

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: **CITY ATTORNEY REPORT**

DATE: October 23, 2014

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The following is my report to the City Council on several issues in which our office has been engaged since the last Council meeting:

1. Owens-Brockway. As I know you are now all aware, the Michigan Court of Appeals issued an Opinion dated October 21, 2014, in which it affirmed the decision of the trial court in dismissing Owens-Brockway's Complaint, and granting the City's relief in its Counter Complaint in the amount of \$4,015,875. I reviewed the Court of Appeals' Opinion and while obviously being very pleased, I believe that it is a very well written and well thought out opinion which will greatly assist the City when, as I anticipate, Owens-Brockway appeals this to the Michigan Supreme Court. The Opinion demonstrates a clear balance, as it rejected an argument that I made as it relates to a procedural doctrine called *res judicata*.

The Court then looked at the substantive issues and held in the City's favor on all of the issues raised by Owens-Brockway. While Owens-Brockway tried to create issues of law, where the judges in the Court of Appeals and the Supreme Court can review without regard to the lower court's ruling on the law, the Court of Appeals found the significant issues to be questions of fact. Questions of fact are recognized to be the domain of the trial court and are to be given special deference by the appellate courts. Only when an appellate court finds that it is left with a definite and firm conviction that a mistake has been made as it relates to findings of facts, will the appellate court reverse the decision of the trial court. In this case, the Court of Appeals found that the factual findings of the trial court were well supported by the evidence produced by the City and those factual findings were affirmed.

At this point, Owens-Brockway has 21 days within which to file a Motion for Reconsideration (which they may do in this case) or, within 42 days file an Application for Leave to Appeal. It is my expectation that Owens-Brockway will continue the litigation. I have discussed this with the City Manager and I would like to attend the November 24, 2014 meeting to further discuss this decision, and its prospects in the Michigan Supreme Court. By that time, we will know whether Owens-Brockway filed a Motion for Reconsideration or will proceed directly to the Michigan Supreme Court.

2. Jared Rockafellow v City of Charlotte. I have met with Thomas Meagher, of Foster, Swift, Collins & Smith, P.C., who is representing the City, and with the City Manager to discuss the status of the case. I am in the process of filing my appearance and will begin participating in the preparation of this case for trial. I would also like to discuss the status of this case with the City Council at the November 24 meeting.

TMH:ddy