TO: Members of the Troy City Council

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DATE: October 1, 2009
SUBJECT: 2009 Third Quarter Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the THIRD quarter of 2009 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. On May 22, 2008, Judge O'Brien issued an Opinion and Order dismissing the City's counterclaim. On June 4, 2008, the City filed a Motion for Reconsideration, which was denied on June 10, 2008. On June 23, 2008, the City filed a Claim of Appeal with the Michigan Court of Appeals. The City's Brief on Appeal is due November 25, 2008. The City's brief was timely filed. The Plaintiffs filed their appellate brief and the City filed a Reply Brief. On February 11, 2009, the Michigan Farm Bureau filed a Motion to File an Amicus Curiae Brief in support of Plaintiffs claims. The City filed a response to that motion requesting that it be denied. On March 4, 2009, the Court of Appeals entered its Order granting the request of the Michigan Farm Bureau, but allowing the City to file a Reply to the Amicus Curiae Brief. On March 23, 2009, the Michigan Farm Bureau filed its Amicus Curiae Brief. On April 3, 2009, Troy filed a Reply to the Amicus Curiae Brief of the Michigan Farm Bureau. We are waiting for the Court to schedule the case for oral argument. **Oral argument has been set for November 9, 2009.**

2. *Behr America v. City of Troy, et. al.*- This case is a plat revision action filed by Behr America against the City of Troy, the Road Commission for Oakland County, the Oakland County Drain Commission, the Michigan Department of Transportation, the Michigan Department of Environmental Quality, The Michigan Department of Natural Resources, the Treasurer of State of Michigan, the Detroit Edison Company and owners within 300 feet of the Behr America property located at 2700 Daley Drive. Behr America is requesting a revision of Supervisor's Plat No. 11, in order to remove the plat's roadway designation of a portion of Daley Street, which has already been vacated by resolution of the Troy City Council. The City of Troy has filed an Answer to the Complaint, and the parties are now conducting discovery. Witness and Exhibit Lists have been filed by the parties in the discovery phase. The State of Michigan has required clarification of the easement that was granted to the City of Troy reserving a vehicular turn around. A public hearing will be scheduled as soon as possible on a new proposed vacation. The parties continue to negotiate an acceptable Consent Judgment, which could be entered immediately after Council action on the proposed vacation. Case evaluation was waived by Court order. A draft of a Consent Judgment is being reviewed by the Defendants, and will be submitted to City Council for its review and approval. **Plaintiffs have been delayed in finalizing this matter, but expect to move forward soon.**

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.

JOHN R. ROAD IMPROVEMENT PROJECT

1. *City of Troy v. Munchiando - The* City filed this condemnation lawsuit in connection with the John R. Road widening project. The City's complaint was filed on August 4, 2008. The Court entered the Order of Possession on September 22, 2008, giving the City legal title to the property. Through this Order, the Munchiandos can temporarily remain in the house, as long as they pay rent to the City. This means that only the amount of just compensation remains at issue in this case. The parties are now exchanging discovery. Discovery continues. **On September 2, 2009, case evaluation was held. The parties have until September 30, 2009 to either accept or reject case evaluation. If both parties accept the case evaluation award, then the case is settled for that amount. If either party rejects the case evaluation award, then the case proceeds to trial.**

ROCHESTER ROAD IMPROVEMENT PROJECT

2. *City of Troy v RCU Independence Inc and Sentry Inc.* The City filed this condemnation action to acquire property located at 3688 Rochester Road in connection with the Rochester Road Improvement Project. The case was assigned to Judge Bowman of the Oakland County Circuit Court. Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. In this Motion, they argued that the City did not engage in sufficient negotiations after making the written good faith offer for the property. The City argued that it was in compliance with all the statutory requirements. After oral argument, the Court dismissed the case, relying on the alleged lack of jurisdiction. The City filed an Appeal with the Michigan Court of Appeals, which is pending. In the meantime, the City filed a second condemnation complaint after additional discussions with the attorney representing the property owner. **On July 29, 2009, the Court entered an Order for Payment of Estimated Compensation and Surrender of Possession. This occurred only after the City agreed to assume the expenses for moving the car wash on the property. The case is now in the discovery phase of the litigation on the issue of just compensation. The City is still pursuing the appeal of the dismissal of the initial case to resolve the different statutory interpretations of the parties, since this issue is likely to arise in future condemnation matters.**

3. *City of Troy v Sentry Inc. and RCU Independence*. The City filed this condemnation action to acquire property located at 3785 Rochester Road in connection with the Rochester Road Improvement Project. The case was assigned to Judge Grant of the Oakland County Circuit Court. Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on the basis of alleged insufficient negotiations after the written good faith offer was made. The City argued was in compliance with all statutory requirements. After oral argument, the Court dismissed the case, relying on the alleged lack of jurisdiction. The City filed a Motion for Reconsideration, which is still pending with the Court. In the meantime, the City filed a second condemnation complaint after additional discussions with the attorney representing the property owner. **The parties stipulated to an Order for Payment of Estimated Compensation and Surrender of Possession that was entered on July 29, 2009, after the City agreed to assume expenses for moving the car wash on the property. The only issue remaining is the final amount of just compensation. Discovery continues as it relates to that issue.**

4. *City of Troy v Midwest Master Investment*. The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3525-3529 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

5. *City of Troy v MNAD Property LLC.* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3424 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

6. *City of Troy v Troywood Shops*. The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3718-3736 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

7. *City of Troy v Lukich Realty*. The City of Troy filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3900 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

8. *City of Troy v Century Plaza, LLC.* The City of Troy filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3614-3675 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing. Case evaluation is scheduled for November 4, 2009.**

9. *City of Troy v Picano Land Limited Partnership* (Case No 09-097975). The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3775 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

10. *City of Troy v Picano Land Limited Partnership* (Case No 09-097982). The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is also with the address of 3775 Rochester Road (one Picano's parcel is vacant without its own address). The City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

11. *City of Troy v JMT Properties.* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3381 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

12. *City of Troy v P/G Equities.* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3921 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

13. City of Troy v 3385 Rochester Associates, LLC. The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3385 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **The City has filed a motion for entry of a final judgment to conclude this case, since the**

property owners have not taken an active role in this litigation. The motion, seeking to declare the amounts already paid as the just compensation, is set for hearing on September 30, 2009.

14. *City of Troy v William H. Price* (Price Funeral Home). The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3725 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

15. *City of Troy v William H. Price* (Property Adjoining Funeral Home). The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is addressed at 3725 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

16. *City of Troy v. Atto Construction.* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3921 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Case evaluation is scheduled for April 10, 2010.**

17. *City of Troy v. Space Station of Troy, Inc.*. The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3410 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **The City has discussed the case with the property owner, and will submit a proposed final judgment where the just compensation is the amount that has already paid to the property owner.**

18. *City of Troy v. Rochester Square Associates, et. al..* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3946 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Case evaluation will occur in January 2010.**

19. *City of Troy v. Susan Sandleman as Trustee for the Ester Jeffrey Trust.* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3914 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Case evaluation is currently scheduled for October 2009.**

20. *City of Troy v. Old Troy, LLC.*. The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3278 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Case evaluation is set for March 2010.**

21. *City of Troy v. UEOS Troy, LLC.* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3801 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **The parties have continued to negotiate a settlement of this case, and it is anticipated that a proposed Consent Judgment will be presented to City Council for its consideration in October.**

22. *City of Troy v. Ida Rudack Trust, et. al..* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3615 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Case evaluation is March 3, 2010.**

23. *City of Troy v. Diajeff, LLC..* The City filed this condemnation action in connection with the Rochester Road Improvement project. This property is at 3754 Rochester Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Case evaluation is March 10, 2010.**

WATTLES ROAD IMPROVEMENT PROJECT

16. *City of Troy v Firas and Reeta Ibrahim.* The City filed this condemnation action in connection with the Wattles Road Improvement project. This property is at 1131 E. Wattles Road, and the City has now acquired title to the property that was required for the road construction project. The case will continue to allow a jury

to determine the value of the property that was acquired by the City. The case is now in the discovery phase. **Discovery is continuing.**

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. On August 28, 2008, the Court listened to the oral arguments on our motion to dismiss. On September 4, 2008, the Court issued an opinion and order granting our motion to dismiss Detective Pokely and the City. On September 10, 2008, Plaintiff filed a notice of appeal, and is seeking a reversal of this dismissal with the United States Court of Appeals for the Sixth Circuit (includes Michigan, Tennessee, Kentucky, and Ohio). After hosting a telephonic pre-trial conference, the Court will provide the briefing schedule for the parties. Plaintiff filed his appellate brief on June 18, 2009. Troy's response brief is due July 17th. **The City's brief was timely filed, and oral argument is set for December 3, 2009.**

2. *Steeg v City of Troy, et al.* – Plaintiff Donald Joseph Steeg filed this lawsuit against the City of Troy, Troy Police Chief Charles Craft, and Troy Police Officers Christina Giovannoni, Michael Giordano, and Scott Smith. Plaintiff alleges he suffered damages as a result of his contact with Troy police officers, who stopped his vehicle based on a citizen's complaint of erratic driving. The officers investigated to determine if Steeg was a drunk driver. Steeg alleges the officers violated his fourth amendment rights (alleged unlawful seizure and excessive force). The lawsuit was filed in the United States District Court for the Eastern District of Michigan and assigned to Judge Bernard A. Friedman. The Plaintiff is seeking over $75,000 in damages. The City Attorneys Office is representing the City and Chief Craft. The individual defendant police officers from Troy are being represented by the insurance company's designated attorney, Michael Rosati of Johnson, Rosati, LaBarge, Aseltyne, & Field, P.C. The case is in the discovery phase. Discovery continues. We have filed a Motion for Summary Judgment on

behalf of the City and Chief Craft. Attorney Rosati's office has filed a Motion for Summary Judgment on behalf of the individual officers. **This case has been settled for the nominal case evaluation amount. Orders dismissing the case against the City, Chief Craft, Officer Smith, Officer Giovannoni, and Officer Giordano have been entered with the Court.**

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 23, 2008. The jury trial date has been adjourned to July 29, 2008. Judge Mester denied our motion for summary disposition, finding an issue of fact that would need to be resolved at trial. The City filed a motion for reconsideration of this decision, which was denied by Judge Mester in a written opinion. As allowed under the governmental immunity state statute, the circuit court case has now been stayed so that the City can pursue an appeal with the Michigan Court of Appeals prior to the conclusion of a trial. The City timely filed its appeal on June 3, 2008. The City's Brief is due on or before October 8, 2008. The City timely

filed its appellate brief, as well as a reply to Plaintiff/ Appellee's brief. Oral argument in the Court of Appeals is scheduled for July 7, 2009. **The Court of Appeals has remanded the case for trial.**

2. *City of Troy v. Sunset Excavating, Inc. and Eclipse Excavating, LLC* – This lawsuit was filed by the City in the 52-4th District Court, since the damages are less than the $25,000 jurisdictional amount. On July 11, 2006, there was a major water main break near the intersection of Crooks Road and Wattles Road. Just prior to the water main break, employees of Eclipse Excavating LLC, a subcontractor for Sunset Excavating, Inc. were working in Troy's pressure reducing valve ("PRV") vault #3, located north of the water main break. This work was related to Oakland County's Crooks Road construction project. One of Eclipse's employees admits that he inadvertently moved one of the valves in the PRV vault, and tried to immediately self correct it by completely closing the valve, when it actually should have remained completely open. The City was not aware of this mistake until several hours later, as our employees were responding to the water main break. Since the actions of the employee from Eclipse Excavating actually caused the water main break, Troy is now seeking reimbursement for the $24,445.60 in labor and costs for the repair and necessary traffic control. We have served all of the parties with the complaint, and are now waiting for them to file answers. The parties are engaging in discovery. A pre-trial conference is set for January 26, 2009. After depositions and discovery, the matter will be sent to Case Evaluation on July 9, 2009. **This case was resolved by case evaluation, and the Defendants paid the City on September 9, 2009. This case is now closed.**

3. ***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.**

F. MISCELLANEOUS CASES

1. *Kocenda v City of Troy***-** 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 Emotional 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. Several months after the dismissal of his lawsuit, Kocenda filed an untimely Motion for Reconsideration. The Motion for Reconsideration was denied. Kocenda has now filed a Claim of Appeal with the Michigan Court of Appeals, seeking a reversal of the dismissal and/or the denial of the Motion for Reconsideration. The City filed a Motion to Dismiss the Claim of Appeal for lack of jurisdiction on the basis it was untimely. The Court of Appeals granted the motion and dismissed the appeal on August 27, 2008. We then filed a motion seeking costs from Kocenda and/or his attorney. This motion was pending as of the end of the quarter. The Court granted our motion for costs, and $100.00 was paid to the City. Kocenda subsequently filed a Motion for Relief from Order in Oakland County Circuit. In that motion, he alleged there was newly discovered evidence and that the original Order Granting Summary Disposition should be set aside. The motion was denied. Kocenda filed a delayed application for leave to appeal with the Michigan Court of Appeals. On May 21, 2009, the Court of Appeals granted the delayed application for leave to appeal but limited Kocenda's appeal to whether or not Judge Mester abused his discretion in denying Kocenda's motion to amend his complaint to allege a claim for tortious interference with a business relationship. **Plaintiff's appellate brief covered issues that went beyond the Court's earlier limitations. The City filed a motion to strike the matters that exceeded the Court's narrow ruling. This motion was denied by the Court, but the City was expressly authorized to address these additional issues in its responsive brief, which was timely filed. The parties are now waiting for the Court to schedule oral argument.**

2. *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.**

G. CRIMINAL APPEALS

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

1. *City of Troy v Chowdhury*. In this case, the Defendant challenged the validity of Section 98.10.03 of Chapter 98 of the City of Troy Code, which authorizes a police officer to require a person less than 21 years of age to submit to a preliminary chemical breath analysis (PBT) if the police officer has reasonable cause to believe the person has consumed alcoholic liquor. Under the ordinance, the results of the PBT are admissible in a criminal prosecution to determine whether a minor consumed alcoholic liquor.
   On July 22, 2008, the District Court granted the Defendant's Motion to Suppress Evidence and ruled the results of a PBT administered to the Defendant were inadmissible because Troy's ordinance was unconstitutional. The City appealed this decision to the Oakland County Circuit Court. The Circuit Court denied the City's application for leave to appeal. The City then filed an application for leave to appeal to the Michigan Court of Appeals, which was granted. The City timely filed its appellate brief during this quarter. Oral Argument was scheduled for August 5, 2009. **Oral argument was held on August 5, 2009. On September 10, 2009, the Court of Appeals issued its Opinion and Order, affirming the decisions of the District Court and the Circuit Court.**

2. **City of Troy v Hohenstern. The Defendant in this case is charged with Operating While Intoxicated. He filed a "Motion to Suppress Breath Test Results, Field Sobriety Test Results, and Motion to Dismiss Charges and/or Case" in the District Court. After a hearing on June 2, 2009, District Court Judge Bolle denied the motion. The Defendant has filed an application for leave to appeal the decision to the Oakland County Circuit Court. The appeal was assigned to Oakland County Circuit Court Judge Denise Langford Morris. The City has filed a Motion to Dismiss or Deny Application for Leave to Appeal. A hearing on the motion is scheduled for September 30, 2009.**

3. **City of Troy v Erik Ziegler. The Defendant in this case is charged with Operating While Intoxicated. He filed a filed a Motion to Suppress and Dismiss, alleging the stop of his motor vehicle was improper and was in violation of the Fourth Amendment. An evidentiary hearing was held on**

August 27, 2009. At the conclusion of the hearing, 52-4 District Court Judge Martone denied Defendant's motion. The Defendant has filed an application for leave to appeal the decision to the Oakland County Circuit Court. The appeal was assigned to Oakland County Circuit Court Judge Nanci J. Grant. A hearing on the application for leave to appeal is scheduled for October 14, 2009.

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. ITC filed its appellate brief on July 14, 2008. The City's brief is due on October 13, 2008. The City timely filed its brief in this Court of Appeals matter. The Court also granted the motion of the Midwest Independent Transmission System Operator, Inc. to file an amicus curaie brief in the case. Briefs have been filed, and the parties are waiting for the Court to schedule oral argument. **This case was voluntarily dismissed by ITC on August 18, 2009. This case is now concluded.**

2. *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.**

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