



TO: Members of the Troy City Council

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SUBJECT: 2010 First Quarter Litigation Report

The following is the quarterly report of pending litigation and other matters of interest. **Developments during the FIRST quarter of 2010 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. *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. The Court has set another pre-trial date for January 26, 2010, and the parties expect a Consent Judgment to be entered on or before that date. **A Consent Judgment was entered with the Court on January 26, 2010. This case is now closed.**

C. EMINENT DOMAIN CASES

These are cases in which the City wishes to acquire property for a public improvement and the property owner wishes to contest either the necessity or the compensation offered. In cases where only the compensation is challenged, the City obtains possession of the property almost immediately, which allows for major projects to be completed.

ROCHESTER ROAD IMPROVEMENT PROJECT

1. City of Troy v 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. **(first case)** 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 **second** 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. Discovery Continues. Case Evaluation has been

scheduled for February 3, 2010. **The Court rescheduled case evaluation in the second case for May 5, 2010. In addition, the Defendant filed a Motion seeking a preliminary payment to cover its costs for moving the car wash buildings and equipment. Pursuant to a negotiated order entered on January 27, 2010, the City has placed an estimated amount in an escrow account, and will use this account to reimburse Defendant for its necessary relocation costs. As to the first case in the Michigan Court of Appeals, all appellate briefs have been timely filed, and the parties are waiting for the Court to schedule oral argument.**

2. *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 it 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. **The Defendant filed a Motion seeking a preliminary payment to cover its costs for moving the car wash buildings and equipment. Pursuant to a negotiated order entered on January 27, 2010, the City has placed an estimated amount in an escrow account, and will use this account to reimburse Defendant for its necessary relocation costs.**
3. *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. **Case Evaluation was held on March 3, 2010. As a result of the case evaluation process, the parties are working on a proposed consent judgment to finalize this case.**
4. *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. Case evaluation is scheduled for January 6, 2010. **A Consent Judgment was entered with the Court on February 23, 2010, and the case is now closed.**

5. *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. **Case evaluation was held on March 3, 2010, and as a result of the case evaluation process, the parties are negotiating a proposed consent judgment to finalize this case.**
6. *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. **Case Evaluation is scheduled for April 7, 2010.**
7. *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. Case evaluation is scheduled for January 6, 2010. **As a result of the case evaluation process, a consent judgment was entered on February 18, 2010 between the property owner and the City. Michigan Bell, n/k/a SBC, although not actively participating in this lawsuit, subsequently attempted to leverage the City into paying additional sums by threatening to file a motion to set aside this consent judgment.**
8. *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. Case evaluation is scheduled for January 6, 2010. **The case evaluation award was not mutually accepted, and therefore the case continued on the trial schedule. In the interim, the Court ordered the**

parties into mandatory facilitation, which was similarly unsuccessful in resolving the issue of total just compensation. The case is now scheduled for jury trial on May 3, 2010.

9. 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. A consent judgment has been approved, but it has not been entered. **Based on some new developments, the parties are now working on a revised consent judgment.**
10. 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. **As a result of case evaluation, held on March 3, 2010, the parties are negotiating a proposed consent judgment.**
11. 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. **Case evaluation is scheduled for May 5, 2010.**
12. 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. **Case evaluation is scheduled for May 5, 2010.**
13. 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. **The parties negotiated a consent judgment, which was entered by the Court on February 16, 2010. This case is now closed.**

14. 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 on January 6, 2010. Jury trial is scheduled for April 1, 2010. **As a result of the case evaluation process, a consent judgment was negotiated, and was entered by the Court on February 18, 2010. This case is now closed.**
15. 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. **A Consent Judgment was entered with the Court on January 8, 2010, and the case is now closed.**
16. 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. The jury trial is scheduled for May 20, 2010. **As a result of the case evaluation process, the parties are negotiating a proposed consent judgment.**
17. 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. The jury trial is scheduled for May 17, 2010. **The case evaluation was postponed until May 5, 2010. Jury trial is scheduled for August 16, 2010.**
18. 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 3, 2010. The jury

trial is scheduled for June 21, 2010. **As a result of the case evaluation process, the parties are negotiating a proposed consent judgment.**

19. **City of Troy v BG's L.L.C.** After obtaining a possession and use agreement, the City was unable to voluntarily purchase this property for the Rochester Road Improvement Project, and therefore a condemnation lawsuit was filed on January 19, 2010. The property is at 3545 Rochester Road, and the City has already acquired title to the subject property. The only remaining issue is the amount of just compensation to be paid. The case is now in the discovery phase.
20. **City of Troy v Safeway Acquisition Co.** After obtaining a possession and use agreement, the City was unable to voluntarily purchase the necessary property required for the Rochester Road Improvement Project from the gas station at 3990 Rochester Road. The City therefore filed this condemnation action on January 19, 2010. The City has acquired title to the subject property and the only remaining issue is the amount of just compensation to be paid. The case is now in the discovery phase.

WATTLES ROAD IMPROVEMENT PROJECT

1. 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. **Case evaluation is scheduled for April 7, 2010.**

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. Oral argument was held December 3, 2009. On December 29, 2009 the Court of Appeals issued an unpublished opinion affirming the District Court's dismissal of Plaintiff's complaint. **Plaintiff subsequently filed an application for hearing en banc with the Sixth Circuit Court on January 12, 2010, seeking to overturn the favorable Court of Appeals decision. The City filed its brief in response to this application. On March 17, 2010, without oral argument, the Sixth Circuit issued an order that denied Plaintiff's application. Although there is no appeal of right to the United States Supreme Court, the Plaintiff could file a writ of certiorari, asking the Supreme Court to overturn the dismissals of this case. This action must be taken on or before June 15, 2010.**

2. **Hal Stickney v David Nordstrom, City of Troy et al.** Plaintiff, who is proceeding without an attorney, has filed this action against the City of Troy and retired Troy Police Officer David Nordstrom, retired Sgt. Barry Whiteside and Captain Keith Frye, as well as several Oakland County defendants and former business associates. This case stems from the investigation and prosecution of Plaintiff on an aggravated stalking charge, where Plaintiff was ultimately acquitted. Plaintiff alleges that the City and the Troy police officers violated his constitutional rights to be free from unreasonable seizure and a violation of his constitutional due process rights. Plaintiff also claims that the Troy defendants conspired with the other named defendants to violate his constitutional rights, and intentionally inflicted emotional distress on Plaintiff. Plaintiff is requesting damages in the amount of seven million dollars.

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. The Circuit Court has re-opened discovery, and has set a jury trial date of June 1, 2010. **The case has been assigned to Judge Martha Anderson, who has retained the June 1, 2010 scheduled jury trial date.**
2. Nancy Huntley, Legal Guardian of Carolyn Huntley, a Protected Person v. City of Troy- This lawsuit was filed in the Oakland County Circuit Court. Plaintiff alleges that on June 29, 2007, Carolyn Huntley was walking on the sidewalk located in front of 511 Cardinal, Troy, Michigan when she tripped and fell on an elevated concrete slab. Plaintiff alleges that Troy was negligent in failing to maintain the sidewalk; to provide adequate inspections; to give notice of a dangerous condition; and to use reasonable care in the design of the sidewalk. The City filed an Answer and Affirmative Defenses and also filed a Motion for Summary

Disposition, arguing that Plaintiff failed to provide notice, as required by MCL 691.1404. Plaintiff's response to this motion is due on October 7, 2009, and Judge Rudy Nichols has scheduled oral argument for October 28, 2009. The parties are waiting on the Court's decision on the motion. **On March 9, 2010, the Court issued its written opinion, granting in part and denying in part our motion for summary disposition. As a result, the public nuisance and nuisance per se claims are now dismissed. The parties are conducting discovery on the alleged defective highway claim.**

3. *Raquel Chidiac v Edwin Julian and City of Troy* – This lawsuit was filed by Plaintiff Raquel Chidiac, who suffered injuries after colliding with a Troy Police Officer at Big Beaver and John R roads. Plaintiff alleges that on October 3, 2009 at around 7:00 p.m. she was traveling eastbound on Big Beaver Road when her vehicle was struck by a Troy Police vehicle. She is alleging the City is liable pursuant to the motor vehicle exception to governmental immunity, and also under the Michigan Owner Liability Act, MCL 257.401. She is alleging that she suffered serious and permanent injuries, and is seeking damages in excess of \$25,000. We filed an answer on December 8, 2009. **The City filed a motion for summary disposition requesting dismissal of the individual Troy police officer. The Court has scheduled the hearing on this motion for April 28, 2010.**

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. **The Michigan Court of Appeals scheduled oral argument for May 4, 2010.**

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. **The Court did not schedule any dates during this quarter.**
3. Andrew Zurowski v City of Troy. In this claim and delivery action, the Plaintiff is seeking a court order for the return of two rifles that were confiscated when the Troy police were dispatched to his home. Since there was a great concern that Mr. Zurowski was a danger to himself and others, the two rifles were confiscated. The case was filed in the 52-4 District Court and assigned to Judge Drury. The case was filed on December 7, 2009. The City has answered the complaint and is awaiting a court date for a pretrial or trial. **The Court scheduled a pretrial for April 13, 2010.**

4. Sean Steven Seyler v. City of Troy and Troy Police Department. Mr. Seyler filed this Freedom of Information Act case against the City, seeking the police report and his lab test results, which were also simultaneously requested as criminal discovery within 48 hours of Mr. Seyler's drunk driving arrest. The City has filed a Motion for Summary Disposition, arguing that the documents requested were either already provided as criminal discovery or are otherwise exempt from disclosure. The Court will issue a scheduling order setting the date for oral argument. **The Court entertained oral arguments on March 24, 2010, and granted our motion for dismissal.**
5. William and Elaine Middlekauff v. City of Troy. The Middlekauffs filed this lawsuit in the 52-4 District Court, alleging that a City employee told them that the City would reimburse them to have a private contractor remove City trees from their property at 2449 Oak Ridge Drive in Troy, which fell in the intense wind storm of June 8, 2008. The Middlekauffs demand \$6,103, claiming breach of contract, promissory estoppel (reliance on a promise) and fraud and misrepresentation. **The City filed a motion for summary disposition, which was heard on March 4, 2010. The Court held the matter in abeyance for 60 days, and allowed Plaintiffs to obtain discovery to counter our motion for summary disposition.**

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 Erik Ziegler. The Defendant in this case is charged with Operating While Intoxicated. He 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. The Defendant's application for leave to appeal was granted and the parties were directed to file briefs. Oral argument on the appeal was held on December 9, 2009. We are awaiting a decision from the Court. **On February 25, 2010, Judge Grant issued her Order and Opinion affirming the trial court's decision to deny Defendant's Motion to Suppress and Dismiss. The Defendant filed an Application for Leave to Appeal with the Michigan Court of Appeals. The City's response is due in April.**

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.**

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