

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

MILWAUKEE RIVERKEEPER
1845 N. FARWELL AVENUE
MILWAUKEE, WI 53202,

Plaintiff,

v.

Case No. 11-CV-8784

MILWAUKEE COUNTY
901 N. NINTH STREET
MILWAUKEE, WI 53233,

Defendant,

COPY

MILWAUKEE RIVER PRESERVATION ASSN, INC.,
and BRIAN KREUZIGER
706 W. ROCK PLACE, 2nd FLOOR
GLENDALE, WI 53209

Intervening Defendants.

MILWAUKEE RIVER PRESERVATION ASSOCIATION
AND BRIAN KREUZIGER'S CROSS-CLAIM
PLEAD IN THE ALTERNATIVE

Defendants, Milwaukee River Association, Inc., and Brian Kreuziger (hereinafter "MRPA"), by its attorneys, Galanis, Pollack, Jacobs & Johnson, S.C., as and for a cause of action against the co-defendant above named, alleges and shows to the court as follows:

1. That MRPA is a domestic, non-stock corporation existing under and by virtue of the laws of the State of Wisconsin with its principal office located at the address in the caption. That multiple members of the MRPA are riparian owners with property located upon the Milwaukee River within a direct proximity of the Estabrook Dam.

2. Co-Defendant, Milwaukee County, is the owner and operator of the Estabrook Dam with principal offices located at the address in the above caption; said defendant is hereinafter referred to as "Defendant".

3. That the area of the current Estabrook Dam previously contained a limestone out-cropping ledge slowing the water-flow at the onset of a S-Curve (Oxbow Curve) in the Milwaukee River, creating an upstream lake.

4. That the limestone out-cropping ledge was removed on or around 1933.

5. After removal of the limestone out-cropping ledge, the upstream water levels were significantly altered and created uncontrollable water levels and unpredictable flooding

6. That Milwaukee County initiated a channel project, thereby eliminating the S-curve (a/k/a oxbow curve) previously in place as a remediation remedy to the problems created in removing the limestone out-cropping ledge.

7. That the channel project failed to address or remediate the water level reduction and flooding problems.

8. That between 1937 and 1938, Milwaukee County built the Estabrook Dam with 10 retractable gates and a fixed crest spillway created in the former S-Curve.

9. That the Estabrook Dam was created without a Fish Passage in the Dam itself and the fish passage was intended through the fixed crest spillway.

10. That the primary purpose of the dam was to control the water flow to prevent flooding.

11. That the installation of the Estabrook dam recreated the water levels to the recreational heights previously in place by the limestone out-cropping ledge.

12. That for over 70 years from the inception of the Estabrook Dam and the DNR Order in 2009 for the gates to remain open, the 170 riparian owners residing on the Milwaukee River utilized the water for numerous recreational activities.

13. The MRPA riparian owners relied upon the water level created and maintained by the Estabrook Dam when purchasing the real estate.

14. The MRPA riparian owners relied upon the water level created and maintained by the Estabrook Dam when building permanent structures located on said water.

15. The Milwaukee and Glendale Municipalities have relied upon the water levels when determining the property taxes for properties located upon the water.

16. That if the Estabrook Dam were to be repaired, that this pleading would have no consequence for the MRPA riparian owners as the water levels previously relied upon would be maintained.

17. That if the Estabrook Dam were to be removed, the water levels of the MRPA riparian property owners would significantly decrease by a seasonal level of approximately 3 feet.

18. That a decrease of 3 feet would eliminate or significantly reduce the water front property rights of the MRPA riparian owners.

19. That the depreciation of property values alone would be between at least 20% of the current appraised values of the 170 properties.

20. The calculation based upon the current property values, the 170 properties located within the effected proximity of the Estabrook Dam and the 20% depreciation results in a minimum devaluation of eleven million dollars (\$11,000,000.00) in property values.

21. That the average cost to each property owner to remediate existing structures and landscaping \$6,000.00 per riparian property owner, or an amount of \$1.02 million (\$1,020,000.00) in remediation costs.

22. The impact of a 20% reduction in property values will also have a direct impact on the tax assessment and property tax revenue for the respective municipalities.

23. Where an artificial outlet is constructed and maintained for 40 years, the riparian land owners have a reasonable expectation of the water level maintained for that time period, and the dam owner, Milwaukee County has no right to reduce the water level so as to impair the value of the riparian property. That Milwaukee County as the owner of the dam is responsible for the water level reduction to the 170 riparian land owners and the consequences of the dam removal.

24. That Milwaukee County as the Estabrook Dam owner would be liable to riparian property owners in the sum of at least \$12,020,000 million dollars.

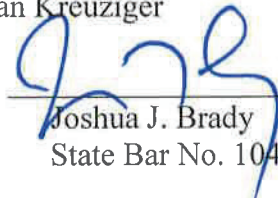
WHEREFORE, MRPA pleads as a cross-claim in the alternative against Milwaukee County, the total amount of \$12,020,000, as follows:

- (1) The sum of \$11,000,000.00, for property value depreciation as prorated by assessed property value and 20% decrease of said value to the 170 riparian property owners.
- (2) The sum of \$1,020,000.00 for remediation of existing property structures for the 170 riparian property owners.
- (3) For the taxable costs and fees of this action
- (4) For the reasonable attorney fees of the intervening defendants.

Dated this 6th day of July, 2015

Galanis, Pollack, Jacobs & Johnson, S.C.
Attorneys for Milwaukee River Preservation Assn., and
Brian Kreuziger

By:


Joshua J. Brady
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