

MASSACHUSETTS Lawyers Weekly

In sewer dispute with Worcester, jury awards Holden \$14.6 million

By: Kris Olson September 2, 2022

Good fences may make good neighbors, but sewer pipes can have the opposite effect, it seems.



On Aug. 4, a Superior Court jury found that the city of Worcester had charged its neighbor to the north, Holden, nearly a decade's worth of improperly high fees to allow Holden's sewage to be deposited into Worcester's sewer system and treated at its treatment plant.

After an eight-day trial, the jury rendered a \$14.6 million verdict on Holden's unjust enrichment claim, which with interest exceeds \$25 million should the award survive the challenges that still lie ahead.

Worcester's co-defendant, the Department of Conservation and Recreation, was also found to have materially breached a 1999 agreement with Holden that obligated it to charge Holden only "proportionate applicable transport costs" for wastewater transport through the Worcester sewer system.

But the jury found that DCR's performance under that contract was excused by "waiver, condition precedent, contract modification or impossibility" and awarded Holden no damages from DCR.

The parties are set to appear again before Judge James M. Manitsas for a Sept. 15 status conference. One of the matters expected to be discussed is Worcester's request for judgment notwithstanding a verdict, which it requested soon after the jury reached its decision.

In court filings, Worcester indicates that Manitsas suggested that the jury's verdict is "not final."

Through its attorney, Christopher J. Petrini of Framingham, Holden responds that it recalls the judge's words differently and, regardless, deems the jury's determination binding on the court.

The arrangement to have Holden's sewage pass through Worcester dates to the mid-1930s, when DCR's predecessor, the Metropolitan District Commission, constructed a sewer pipe known as the "Rutland-Holden Interceptor" and then contracted with Worcester to construct a connecting sewer.

While the contractual relationships among Worcester, Holden and MDC went through various evolutions over the years, everything remained copasetic until the turn of the millennium.

In the late 1990s, a multi-year negotiation between Worcester, MDC, Rutland, Holden and West Boylston resulted in a new sewer use agreement between Worcester and MDC, signed in 2000. That agreement set forth a new methodology for calculating rates

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Throughout the litigation, Holden’s argument has been that the 2000 rate passes along to Holden costs unrelated to its use of Worcester’s sewer system, including for sewer debt costs and storm water management. Holden maintains its own, separate system to handle storm water runoff from parking lots and such, which unlike sewage does not need to go to a treatment plant.

During the nine-plus years the case has been going on — Holden filed its complaint on May 24, 2013 — Worcester has won a few battles.

While Judge Shannon Frison denied Worcester’s motion for judgment on the pleadings in 2015, the defendants convinced Judge David A. Ricciardone that two outdated agreements that Holden had argued should still govern the parties’ relationship were instead unenforceable and void against public policy, given the “significant changes” to the circumstances underlying the relationship since.

That, in turn, contributed to Ricciardone granting the city summary judgment on Holden’s statutory claim, which the judge also found deficient for another reason.

“There are no words in Chapter 286 [of the Acts of 1939] from which this court could conclude that the Legislature intended to impose a statutory duty on Worcester with respect to Holden [to assess Holden a proportionate rate], especially when the statute expressly imposed that duty on DCR alone by its own terms,” Ricciardone wrote in his Dec. 29, 2017, decision.

However, Holden’s unjust enrichment claim not only survived summary judgment but — four and a half years later — served as the basis of the jury’s massive verdict.

Petrini says he’s constrained as to how much he can comment, given the ongoing nature of the proceedings, though he does say his client believes the jury correctly decided that Worcester was unjustly enriched by \$14.6 million, and that that decision “is binding on the court and should be implemented.”

The unrebutted evidence, he adds, shows that Holden was “grossly overcharged for the wastewater services at issue.”

Worcester’s attorney, Michael P. Angelini, declines to comment, citing the ongoing litigation, and a DCR spokesperson similarly declines to speak.

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