

Edward Kickham Jr.

From: Gregory Hanley
Sent: Tuesday, March 26, 2019 8:18 PM
To: Edward Kickham Jr.
Subject: FW: Youmans v. Bloomfield Township -- Confidential and Subject to MRE 408
Attachments: Bloomfield Settlement Proposal.pdf

From: Gregory Hanley
Sent: Monday, January 8, 2018 12:19 PM
To: Hampton, William P. <whampton@secrestwardle.com>; Roberts, Mark <mroberts@secrestwardle.com>
Cc: Edward Kickham Jr. <ekickhamjr@kickhamhanley.com>
Subject: Youmans v. Bloomfield Township -- Confidential and Subject to MRE 408

Gentlemen:

Attached please find a proposal for class-wide resolution of the *Youmans* case. This is being provided to you pursuant to MRE 408.

This proposal is subject to the consummation of a mutually-acceptable written settlement agreement and, of course, ultimate approval by the Court. Feel free to call me if you would like clarification of any of the proposed terms.

Gregory D. Hanley
Kickham Hanley PLLC
300 Balmoral Centre
32121 Woodward Avenue
Royal Oak, Michigan 48073
248-544-1500 (main)
248-544-7430 (direct)

January 8, 2018 Settlement Proposal – *Youmans v. Bloomfield Township*

Submitted pursuant to MRE 408

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I. THE REFUND

A. The Court already has certified a class consisting of all persons or entities who/which paid the Charter Township of Bloomfield (the “Township”) for water and sewer services on or after April 21, 2010. For settlement purposes, the parties will agree that the class will consist of all persons or entities who/which paid the Township for water and sewer service between April 21, 2010 and January 31, 2018 (the “Class”).

B. The case challenges a variety of cost components which Plaintiff claims are included in the water and/or sewer rates (the “Rates”) assessed by the Township and the Township’s failure to consider all revenues generated by its water and sewer-related charges in setting the Rates (collectively, the “Challenged Charges”). In essence, Plaintiff claims both (1) that the Township’s Rates are too high and (2) that the Township’s water and sewer customers, through their payment of the established Rates, are financing public costs that should be paid by the Township’s General Fund or some other revenue source.

C. Kickham Hanley PLLC (“KH” or “Class Counsel”) believes that the Challenged Charges the Township will have collected between April 15, 2010 and January 31, 2018 exceed **Twenty-One Million Dollars** (\$21,000,000). A detailed itemization of the overcharge amounts through March 31, 2017 that Plaintiffs intend to introduce at trial are set forth in Plaintiff’s Summary Disposition Briefs and supporting materials. The amounts are summarized as follows:

1. “Non-Rate Revenues” not deducted in Rate Model – **\$2,283,000**
2. “Sewer-Only Revenues” not deducted in Rate Model – **\$2,266,285**
3. Public Fire Protection (“PFP”) Charges included in Rate Model – **\$8,600,000**
(through 3/31/16)
4. Improper “Rent” Charges included in Rate Model – **\$1,400,000**
5. County Storm Drain Charges included in Rate Model – **\$434,000**
6. Cost of all water “used” by the Township included in Rate Model -- **\$3,585,748**
7. OPEB Charges included in the Rate Model -- **\$2,600,000**

D. As part of the settlement, the Township shall deposit a Settlement Fund (the “Settlement Fund”) in the amount of **Five Million Dollars** (\$5,000,000) into the IOLTA Trust Account of KH to be used to pay refunds and credits to the Class (the “Refunds” and “Credits”) and compensation and expense reimbursement to KH as Class Counsel, as determined by the Court. Upon final approval of the settlement by the Court, KH shall return to the Township the amount of

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the Net Settlement Fund (as defined in Paragraph V below) attributable to Class Members who do not timely submit claims for Refunds (the “Township Administered Portion”) so that the Township can apply that amount as Credits, as described in Paragraph V below. The Settlement Fund shall be administered by KH (the “Claims-Escrow Administrator”) with the assistance of the Garden City Group (“GCG”) or another third-party administrator (“TPA”).

II. PROSPECTIVE RELIEF

A. The Township shall be allowed to utilize its current water and sewer rates (the “Rates”) through March 31, 2019 (the “FY 2019 Period”). The total amounts paid by the Township’s water and sewer customers pursuant to the Township’s Rates at all relevant times shall be referred to as the “W&S Charges.”

B. For each of the fiscal years beginning April 1, 2019, and ending March 31, 2024 (the “Prospective Relief Period”), the Township shall utilize Plante Moran or another third-party consulting firm experienced in municipal water and sewer rate-making practices and procedures (the “Outside Consultant”) to conduct a cost of service study for the Township’s water and sanitary sewer system and to design and recommend Rates solely to cover the Township’s cost of service. In performing the cost of service studies and designing and recommending Rates, the Outside Consultant will adhere to the guidance provided by the American Water Works Association publication “Principles of Water Rates, Fees, and Charges, Manual of Water Supply Practices M1” for Water Rates and the Water Environment Federation’s “Financing and Charges for Wastewater Systems, Manual of Practice No. 27” for Sewer Rates, subject to the requirements of Michigan law and Paragraphs II.C and II.D below. The Township will agree to implement the Rates designed and recommended in good faith by the Outside Consultant.

C. For the duration of the Prospective Relief Period, the Township shall not include as a recoverable cost in the Rates the expense it incurs to Oakland County for maintenance of the Township’s storm drain infrastructure.

D. The Township may not levy a tax or other assessment against property owners or water and sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the Township increase its Rates to finance, in whole or in part, the Settlement Fund. The Settlement Fund shall be financed solely from current assets of the Township’s Water and Sewer Fund and/or the General Fund.

III. TRANSITIONAL PROVISION

So long as the Township complies with the Prospective Relief described above for the duration of the Prospective Relief Period, the Class Members who receive Refunds or Credits as part of the settlement shall release and waive any and all claims that could be brought which (a) arise during the FY 2019 Period challenging the Rates for the FY 2019 Period (the “FY 2019 Period Claims”) and (b) arise during the Prospective Relief Period challenging the Township’s Rates during the Prospective Relief Period (the “Prospective Relief Period Claims”).

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IV. RELEASE AND DISMISSAL

A. In addition to the release described in Paragraph III above, the Township gets a release of all claims which (1) arise out of the Township's calculation of the Rates from the beginning of time through the date of the final judgment and/or the components of costs included in the Rates through the date of the final judgment, or (2) were asserted in the Lawsuit, through the date of the final judgment.

B. The Lawsuit will be dismissed with prejudice.

V. CLASS PROCEDURES

A. The "Net Settlement Fund" to be distributed to the Class is the Settlement Fund less attorneys' fees and costs and any incentive award ("Attorneys' Fees and Costs") approved by the Court.

B. All Class Members may participate in the settlement by receiving a Refund from the Net Settlement Fund or a Credit against future W&S Charges if they paid W&S Charges to the Township at any time between April 21, 2010 and January 31, 2018 (the "Class Period").

C. The Township would provide billing and payment records in electronic form which, at a minimum, provide the service address, account number, and billing and payment history for each water and sewer customer for the time period from April 21, 2010 through January 31, 2018. The Claims-Escrow Administrator would provide notice to the class members through first class mail and through extensive publication. Such forms of notice will not be required to be exclusive and Class Counsel will be allowed to use any appropriate means to give notice to Class Members of the Settlement and the opportunity to obtain a refund.

D. Class members would be required to submit sworn claims by a date certain which identify their names, addresses, and the periods of time in which they paid W&S Charges in order to receive a Refund. The foregoing is just a general outline. GCG will assist in implementing a process designed to minimize fraud and maximize dissemination of the refunds to the appropriate parties.

E. After the deadline for submission of claims, the Claims-Escrow Administrator would calculate each class member's pro rata share of the total amount of W&S Charges paid by all of the class members during the Class Period. The size of each Claim Member's Allowed Claim shall be determined by calculating his, her or its Pro Rata Interest in the Net Settlement Fund based upon the amount of W&S Charges each Class Member paid as a member of the Class during the Class Period. Thus, by way of example, if a Class Member paid \$5000 in W&S Charges, they will receive a proportionally higher distribution than a Class Member who paid \$2500 in W&S Charges. The Class Members who submit timely claims will receive Refund checks representing their Pro Rata Interest in the Net Settlement Fund. Class Members who do not submit claims will receive a Credit on their

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water and sewer service account in the amount of their Pro Rata Interest in the Net Settlement Fund, which will be used against future W&S Charges. The credit will not be personal but will attach to the property associated with the Charges and will remain until the W&S Charges accrued after the Credit is applied exceed the amount of the Credit. The amounts of the Allowed Claims shall be based upon the Township's records. KH shall remit to the Township the portion of the Net Settlement Fund representing the Credits for class members who did not submit claims, and the Township shall apply those amounts to the applicable water and sewer service accounts. The entire Settlement Fund less fees and costs would be distributed to the Class.

F. The amounts of money covered by checks distributing Refunds which: (a) are returned and cannot be delivered by the U.S. Postal Service after the Claims-Escrow Administrator (i) confirms that the checks were mailed to the identified addresses, and (ii) re-mails any checks if errors were made or it becomes aware of an alternative address; or (b) have not been cashed within six months of mailing, shall be refunded to the Township within 30 days after the expiration of the six month period; and the Class Members to whom such checks were mailed shall be forever barred from obtaining any payment from the Settlement Fund. The Township shall deposit any refund in its water and sewer fund and utilize any refund monies solely for the operation, maintenance and improvement of its water and sanitary sewer system.

G. Class Counsel shall be paid Attorneys' Fees and Costs only from the Settlement Fund. For purposes of an award of Attorneys' Fees and Costs, the Settlement Fund shall be deemed to be a "common fund," as that term is used in the context of class action settlements. Class Counsel shall not make an application for any attorneys' fees and costs which are in addition to the "common fund" Attorneys' Fees and Costs contemplated by this proposal, and will waive any right to charge the Township for statutory fees under the Headlee Amendment. The amount of Attorneys' Fees and Costs to be paid to Class Counsel from the Settlement Fund shall be determined by the Court applying legal standards and principles applicable to awards of attorneys' fees and costs from common fund settlements in class action cases. Plaintiff will apply for an incentive award for Plaintiff consistent with awards given to representative plaintiffs in similar cases, to be paid out of the Settlement Fund with Court approval.