building Department followed the procedure for issuing a Stop Work Order. In addition, our office filed an emergency motion with the Court of Appeals, seeking to enjoin construction of the building pending final outcome of the appeal. On June 21, 2006, the Court of Appeals granted the motion for immediate consideration, but denied the motion to enjoin construction of the building. The denial of the motion has no bearing on the final outcome of this appeal, and if Troy ultimately prevails on appeal, the new building will have to be removed. Despite the issuance of the Stop Work Order, the construction continued on the new building. The Papadelis Family then filed a Motion to hold the City Attorney and the Director of Building and Zoning in contempt of court. In this Motion, the Papadelis family argued that the Circuit Court ruling (Judge Colleen O'Brien) allows the construction of the new building without a permit and without having to comply with the zoning ordinance provisions regulating the size and location of buildings. Judge O'Brien denied this Motion on June 28, 2006, and ruled that her earlier ruling (the ruling on appeal) was limited to the buildings on the property at the time of the ruling, and did not extend to allow for new construction on the site. On September 19, 2006, the Court of Appeals affirmed the decisions of the Circuit Court. Thus, the Court affirmed the declaratory judgment in favor of the plaintiffs, but it also affirmed the dismissal of plaintiff's civil rights claims against the City, Mark Stimac, and Marlene Struckman. Troy has filed an Application for Leave to Appeal with the Michigan Supreme Court. The Michigan Municipal League is also filing an amicus brief in support of the City's Application for Leave to Appeal. The Papadelis family filed a Cross Application for Leave to Appeal. If the Supreme Court denies both the Application for Leave to Appeal and the Cross Application for Leave to Appeal, the Court of Appeals decision becomes the final decision in this case. The Supreme Court may grant both the Application and Cross Application for Leave to Appeal, or it may grant one and deny the other, or it may grant either Application in part and limit the issues that it will review. The Michigan Municipal League (MML) has prepared an Amicus Brief in support of the municipal position, and the Papadelis family has opposed the MML's Motion for Leave To File the Amicus Brief. The parties are now waiting for the Michigan Supreme Court to take action. On June 29, 2007, in lieu of granting leave to appeal, the Michigan Supreme Court ruled in favor of the City, and reversed the decisions of the Oakland County Circuit Court and the Court of Appeals. The case will now be remanded back to the Oakland County Circuit Court for an order requiring the Papadelis family to comply with Troy's zoning ordinances. The Michigan Supreme Court declared that the greenhouses and pole barn are not "incidental to the use for agricultural purposes of the land on which they are located." Plaintiff's cross appeal against the City was denied. Troy filed a motion in Circuit Court to enforce the Supreme Court's ruling, which requires all of the buildings constructed on the Papadelis property to be in compliance with Troy's zoning ordinance. In the alternative, the structures need to be removed.

The Court scheduled an evidentiary hearing on our Motion for October 17, 2007. A hearing/bench trial began on October 17th and continued on October 23rd. The City presented evidence in support of its request for an Order requiring the Papadelis family to remove two large greenhouses, eight smaller greenhouse type structures (cold frames) and a pole barn from the subject property. The Papadelis Family has started to present evidence in support of their defense and opposition to the City's requested relief. They contend the zoning ordinance is not applicable to the buildings. The Court has set the next hearing/ bench trial continuation date for January 30, 2008. **The hearing/bench trial continued on January 30, 2008 and closing arguments were scheduled for March 5, 2008. After closing arguments were made, Judge O'Brien indicated she would prepare a written opinion.**

2. *Milano Development Company, Inc. v. City of Troy, et. al.* – This lawsuit was filed on December 11, 2006. It seeks to amend part of a plat to vacate an easement reserved on the original plat of the Square Acres Subdivision Plat, located in Section 14. The Plaintiff is proposing to develop a 13-unit site condominium project on Lot 17. The City has already granted preliminary site plan approval of the proposed Athens Park Site Condominium Project. However, the development cannot be completed in accordance with the approved site plan unless the private roadway easement is vacated. The Plaintiff is currently working on a proposed Consent Judgment, which will incorporate the requests of the attorneys of record. There has been a delay to this case, since Plaintiff needs to add some recently discovered parties who are necessary to the lawsuit, and delete some originally named but unnecessary parties from the lawsuit. Once the issue of the proper defendants is resolved, we will submit a proposed Consent Judgment to amend the plat as a future City Council action item. **A Consent Judgment was approved by City Council, and subsequently entered with the Court on February 5, 2008. The Consent Judgment provides that Plaintiff will send a copy of the proposed amended plat to the City Clerk within 120 days of the entry of the judgment. The City Clerk will verify that all City requirements have been satisfied, and the amended plat would then be subsequently forwarded to the State of Michigan for approval. Plaintiff's final step is to submit the amended plat to the Oakland County Register of Deeds for recording. This case is now closed.**

3. *Karagiannakis and Garrett Family Ltd.Partnership v. City of Troy, et. al.*
The Plaintiffs, Nick and Leslie Karagiannakis, are the owners of property that is designated as "Outlot B" in the Troy Villas Subdivision No. 1 (north of Square Lake Road, west of Rochester Road). The Co-Plaintiff, Garrett Family Limited Partnership (hereinafter "Garrett") has a purchase agreement with the Karagiannakis family for a portion of this property, which has or will be combined with the rear portions of other parcels that front on Square Lake Road. Garrett proposes to build a 12-unit site condominium on this approximately 6.04 acre parcel, which is currently landlocked and is located behind several homes that front on Ottawa and Donaldson. The plat for the property does not expressly designate a public roadway easement that would allow for a roadway to be constructed over the property owned by co-defendants Arthur and Delphine Lubiarz (480 Ottawa) and James and Cynthia Smith (536

Ottawa- actually on the adjoining plat). The express language of the plat grants only a 43-foot private easement- not a public road. In 1981, a private driveway agreement over this 43-foot private easement allowed for the construction of the Karagiannakis' residence (500 Ottawa). However, this agreement is extremely limited, and authorizes only a private driveway to a single-family residence. It could not be used to service a 12-unit condominium site. Plaintiffs seek to convert the private easement to a public road, which is required for the proposed development. The Plaintiffs previously filed an action for Declaratory Judgment, and the City argued that the complaint was not correctly filed, since the requested relief could only be granted through a re-plat lawsuit under the Michigan Subdivision Control Act. Under this law, a plat revision complaint needs to be filed against all persons having an interest that could be impacted by revisions to the plat. Plaintiffs thereafter agreed to voluntarily dismiss their Declaratory Judgment action lawsuit, and have now filed this plat revision lawsuit. In the alternative, Plaintiffs have also pled a count asking the Court to allow it to put in a public or private road that is less than the 60- foot width required by City ordinance. The City has filed an Answer to the Complaint and discovery is continuing. Trial is scheduled for April 3, 2008. Prior to the trial date, we will file a Motion for Summary Disposition, seeking dismissal of the case. Plaintiffs filed a motion to adjourn the April trial date, and the new trial date is May 5, 2008. In the meantime, Plaintiffs recently submitted interrogatories to a number of Defendants, including the City. The City is in the process of preparing answers to these interrogatories. **The City has filed a Motion for Summary Disposition, arguing that Plaintiffs have failed to serve all necessary parties with the Complaint and Summons. In addition, the City argues that dismissal in its favor is warranted to avoid potential takings claims or claims that the City has misused the powers of condemnation, for the benefit of a private developer. Oral argument on the motion will be April 16, 2008. If the motion is denied, the Court has set the bench trial in this matter for May 5, 2008.**

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.

There are no pending eminent domain cases at this time.

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. *Gerald Molnar v. Janice Pokley, the City of Troy et al*.- Plaintiff filed this lawsuit against the City and Troy Detective Janice Pokley, after a jury found him not guilty of the charge of Criminal Sexual Conduct in the Second Degree. Plaintiff alleges that the City and Detective Pokley violated his constitutional rights to be from an unreasonable seizure, due process, and equal protection. These constitutional violations allegedly occurred during the criminal sexual conduct investigation of Plaintiff. Plaintiff also claims that the Troy defendants conspired with other named defendants to violate his constitutional rights, and intentionally inflicted emotional distress on Plaintiff. Plaintiff is requesting an unspecified amount of compensatory, exemplar, and punitive damages. On February 27, 2007, Troy filed a motion to dismiss, or in the alternative summary judgment. Plaintiff filed his response to our motion to dismiss on May 21, 2007. As of the end of the **first** quarter, the Court had not yet set a date for oral argument on the motion or otherwise ruled on our motion to dismiss. Since the other defendant, Care House, subsequently filed its motion to dismiss the lawsuit, it is possible that the Court will simultaneously rule on both of these pending motions.

2. *Kenneth Morrell v Troy, et al.* Plaintiff Kenneth Morrell filed a lawsuit against the City of Troy and Troy Police Officer Meghan Broderick. In the complaint, Mr. Morrell alleges a count of assault, gross negligence, a violation of Michigan's Persons with Disabilities Civil Rights Act (PWDCRA), Constitutional violations, false imprisonment, and racial discrimination. The lawsuit was filed in Oakland County Circuit Court and assigned to Judge Steven N. Andrews.
According to the complaint, the Plaintiff is a disabled person who is African-American. He contends that the PWDCRA entitles him to have employees of self-service gas stations pump gasoline into his car on demand. He alleges that on April 28, 2006 he drove to the BP gas station at Maple and John R., seeking some gasoline for his car. Plaintiff claims that his request for gasoline was denied, and that the gas station owner/ operator instead contacted the Troy Police, who sent Officer Broderick to the scene. In his complaint, he alleges that Officer Broderick aided and abetted the gas station employees in violating his rights under the PWDCRA. He also complains that Officer Broderick drew a weapon (a handgun) on the Plaintiff without justification. Officer Broderick denies that she drew a handgun, although the circumstances may have justified it. She did take her department issued taser out of the holster, but did not use it. Plaintiff also complains that another unidentified Troy police sergeant told him he was permanently barred from the BP gas station, and that he would be arrested for trespassing if he returned. He claims the incident resulted in emotional agitation, forcing him to seek medical help, including medication for his nerves. He is seeking over $25,000 in damages, plus attorney fees and costs. Plaintiff has also named the gas station owners and its manager as co-defendants in this lawsuit. Troy has filed a Motion for Summary Disposition. The hearing on the motion is scheduled for July 11, 2007. The Court granted Troy's motion in part and dismissed the assault, gross negligence and false imprisonment claims against the City of Troy. The Court also initially dismissed the alleged violation of PWDCRA claim against both Troy and Officer Broderick, but reinstated the claim in response to Plaintiff's Motion for Reconsideration. The case is now in the discovery phase. Plaintiff filed a

motion to extend discovery. The motion was granted and the discovery phase has been extended to February 1, 2008. **At the close of discovery, Troy filed a second Motion for Summary Disposition. Case evaluation was held on February 29, 2008. On March 12, 2008, the Court denied Troy's Motion for Summary Disposition. Additionally, the Court has ordered the remaining parties to facilitate/ mediate the case. If the case is not resolved through either case evaluation or facilitation, it will proceed to trial, which was initially scheduled for April 4, 2008. Plaintiff filed a Motion to Adjourn the trial, which was granted by the Court, and the trial is now set to start on April 21, 2008.**

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. *Mary Ann Hennig v. City of Troy-* Plaintiff has filed this lawsuit, claiming that the City is liable for injuries she sustained after her vehicle was struck by a Troy Police Officer as he was pursuing a suspected drug dealer. Her complaint alleges serious impairment of a bodily function, in that she has neurological damages. The City has filed an answer to the complaint, and the parties are now conducting discovery. The parties have exchanged witness list, expert witness lists and exhibit lists. The parties are continuing to do discovery including updating medical records and deposing witnesses. The Plaintiff has been examined by an orthopedic physician chosen by the City and is scheduled to be examined during the week of October 22, 2008 by a clinical neuropsychologist chosen by the City. Discovery is continuing. On December 12, 2007, the Court ordered facilitation of the case, which is scheduled for March 4, 2008. If the parties are unable to settle the case with facilitation, then a jury trial is scheduled to start on April 22, 2008. **The Court ordered facilitation was conducted on March 28, 2008. In the interim, the City filed a Motion for Summary Disposition, alleging that Plaintiff cannot establish negligence, or that Ms. Hennig's injuries satisfy the no-fault minimum threshold standard, which is that the injuries constitute a "serious impairment of a bodily function." Troy's Motion will be heard on April 16, 2008. The jury trial date has been adjourned to July 29, 2008.**

2. ***Rome Love v. City of Troy*- This lawsuit has been filed in the Wayne County Circuit Court, which is the county where the Plaintiff resides, as well as the location of the accident. Plaintiff argues in his complaint that the City is liable for his alleged injuries that were caused when a City of Troy tour bus hit the rear corner panel of a SMART bus on April 6, 2006. The Troy bus was driving on Woodward Avenue, returning from a senior field trip. The Troy bus sustained minor damage, including a broken mirror. Plaintiff claims to have been a passenger on the SMART bus. Plaintiff seeks damages in excess of $25,000 for alleged pain, disability, and mental anguish, although the alleged injuries are not specified. The City's answer to the complaint is due on April 14, 2008.**

F. MISCELLANEOUS CASES

1. *Nardi v Troy, et al.* - Plaintiff Leroy S. Nardi named the City of Troy, the County of Oakland, and the State of Michigan as Defendants in this lawsuit filed in the United States District Court for the Eastern District of Michigan. The Plaintiff owns a parcel of land located at 97 East Wattles. On April 26, 2001, he received a letter from the Building Department, advising him that public sanitary sewer would soon be available to service his property, since there was a new subdivision that abutted his property. The letter informed Mr. Nardi of Chapter 20, which at that time required connection to the newly available public sewer within 18 months. This mandatory connection included a $200.00 Interceptor Connection fee (tap fee) and a $3,400.00 Lateral Benefit Charge. These costs could be financed over a 40- year period of time, through a Sewer Contract with the City. In November 2001, Plaintiff's septic system on the property was showing signs of failure, and the Oakland County Health Department was investigating the matter. On November 21, 2001, the Plaintiff signed a Sewer Contract with the City, where he agreed to pay the sewer connection fees for the hook up in quarterly installments of $57.00 each. Pursuant to the contract, unpaid installments are collected in the same manner as taxes, which mean that all delinquent payments are forwarded to Oakland County for collection and/or foreclosure proceedings. As a result of Plaintiff's failure to pay the quarterly installments, Oakland County initiated foreclosure proceedings for the property.

   In the lawsuit, Plaintiff seeks an injunction to stop the foreclosure proceeding, as well as reimbursement for all sewer fees previously paid, and punitive damages in the amount of $500,000.00. Plaintiff filed the complaint without the assistance of an attorney, and his basis for relief is not exactly clear. He contends all defendants have violated his rights under the 5th, 7th, and 14th Amendments of the United States Constitution and he alleges fraud, extortion, a violation of Article VI, Section 2 of the Constitution, and a taking of property without due process of law. Essentially, he claims the Sewer Contract is not valid because he signed it under duress. He did make a note on the contract when signing that said that he was signing it under duress. However, without such a contract, the entire collection fee would have been immediately due, rather than financing the payments over a 40

year period. Plaintiff also challenges the City's ability to collect a Benefit Charge, because a private developer constructed the portion of the sanitary sewer system to which his property is connected. The Benefit Charge is designed to reimburse the City for the proportional cost of operating the entire system. The City has filed a Motion to Dismiss, which is scheduled for April 23, 2007. After receiving Troy's Motion to Dismiss, Plaintiff hired an attorney to represent him. Plaintiff filed a response to the motion, and oral argument was held. Judge Anna Diggs Taylor granted the Motion in part and dismissed Plaintiff's state law (fraud, contract, duress, extortion and common law) claims. With regard to Plaintiff's federal claims, the Court indicated it would grant the Motion to Dismiss unless Plaintiff filed an amended complaint within 20 days. The Plaintiff filed an amended complaint and Troy has filed its Answer and Affirmative Defenses. The case is now in the discovery phase. Discovery is continuing. The City filed a Motion for Summary Judgment, seeking a dismissal of the Lawsuit. The Court will set the hearing dates for the Motion. **The Court granted Troy's Motion for Summary Judgment and dismissed the case.**

3. *Kocenda v City of Troy, et al.* – David Kocenda has filed a complaint against the City of Troy, Chief Craft, Captain Murphy, Captain Mott, Lieutenant Hay, Lieutenant Pappas, and Lieutenant Rossman, alleging Defamation and Intentional Infliction of Emotonal Distress. Plaintiff, a Troy police officer, claims he was offered a job as a police officer with the City of Palm Beach Gardens, Florida, but the offer was retracted because of false information provided by Troy and its officers. He contends remarks made by Troy employees constitute both Defamation and Intentional Infliction of Emotional Distress. He is seeking damages in excess of $25,000. The lawsuit was filed in Oakland County Circuit Court and assigned to Judge Fred Mester. Troy's responsive pleading is due December 18, 2007. The City has filed a Motion for Summary Disposition, seeking a dismissal of the lawsuit against the City and its Officers. The Court will set the date for the hearing on our motion. **The Court granted the Motion for Summary Disposition and dismissed the case.**

G. CRIMINAL APPEALS

1. *People v Megan B. Nairne* – Ms. Nairne was charged with domestic assault. She was represented by a court appointed attorney, and pled no contest to the assault charge on December 21, 2006. Although a no contest plea is treated like a guilty plea, the Defendant is able to defer to the police report, instead of detailing the crime on the record. Since Ms. Nairne is deaf, there was an interpreter present at the time of the plea. Shortly after pleading no contest, Ms. Nairne hired a new attorney, who filed a motion asking the Court to allow Defendant to withdraw her plea. In this motion, Ms. Nairne claimed that her court appointed attorney did not adequately represent her, and her plea of no contest was not voluntarily and knowingly made. On September 20, 2007, Judge Martone denied her motion. She then filed an application for leave to appeal Judge Martone's decision in the Oakland County Circuit Court. We responded to her motion, arguing that Judge Martone properly denied her motion to withdraw

the no contest plea. On October 11, 2007, Oakland County Circuit Court Judge Colleen O'Brien issued an opinion and order denying Defendant's application for leave to appeal. Defendant has now filed an application for leave to appeal in the Michigan Court of Appeals. The City filed its response, and we are waiting for a decision. **On February 5, 2008, the Court of Appeals denied Defendant's application, and ruled in favor of the City. The case has been remanded to Judge Martone for Ms. Nairne to be sentenced.**

2. *People v Ravi Arya* – Ravi Arya is charged with domestic assault and battery. The victim, his mother in law, has left the country and is not expected to return. The defendant's wife witnessed the assault but has indicated she will exercise her spousal privilege. The City Attorney's Office advised Defendant's attorney of its intent to introduce into evidence the statements made by the victim and Defendant's wife to Troy Dispatch and to two Troy Police Officers. The Defendant filed a Motion to Suppress the Statements and a Motion to Dismiss the Case. At the hearing on the Motion, the City argued the statements were admissible under Michigan statute and the Rules of Evidence. Judge Drury agreed and denied both motions. The Defendant filed an interlocutory appeal (Application for Leave to Appeal) to Oakland County Circuit Court. The City has filed its response. The Court may schedule the case for oral argument or it may issue a written decision without oral argument. As of December 20th, a Court date has not been scheduled. **On appeal, the Circuit Court affirmed part and reversed part of the decision of 52-4 District Court Judge Dennis Drury. The Circuit Court ruled that the statement made by the Defendant's wife to dispatch are admissible in the criminal trial. However, the other statements are not admissible in the criminal trial. The case was remanded to the District Court for the continuation of the criminal proceedings.**

3. **People v Karam – Defendant David Paul Karam was charged with drunk driving (operating a vehicle while intoxicated). He filed a motion to dismiss the charge, arguing that the Troy police officer's stop of his vehicle was invalid. Specifically, Mr. Karam argued that there was no probable cause to believe that he was a drunk driver. However, at the evidentiary hearing held before 52-4 District Court Judge Michael A. Martone, Lieutenant (now Captain) Colleen Mott testified that she monitored radio dispatch, where there was a report that the driver of a Chevrolet Equinox, license plate 282 WPS, was intoxicated, and was driving eastbound on Big Beaver Road. When she personally observed this identified vehicle, she noticed that it drifted from side to side in the lane. Based on her own observations and experience, in addition to the information provided via dispatch, she believed that the driver was drunk, and stopped the car, driven by Mr. Karam. Subsequent sobriety and breathalyzer tests confirmed Mott's suspicions, and he was charged with operating a vehicle while intoxicated. Judge Martone denied Mr. Karam's motion to dismiss the charge. Mr. Karam then filed an Application for Leave to Appeal this decision to the Oakland County Circuit Court. Judge Nanci Grant, after hearing the**

arguments of the parties, denied Mr. Karam's application for leave to appeal, and the case is now scheduled for trial before Judge Martone.

H. ADMINISTRATIVE PROCEEDINGS

1. *In the Matter of the Application of International Transmission Company, d/b/a ITCTransmission, for a Certificate of Public Convenience and Necessity for the Construction of a Major Transmission Line Running From and Through Sterling Heights, Troy, Clawson, and Royal Oak, MI.* ITCTransmission has requested permission to construct a new major transmission line- the Bismark- Troy Project. After meeting with City Administration, ITC's proposed location for this new transmission line is primarily through industrial properties, and underground. Previously, a route traversing Maple Road was considered. Before any construction can commence, ITCTransmission needs to obtain a Certificate of Public Convenience and Necessity from the Public Service Commission (PSC). In this proceeding, the PSC determines whether the public benefits justify the construction of the new transmission line; whether the proposed route is feasible and reasonable; and whether the proposed line presents an unreasonable threat to public health or safety. In this particular case, Detroit Edison and Consumers Power filed to intervene. On appeal, these petitions were granted. The parties are now conducting discovery. The expert witnesses of the parties were cross examined on September 27 and 28, 2007. The parties are now preparing written legal briefs for the Administrative Law Judge. Briefs have been filed, and the Administrative Law Judge issued his Notice of Proposal for Decision on December 5, 2007, concluding that ITC has not demonstrated that the quantifiable and nonquantifiable public benefits justify the line's construction, and/or that the proposed route is reasonable. Since Exceptions to this Notice of Proposal for Decision have been timely filed with the Michigan Public Service Commission, the Administrative Law Judge's Decision is not final, and the case will continue. **On February 22, 2008, the Michigan Public Service Commission denied ITC's application for a Certificate of Public Necessity. On March 24, 2008, ITC timely filed its appeal of this decision with the Michigan Court of Appeals.**

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