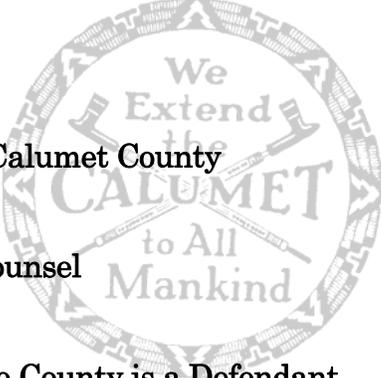


Memorandum

To: Honorable Board of Supervisors, Calumet County
Cc: Jay Shambeau
From: Dawn N. Klockow, Corporation Counsel
Date: June 11, 2012
Re: Status of Current Litigation where County is a Defendant



Honorable Supervisors:

The following is a synopsis of the pending litigation cases where the County is a defendant. Following my last report to the Calumet County Board of Supervisors, there have been several lawsuits filed.

Current Litigation:

1. **Steven Avery v. Kenneth Kratz, et al. 11 CV 1093**
 - a. Nature of the litigation: Steven Avery, a convicted murderer, filed a federal civil rights action for declaratory relief under 42 U.S.C. §§1983, 1985 and 1986 against former District Attorney Kenneth Kratz, John Dederig, William Tyson, Daniel Kucharski, Barbara Van Akkeren, Thomas Gritton and Calumet County alleging that his 3rd, 4th, and 14th Amendment rights were violated. All parties with the exception of Kratz and Gritton are or were either employees of Calumet County or a county elected official. This case revolves around claims that search warrants were improperly signed and executed and that his rights to be free from unreasonable search and seizure were violated. The events that gave rise to this claim stem from the investigation in the murder of Theresa Halbach. He asks for \$1 for every item illegally taken from his property and punitive damages of \$150,000.
 - b. Progress of the Case: Outside counsel has been appointed by our insurance administrator, Aegis Corporation. An Answer to the Complaint was filed on 5/8/2012. This case is in process and is one of five cases that Mr. Avery has filed against the County and its employees and public officials.

- c. This is a completely covered insurance case, subject to the County's \$25,000 deductible, which is held in an escrow account with our insurance carrier WCMIC. I have been informed by our insurance carrier that Underwriting has decided that since Mr. Avery has filed five lawsuits against the County that the County will only be charged one \$25,000 deductible per policy year for the filed Avery cases. This case and case number 12 CV 71(below) are both under the 2005 policy year; therefore, per the information I have from Aegis Corporation, the County is liable for \$25,000 for both of these cases or \$12,500 per case.

2. **Steven Avery v. Calumet County, et al. 12 CV 71**

- a. Nature of the litigation: Steven Avery, a convicted murderer, filed a federal civil rights action for declaratory relief under 42 U.S.C. §§1983, 1985 and 1986 against former District Attorney Kenneth Kratz, former Attorney General Peggy Lautenschlager, R. Nick Stahlke, Sherry Culhane, Kim J. Skorlinski, Thomas Fassbender, Mark Wiegert, Wendy Baldwin, Gerald Pagel, Barbara Van Akkeren and now retired, Judge Donald A. Poppy, alleging that his 4th and 14th Amendment rights were violated. Defendants Wiegert and Baldwin are employees of the Sheriff's Department. Defendants Van Akkeren and Poppy are elected officials of the County. Mr. Avery contends that Calumet County employees violated his rights to be free from unreasonable search and seizure due to the confiscation of two vehicles for an evidentiary search and resulting damage to said vehicles. The events that gave rise to this claim stem from the investigation in the murder of Theresa Halbach. He demands \$455 in compensatory damages to his vehicle and loss of gasoline, and punitive damages in the sum of \$250,000.
- b. Progress of the Case: Outside counsel has been appointed by our insurance administrator. An Answer to the Complaint was filed on 5/8/2012. This case is in process and is one of five cases that Mr. Avery has filed against the County and its employees and public officials.
- c. This is a completely covered insurance case, subject to the County's \$25,000 deductible, which is held in an escrow account with our insurance carrier WCMIC. I have been informed by our insurance carrier that Underwriting has decided that since Mr. Avery has filed five lawsuits against the County that the County will only be charged one \$25,000 deductible per policy year for the filed Avery cases. This case and case number 11 CV 1093 (above) are both under the 2005 policy year; therefore, per the information I have from Aegis Corporation, the County is liable for \$25,000 for both of these cases or \$12,500 per case.

3. **Steven Avery v. Mark Wiegert, et al. 12 CV 52**

- a. Nature of the litigation: Steven Avery, a convicted murderer, filed a federal civil rights action for declaratory relief under 42 U.S.C. §§1983, 1985 and 1986 against Mark Wiegert, former District Attorney Kenneth Kratz, Wendy Baldwin,

Lynn Zigmunt, Patrick Willis, Calumet County and Manitowoc County, Wisconsin alleging that his 1st, 4th, and 14th Amendment rights were violated. Mr. Avery claims that warrants were defective and that his privacy rights were violated. He claims nominal damages of \$1 for each item that he alleged was illegally taken and \$1 for each day that a camera was illegally held, and punitive damages of \$50,000.

- b. Progress of the Case: Outside counsel has been appointed by our insurance administrator. An Answer to the Complaint was filed on 5/8/2012. This case is in process and is one of five cases that Mr. Avery has filed against the County and its employees and public officials.
 - c. This is a completely covered insurance case, subject to the County's \$25,000 deductible, which is held in an escrow account with our insurance carrier WCMIC. I have been informed by our insurance carrier that Underwriting has decided that since Mr. Avery has filed five lawsuits against the County that the County will only be charged one \$25,000 deductible per policy year for the filed Avery cases. This case and case numbers 12 CV 192 and 12 CV 193 all fall under the 2005 policy year ; therefore, per the information I have from Aegis Corporation, the County is liable for \$25,000 for all three cases or \$8,333.33 per case.
4. **Steven Avery v. Gerald Pagel, et al. 12 CV 192**
- a. Nature of the litigation: Steven Avery, a convicted murderer, filed a federal civil rights action for declaratory relief under 42 U.S.C. §§1983, 1985 and 1986 against Gerald Page, John Byrnes, Gary Hemauer, Calumet County and Correctional Officer(s) John Doe(s) alleging that his 1st, 4th, 5th, 9th and 14th Amendment rights were violated. He alleges a violation of his rights to privacy stemming from a strip search for evidence of defensive wounds on his person during the investigation of the murder of Theresa Halbach. He also claims a violation of his rights for being placed in segregation and a denial of telephone access while in the Calumet County jail. Mr. Avery asks for nominal damages of \$1 for every instance his rights were violated and punitive damages of \$15,000,000.
 - b. Progress of the Case: An Answer was filed on June 5, 2012. This case is in the beginning stages.
 - c. This is a completely covered insurance case, subject to the County's \$25,000 deductible, which is held in an escrow account with our insurance carrier WCMIC. I have been informed by our insurance carrier that Underwriting has decided that since Mr. Avery has filed five lawsuits against the County that the County will only be charged one \$25,000 deductible per policy year for the filed Avery cases. This case and case numbers 12 CV 52 and 12 CV 193 all fall under the 2005 policy year ; therefore, per the information I have from Aegis

Corporation, the County is liable for \$25,000 for all three cases or \$8,333.33 per case.

5. Steven Avery v. Manitowoc County, et al. 12 CV 193

- a. Nature of the litigation: Steven Avery, a convicted murderer, filed a federal civil rights action for declaratory relief under 42 U.S.C. §§1983, 1985 and 1986 against Manitowoc County, Wendy Baldwin, former District Attorney Kenneth Kratz, Patrick Willis, Lynn Zigmunt and Calumet County alleging that his 3rd, 4th, and 14th Amendment rights were violated. He alleges his right to be free from unreasonable search and seizure were violated to due to a defective warrant that was executed and damage to his rental property, which he was responsible for. Mr. Avery asks for \$1 in nominal damages for each item illegally taken , compensatory damages of \$30,000 and punitive damages of \$500,000.
- b. Progress of the Case: An Answer was filed on June 5, 2012. This case is in the beginning stages.
- c. This is a completely covered insurance case, subject to the County's \$25,000 deductible, which is held in an escrow account with our insurance carrier WCMIC. I have been informed by our insurance carrier that Underwriting has decided that since Mr. Avery has filed five lawsuits against the County that the County will only be charged one \$25,000 deductible per policy year for the filed Avery cases. This case and case numbers 12 CV 52 and 12 CV 192 all fall under the 2005 policy year ; therefore, per the information I have from Aegis Corporation, the County is liable for \$25,000 for all three cases or \$8,333.33 per case.

6. William Gerhartz v. David Richert and Bill Tyson, 12 CV 38

- a. Nature of the litigation: The is a federal action under 42 U.S.C. §1331(a) and 1343 which alleges that defendants Richert and Tyson did not have probable cause to draw blood at a hospital. Defendant was convicted in state court of operating a motor vehicle under the influence of an intoxicant 5+ offense and lost his probable cause argument in state court. His complaint requests damages, costs, fees and punitive damages, but does not list an amount.
- b. Progress of the Case: This case was referred to our insurance administrator and is a covered case. Outside defense counsel filed the Answer to the Amended Complaint on May 14, 2012, along with a Motion to Dismiss or change venue to the Eastern District of Wisconsin. A briefing schedule has been set up and the Defendant has until June 6, 2012, to submit his brief in opposition to the change of venue and the County has until June 18th to respond.
- c. This is a completely covered insurance case, subject to the County's \$25,000 deductible, which is held in an escrow account with our insurance carrier WCMIC.

7. **James Gleason v. Presto, et al. 11 CV 512**

- a. Nature of the litigation: The lawsuit alleges that Officer Steven Presto (New Holstein PD), and Deputies Lemieux and Meyer violated Mr. Gleason's civil rights during a traffic stop and search. Deputies Meyer and Lemieux were assigned to assist Officer Presto under mutual aid. Officer Presto requested help on a call where he was following a vehicle where a subject individual, who could not possess a gun, allegedly had possession of a gun in the vehicle. Once the vehicle was stopped and it was determined that the subject individual was not in the car, officers ordered Mr. Gleason out of the car and searched it, despite the fact he did not give them permission to search his vehicle. Mr. Gleason alleges that his 2nd and 14th Amendment rights were violated. He asks for damages and a declaration that he is able to carry a concealed weapon in his car due to the fact that he is a correctional officer.
- b. Progress of the Case: Answers have been filed along with motions and briefs for summary judgment. We are awaiting the Court's decision on the competing motions for summary judgment.
- c. This case was referred to the City of New Holstein for defense by our insurance administrator, Aegis Corporation, since the Calumet County Deputies were acting at the request of the City of New Holstein under the doctrine of mutual aid. The County has no monetary liability in this case.

I will continue to keep the Board informed of all major developments in these cases.