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## **MEMORANDUM**

### **Neighborhood Revitalization Litigation & Legal Services Update November 2021**

The Neighborhood Revitalization and Ordinance Enforcement section of the City Attorney's Office improves the quality of life in Milwaukee's neighborhoods by prosecuting ordinance violations and abating public nuisance properties and issues. We facilitate lawful public safety efforts through litigation, legal opinions, education and outreach. Our community prosecution team collaborates with other city departments and governmental agencies, local businesses, community based organizations and residents to holistically address chronic neighborhood and housing-related problems. This includes investigating exploitative landlords and seeking receiverships and injunctive relief where appropriate, initiating and defending condemnation (raze order) proceedings against blighted properties, investigating and prosecuting appropriate actions against municipal license holders, and developing unique legal strategies that target difficult and ongoing problem properties.

#### **LITIGATION**

##### **Servite Drive LLC v COM**

Court: Milwaukee County Circuit Court

Case No. 21-CV-3400

City Counsel: ACA Heather Hecimovich Hough

Opposing Counsel: Von Briesen Attorneys

Judge: Connolly

Summary: Servite Drive LLC sued City for Nuisance demanding injunctive relief for the installation of a cul-de-sac they alleged caused drivers to drive onto their property creating a nuisance. City prevailed on a motion to dismiss.

##### **City of Milwaukee v. Big Pharma**

Court: Northern District of Ohio (MDL)

Case No. 20-OP-05044

City Counsel: ACA Heather Hecimovich Hough  
Opposing Counsel:  
Judge: The Hon. Dan Aaron Polster

In 2020, the City of Milwaukee commenced a lawsuit against big pharmaceutical companies seeking substantial monetary relief with the assistance of a firm retained out of New York. (Claims include the Milwaukee opioid crisis as public nuisance, among others). In house counsel has been assigned to ACA Hough. In the summer of 2020, the City conducted initial discovery in the matter and submitted to the Court the Plaintiff Information Sheet that provided the Court with information on City Departments, City Officials, resources and budgets allocated to opioid related expenses to be considered for settlement purposes. Since filing, two of the named defendants have filed bankruptcy actions and the City has submitted proof of claims in both proceedings. Third manufacturer, Johnson and Johnson, has made a proposed settlement. City and other nation-wide entities must respond by January 2, 2022. Working with outside counsel to maximize City's settlement.

**Dragonwood Conservancy v. Felician, Simmert, City of Milwaukee**

Court: Eastern District of Wisconsin  
Case No.: 16-CV-00534  
City Counsel: ACA Heather Hecimovich Hough/ACA Jenny Yuan  
Opposing Counsel: Mark Murphy, Thomas Kyle  
Judge: Magistrate Judge Nancy Joseph

In 2016, MPD Officers and the City were sued by Terry Cullen and the Dragonwood Conservancy in federal court for 1983 claims alleging unreasonable search of properties and seizure of hundreds of reptiles stemming from the execution of warrants in 2010. After extensive litigation, the case was presented to a jury trial in federal court at the end of May, 2021. City prevailed, Plaintiffs appealed to the Seventh Circuit. City's brief due at the beginning of December, 2021.

**City of Milwaukee v. Elijah M. Rashaed**

Court: Milwaukee County Circuit Court  
Case No: 17-CV-6823  
City Counsel: ACA Heather Hough  
Opposing Counsel: David Halbrooks  
Judge: Jeffrey Conen/Pedro Colon/Arbitrator: Ret. Judge Charles Clevert

Summary: Public nuisance action against landlord that chronically violated building code ordinances and state ATCP laws protecting tenants. Defendant used limited liability company entities to insulate himself from consequences of his exploitative business practices.

Summary: The city sued Elijah Mohammad Rashaed and 18 of his proxy entities that combined owned 166 residential buildings containing 302 living units in the city of Milwaukee. The city sought an injunction that prohibited him from managing residential rental properties, collecting rent, and acquiring or conveying property. The city sought the appointment of a receiver to manage the properties, bring them up to code standards and to sell

them to pay for the cost of the receivership and satisfy all liens, building code judgments and delinquent taxes.

In 2020, the nuisance abatement lawsuit against Elijah Mohammad Rashaed concluded successfully after three years of litigation. A court-imposed mediation conducted by retired federal district judge Charles Clevert has led to an agreement that ended Mr. Rashaed's ownership of residential rental properties in the City of Milwaukee by the end of the year and will compensate the court-appointed property manager for his efforts to manage a highly distressed residential rental portfolio.

**Case Status:** In February of 2021, Counsel representing Rashaed filed an emergency motion in circuit court seeking to reopen the case alleging that the City was unreasonable and breached the mediated settlement agreement. This was an attempt to remove some 40 parcels from the in rem tax foreclosure batch. The City prevailed in circuit court, and the assigned judge, Judge Conen denied the emergency motion in favor of the City. Rashaed then filed a demand for arbitration as per the terms of the settlement agreement. This matter was heard before the arbitrator, Judge Clevert, and Judge Clevert also ruled in the City's favor and found that the City acted reasonably.

**City of Milwaukee v. Mohammad Choudry, et al.**

Court: Milwaukee County Circuit Court

Case No: 16-CV-8057

City Counsel: ACA Alex Carson

Opposing Counsel: Timothy Baldwin

Judge: William Sosnay

Summary: From 2009 to 2016, Mohammad Choudry amassed a portfolio of neglected rental properties. The defendant frequently failed to record sheriff's deeds, regularly did not pay real estate taxes, and hid behind LLCs that incurred significant forfeiture debt. His tenants lived in poor conditions, the city rarely collected debts upon him, and his cash-only business made it difficult to garnish to pay those debts.

The City sued Mr. Choudry and several related LLCs under several causes of action including debt collection, public nuisance, racketeering, and fraudulent transfers. In addition, the City sought to pierce the corporate veil of the LLCs and hold Choudry personally liable.

In 2020, the case was remanded by the District I Court of Appeals. Properties remain under receivership.

Case Status as of 11/2021: City prevailed in summary judgment, Madison parcel to be sold with proceeds to go to receiver and City.

**Black Spruce v. COM**

Court: Milwaukee County Circuit Court/Wisconsin Court of Appeals

Case No. 2019-CV-006570/2020-AP-001113

City Counsel: ACA Nicole Larsen, ACA Kim Prescott, Odalo Ohiku

Opposing Counsel: Mark F. Foley  
Judge: Awaiting Assignment

Summary: Three raze orders were issued against three of the buildings comprising the old Northridge Mall property. The property's owner, U.S. Black Spruce, appealed the raze orders to circuit court, and a court hearing was held over three separate days in January and February, 2020. The Court ordered post-hearing briefing and responsive briefing. The Court subsequently upheld the raze orders, and USBS has appealed the circuit court decision to the Wisconsin Court of Appeals.

Case status as of 04/2021: The circuit court (2019-CV-006570; Hon. William S. Pocan) issued a decision and order that upheld the reasonableness of the raze orders. USBS appealed, and the appeal is currently pending. All appellate briefing has been submitted and we are awaiting further action by the Court of Appeals.

**In re City Wide Investments, LLC bankruptcy**

Court: U.S. District Court for the Eastern District of Wisconsin  
Case No. 17-CV-1403  
City Counsel: ACA Hannah Jahn  
Judge: Hon. Pamela Pepper/Hon. Brett Ludwig

Summary: City Wide Investments, LLC owns eight or nine rental properties in the City of Milwaukee. At the time of filing, delinquent property taxes totaled \$100,808.30, municipal court judgments totaled \$41,331.50, and \$11,300.17 was owed to Water Works.

The business filed a Chapter 11 bankruptcy to get back an 8-unit apartment building located at 8940 N. Michele St., which the City acquired through in rem foreclosure on and then sold to a third party. After a September, 2017 trial on the property value, the court ordered judgment in favor of the Plaintiff in the amount of \$280,894.56.

The City appealed to District Court and still awaits a decision. By court order, the City paid \$100,808.30 to the Debtor (because the City admitted it owed a portion of the Michele St. property value) in order for the City to file claims for tax liens on City Wide's other properties. It is possible that the growing tax liens on City Wide's other properties will be offset by the judgment against the City.

**Case Status as of 4/2021:** Judge Ludwig issued decision affirming bankruptcy court judgment against the City on January 8, 2021. The City had no grounds to appeal this. As the City already paid a portion, the City owes \$180,086.26. The parties may yet agree to offset the City judgment by City Wide's delinquent taxes, interest, and municipal court judgments, which exceed the City judgment. The debtor has a filing deadline of May 28, 2021 to decide whether to settle with the City and dismiss the case, or continue with a plan of reorganization.

**In re James Miiicke bankruptcy**

Court: U.S. Bankruptcy Court  
Case No. 17-23177

City Counsel: ACA Hannah Jahn  
Judge: Hon. Susan V. Kelley

Summary: Over a decade of operating rental properties, resulting in citations for building code violations, Mr. Miicke incurred \$272,680.70 in municipal court judgments. While the bulk of those properties were foreclosed, the judgments remained as unsecured debt. When Mr. Miicke filed a Chapter 13 bankruptcy, the City Attorney's Office objected to confirmation of any plan until Mr. Miicke agreed to pay 100% of the unsecured debt through the plan.

A plan was confirmed that provided for monthly payments in addition to requiring Mr. Miicke to sell his four remaining rental properties to pay the City's claim. Through the bankruptcy plan, Mr. Miicke has paid the City approximately \$80,000 in reduction of his outstanding judgments, although over \$300,000 remains outstanding. His four remaining properties have not yet been sold.

The case was dismissed and Mr. Miicke refiled in September 2020 (Case No. 20-2621). Mr. Miicke's new plan proposes to sell five properties by January 28, 2022 to fund plan payments. Through the confirmed plan he will pay the City \$69,119 for municipal court judgments.

**In re. Paul M. Bachowski bankruptcy**

Court: United States Bankruptcy Court Eastern District of Wisconsin  
Case No: 16-30646-beh; Ch. 13  
City Counsel: ACA Kevin P. Sullivan  
Opposing Counsel: Todd C. Esser  
Judge: Beth E. Hanan

Summary: The City has sought relief from automatic stay with respect to the 16 parcels Debtor proposes to sell ("Relief Stay") and has objected to confirmation of his plan with respect to Debtor's remaining 17 parcels ("Objection"). Debtor has been in bankruptcy since October, 2016.

In resolution of the City's motion for relief from stay, an order has been entered by the bankruptcy court incorporating agreed-upon deadlines for code compliance and listing for sale with respect to the debtor's properties and providing for increased monthly payments. Sale of the property at 617 W. Hadley has received bankruptcy court approval. Mr. Bachowski has continued to make monthly payments and DNS has determined that he is in substantial compliance with their issued orders.

By order dated April 18, 2019, the debtor has received court authority to sell his property at 2235-37 N. Martin Luther King, Jr. Dr. for \$370,000.00. Upon the recent closing of this sale transaction, the City has received a payment of approximately \$40,000.00 for delinquent taxes and \$116,000.00 for outstanding judgments. The Treasurer's Office is disbursing payments which should resolve outstanding judgments.

Mr. Bachowski is the owner of nearly 30 parcels of property, most of them improved, in the City. His Chapter 13 plan obligates him to pay the trustee \$1,000 per month for the benefit of creditors. He is current with plan payments and has made some monthly pre-payments from time to time. Other than administrative obligations paid by or to the trustee, the City has received all the net proceeds of these payments in reduction of delinquent taxes.

Mr. Bachowski, with court approval, sold the property at 2235-37 N MLK Dr. in August. At closing, all City taxes, water charges and DNS charges in respect of the property were paid in full. In addition, the City was provided a check in the amount of \$116,497.82. Pursuant to agreement, this check was used to pay in full and satisfy five outstanding judgments owed by Mr. Bachowski to the City in the approximate, collective amount of \$75,000. The balance, some \$40,000, was turned over to the City Treasurer to pay outstanding taxes on other, Bachowski-owned properties, targeting the oldest delinquencies. Notwithstanding the payments to the City described in this paragraph, his monthly obligation to the trustee remains in effect and he continues to keep these payments current.

Case status as of 4/2021: This case remains open and active, with the debtor current on monthly payments. No additional properties have been sold.

### **COMMITTEE HEARING MATTERS**

#### **In re: Points View Boite**

Administrative Review Appeals Board Representation of MPD District 2  
City Counsel: ACA Heather Hecimovich Hough

Counsel for Points View Boite appealed a Nuisance Designation (MCO 80-10) twice; the first appeal resulted in a settlement and the second appeal resulted in the Board ruling in favor of MPD District 2 and denying the appeal. License non-renewed, Points View Boite did not appeal.

#### **In re: Gene's Supper Club**

Licensing Committee Renewal counsel for MPD District 7  
City Counsel: ACA Heather Hecimovich Hough

Served as counsel for MPD District 7 in non-renewal advocacy after numerous shootings at the premise. Common Council voted to non-renew license; on appeal in circuit court.

### **MUNICIPAL COURT PROSECUTION**

#### **Municipal Prosecution of cases on behalf of MPD as of 4/2021**

##### **Adult Citations:**

2021 (YTD):	1,869 cases
2020:	4,229 cases
2019:	8,750 cases

**Juvenile Citations:**

2021 (YTD): 104 cases  
2020: 483 cases  
2019: 975 cases

**Municipal Prosecution of cases on behalf of Health Department**

2021 (YTD): 96 cases  
2020: 18 cases  
2019: 50 cases

**Municipal Prosecution of cases on behalf of DPW (Parking)**

2021 (YTD): 187 cases  
2020: 801 cases  
2019: 2,149 cases

**Municipal Prosecution of Building & Zoning Code cases**

2021 (YTD): 456 cases  
2020: 1752 cases  
2019: 2304 cases

**APPELLATE COLLECTIONS MATTERS****IN REM PROPERTY FORECLOSURE ACTIONS**

1. In Rem 2020-01 (Circuit Court Case No. 2020-CV-001982)  
Order for Judgement signed by Judge Witkowiak
2. In Rem 2020-02 (Circuit Court Case No. 2020-CV-007046)  
Order for Judgment signed by Judge Pocan
3. In Rem 2021-01 (Circuit Court Case No. 2021-CV-002078)  
Assigned to Judge Martens covering 171 parcels. Hearing for default judgment scheduled for July 7, 2021.

**LEGAL SERVICES**

Community outreach, trainings and community prosecution efforts in conjunction with other city departments regarding property investigations, exploitative landlords, licensed premises and holistic crime & safety initiatives. Participation in weekly and monthly team meetings at MPD districts, community organization meetings (i.e. Reclaiming our Neighborhood, Clarke Square, etc.).

- Training provided to MPD on prostitution-related municipal ordinances.
- Training provided to MPD command staff and district commanders on Nuisance Abatement.

- Training provided to members of MPD MIRT on constitutional policing, crowd management.
- Training provided on community prosecution at crime and safety meetings.
- Training provided to MPD Districts on after-set activity and abatement.
- Two day City-Wide CPU training conducted November 4-5, 2021 with MPD, DNS, District Attorney’s Office, City Attorney’s Office, Safe and Sound and SOC.

**Monitoring Sheriff Sales for Compliance with State Statutes**

Summary: The City Attorney’s Office, working with DOA-IRD, persuaded the Wisconsin Legislature to amend the state mortgage foreclosure statutes in Wis. Stat. Ch. 846 to, among other things, require 3<sup>rd</sup> party bidders at any sheriff sale auction in the state to meet 3<sup>rd</sup> party bidder eligibility requirements in order to be able to buy at a sheriff sale on a mortgage-foreclosed parcel. Under this new state law (Wis. Stat. 846.155), neither the 3<sup>rd</sup> party bidder, nor an entity they own or control, can buy if they owe property taxes on any property in the state that is more than 120 days delinquent, or if they have an outstanding unsatisfied municipal judgment against them concerning noncompliance with building codes; and in order to get their bid/sale confirmed by the Court overseeing the mortgage foreclosure, they must file with the Court an affidavit to that effect that also discloses an in-state agent for service of process. This new law stopped the notorious problem landlords from bidding at Milwaukee County Sheriff sales. With DNS and City Attorney monitoring of the sheriff sales (through negotiated cooperation with the Sheriff’s Office on data sharing), the City Attorney has been able to collect \$31,867.61 (as of May 1, 2020) in property taxes and municipal court judgments owed to the City from winning 3<sup>rd</sup> party bidders.

**Investigation of Property Owners for In Rem Redemption Process before Common Council Judiciary & Legislation Committee in 2019.**

By month, number of applications investigated for municipal court judgments or other debts or delinquencies owed to the City of Milwaukee prior to Common Council approval:

**2020:**

January	12
February	33
March	11
April	06
May	10
June	07
July	0
August	0
September	14
October	12
November	10
December	04



**2021:**

January	04
February	06
March	0
April	0

**Legal Opinions & Outreach**

October 2021 Opinion to MPD to determine the legality of the use of bait cars (ACA Hough).

October 2021 Memorandum to Alderperson inquiring about the legality of offensive yard signage (ACA Hough).

1049-2016-1386: