

CERTIFICATE PROGRAM

Center for Restorative Justice

SUFFOLK UNIVERSITY BOSTON

Be a Catalyst for Change!

Expand Ad

City to appeal \$26.5M judgment for overcharging neighbor

Jury finds it was unjustly enriched by fees to transport wastewater

By: Kris Olson May 25, 2023



Christopher J. Petrini (third from left) credits the successful outcome of the case on the dedicated effort of his team, which included, from left: attorneys Michael K. Terry and Heather C. White, and paralegal Teresa Bertone.

The judgment will have to survive an appeal, but the town of Holden is one step closer to recouping years' worth of excessive wastewater transport charges paid to its neighbor to the south, the city of Worcester.

Superior Court Judge James M. Manitsas entered final judgment — more than \$26.5 million — on April 26, two weeks after awarding Holden more than \$11.3 million in prejudgment interest.

The decisions follow Manitsas' ruling late last year denying Worcester's motion for judgment notwithstanding the verdict, which left intact a jury's conclusion that Worcester had been unjustly enriched by payments it had received for the transport of Holden's sewage through the city's sewage system.

Those payments were based on a rate that Holden had never agreed to but instead were derived from a separate contract between Worcester and the Department of Conservation and Recreation.

We use cookies on our website to give you the most relevant experience by remembering your preferences and repeat visits. By clicking "Accept", you consent to the use of ALL the cookies.

[Cookie settings](#)

From the outset, Holden had complained that Worcester was charging it for services unrelated to sewage transit, including storm water management, which it handles on its own. However, the town had grudgingly paid its quarterly DCR bills since 2000, with the payments then passed through to Worcester.

Under a contract Holden had signed directly with DCR in 1999, the town had agreed to pay its "proportionate applicable transit costs" to use Worcester's sewage system. While the jury found that DCR had breached that contract by charging Holden more than that, it also found that Holden had waived any claim for breach against DCR by paying the fees for over 13 years.

But Holden's unjust enrichment claim against Worcester fared far better.

In its motion for judgment notwithstanding the verdict, Worcester renewed the argument that Holden's contract with DCR constitutes an adequate remedy at law, which should bar Holden's unjust enrichment claim against Worcester.

Two other Superior Court judges — Shannon Frison, on a motion for judgment on the pleadings, and David Ricciardone, on a motion for summary judgment and a motion for reconsideration — had already rejected that argument before Manitsas issued strike three.

"The rule barring unjust enrichment where a valid contract covers the subject matter of the parties' dispute applies only when a plaintiff seeks to recover from either the party with whom he expressly contracted, or when he seeks to recover from a third party to the contract who benefited from its performance," Manitsas wrote in his Dec. 20 decision.

To the extent that Worcester continues to press the argument in its forthcoming appeals, Holden's attorney feels confident that the Appeals Court will see the issue the same way as Manitsas.

"The fact that Holden had a contract with DCR doesn't change the fact that Worcester admittedly received and cashed dozens of checks that were approximately for payment of about five times the amount of the fair value of the services," says Christopher J. Petrini of Framingham.

That's a "bread-and-butter" unjust enrichment scenario, Petrini adds.

Conversely, if the rule were as Worcester suggests, a party in its shoes would have "carte blanche" to charge whatever it wanted to and retain the excessive funds with impunity, he notes.

"That can't be the law," Petrini says.

Worcester also argued that the jury's analysis of the issue of waiver with respect to the 1999 agreement between Holden and DCR was incongruous with how it answered in the negative the question of whether Holden should be barred from recovering against Worcester because it "unreasonably" delayed suing between 1999 and 2013.

But those findings were "not at all inconsistent," Manitsas determined. The judge noted that for Worcester to use the equitable defense of laches, it would have needed to show that it had been injured or prejudiced in some way, which it could not do.

"There was no prejudice — they just kept receiving the money," Petrini says.

With respect to his client's claims against DCR, Petrini believes that the judge erred in sending the waiver issue to the jury. Holden sent letters of protest and ultimately did sue, Petrini says.

"What better evidence that we were not agreeing to the charges other than filing suit?" he asks rhetorically.

Petrini filed an unsuccessful motion under Rule 59(e) to overturn the jury's finding on waiver and now plans his own appeal of that issue.

"major undertaking" to sue the second largest city in New England along with a state agency, with no guarantee of a favorable outcome.

Holden also did not fully grasp the nature and scope of the overcharges until shortly before retaining his services, Petrini adds.

Worcester's attorney, Michael P. Angelini of Bowditch & Dewey, had not responded to a request for comment as of Lawyers Weekly's press time.

But in a statement issued to MassLive, the city of Worcester expressed confidence that the Appeals Court or Supreme Judicial Court would take it off the hook or, if not, that the state would make Holden whole. Its contract with DCR guarantees it "full payment," the city notes.

"If it is ever finally determined that Holden is entitled to some payment, which we do not expect, we are confident that it will be paid by the commonwealth, and not by Worcester," the city's statement reads in part.

Petrini says he can't be concerned about the financial hardship the \$26.5 million judgment might present to Worcester, noting that his first duty is to his client.

"This case could have been resolved a long time ago and could still be resolved now," he says.

Even with the prospect of an appellate court bringing some finality to the unjust enrichment issue, Petrini knows there is yet another battle between the municipalities looming on the horizon.

"We still have to figure out the charges going forward, which is a whole separate issue," he says.

Issue: MAY 29 2023 ISSUE

YOU MIGHT ALSO LIKE

Crash victim's damages too speculative for federal jurisdiction

May 25, 2023



Defense lawyers laud new standard for challenging pedestrian stops

May 23, 2023



Estate planners basking in glow of lottery winners

May 19, 2023

Copyright © 2023 Massachusetts Lawyers Weekly
40 Court Street, 5th Floor,
Boston, MA 02108
(617) 451-7300

We use cookies on our website to give you the most relevant experience by remembering your preferences and repeat visits. By clicking "Accept", you consent to the use of ALL the cookies.

[Cookie settings](#)