



DETROIT
**Water & Sewerage
Department**

Office of General Counsel

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Attorney/Client Communication
Attorney Work Product
QUARTERLY LITIGATION REPORT AND FY 2019 CASE DISPOSITION
November 2019

Executive Summary

The Office of General Counsel manages all litigation matters for the Detroit Water and Sewerage Department (“DWSD”). Currently, there are 24 pending litigation matters involving DWSD. The cases are as follows:

- DWSD is a/the Plaintiff in 4 pending cases:
 - All four cases are collections matters against commercial customers, and all are pending in the Wayne County Circuit Court.
- DWSD is a/the Defendant in 20 pending cases:
 - 3 cases allege personal injury¹
 - 3 cases allege property damage based upon a basement backup ²
 - 2 cases allege a breach of contract³
 - 3 cases involve quiet title actions⁴
 - 2 cases allege violations of civil rights and discrimination⁵
 - 7 cases allege violations of the Michigan Constitution, specifically the Headlee Amendment⁶ (5 cases challenge to DWSD’s drainage charge, 1 case challenges the fire line service charge, 1 case challenges the industrial wastewater charge)

¹ *Gilewski; Porter; Gibson*

² *Detroit Invest Corporation; Anderson-Small; Singh*

³ *Pitts; Bresnan*

⁴ The City Law Department is handling the quiet title actions; the Office of General Counsel is monitoring the cases for our records. *MJ Parcels; Wayne State University; 7300 Woodward*

⁵ *Thomas; Smith.*

⁶ *DAART, Binns, Trappers Alley, Fort Street; Red Cap; General Mills; United House of Prayer and Praise*

- All cases are pending in the Wayne County Circuit Court except for the following cases:
 - Michigan Court of Appeals (*Gilewski; Detroit Invest Corporation*)
 - 36th District Court (*Pitts*)
- Since the last Quarterly Litigation Report, 8 cases have been settled⁷ and 8 cases have been dismissed^{8,9}.
- DWSD’s Legal Team is handling 14 cases “in-house”. The remaining 10 cases are being handled by outside counsel (3 by Detroit Law Department, 2 GLWA assumed defense and 5 by Miller Canfield).
- For Fiscal Year 2019, DWSD settled 6 lawsuits, totaling \$242,500.
 - *Diane Dawson v. DWSD* (\$5,000)
 - *Anthony Hampton v DWSD* (\$40,000)
 - *Michael Freeman v DWSD* (\$47,500)
 - *Jason Miller v DWSD, et al.* (\$150,000)
 - *AFSCME Council 25 v DWSD, et al.*¹⁰
- For Fiscal Year 2019, DWSD collected on three lawsuits, totaling \$1,234,000¹¹.

⁷ *Hampton; Freeman; AFSCME; First Enterprises; Dawson; Miller; Flynt; Jeeva*

⁸ *St. James Nursing Center; Gene Mo; AIC Corporation; Rawan Travel; Ridley; Barbara Building Real Estate; Greer*

⁹ *DWSD, et al v. State of Michigan, Michigan Department of Environmental Quality* challenged the state’s implementation of the new Lead and Copper Rule standards, the case was filed in the Michigan Court of Claims, which dismissed all claims. DWSD will not appeal.

¹⁰ The case involved grievances filed by employees prior to the bifurcation, which preserved their right to the claim in bankruptcy. We agreed to settle, the amount for each employee is different, and the employees must send a release to DWSD in order to receive their settlement. While some employees have done so, others have not, and a final dollar amount is not quantifiable at this time.

¹¹ *DRSN; Keffalinos; First Enterprises and Auto Liquidation, Inc.* The DSRN case was dismissed and the settlement was reached outside of the litigation process.



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IN-HOUSE COUNSEL LITIGATION

| # | Plaintiff | Defendant | Court | Assigned Judge | Attorney | Type of Action | Brief Facts | Claims | Status of Litigation |
|---|----------------------------|-----------------------|-------|---------------------|----------------|-----------------------|--|----------------------------|---|
| 1 | DWSD | Heritage Manor | WCCC | Daniel Hathaway | Jacob Bahri | Collections | Defendant is a nursing home and rehabilitation center who has failed to pay water and sewerage bills for several accounts. The suit was filed to collect \$286,582.86. | Breach of implied contract | Case is currently in the discovery phase. |
| 2 | DWSD | DSRN Real Estate, LLC | WCCC | John Murphy | Jacob Bahri | Collections | Defendant is a realty company who has failed to pay water and sewerage bills for several accounts. | Breach of implied contract | Case is in the discovery phase. |
| 3 | Kimberly and Eric Gilewski | DWSD | WCCC | Daphne Means Curtis | Nikkiya Branch | Personal Injury | Plaintiffs allege that on June 18, 2016, they were riding their mopeds on eastbound Jefferson when Kimberly's moped fell into a deep hole causing her to crash. She was ejected from the moped and propelled further east on the roadway. She alleges that she sustained sprains, lacerations, injuries to her face, neck, back, shoulders, left knee, hand and a possible traumatic brain injury. Eric alleges that he witnessed the injury sustained by his wife and sustained emotional injuries. | Negligence | Case is on appeal |
| 4 | Detroit Invest Corp | DWSD | WCCC | Martha Snow | Choi Portis | Basement Backup Claim | Plaintiff alleges that on November 29, 2016, its apartment building sustained damage resulting from a water and sewerage backup. | Negligence | Case is on appeal. |

| # | Plaintiff | Defendant | Court | Assigned Judge | Attorney | Type of Action | Brief Facts | Claims | Status of Litigation |
|----|--|-----------------------|---------------------------------|-------------------|----------------|---|---|----------------------------|---|
| 5 | Donna Pitts | DWSD | 36 th District Court | David Kleparek | Jacob Bahri | Small claims/Breach of Contract | Plaintiff filed action for alleged breach of contract related to DWSD's payment plan program. | Breach of contract | Case is currently in the discovery phase. |
| 6 | MJ Parcels | DWSD, et al. | WCCC | Daniel Hathaway | Jacob Bahri | Quiet Title/ Injunctive Relief | Plaintiff sees to vacate a sewer in the alley behind Milwaukee and E. Grand Boulevard | Injunctive Relief | Case is currently in the discovery phase. |
| 7 | Wayne State University | DWSD | WCCC | David Groner | Jacob Bahri | Quiet Title/ Injunctive Relief | Plaintiff seeks to vacate the sewer in the area of Cass and York Streets. | Injunctive Relief | Case is currently in the discovery phase. |
| 8 | 7300 Woodward, LLC | DWSD, et al. | WCCC | Craig Strong | Jacob Bahri | Quiet Title/ Injunctive Relief | Plaintiff seeks to vacate the sewer in the alley behind 7300/7310 Woodward | Injunctive Relief | Case is currently in the discovery phase. |
| 9 | Willie Porter | DWSD | WCCC | David Groner | Choi Portis | Personal Injury | Plaintiff alleges that on October 18, 2018, a DWSD employee struck his vehicle causing personal injury and property damage | Negligence | Case is currently in the discovery phase. |
| 10 | Yvonne Gibson | DWSD | WCCC | Sheila Ann Gibson | Choi Portis | Personal Injury | Plaintiff alleges that on March 16, 2019, she was walking down E. Jefferson when she stepped into the street to avoid encountering snow and ice on the sidewalk when she slipped and fell on ice. | Negligence | Case is currently in the discovery phase. |
| 11 | Cheryl Anderson-Small and Wilbert Small, Jr. | DWSD | WCCC | Martha Snow | Choi Portis | Basement Backup claim | Plaintiffs allege that they experienced water in the basement of their commercial building allegedly caused by construction that DWSD performed in the area. | Negligence | Case is currently in the discovery phase. |
| 12 | DWSD | Kefallinos | WCCC | | Jacob Bahri | Collections | Defendant is a realty company who has failed to pay water and sewerage bills for several accounts | Breach of implied contract | Case is currently in the discovery phase. |
| 13 | Amarjit Singh, et al | DWSD and Wayne County | WCCC | Martha Snow | Jacob Bahri | Basement Backup claim/ Constitutional Violation | Plaintiff alleges that its property sustained damage resulting from a water and sewerage backup into the basement. Plaintiff also alleges a violation of the Headlee Amendment | Negligence | Case is currently in the discovery phase. |
| 14 | Corey Thomas | DWSD | U.S. District | Terrence G. Berg | Nikkiya Branch | Violation of Civil Rights | Plaintiff alleges that his supervisor created a racially | Violation of Civil Rights | Case is currently in the discovery phase. |

| # | Plaintiff | Defendant | Court | Assigned Judge | Attorney | Type of Action | Brief Facts | Claims | Status of Litigation |
|----|------------------------|------------------------|--|-------------------|-------------|----------------|---|----------------------------|---|
| | | | Court for the Eastern District of Michigan | | | | hostile work environment; racially discriminated against him; and committed retaliatory harassment against him. | | |
| 15 | DWSD | Aleksandar Stojanovski | WCCC | Annette J. Berry | Jacob Bahri | Collections | Defendant has failed to pay on his account. | Breach of implied contract | Case is currently in the discovery phase. |
| 16 | Kenneth Bresnan, et al | City of Detroit, et al | WCCC | Lita Masini Popke | Choi Portis | Class Action | Plaintiffs claim tortious conduct and injunctive relief requested against the City of Detroit to deploy state-of-the art flood mitigation technology. | Breach of implied contract | City of Detroit was served with the case October 8, 2019. The answer to the complaint is due on November 5, 2019. |

OUTSIDE COUNSEL LITIGATION

| # | Plaintiff | Defendant | Court | Assigned Judge | LawFirm/ Attorney | Type of Action | Brief Facts | Claims | Status of Litigation |
|---|-----------------------------------|--------------------|-------|------------------------|--|------------------------------------|--|---|---|
| 1 | DAART | DWSD | WCCC | John A. Murphy | Miller Canfield/ Sonal Mithani | Class Action | Class Plaintiff challenges the constitutionality of DWSD's drainage charge. | Violation of Headlee Amendment | Awaiting ruling from Michigan Supreme Court |
| 2 | Nicola Binns, et al | DWSD | WCCC | John A. Murphy | Miller Canfield/ Sonal Mithani | Class Action | Class Plaintiff challenges the constitutionality of DWSD's drainage charge. | Violation of Headlee Amendment | Awaiting ruling from Michigan Supreme Court |
| 3 | Trappers Alley, et al | DWSD | | John A. Murphy | Miller Canfield/ Sonal Mithani | Class Action | Class Plaintiff challenges the constitutionality of DWSD's drainage charge. | Violation of Headlee Amendment | Awaiting ruling from Michigan Supreme Court |
| 4 | Fort Street Business Park, LLC | DWSD | WCCC | John A. Murphy | Miller Canfield/ Sonal Mithani | Class Action | Class Plaintiff challenges the constitutionality of DWSD's drainage charge. | Violation of Headlee Amendment | Awaiting ruling from Michigan Supreme Court |
| 5 | Red Cap Properties, LLC | DWSD | WCCC | John A. Murphy | Miller Canfield/ Sonal Mithani | Individual Plaintiffs | Plaintiffs challenge the constitutionality of DWSD's drainage charge. | Violation of Headlee Amendment | Awaiting ruling from Michigan Supreme Court |
| 6 | General Mill Supply Co | DWSD and GLWA | WCCC | Daniel A. Hathaway | Fausone Bohn, LLP (Jim Fausone/ James Pelland) | Class Action | Plaintiffs are challenging GLWA's current and DWSD's former IWC charge which was imposed on owners of non-residential property located in various municipalities in Southeast Michigan | GLWA's current and DWSD's former IWC charge violates Michigan's Headlee Amendment | Case is in the discovery phase. |
| 7 | Darryl Smith | DWSD, <i>et al</i> | WCCC | Patricia Perez Fresard | Jackson Lewis (Tiffany Buckley-Norwood) | Individual Plaintiff | Plaintiff is alleging a violation of Michigan's Elliot-Larsen Civil Rights Act for age discrimination | Age Discrimination | Case is currently in the discovery phase. |
| 8 | United House of Prayer and Praise | DWSD | WCCC | Annette Berry | Miller Canfield/Sonal Mithani | Class Action (fire line customers) | Plaintiffs are claiming that DWSD is improperly shifting costs for water service to their customer class. | DWSD's fireline charges violate Michigan's Headlee Amendment. | Case is currently in the discovery phase. |