

Mayor William Wild

October 19, 2016

Deerhurst Condo Owners Assoc. v. City of Westland

Judy Jettke Court Reporters
586-783-0060

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DEERHURST CONDOMINIUM
OWNERS ASSOCIATION, INC., a
Michigan non-profit corporation,
and WOODVIEW CONDOMINIUM ASSOCIATION,
a Michigan non-profit corporation,
individual and as representatives of a
class of similarly situated persons
and entities,

Plaintiffs,

Case No: 2015-006473-CZ
Hon. Daphne Means Curtis

-vs-

CITY OF WESTLAND, a municipal
corporation,

Defendant.

_____ /

VIDEO DEPOSITION OF

MAYOR WILLIAM WILD

Taken by the Plaintiff on the 19th day of October 2016,
at the Law Offices of Fausone Bohn, 41700 W. Six Mile
Road, Suite 101, Northville, Michigan at 9:19 a.m.

APPEARANCES:

For the Plaintiff: MR. GREGORY D. HANLEY (P51204)
Kickham Hanley, PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
248-544-1500

For the Plaintiff Deerhurst: MR. DEAN ROBINETTE (P54197)
Foley & Robinette, P.C.
13349 Reeck Court
Southgate, Michigan 48195
734-283-4000

APPEARANCES: (CONTINUED)

For the Defendant
City of Westland:

MR. JAMES M. PELLAND (P51237)
Fausone Bohn, LLP
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REPORTED BY:

Amy Bertin, CER 3871
Certified Electronic Recorder
586-783-0060

T A B L E O F C O N T E N T S

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MAYOR WILLIAM WILD

Examination by Mr. Hanley

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EXHIBITS:

IDENTIFIED

PX#41	Letter dated January 15	10
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1 Northville, Michigan

2 Wednesday, October 19, 2016 - 9:19 a.m.

3 VIDEOGRAPHER: Today's date is October 19, 2016.

4 And we're on the record at 9:19 a.m. This is a video
5 deposition of Mayor William Wild at the law office of
6 Fausone and Bohn, 41700 West Six Mile Road, Suite 101
7 in Northville, Michigan. This is the matter of
8 Deerhurst Condominium Owner's Association versus City
9 of Westland. This case is pending in the Wayne County
10 Circuit Court, Case No. 2015-006473-CZ.

11 Counselors, can you put your appearance on the
12 record, please?

13 MR. HANLEY: My name is Greg Hanley and I
14 represent plaintiffs and the certified class.

15 MR. PELLAND: James Pelland on behalf of the City
16 of Westland.

17 MR. ROBINETTE: Dean Robinette for Deerhurst.

18 MAYOR WILLIAM WILD

19 HAVING BEEN CALLED BY THE PLAINTIFF AND SWORN:

20 EXAMINATION

21 BY MR. HANLEY:

22 Q Morning, sir.

23 A **Good morning.**

24 Q My name is Greg Hanley, we just met. I represent the
25 plaintiffs and the certified class in the lawsuit of

1 Deerhurst versus City of Westland. You are generally
2 familiar with the existence of the lawsuit and
3 allegations?

4 **A Yes.**

5 Q You are currently the Mayor of the City of Westland?

6 **A Yes.**

7 Q And how long have you had that position?

8 **A Since 2007.**

9 Q And prior to 2007, did you have any other jobs with
10 the City?

11 **A I served on the Westland City Council for six years.**

12 Q Were you ever an employee of the City before becoming
13 mayor?

14 **A No.**

15 Q What I'd like to do is play you a video clip of the
16 October 3rd, 2016 council meeting. It's short. And
17 then I want to ask you a couple questions about it and
18 then we'll move on.

19 (Whereupon a video clip from the Oct. 3, 2016 City
20 of Westland Council Meeting was played back by
21 Atty. Hanley.)

22 BY MR. HANLEY:

23 Q That was you on the video; correct?

24 **A Correct.**

25 Q And the video accurately captured what you said at

1 that council meeting?

2 **A Yes.**

3 Q One of the things that you said was that you believe
4 that the lawsuit was frivolous. Do you remember
5 seeing that -- remember saying that?

6 **A Yes.**

7 Q And what's your understanding of what it means when
8 you have a frivolous lawsuit?

9 **A I think, all I can speak to is this case because
10 that's what my comments were in regard to. I stand by
11 my comments. I think our Westland water rates are
12 reasonable and I do think that the merits of this case
13 make it a frivolous case.**

14 Q When you say frivolous did you mean wholly without
15 merit?

16 **A I think it's a waste of our time and I think it's not
17 in the residents best interest.**

18 Q What did you personally review before you made the
19 allegation that the lawsuit was frivolous about the
20 lawsuit?

21 **A It probably wasn't one single thing that I reviewed
22 but we've been talking about this case for a long
23 time.**

24 Q Well, I guess what I'm saying is, did you review any
25 of the deposition testimony of the folks from Westland

1 who testified?

2 **A No.**

3 Q Did you review any of the documents that were produced
4 by the City concerning the cost allocations?

5 **A No.**

6 Q Do you understand that the primary allegation in our
7 lawsuit is that the water and sewer fund or the City
8 is causing the water and sewer fund to transfer monies
9 to the general fund that go beyond the value of any
10 services provided by the general fund to the water and
11 sewer fund?

12 **A And I disagreed with that.**

13 Q No. No. I know that you don't agree with the
14 allegation but do you understand that that is our
15 allegation?

16 **A Yes.**

17 Q That just you're supporting the general fund under the
18 guise of charging the water and sewer fund for
19 services. You understand that's our allegation?

20 **A Yes.**

21 Q And other than having discussions about the lawsuit
22 over a period of time, did you review any of the
23 actual cost allocations to get an understanding of
24 what items of cost were being allocated or not
25 allocated?

1 **A** **No.**

2 Q Have you had discussions with your finance director
3 Mr. Smith about the cost allocations?

4 **A** **Just generally.**

5 Q But as you sit there today, you wouldn't be able to
6 say this cost -- this item of cost is being allocated
7 in this amount?

8 **A** **No.**

9 Q But yet you felt it was appropriate to call the
10 lawsuit frivolous without having done that?

11 **A** **Yes.**

12 Q And you'd agree with me that if the -- well, let me
13 say it this way.

14 I agree that a general fund and a water and sewer
15 fund are -- it is appropriate to allocate general fund
16 costs to the water and sewer fund for the fair value
17 of services that are actually provided. That's what I
18 believe.

19 Do you believe that it is inappropriate if those
20 transfers are in excess of the value of those
21 services?

22 **A** **I don't understand the question.**

23 Q Well, if water and sewer was transferring a million
24 dollars to the general fund so that the general fund
25 could buy fire trucks, that would be inappropriate;

1 correct?

2 **A Yes.**

3 Q Similarly, if they were transferring a million dollars
4 to build a new library, that would be inappropriate?

5 **A Your line of questions seems like it's pretty
6 hypothetical to me.**

7 Q Well, it's not because we're in a lawsuit where you've
8 gone public with an allegation that it's frivolous
9 without having gained an even basic understanding of
10 what these allocations are and what even the items of
11 costs are being allocated. So I'm trying to get an
12 understanding as to what you believe would be
13 appropriate and inappropriate under the circumstances.

14 So if they were to build -- if they were to
15 put in the rates, the water and sewer rates a million
16 dollars in a year to build a fund to build a library
17 that would be inappropriate; correct?

18 **A Are you saying that we did that?**

19 Q No. I'm not saying you did that. I'm saying if you
20 did that, that would be inappropriate?

21 **A The way that you describe it, yes, that sounds
22 inappropriate.**

23 Q And there came a time when Mr. Robinette was writing
24 letters raising the issue of the fact that it appeared
25 that there were exorbitant amounts being transferred

1 from water and sewer to general fund; correct?

2 **A Once again, I don't understand your question.**

3 Q Did there become a time when you became aware before
4 the lawsuit was filed that Mr. Robinette had written
5 some letters asking for an explanation of why these
6 general fund transfers were being made?

7 **A I remember Mr. Robinette asking questions going back
8 previous to this lawsuit.**

9 Q And do you recall that Mr. Fausone wrote him a letter
10 that explained these transfers or purported to explain
11 the transfers?

12 **A I kind of recall that over the course of -- over the
13 time that Mr. Robinette's been involved with
14 Deerhurst.**

15 (Document marked for identification as Plaintiff's
16 Deposition Exhibit Number 41.)

17 **BY MR. HANLEY:**

18 Q I've put in front of you Exhibit 41, which is a letter
19 dated January 15th, 2015 from Mr. James Fausone, James
20 Fausone to Dean Robinette regarding water fund
21 transfers and fixed rates.

22 Are you familiar with the letter?

23 **A Yes.**

24 Q And the first line of it says "I have been asked by
25 Mayor William Wild to respond to your letter received

1 December 1, 2014." Do you see that?

2 **A Yes.**

3 Q Is that what actually happened, you got a letter from
4 Mr. Robinette and you asked Mr. Fausone to respond to
5 it?

6 **A I can't remember but that would make sense.**

7 Q And did you review the letter before it went out?

8 **A I most likely did.**

9 Q Well, I see you're copied on it so I'm assuming you
10 got it.

11 I just want to go through a couple of the
12 statements that are made in this letter.

13 **A Okay.**

14 Q The fourth paragraph down says, "Almost every
15 department in the City supports the water and sewer
16 related activities in some way. For example, the
17 Finance Department is responsible for all billing and
18 collection services. Each year, the City auditors
19 review an analysis of the costs and attributable
20 percentage associated with the services which
21 constitute the transfer." Do you see that?

22 **A M'hm.**

23 Q Yes?

24 **A Yes.**

25 Q So Mr. Fausone is advising Mr. Robinette that not only

1 do we undertake an analysis of these costs but our
2 auditors get involved as well; correct?

3 **A Correct.**

4 Q Did you do anything to investigate at the time of this
5 letter -- well, strike that.

6 You understood that the City was trying to
7 convince Mr. Robinette that its practices were
8 appropriate; correct?

9 **A Correct.**

10 Q And that Mr. Robinette was going to rely upon the
11 statements in this letter in order to decide what he
12 wanted to do in the future on behalf of his clients;
13 correct?

14 **A Correct.**

15 Q And so there's a representation in here about the City
16 auditors being involved in this analysis of costs and
17 attributable percentage. Did you at any time become
18 aware of what their level of involvement actually was,
19 the auditors?

20 **A After the lawsuit was filed I remember talking with**
21 **our auditors about that and the auditors, they told me**
22 **they'd take a look at it but it sounded like the level**
23 **of detail they went into wasn't as deep. It wasn't**
24 **that deep.**

25 Q Well, did they tell you that they had received a

1 subpoena from my office to produce any work papers
2 relating to these cost allocations?

3 **A No.**

4 Q Did you know or did you become aware at any time prior
5 to today that they actually only audited one item of
6 expense in one audit year?

7 **A No.**

8 Q And if they did that -- if they -- if they, in fact,
9 only audited these cost allocations or reviewed these
10 cost allocations in one audit year that would call
11 into question the accuracy of the statement in Exhibit
12 41; correct?

13 **A In your opinion?**

14 Q Well, this letter that you reviewed before it went to
15 Mr. Robinette understanding he was going to rely upon
16 it says, "Each year, the City auditors review an
17 analysis of the costs and attributable percentage
18 associated with the services which constitute the
19 transfer." Correct?

20 **A Correct.**

21 Q And if, in fact, they didn't do that every year and,
22 in fact, had only done it in one year that would call
23 into the question the accuracy of the statement in
24 Exhibit 41; correct?

25 **A Can you repeat the question?**

1 Q If they had only audited or reviewed one item of
2 expense in one audit year that would call into
3 question the accuracy of the statement about the
4 auditors involvement that's present in Exhibit 41.

5 **A Yes.**

6 Q And you understand that auditors, people in the public
7 rely upon auditors because they're supposed to bring
8 an independent evaluation to the books and records of
9 an entity or a municipality?

10 **A Yes. Yes.**

11 Q So when you represent to somebody that the auditors
12 have approved something that is more likely to be
13 relied upon than just a statement that the City does
14 this themselves?

15 **A Yes.**

16 (Document marked for identification as Plaintiff's
17 Deposition Exhibit Number 42.)

18 **BY MR. HANLEY:**

19 Q I'm going to show you what I've marked as Exhibit 42.
20 And this is a chain of emails that is, the bottom one
21 is September 28, 2015 and the one at the top is
22 October 13, 2015. Do you know who Chris Nelson is?

23 **A No.**

24 Q He works at Plante Moran. Plante Moran are your
25 auditors; correct?

1 **A** **Correct.**

2 Q On September 28th, 2015 I sent him the email. At the
3 bottom it says, "Attached please find a work paper
4 produced by Plante Moran in response to our subpoena.
5 This relates to the City's allocation of certain
6 general fund costs to the water and sewer fund. This
7 work paper is for fiscal year 2013, '14. Based upon
8 our review of the documents produced there do not
9 appear to be similar work papers for any other years."
10 Do you see that?

11 **A** **Yes.**

12 Q And then I asked him, "I would appreciate it if you
13 could check to see if there are similar work papers
14 for the other years in question. Fiscal years 2009,
15 2010, 2011, 2012, 2013 and 2015. And if so produce
16 those documents. If there are no such documents I
17 would appreciate it if you would confirm that fact.
18 Thanks." You see that?

19 **A** **Yes.**

20 Q And then at the top shortly -- or a couple weeks later
21 Mr. Nelson responds to me and he says, "Hi Greg, I'm
22 writing to confirm that Plante Moran does not have
23 similar work papers for the other years you identified
24 below." Do you see that?

25 **A** **I do.**

1 Q Were you aware of that at any time prior to today?

2 A **No.**

3 Q And you've been involved in the City's audits;
4 correct?

5 A **Correct.**

6 Q And when the auditors actually audit an item of
7 expense or cost or revenue they generate something
8 called a work paper; correct?

9 A **Yes.**

10 Q So the absence of the work paper would be evidence
11 that they didn't actually do anything with respect to
12 the cost allocations; correct?

13 A **I don't know if I could answer that. I'm not sure. I
14 don't understand the total intricacies of their work.**

15 Q Are you aware that the person that's principally
16 responsible for allocating general fund costs to the
17 water and sewer fund is Mr. Smith?

18 A **Yes.**

19 Q And has Mr. Smith provided you any information about
20 what items of cost he allocates and the amounts?

21 A **No.**

22 Q Has he told you about the fact that there are retiree
23 health care -- or health insurance expenses that the
24 City incurs that are partially allocated to the water
25 and sewer?

1 **A Yeah. I've heard that.**

2 Q Is it fair for me to assume based upon your prior
3 answers that you have not done anything to investigate
4 whether those allocations of retiree health care -- or
5 retiree health insurance expense are appropriate?

6 **A Correct.**

7 Q And again, if they were allocating the retiree health
8 expenses of people who worked in the clerk's office or
9 finance or something else that that would not be
10 appropriate?

11 **A The way that you -- the way you asked the question, I**
12 **would say not. One of the things you'll find in**
13 **municipal government is that people move around.**

14 Q And do you know whether any analysis was done at any
15 time in doing the cost allocations of retiree health
16 insurance to account for the fact of where people were
17 and how much time they spent at each department?

18 **A I'm not sure.**

19 Q Well, did you -- have you become aware that in the
20 course of this case information has been provided by
21 the City concerning various retirees who are being --
22 their health insurance is being paid by the water and
23 sewer fund?

24 **A No.**

25 Q And when you say people move around, are you saying

1 that it would be appropriate if someone had worked in
2 the water and sewer fund for twenty years but worked
3 their last year in finance to allocate some of their
4 retiree health insurance to the water and sewer fund
5 not withstanding the fact that they retired out of the
6 finance department?

7 **A Can you repeat that?**

8 Q You pointed out that people move around and,
9 therefore, you wouldn't agree that it would be
10 inappropriate to allocate finance people of their
11 retiree health insurance. If somebody had worked in
12 water and sewer for twenty years and then worked their
13 last year of employment in finance, it sounds like you
14 believe it would be appropriate to allocate some
15 portion of their retiree health insurance to the water
16 and sewer fund even though they retired out of the
17 finance department

18 **A Yes.**

19 Q And correspondingly, if somebody worked in finance for
20 twenty years and worked a year in water and sewer it
21 wouldn't be appropriate to allocate all of their
22 retiree health insurance to water and sewer?

23 **A Correct.**

24 Q Somebody would have to -- if you wanted to do it in an
25 extensive way, you'd analyze each person and allocate

1 the relative percentage of time that they spent in
2 each department?

3 **A Yes.**

4 Q And do you know whether at any time up to today that's
5 been done?

6 **A I don't know that.**

7 Q Were you made aware that there's over a million three
8 hundred thousand dollars that's paid by the water and
9 sewer fund to the general fund each year purportedly
10 for the retiree health care, health insurance expenses
11 of retired water and sewer employees?

12 **A Yes.**

13 Q And did you become aware at some point of what the
14 actual cost that was determined by the City was on an
15 annual basis for those retired water and sewer
16 employees?

17 **A No.**

18 Q No one's ever told you that it's less than six hundred
19 thousand?

20 **A Not that I recall.**

21 Q Well, wouldn't that be information that you'd want to
22 know before you publicly declare that our lawsuit was
23 frivolous?

24 **A I'm not an attorney but that sounds like a leading**
25 **question to me.**

1 Q Well, I'm allowed to ask leading questions because I'm
2 your adversary.

3 You want to be fair to your water and sewer rate
4 payers, would that be fair to say?

5 **A I want to be fair to my residents, correct.**

6 Q But also people who pay their water and sewer bills?

7 **A Correct.**

8 Q And if it turned out that you were allocating -- you
9 were charging the water and sewer fund a million three
10 every year. I'm not asking you to believe me, the
11 facts will be what the facts are. If it turns out
12 that only six hundred thousand is being spent for
13 retired water and sewer employees, would that be --
14 would you deem that to be fair to the rate payers?

15 **A Yeah. It would be my goal would be to be fair to the
16 rate payers.**

17 Q Right. But if that were the case, if you were
18 charging them a million three and you were only
19 incurring six hundred thousand that wouldn't be fair?

20 **A The way that you describe it, no.**

21 Q And the facts will be as the facts will be on that
22 issue.

23 Have you investigated whether the City has engaged
24 in a practice of moving people into the water and
25 sewer fund as employees in the latter stages of their

1 employment in order to have them be a retiree of the
2 water and sewer fund?

3 **A No.**

4 **Q** Have you reviewed any data about that?

5 **A No.**

6 (Document marked for identification as Plaintiff's
7 Deposition Exhibit Number 43.)

8 **BY MR. HANLEY:**

9 **Q** I've handed you what I've marked as Exhibit 43, which
10 is a document that was produced to us by the City
11 recently. Number Deerhurst 43878, 43879 and 43880.
12 Have you ever seen this document before?

13 **A No.**

14 **Q** This document was generated in a response to our
15 request. There were some retired folks that were
16 identified as being retired water and sewer employees
17 and, therefore, their retiree health expense was put
18 into the water and sewer rate.

19 And what we asked the City to provide was how long
20 people were employed by water and sewer and how long
21 they were employed in other departments or capacities.
22 And the interrogatory number one, which is the first
23 page going on to the second tells each of the
24 employees who are being charged -- whose retiree
25 health insurance expense is being charged to the water

1 and sewer fund worked in the water and sewer
2 department. And the last page tells us which other
3 departments these same folks worked in during their
4 term of employment. And there's a couple that I want
5 to bring to your attention.

6 The first is Mr. Joseph Daugherty, retirement date
7 July 31st, 2011. Do you see that?

8 **A Yes.**

9 Q His years of service in water and sewer were .08. Do
10 you see that?

11 **A Yes.**

12 Q It's about a month worked for water and sewer .08 a
13 year, around a month; right?

14 **A Yes.**

15 Q If you go to the last page and find Mr. Daugherty, he
16 was in the motor pool department for 11.89 years and
17 was in the building department for 8.05 years, almost
18 twenty years in other departments; correct?

19 **A Yes.**

20 Q And motor pool and building are not water and sewer
21 department; correct?

22 **A Correct.**

23 Q And yet Mr. Daugherty's retiree health insurance is
24 put in the water and sewer rates and paid by your
25 water and sewer customers even though he worked in

1 water and sewer for about a month out of twenty years.

2 If that's true, is that fair?

3 **A** When you look at it broken down it's -- when you look
4 at it like this it doesn't seem fair. The one thing
5 that you got to keep mind with cities is that all
6 these guys end up doing a lot of different things for
7 a lot of different departments.

8 **Q** Well, are you aware of a document similar to the
9 Exhibit 43 that's been created that shows that there
10 are people who worked in water and sewer whose retiree
11 health insurance is not being charged to water and
12 sewer?

13 **A** No. I haven't seen that document.

14 **Q** And then there's just a couple more examples so that
15 we can determine Mr. Daugherty is not an isolated
16 incident.

17 There's Mr. Dickie who retired in November of
18 2010. He worked in water and sewer for 1. --
19 basically a year and a half. Do you see that?

20 **A** Yes.

21 **Q** And then if you go to the last page which shows where
22 else he worked, looks to me like he worked in excess
23 of eighteen years in other non water and sewer
24 departments; correct?

25 **A** Correct.

1 Q And just one other one. On the second page there's
2 Mr. John Thomas retired in 2014 from water and sewer.
3 He was a foreman for about a third of the year. Do
4 you see that?

5 **A Is that the second page?**

6 Q Second page.

7 **A Yes. I see it.**

8 Q So about four months he worked in water and sewer but
9 this, the last page tells us that he worked in motor
10 pool for 8.57 years and worked in sanitation for 12.88
11 years. You see that?

12 **A Yes.**

13 Q So again, more than twenty years, twenty-one years in
14 other departments yet his retiree health insurance is
15 being put into the water and sewer rates. Is that
16 fair?

17 MR. PELLAND: Greg, just to be clear. I don't
18 think he's answered that he understands that they're
19 in the water and sewer

20 MR. HANLEY: If that is indeed the case, is that
21 fair?

22 THE WITNESS: That a hundred percent of his
23 retirement health care is being paid out of water?

24 MR. HANLEY: Yeah.

25 THE WITNESS: No. It doesn't seem fair.

1 BY MR. HANLEY:

2 Q Do -- who's your DPS director now?

3 A **Ramzi El-Gharib.**

4 Q Your DPS director has involvement in water and sewer;
5 correct?

6 A **Correct.**

7 Q And he also has involvement in other DPS departments
8 including highway maintenance; correct?

9 A **Correct.**

10 Q What are the other departments that he's involved in
11 that are unrelated to water and sewer?

12 A **Sanitation, roads, construction, maintenance, fleet.**

13 Q Motor pool?

14 A **Fleet is motor pool. Sorry.**

15 Q That's what I thought. Okay.

16 So he has -- he wears a number of hats.

17 A **He ultimately has responsibility for all DPS
18 departments.**

19 Q Did you know that one hundred percent of his
20 compensation is being paid out of the water and sewer
21 fund?

22 A **I did not know that.**

23 Q Did you know that at some point he was under the
24 department of highway maintenance and about a third of
25 his salary was being allocated to the water and sewer

1 fund at that point? No, you didn't know that?

2 **A I did not.**

3 Q If one hundred percent of his salary or compensation
4 is being paid out of water and sewer and yet he
5 performs services and activities for non water and
6 sewer departments, that's inappropriate; correct?

7 **A It sounds like it should be reviewed.**

8 Q Did anybody ever tell you that prior to the lawsuit --
9 and we're coming back to the retiree health issue,
10 that the City had not actually done an analysis of
11 which employees that they were charging to or which
12 employees actually retired out of the water and sewer
13 fund as a method of checking the cost allocation?

14 **A No.**

15 Q I'm going to show you what was marked in a previous
16 deposition as Exhibit Number 2. Which I'll represent
17 to you is the administrative cost allocation sheet
18 that was prepared by Mr. Smith for fiscal year '14 and
19 '15. And there are other sheets for different years
20 but this is a representative sample.

21 Have you ever seen Exhibit 2 before?

22 **A No.**

23 Q I'm going to take you through a few of these things.
24 Now, on the second page there's expenses for the City
25 Hall grounds. Do you see that?

1 **A** **Yes.**

2 Q And on the first page there's an allocation of rent
3 for the City Hall building to water and sewer of three
4 percent. On the first page. I'm sorry.

5 **A** **Okay.**

6 Q Does the water and sewer department occupy about three
7 percent of the new City Hall?

8 **A** **I'm not sure.**

9 Q Well, the allocation is and Mr. Smith said that the
10 three percent was in recognition of the fact that
11 that's the amount of square footage that they occupy.
12 Do you have any reason to contest that?

13 **A** **No.**

14 Q And on the second page there's an allocation of
15 twenty-five percent of the expense of maintaining the
16 City Hall to the water and sewer fund. You see that?

17 **A** **Yes.**

18 Q Have you ever had a discussion with anybody about how
19 a department that occupies three percent of this space
20 should be allocated twenty-five percent of expenses?

21 **A** **No.**

22 Q Does that seem inappropriate?

23 **A** **Yeah. It doesn't seem right.**

24 Q Then there's, a little bit further down there's an
25 allocation of attorney fees of the total budget is

1 eight hundred thousand and thirty percent of that is
2 allocated to water and sewer for a total of two
3 hundred and forty thousand dollars. You see that?

4 **A Yes.**

5 Q Have you ever been made aware of the amount that was
6 actually spent by the City for attorney fees relating
7 to the water and sewer function?

8 **A No.**

9 Q Do you approve the legal bills?

10 **A No. Those go to finance.**

11 Q And the law firm that's representing you in this case
12 is the law firm that gets paid the attorney fees;
13 correct?

14 **A Correct.**

15 Q And what I mean by that is you don't have an in house,
16 do you have an in house lawyer?

17 **A No.**

18 Q Is it fair for me to assume that all or virtually all
19 of the City's legal work is handled by the Fausone
20 Bohn Firm?

21 **A Yes.**

22 Q And you'd agree with me that if there's going to be an
23 allocation of attorney fees to water and sewer that
24 attorney -- those fees and costs and expenses should
25 be based upon services actually provided to the water

1 and sewer function?

2 **A Yes.**

3 Q And it would be inappropriate to allocate -- if the
4 amount actually spent were a hundred thousand, it
5 would be inappropriate to allocate two hundred and
6 forty thousand because it necessarily would pay for
7 legal services that were unrelated to water and sewer?

8 **A Yes.**

9 Q And you've not done an investigation as to whether
10 that amount is appropriate or not appropriate;
11 correct?

12 **A I have not.**

13 Q Then there is an insurance and bonds expense that the
14 largest one is municipal risks reserves. Do you see
15 that? It's a million five.

16 **A Where are we at here?**

17 Q Under insurance and bonds, third line item down on the
18 second page. You see that?

19 **A Yeah.**

20 Q It's a million five hundred thousand dollars. I was
21 told by Mr. Smith that that primarily relates to the
22 insurance expense for the MMRMA.

23 **A Yeah. That's what our municipal risk insurance
24 company is.**

25 Q And do you have involvement in dealing with the

1 insurance issues related to the MMRMA?

2 **A Finance handles most of that, finance and legal.**

3 Q But do you understand that there's an annual premium?

4 **A Yes, I do.**

5 Q And then there's --

6 **A Reserves and --**

7 Q -- increase in reserves. And in the past at least in
8 the past several years there's been a refund from the
9 MMRMA because the MMRMA as an organization has
10 experienced a lower incidence of claims or magnitude
11 of claims than were anticipated when the premiums were
12 originally established?

13 **A I understand that there's a distribution back but
14 that's not entirely how the distribution is made up
15 of. There's also return on investment, it's a pool.**

16 Q Right. Right.

17 But your net MMRMA expense would be in any
18 particular year premiums plus contributions to
19 reserves minus refunds from MMRMA, whatever the
20 purpose of the refund is?

21 **A Yes.**

22 Q And Mr. Smith told me that the million five number
23 that's included in the municipal risk reserves does
24 not take into account the refunds that are received
25 from MMRMA because they go into a separate revenue

1 account. Is that your understanding as well?

2 **A I'm not sure how they allocate the refund.**

3 Q You don't have any basis to contest it or to confirm
4 it; correct?

5 **A Correct.**

6 Q But if they weren't including the refund in
7 establishing the amount that was allocated that would
8 artificially inflate the amount that was allocated
9 because it doesn't recognize the net cost, it
10 recognizes the gross cost; correct?

11 **A I still believe there's more to it than that.**

12 Q But the point is is -- is if you get a refund and
13 you've allocated in the past the expense twenty-five
14 percent or some other percentage to water and sewer
15 there should be some recognition of the fact that
16 there was a refund received in recognition of the fact
17 that water and sewer had been charged in the past.

18 **A Yes.**

19 Q And if that was not occurring then that would not be
20 appropriate; correct? Something again, you'd want to
21 review.

22 **A I'd want to review it.**

23 Q And have you ever looked at your MMRMA premium
24 breakdown to see what kind of coverages you're paying
25 for?

1 **A Not in detail.**

2

3

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11 Q So if somebody wanted to fairly allocate the insurance
12 cost to water and sewer there would be some attempt to
13 recognize what part of the cost of the insurance is
14 the result of the water and sewer function?

15 **A Correct.**

16 Q In other words, if you had, you know, the liability
17 and just general liability insurance there would need
18 to be some recognition that there's all these
19 departments in the City that create the risk of
20 liability and what percentage of that prospective
21 liability is the result of the fact they've got a
22 water and sewer division.

23 **A Correct.**

24 Q And do you know whether that has ever been done?

25 **A I'm not sure.**

1 Q Well, there's three hundred and seventy-five thousand
2 dollars a year that's being allocated and our law suit
3 goes back six years so we're talking just this item
4 alone is a two million dollar item. You'd agree with
5 me that that's a material amount of money; correct?

6 **A The one point five?**

7 Q No. Three hundred and seventy-five thousand that's
8 allocated to water and sewer is a material amount of
9 money when you consider a six year period of time?

10 **A It's a thirty million dollar a year budget, though.**

11 Q No. I understand that but three hundred and seventy-
12 five thousand dollars a year is put into your water
13 and sewer rates and paid by your customers. Okay.
14 And over time in our class period that's over two
15 million dollars. That's a material amount of money to
16 the water and sewer fund; correct?

17 **A I would agree.**

18 Q And it's something that, I think you said it's worthy
19 of being looked at. But again, that's not something
20 you looked at or even asked anybody to look at before
21 you suggested that our lawsuit was frivolous; correct?

22 **A Correct.**

23 Q Then there's retiree health insurance, the total is
24 three point two seven four million dollars. Do you
25 see that?

1 **A** **The same page?**

2 Q The second page near the bottom. Under general
3 government

4 **A** **Yeah. I see it.**

5 Q And then forty-two percent of that total expense has
6 been allocated to the water and sewer fund. Do you
7 see that?

8 **A** **Yes.**

9 Q And that's how we come to the last column of one
10 million three hundred and seventy-five thousand two
11 hundred and fifty-nine?

12 **A** **Yes.**

13 Q And again, you'd agree that's a material amount of
14 money being allocated every year to the water and
15 sewer fund?

16 **A** **Yes.**

17 Q And are you aware of any attempt on the part of
18 anybody in the City to actually analyze the true
19 retiree health care insurance expense for water and
20 sewer employees at any time prior to this morning?

21 **A** **I'm not sure.**

22 Q And if -- and again, I think we established that if
23 they're transferring money that is way beyond the
24 actual cost, that money that gets into the general
25 fund is available to the general fund to pay other

1 expenses; correct?

2 **A Correct.**

3 Q And you understand that we have a disagreement in this
4 case, and I'm not asking you to agree, but if we were
5 to prove that millions of dollars above and beyond the
6 cost of the services provided had been transferred,
7 that's a problem for the City; correct?

8 **A So that's your opinion.**

9 Q Is it a problem? Would you feel that it was unfair to
10 your water and sewer -- and again, don't believe what
11 -- you don't have to believe what I'm saying. But if
12 it turns out that we prove through documents and
13 testimony and internal financial things that there
14 were millions of dollars that were transferred that
15 were indisputably above the cost of the actual
16 services that were provided, that would be
17 inappropriate?

18 **A I think it would be -- it should be reviewed.**

19 Q Well, but one of the purposes of writing your January
20 -- Mr. Fausone's January 15th letter that's Exhibit 41
21 is to assure Mr. Robinette that that in fact was not
22 happening; correct?

23 **A Correct.**

24 Q And so this letter Exhibit 41 is pregnant with the
25 notion that if it was happening that would be

1 inappropriate; correct?

2 **A Correct.**

3 Q Because if you had admitted to Mr. Robinette in
4 January of 2015 that you were transferring millions of
5 dollars that were unrelated to the services provided
6 Mr. Robinette would have had a lawsuit filed pretty
7 quick; right?

8 **A I don't know.**

9 Q Finally, there is a line item of MTT refunds attorney
10 which Mr. Smith told me was a line item of expense for
11 Michigan Tax Tribunal refunds. People appeal their
12 property taxes and we have to pay those back in every
13 year, some amount back. You understand that's an
14 expense of the City?

15 **A I do.**

16 Q And for many years fifteen percent of that purported
17 expense about forty-two thousand dollars was being
18 allocated to the water and sewer division. Do you see
19 this line item at the end?

20 **A Yes.**

21 Q And Mr. Smith told me in his second deposition that
22 that was a mistake. You'd agree with that; correct?

23 **A I'm not sure how he allocates those.**

24 Q But if he said it was a mistake and it was
25 inappropriate to allocate it, you wouldn't contest it?

1 **A** **Correct.**

2 Q You don't superior knowledge or information?

3 **A** **Correct**

4 MR. HANLEY: Why don't we take a short break here,
5 get a water and recalibrate, move on to a different
6 topic.

7 VIDEOGRAPHER: Off the record 10:05 a.m.

8 (Brief pause.)

9 VIDEOGRAPHER: Back on the record. The time is
10 10:15 a.m.

11 (Document marked for identification as Plaintiff's
12 Deposition Exhibit Number 44.)

13 BY MR. HANLEY:

14 Q We've become aware that at some point a decision had
15 been made to provide certain information about this
16 lawsuit on the City's website.

17 **A** **Yes.**

18 Q And were you involved in the decision to do that?

19 **A** **Yes.**

20 Q Was it your idea?

21 **A** **Those decisions were made with our legal counsel.**

22 Q I'm going to show you what I've marked as Exhibit 44
23 which I'll represent to you is a printout that we made
24 on October 10th, 2016 from the City's website.

25 The content that was on the website, did you pre

1 approve it?

2 **A Yes.**

3 Q I mean, you reviewed it and had the ability to make
4 changes and comments and things like that?

5 **A Yeah. I was part of the team that sat down with our
6 attorneys on this.**

7 Q And I don't want to know what you talked about with
8 your attorneys but who else was on the team that
9 wasn't an attorney?

10 **A My deputy mayor.**

11 Q Who is that person?

12 **A I have a new deputy mayor now whose sitting here. I
13 think it was, predated him. I think it was my former
14 deputy mayor Thelma Kubitskey.**

15 Q Is Ms. Kubitskey still employed by the City?

16 **A She is.**

17 Q What's her position now?

18 **A She's doing business development now.**

19 Q Who else was on the team?

20 **A Budget director Deb Peck.**

21 Q Anybody else?

22 **A Probably had Steve Smith the finance director in the
23 room and then one person from our communications team.**

24 Q Well, in the course of these meetings, did Ms. Peck or
25 Mr. Smith tell you what had gone on in their

1 depositions and the documents that existed relating to
2 this case?

3 **A No.**

4 Q Did they say -- you understood that this was being put
5 up to be relied upon by your citizens in a -- some of
6 whom are water and sewer rate payers, some of who may
7 not be, but to have them understand your view of the
8 case.

9 **A This isn't just -- this is the City's view of the**
10 **case, not necessarily just mine alone.**

11 Q Well, okay. I'm usually the royal your meaning your
12 being the City collectively. The team who made the
13 judgment but I understand that this was --

14 **A This is the City's communication to our residents.**

15 Q And that you were intending them to rely upon it in
16 deciding courses of action and things like that?

17 **A There was a lot of misconception involving this case**
18 **going back a long ways so this was our attempt to**
19 **communicate to the residents.**

20 Q But part of the residents are water and sewer
21 customers; correct?

22 **A Right. And I think that's an important point that we**
23 **need to touch on is that all of my residents aren't**
24 **members of your class.**

25 Q I get that, but some are.

1 **A** **And they deserve to be communicated to as well.**

2 Q But people who were in the class would also be subject
3 to this communication as well; correct?

4 **A** **Correct.**

5 Q And there's no way to filter your website so that you
6 have to ask them if they're a water and sewer customer
7 and if they are they can't access the website. You'd
8 agree that's true; correct?

9 **A** **Correct.**

10 Q At any time before -- and we're going to go through
11 some of the content. But any time before this was put
12 up, did Ms. Peck or Mr. Smith say, you know, you might
13 want to review my deposition to see what I said or you
14 might to review these documents that the plaintiff's
15 have and we might want to tone this down a little bit.
16 Did anybody say anything like that?

17 **A** **No.**

18 MR. PELLAND: You know, I do want to object. He
19 did say that counsel was present during these
20 communications, too, so. I think any communications
21 that were going on, if counsel was present, would be
22 privileged.

23 MR. HANLEY: All right. Well, outside of
24 counsel

25 MR. PELLAND: Yeah. I just want you to -- can you

1 clarify that?

2 BY MR. HANLEY:

3 Q Outside of counsel being present, did Mr. Smith take
4 you aside or Ms. Peck take you aside and say, you
5 know, I gave this testimony in my deposition, it may
6 create some issues. Any time through today has
7 anybody come up to you and said that?

8 **A No.**

9 Q Communicated to you in an email those things?

10 **A No.**

11 Q Did you know at the time that this was posted that
12 there was already a notice that had been approved by
13 the court and was being sent or had been sent to the
14 class members?

15 **A Yes.**

16 Q And let's go through some of these statements. Down
17 at the bottom it says "How is the City proceeding?"
18 Do you see that?

19 **A Yes.**

20 Q And did you have input into the statements that were
21 made in here, in this section?

22 **A Yes.**

23 Q And it says, "The City of Westland is confident it
24 will prevail in the current lawsuit. However, if the
25 plaintiffs and the class members are determined to be

1 entitled to a refund of any past water and/or sewer
2 charges or if the City is required to reduce it's
3 water and sewer rates going forward this may impact
4 the financial stability of the water and sewer fund."
5 You see that?

6 **A Yes.**

7 Q And why did the City feel it was important to make
8 that statement on it's website?

9 **A Because I believe that it's true.**

10 Q But why was it important to communicate that to your
11 residents?

12 **A Because they weren't going to read that in the letter
13 that you mailed them.**

14 Q So you wanted to supplement what was in the notice?

15 **A Like I said, part of -- probably the biggest part of
16 my job as mayor besides overseeing the City is
17 communicating to our residents. And like I said, it's
18 important that all of our residents have access to the
19 information and people want to hear from their local
20 government, their elected officials.**

21 Q But if they're a resident and they're not a water and
22 sewer customer, why would they care about the
23 financial stability of the water and sewer fund?

24 **A Can you repeat that?**

25 Q If they're a resident but not a water and sewer or not

1 a water and sewer customer, why would they care about
2 the financial stability of the water and sewer fund?

3 **A Because one day they may flush their toilet. They may**
4 **turn on their shower one day and they're going to want**
5 **it to work.**

6 Q So they're already customers?

7 **A In my household there's five people that live in my**
8 **household.**

9 Q Right. But there's only one customer; right? And
10 that's why you're saying there's twenty-six thousand
11 or twenty-seven thousand customers but eighty thousand
12 residents; right?

13 **A Right.**

14 Q And I have four teenage daughters and so we are in the
15 same situation. Meaning, we may only have one bill
16 but we're five customers; right? You're deeming your
17 family as also customers of the water and sewer
18 system?

19 **A I guess. I was communicating to the residents.**

20 Q But the reality is, is there's a very small percentage
21 of people in your City who are residents who do not
22 receive water and sewer service; correct? They may
23 not be the person who writes the check, I write the
24 check in my household but my daughters and my wife are
25 recipients of water and sewer services; correct?

1 **A Correct.**

2 Q So all are not, I don't want to say all because it's
3 too categorical but a very high percentage of
4 residents of Westland receive water and sewer service
5 irrespective of whether they're the one that write the
6 check?

7 **A Correct.**

8 Q Then you say, "In order to properly maintain and
9 operate the system financial reserves are critical.
10 Future rates will likely have to rise to recover from
11 the cost of defending this lawsuit and any damages
12 that may result." Do you see that?

13 **A Yes.**

14 Q My question for you, sir is if our lawsuit is
15 frivolous, how is there going to be any impact on
16 future rates, how is there going to be any impact on
17 the financial stability of the water and sewer fund?
18 I mean, in your view we're going to lose; right?

19 **A I stand by my statement and I think that our rates are
20 reasonable.**

21 Q Well, but one of the ways you'd need to make that
22 determination is by examining the reasonableness of
23 your cost allocations which is something you haven't
24 done; right?

25 **A As mayor I don't go into some of the detail that you**

1 **pointed out here today. I've got people that do that**
2 **for me.**

3 Q But you said you believe they're reasonable; right?

4 A **I do believe they're reasonable.**

5 Q You said that again under oath; right? Correct?

6 A **Correct.**

7 Q And you never talked to Mr. Smith about the cost
8 allocations, you never talked to Ms. Peck about the
9 cost allocations, you never reviewed the cost
10 allocations. And you don't even know the items of
11 cost and the approximate amounts until we walked
12 through Exhibit 2 here today; correct?

13 A **You pointed out a couple -- you pointed a couple**
14 **instances on a very large spreadsheet. But at the end**
15 **of the day I contend that our rates are reasonable and**
16 **they're comparable with surrounding cities.**

17 Q Well, do you know, you've said that and that's
18 something on your website. Do you think that
19 comparing your rate to Wayne or Livonia or something
20 is a fair and appropriate way to inform your residents
21 that their rates are reasonable?

22 A **It's not the only way that we compare. I mean,**
23 **obviously there's not a lot of apples to apples, city**
24 **to city but I think it is one of the things that we**
25 **take a look at to be competitive with them.**

1 Q By the way, have you talked to any other
2 municipalities about our cases? You seem to know a
3 lot about other places we're suing and, in fact,
4 Taylor has a website right now that has some identical
5 language with your website or at least what used to be
6 on your website. Have you talked to their mayor about
7 this?

8 **A Mayors talk.**

9 Q Well, -- okay. Did you talk to Mayor Sollars?

10 **A I've talked to him generally about this.**

11 Q And did you provide or instruct somebody to provide
12 the language from your website so that Taylor could
13 use the same or similar language on its website?

14 **A I did not but this is on our website, it's a public
15 website.**

16 Q Well, did you discuss with Mayor Sollars or anybody
17 else at Taylor the fact that you were putting this
18 website on?

19 **A I don't recall.**

20 Q You're saying "In order to properly maintain and
21 operate the system financial reserves are critical."
22 Do you see that?

23 **A Yes.**

24 Q Do you understand and I've seen some press comments
25 about we're suing everybody with a fund balance and

1 that's the basis of this lawsuit. You made comments
2 to that effect; correct?

3 **A Yes.**

4 **Q** Do you understand that the primary claim we have in
5 our case is not that you have a fund balance but that
6 your fund balance should actually be higher in the
7 absence of these transfers? Your fund balance is too
8 low based upon your rates because you're transferring
9 millions of dollars to the general fund. You
10 understand that's our allegation? Again, I'm not
11 asking you to agree with it. But do you understand
12 this case principally is not about your reserves but
13 it's about the transfers that actually reduce your
14 reserves?

15 **A I understand that part of it.**

16 **Q** And do you also understand that the City puts in its
17 rates every year a pay as you go component for capital
18 improvements to the water and sewer system?

19 **A Yes.**

20 **Q** So the notion that the reserves are critical and I
21 understand that some level of reserves is appropriate
22 and I don't contest that. But the City's capital
23 improvement plan is financed almost entirely by pay as
24 you go rates; correct?

25 **A Yes. But we also have bonding that --**

1 Q We have bonding for the meters; right?

2 A -- we're paying -- yeah. We're paying the bond
3 payments out of our water rate.

4 Q Right. But you sold the bonds, you got a big chunk of
5 money in that you're drawing down restricted funds for
6 the meter program; correct?

7 A Correct.

8 Q But I'm talking about your normal water main
9 replacement, sewer relining, all that. The normal
10 capital improvements that are planned on a five year
11 horizon and there's budgeted monies every year. That
12 goes into the rate.

13 A Absolutely.

14 Q Right. And so you're not using reserves to finance
15 those. Every capital improvement you have right now
16 is whether it's bonded debt or other kinds of debt or
17 current period infrastructure improvements is put into
18 the rate and captured in the current period?

19 A Right. The part you're missing is that what if
20 something goes wrong that's unexpected, bad weather or
21 something breaks, our aging system, equipment
22 malfunctions.

23 Q Okay. But does that -- the need to have that amount
24 of money, does that justify any kind of general fund
25 transfers? Do you understand that when you transfer

1 money to the general fund you deplete the water and
2 sewer fund and impact the water and sewer fund's
3 ability to respond to those emergencies?

4 **A We disagree on some of the line items that were in**
5 **here but as far as allocations back to the general**
6 **fund, I think that they're appropriate. I think ours**
7 **are reasonable.**

8 Q All right. You're on record about that and we also
9 know the factual basis for that statement so I'm not
10 going to go back to it again. But the point is, is if
11 we ultimately prove through proper evidence that
12 millions of dollars has been improperly transferred
13 that the water and sewer fund will have been depleted
14 of monies that would otherwise be available for these
15 emergencies that you're talking about?

16 **A Yes.**

17 Q Now, on the second page, why is the City choosing not
18 to settle? You say or the City says, "The City
19 believes there's no factual or legal merit to the
20 claim. Ultimately, there is no net benefit to the
21 current residents of the City if the class members
22 prevail. This suit is designed to benefit the
23 opposing legal counsel who is set to receive one third
24 of any refund or payment the City is required to make
25 to the class members. And any amount paid for the

1 class members legal fees would ultimately be an
2 expense incurred by the City residents." Do you see
3 that?

4 **A Yes.**

5 Q Why did you put this section on the website?

6 **A Once again, I think it's important that we communicate**
7 **to our residents. This isn't information that they're**
8 **going to receive in your letter that you sent them.**

9 Q But do you know that that letter was approved by your
10 counsel and approved by the court? Everything in it
11 was approved by the court and your own counsel.

12 **A I understand that.**

13 Q You say "This suit is designed to benefit the opposing
14 legal counsel." You see that?

15 **A Just to be clear. That's not what I say.**

16 Q The City says "This suit is designed to benefit the
17 opposing legal counsel." You see that?

18 **A Yes.**

19 Q What you're effectively representing is, is that me,
20 my law firm, Mr. Robinette, his law firm are really
21 the only people with anything to gain. And, in fact,
22 that's something you said on the tape that we
23 reviewed; correct?

24 **A Yes.**

25 Q And before making that statement, have you done any

1 investigation at all into my track record in terms of
2 what benefits have been achieved for people in the
3 municipalities that we have achieved results in?

4 **A No.**

5 Q Have you reviewed what judges have said about our
6 results?

7 **A No.**

8 Q Do you have any basis to contest that in any of the
9 lawsuits that I have prosecuted to class actions to
10 conclusion that I was the only one that benefitted?

11 **A No.**

12 Q And so, how did you feel -- how did the City feel it
13 was appropriate to make a statement that the whole
14 lawsuit was designed to benefit opposing legal
15 counsel?

16 MR. PELLAND: I don't think that's what the
17 language says but.

18 BY MR. HANLEY:

19 Q "This suit is designed to benefit the opposing legal
20 counsel." That's a verbatim quote. Why did the City
21 feel it was appropriate and accurate to say that?

22 **A Because their stance was that we feel that our water
23 rates are reasonable and that this case was without
24 merit.**

25 Q But that means it's designed to benefit the opposing

1 legal counsel? The suit is, what benefit do I get
2 from filing a frivolous lawsuit? I'm fronting
3 hundreds of thousands of dollars for this case and I'm
4 going to bring a frivolous lawsuit?

5 **A I can't answer that.**

6 Q But this is something you've repeated publicly, to
7 reporters and on the website; correct?

8 **A Correct.**

9 Q Without having any knowledge of our prior record of
10 achievement for class members in other communities.

11 **A Sounds like you're taking it a little personal.**

12 MR. PELLAND: Just answer questions.

13 BY MR. HANLEY:

14 Q No. I don't take it personal but I do -- this is the
15 business that I'm in and I take very seriously the
16 responsibility to my class members. And I prosecuted
17 a case against the City of Detroit for five years and
18 almost bankrupted my law firm and at the end of the
19 day I achieved an amazing result. And Chief Judge
20 Columbo of the Wayne County Circuit Court said this
21 would not have been possible, this case would not be
22 brought and this result would not have been obtained
23 without the efforts of plaintiff's counsel. The
24 reputation as you know as a person in public office is
25 everything. And if you lose that reputation you lose

1 everything. So I apologize if I'm taking it
2 personally but it goes against the principles that I
3 employ in this practice. And I'd be out of business
4 if I ever did what you have alleged, the City has
5 alleged on its website. Okay.

6 So the -- you ultimately became aware that we, Mr.
7 Robinette and I, objected strenuously to this website;
8 correct?

9 **A Yes. I've heard that.**

10 Q And you became aware that we went to court and got an
11 injunction that required the City to remove certain
12 statements from its website?

13 **A Yes.**

14 Q Have you reviewed that injunction?

15 **A No. Not in its entirety. I was briefed on it.**

16 Q Were you aware that the court made certain findings
17 about the City's postings that made it into the order?

18 (Document marked for identification as Plaintiff's
19 Deposition Exhibit Number 45.)

20 BY MR. HANLEY:

21 Q Let me show you what we've marked as Exhibit 45. This
22 is the order granting plaintiff's verified emergency
23 motion for entry of a preliminary injunction
24 prohibiting defendants communications to class members
25 concerning this case and other conduct. It's an order

1 entered on October 17th, 2016. Have you ever seen
2 this?

3 **A No. I was briefed on it. I was briefed on it by our**
4 **attorneys.**

5 Q On the second page of this, and we don't need to go
6 through all the things that have been enjoined. But
7 the first paragraph says "This matter having come
8 before the court upon the emergency verified motion of
9 the plaintiffs, the court having reviewed the party's
10 briefing and heard the party's oral argument, the
11 court finding that a legal basis for issuing a
12 preliminary injunction exists for reasons stated on
13 the record including the courts finding that
14 information on the City's website was intended to
15 "basically scare or attempt to scare people who might
16 be members of the class into not joining the class."

17 And the court's finding that the City's website
18 contained "hyperbole or threats or other methods of
19 intimidation." Do you see that?

20 **A Yes.**

21 Q Were you ever made aware that the court had
22 specifically found that the City was engaging in
23 methods of intimidation and that they were trying to
24 basically scare or attempt to scare people into not
25 joining the class."

1 **A** **Our attorneys advised us on what parts of the FAQs**
2 **would have to be removed or modified.**

3 **Q** But did you know the court had made those specific
4 findings that I just read to you?

5 **A** **No.**

6 **Q** And going back to your website, you at the third page
7 you say, "What if I want out of this class action?
8 You may opt out of the lawsuit. Please download the
9 form below, complete it and return it to the law firm
10 and address on the form." Do you see that?

11 **A** **Yes.**

12 **Q** If someone's not in your class, they don't need to opt
13 out; right? Our class, they don't need to opt out if
14 they're a resident but not a water and sewer customer?

15 **A** **Correct.**

16 **Q** So by adding this opt out form, you were intending it
17 to be used by class members to send a letter to me
18 saying they didn't want to participate?

19 MR. PELLAND: Which exhibit? I'm sorry.

20 MR. HANLEY: 44.

21 MR. PELLAND: All right.

22 THE WITNESS: Correct.

23 BY MR. HANLEY:

24 **Q** And that's something that the City has had to pull
25 down; correct?

1 **A Correct.**

2 MR. PELLAND: I don't think that's true, Greg.

3 MR. HANLEY: I haven't checked recently.

4 MR. PELLAND: No. It's not in the order.

5 BY MR. HANLEY:

6 Q Now, did there come a time where you gave an interview
7 to Ms. Rogers from the Hometown Life Newspaper?

8 **A Yes.**

9 Q How did she find out about the lawsuit?

10 **A She's the beat writer for the City of Wayne and for**
11 **Westland and this lawsuit's been bouncing around our**
12 **City for quite a while so.**

13 Q Well, the first line of her article, I'll show you
14 Exhibit 46 is Westland residents began receiving
15 letters this week notifying them that they are part of
16 a class action, so forth.

17 Did somebody contact Ms. Rogers and tell her this
18 was going on or did she find out through some third
19 party source?

20 **A I'm not sure. You'd have to ask her.**

21 Q Well, how did she come to you, because you're quoted
22 in here; correct?

23 **A We had a closed study session with City Council on**
24 **this. So I think her comments were and I'm just**
25 **trying to speculate here. It was probably on the**

1 **heels of this closed study session with the City**
2 **Council.**

3 Q Right. But what I'm saying is you're quoted in here
4 and we'll get into some of your quotes. You talked to
5 her?

6 A **I did.**

7 Q How did you come to talk to her?

8 A **She made an appointment to come and talk to me about**
9 **this.**

10 Q So she called you?

11 A **I believe so.**

12 Q And when was this?

13 A **I don't recall. I believe it was on the heels of our**
14 **study session.**

15 Q So you're quoted in here and she specifically notes
16 that I didn't respond to request for comments. Do you
17 see that?

18 A **Where's that at? Okay. I see it.**

19 Q By the way, have you seen any public comments that
20 I've made about this lawsuit?

21 A **No.**

22 Q The fourth paragraph you're quoted as saying, "They
23 are suing everyone with a fund balance in their water
24 and sewer fund. Their argument is that we have a fund
25 balance so that is evidence of what we're charging."

1 Do you see that?

2 **A Yeah.**

3 Q Is that what you said or words to that effect?

4 **A Yeah.**

5 Q You'd agree with me it's a little bit of an
6 overstatement to say that we're suing everybody with a
7 fund balance; correct?

8 **A Yeah. I would agree and her quote here is probably a
9 little general.**

10 Q But you've -- and on your website you identified about
11 eight communities that we had lawsuits with. You'd
12 agree with me that there's many, many more communities
13 in the Southeast Michigan area?

14 **A Correct.**

15 Q And further on down the line, the third paragraph from
16 the bottom you say "We've been using a formula for
17 setting rates and administrative charges against the
18 water fund. Plante Moran does our audits and we've
19 hired a third party expert to look at those." Do you
20 see that?

21 **A Yes.**

22 Q Why did you feel it necessary to tell Ms. Rogers that
23 Plante Moran does your audits?

24 **A I'd say she probably already knows that.**

25 Q Well, but it's a direct quote, it's in quotes; right?

1 You don't deny saying that, do you?

2 **A No. This quote seems like it's kind of -- I can't**
3 **remember if that was an exact quote or if she took our**
4 **conversation and made a quote out of it.**

5 Q Well, did you mention to her Plante Moran did the
6 audits?

7 **A Most likely.**

8 Q And again, when you talk about auditors, particularly
9 an esteemed firm like Plante Moran, it's intended to
10 convey the fact that an independent person has
11 evaluated what's being challenged; correct?

12 **A Correct.**

13 Q And we know from earlier in the testimony that, in
14 fact, although Plante Moran is your auditor, Plante
15 Moran has not been involved in the cost allocation
16 issue, other than in one audit year; correct?

17 **A I didn't know that at the time that I had this**
18 **conversation with her.**

19 Q But you believed it to be true at the time; correct?

20 **A I did.**

21 Q But believing it to be true you thought it was
22 important to stress it because, again, it would show
23 that it wasn't just the City making these judgments,
24 it was an independent third party?

25 **A Yes.**

1 Q And it says we've hired a third party expert. Who's
2 that?

3 **A I'm not sure.**

4 Q Have you become aware that plaintiffs have experts on
5 cost allocation methodologies and they're in the
6 process of completing their work?

7 **A I'm not sure if I knew that.**

8 Q Are you -- do you intend when that work is delivered
9 with appropriate source documentation and testimony to
10 review it in some level to make a judgment as to
11 whether we're right or somewhat right in this lawsuit?
12 Are you willing to do that?

13 **A So you said that you've hired consultants to review
14 the numbers, is that what you're saying?**

15 Q We've hired consultants who are experts in municipal
16 cost allocations to take the evidence and form
17 opinions about whether what we say is occurring is
18 occurring. We're poised in the next week to provide
19 that information. It is going to have detailed
20 calculations and it's going to be sourced to every
21 document that the City's produced that's relevant and
22 to the relevant deposition testimony. Are you willing
23 to review that and make judgments and reevaluate your
24 judgment if necessary about whether this lawsuit is
25 frivolous?

1 MR. PELLAND: I object to that question. What
2 he's going to do. That's a legal aspect of this case
3 in what we're going to do, so that has to go to work
4 product and what the attorneys are going to discuss
5 with him.

6 BY MR. HANLEY:

7 Q Are you willing to keep an open mind about this case
8 as the evidence comes in or are you -- has your
9 conclusion that it's frivolous one that's
10 impenetrable?

11 **A I'd like to consider myself a reasonable person.**

12 Q Did you ever become aware that the plaintiffs had made
13 a class wide settlement offer shortly after the class
14 was certified?

15 **A I had heard that.**

16 Q Did you review it in detail and gain an understanding
17 of whether this case could be settled within your fund
18 balance?

19 **A I don't remember reviewing it in detail.**

20 Q Okay.

21 MR. HANLEY: I have no further questions at this
22 time, sir. I appreciate your time.

23 MR. PELLAND: I don't have any questions.

24 (Deposition concluded at 10:45 a.m.)

25

- - -

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 62 pages, is a complete, true, and correct record of the testimony of MAYOR WILLIAM WILD, held in this case on October 19th, 2016.

I also certify that prior to taking this deposition MAYOR WILLIAM WILD, was duly sworn to tell the truth.

I also certify that I am not a relative or employee of or an attorney for a party; or a relative or employee of an attorney for a party; or financially interested in the action.

Amy Bertin, CER-3871

JUDY JETTKE & ASSOCIATES
309 S. Gratiot
Suite 2
Mount Clemens, Michigan 48043

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