

COMMONWEALTH OF MASSACHUSETTS

S.J.C. No. FAR-_____

APPEALS COURT NO. 2023-P-0794
WORCESTER, SS. SUPERIOR COURT DEPT.
NO. 1385CV00910

TOWN OF HOLDEN

v.

DEPARTMENT OF CONSERVATION AND RECREATION
AND THE CITY OF WORCESTER

**DEFENDANT/APPELLANT/CROSS-APPELLEE
CITY OF WORCESTER'S APPLICATION FOR
FURTHER APPELLATE REVIEW**

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REQUEST FOR FURTHER APPELLATE REVIEW

Defendant/Appellant/Cross-Appellee, the City of Worcester ("Worcester" or the "City") hereby requests that this Court grant further appellate review of the decision issued by a panel of the Appeals Court ("Panel") in Town of Holden v. Department of Conservation and Recreation & another, Appeals Court No. 23-P-794.

The Panel's decision announces a new principle of law in Massachusetts that contradicts hundreds of years of uniform precedent across the country: that a party to a contract may be held liable for unjust enrichment for strictly complying with its contractual obligations. The Panel's decision affirming a judgment in equity against Worcester for complying with its contractual responsibilities creates an untenable choice for contracting parties: comply with your contractual obligations and risk being held liable for unjust enrichment or breach your contract and be held liable for breach of contract. This Court should grant further appellate review because the precedent set by the Panel upends basic principles of freedom of contract that are fundamental to the order of economic and business affairs in the Commonwealth.

In 1999, the Town of Holden ("Holden") contracted with the Massachusetts Department of Conservation and Recreation ("DCR") for DCR to transport Holden's sewage to a wastewater treatment plant in Milbury. Separately, in 2000, DCR contracted with Worcester to accept sewage from DCR's sewer pipes and transport it through Worcester's sewer system to the treatment plant (the "SUA"). Worcester and DCR agreed on a price for Worcester's services and included it in the SUA. It is undisputed that Worcester provided those services and billed DCR exactly in compliance with the SUA.

In 2013, Holden sued DCR for overcharging it and thus breaching the 1999 contract between them. Holden also sued Worcester, claiming that what Worcester charged DCR under the SUA was excessive and "unfair" and that Worcester had thus been unjustly enriched. At trial, it was determined that DCR had breached its contract with Holden but that Holden had waived that claim. It was also determined that Worcester was unjustly enriched by the payments it received under the SUA and judgment entered requiring Worcester to relinquish substantial portions of what it had been paid under the SUA and pay them over to Holden. The

Panel affirmed, holding that the SUA would not be enforced as written and that Worcester could not charge DCR the contractual rate but instead that equity allowed Worcester only to bill and collect only what the Superior Court determined to be "fair."

This is the first case in the history of the Commonwealth where a court has allowed a nonparty to a contract (here Holden) to utilize an unjust enrichment claim to deprive a party with contract rights (here Worcester) of those rights, even though the contract (here the SUA) was valid and enforceable. In affirming this result, the Panel rejected settled law and established three new legal principles:

First, that receipt of what one is expressly owed under a valid and enforceable contract can be unjustly received.

Second, that upon being challenged by a claim for unjust enrichment, the terms of a valid contract will only be enforced to the extent the jury or Court determines them to be "fair."

Third, that a party (here Holden) holding a legal remedy against another party (here DCR) may nevertheless pursue an equitable claim (here unjust

enrichment) against a third party (here Worcester) to recover the same damages for the same injury.

The Panel's decision sets a perilous precedent that a party who performs and accepts payments expressly due under a valid and enforceable contract may nonetheless be held liable in equity to surrender those payments to a nonparty that believes the contract is unfair.

These are issues of first impression with implications that are of such public interest that justice requires intercession and a final determination by this Court. See G.L. c. 211A, § 11.

This Court should reject the Panel's holding and confirm that Massachusetts law requires the courts to enforce the terms of freely negotiated contracts and that claims in equity may not trump those terms. Absent a clear enunciation from this Court, the Panel's decision is certain to create significant uncertainty regarding the rights of Massachusetts parties to rely on their contracts and will spur

litigation challenging the “fairness” of freely bargained for contracts.¹

STATEMENT OF PRIOR PROCEEDINGS²

Holden’s Complaint sought recovery against DCR and Worcester for the same purported injury and for the same damages. Holden claimed that DCR had overcharged it and thus breached its 1999 contract with DCR under which DCR agreed to collect and transport Holden’s sewage (“Holden-DCR Contract”). The Complaint asserted an unjust enrichment claim against Worcester, alleging that Worcester’s receipt of payments under the SUA constituted unjust

¹ Worcester acknowledges that the Panel’s decision is unpublished pursuant to Appeals Court Rule 23.0 and therefor does not constitute a binding precedent for the Commonwealth. However, as a practical matter, Rule 23.0 decisions are routinely cited in the Superior Court by attorneys and are routinely quoted, cited, and relied upon by Superior Court judges in support of their decisions. E.g., Betancur v. City of Boston, No. 2484CV01695-C, 2025 WL 694630, at *1 (Mass.Super. Feb.07,2025) (Gordon, J.); Bourgeois v. Barry Desruisseaux, No. 2085CV01239, 2022 WL 22945461, at *1 (Mass.Super. July 11,2022) (Kenton-Walker, J.); Amaral v. Rodriguez, No. 2173CV00418, 2021 WL 5764501, at *1 (Mass.Super. Oct. 19,2021) (Cowin, J.). The Panel’s decision has already received widespread publicity.

² A copy of the docket entries in both the Superior Court and the Appeals Court are attached hereto as Exhibit 1 and Exhibit 2.

enrichment. Holden made these claims against Worcester even though Holden was not a party to the SUA and Worcester only billed DCR and Worcester was paid exactly what was due under the SUA.

After a trial, it was determined that DCR breached the Holden-DCR Contract and Worcester was held liable in equity for the amount that DCR overcharged Holden. The Panel affirmed the judgment of the Superior Court in a decision pursuant to Appeals Court Rule 23.0. The Panel compounded on the legal errors of the Superior Court and stated new law, holding (1) that Worcester's receipt of payments to which it was contractually and lawfully entitled constituted unjust enrichment, (2) that the factfinder in an unjust enrichment claim may determine the fairness of contractual entitlements and obligations, and revise them, even when the validity of the contract is not at issue, and (3) that a litigant may elect to pursue an equitable remedy even when, as the jury found, it had an adequate remedy at law.³ A true and accurate copy of the Appeals Court Rescript is

³ Worcester has not sought reconsideration or modification in the Appeals Court.

attached hereto as Exhibit 3 and a true and accurate copy of the Panel's decision is attached hereto as Exhibit 4.

Additionally, as Required by Mass R. App. P. 27.1(b), a copy of the Holden-DCR Contract is attached here as Exhibit 5, a copy of the SUA is attached hereto as Exhibit 6, and a copy of the trial judge's findings of fact and conclusions of law is attached hereto as Exhibit 7.

STATEMENT OF FACTS

This case turns on two independent DCR contracts involving the transport of sewage: one with Holden (the Holden-DCR Contract) and one with Worcester (the SUA). DCR built sewage transport pipes (the "Interceptors") that connected on one end to several municipal sewer systems, including Holden's, and at the other end to Worcester's sewer system. Worcester's system connects to a treatment plant in Milbury (the "Treatment Plant") which adjoins Worcester, making it possible to transport sewage from the Interceptors through Worcester's sewer system to the Treatment Plant.

In 1999, Holden and DCR entered into the Holden-DCR Contract establishing what DCR would charge Holden

to accept and transport Holden's sewage. Worcester was not a party to the Holden-DCR Contract. See Exhibit 5.

In order to be able to transport sewage that it collected from Holden and other municipalities⁴ to the Treatment Plant, DCR negotiated the SUA with Worcester in the year 2000, pursuant to which Worcester agreed to accept sewage from DCR's Interceptors and to transport it through Worcester's sewer system to the Treatment Plant. Worcester had no obligation whatsoever to do so, and only agreed to do so in exchange for receiving the fees negotiated and outlined in the SUA. See Exhibit 6.

The SUA referred explicitly to St. 1932 c. 262, §9, which "authorizes [DCR] to make 'mutually agreed upon' payments to Worcester for Worcester's receiving and disposing of wastewater from the [Interceptors]." The SUA also recited that the intent of the parties in entering the SUA was to include a "revised method of computing a sewer use rate" and therefore to "develop

⁴ Sewage from both West Boylston and Rutland was also collected and transported through DCR's Interceptors pursuant to their own contracts with DCR. Neither Town was a party to this litigation.

a rate to charge [DCR] for transport of towns wastewater in order to cover the cost of operation, maintenance and repair" of Worcester's sewer system. Exhibit 6 at §§4A. & B.

DCR and Worcester negotiated for more than one year before eventually agreeing to the "transport rate" "to be billed to [DCR] by [Worcester] for transport of sewage from the [Interceptors.]" Exhibit 6 at §4.2. The formula was set forth in Exhibit F to the SUA. In consideration for payment of that transport rate, Worcester agreed to "receive, transport, and convey [DCR] wastewater . . . from [DCR's] points of connections . . . to the Treatment Plant."⁵ Holden was not a party to the SUA and the SUA

⁵ The Panel's decision conflated the entirely independent contracts which are involved here. The Panel wrote that pursuant to the SUA, "Worcester agreed to 'receive, transport and convey [Holden's] wastewater . . . from points of connections . . . to the Treatment Plant." Exhibit 4 at p. 5. This was incorrect. The actual language from the SUA correctly stated that Worcester agreed to "receive, transport and convey **MDC** wastewater . . . from points of connections . . . to the Treatment Plant." Exhibit 6 at § 1.1 (emphasis added). MDC is DCR's predecessor and MDC wastewater as defined in the SUA refers to all of the wastewater that DCR collected from multiple municipalities, not just wastewater from Holden. Worcester never agreed to "receive, transfer and convey" anything from Holden. Its arrangement was

specifically disclaimed any third-party rights. See Exhibit 6.

As the SUA mandated, Worcester calculated what DCR owed it and billed DCR accordingly. DCR paid those bills using funds received from the towns that sent sewage into its Interceptors, including Holden.⁶ Worcester billed and was paid exactly what was due under the SUA, and not a penny more.

In 2013, Holden brought this lawsuit claiming (1) that DCR had breached the Holden-DCR Contract by overcharging what the Holden-DCR Contract allowed and (2) that Worcester was unjustly enriched because the amount it charged DCR was unfair and part of what it received under the SUA was moneys that DCR had overcharged Holden. See Exhibit 1 and Exhibit 2. Holden claimed that the "transport rate" negotiated between Worcester and DCR and incorporated into the SUA (to which Holden was not a party) was unfair and

only with the Commonwealth and the SUA disclaimed any third-party rights. Exhibit 6 at pp. 1, 11, 13.

⁶ As noted above, DCR's Interceptors collected and transported sewage from multiple municipalities, not just Holden, pursuant to independent contracts between it and those towns.

that *Worcester* should have to return to Holden part of what *Worcester* received from DCR under the SUA.

At trial, it was determined that DCR had a valid contract with Holden and that DCR breached that contract "each time that DCR billed, and Holden paid, on a quarterly basis, invoices for wastewater transport costs" but that Holden waived this claim by its delay in bringing suit. There was also a finding that the transport rate which DCR had agreed to pay *Worcester* was unjust and that *Worcester* had therefore been enriched unjustly in the amount of \$14,604,237, which is approximately the same amount that Holden's expert opined that DCR had overcharged Holden. The Court entered a final judgment, including costs and prejudgment interest, in the total amount of \$25,976,195, noting the "number should be adjusted upward by \$4801.39 for each day that passes after December 31, 2022, until final judgment entered."

In a decision that necessarily has a substantial financial impact on residents and taxpayers in multiple municipalities throughout the greater *Worcester County* area, the Panel affirmed the Superior Court judgment.

**Statement of Points with Respect to Which Further
Appellate Review is Sought**

Further appellate review is necessary with respect to at least three issues pertinent to the judgment against Worcester on Holden's unjust enrichment claim: (i) Worcester was contractually entitled to receive what it was paid and, therefore, such enrichment cannot as a matter of law be considered "unjust", (ii) freely bargained contracts should not be subjected to collateral attack by nonparties on "fairness" grounds via an unjust enrichment claim, and (iii) Holden impermissibly elected an equitable remedy where it had an adequate remedy at law against DCR for the same injury.⁷

⁷ These issues do not constitute an exhaustive list of what Worcester raised in its appeal. Other issues, including, but not limited to, the award of prejudgment interest were incorrectly decided by the Appeals Court which also warrant this Court's attention. However, recognizing that further appellate review is warranted for substantial reasons affecting the public interest and the interest of justice, Worcester has focused this application on the issues having the greatest consequence beyond this case. Worcester emphasizes however, the need for the Court to consider the entirety of this case if further appellate review is allowed.

**Statement of Reasons Why Further Appellate
Review Is Appropriate**

The Panel's decision radically departs from firmly established and nearly universally accepted principles regarding the intersection of contract law and equity. It upends centuries of settled law relating to freedom of contract upon which our economic and social systems are based. If left to stand, the Panel's decision will destabilize reliance on negotiated contracts and encourage third-party litigation challenging the "fairness" of freely negotiated contracts. This Court's intervention is needed to reaffirm that Massachusetts courts are not in the business of rewriting privately negotiated contracts to conform to a judge or jury's perception of "fairness" and that parties are entitled to rely on the terms of a negotiated agreement without risk of being stripped of its benefits based on the opinion of a judge or jury that it was a bad or "unfair" deal.

I. **The Panel's Decision Created New Law by Holding That a Party May Be Unjustly Enriched By Accepting Payments Owed Under A Contract**

Here, the Panel affirmed a determination that Worcester was unjustly enriched by receiving payments from DCR that it was contractually entitled to receive

under the SUA. In doing so, the Panel failed to address or even acknowledge case law from across the country holding that a party cannot as a matter of law be unjustly enriched by receiving something that it was legally entitled to receive under a contract.

E.g. Huckabee v. Meta Platforms, Inc., No. CV 24-773-GBW, 2025 WL 1744357, at *9 (D. Del. June 24, 2025) (“One is not unjustly enriched by receipt of that to which he is legally entitled...”); Schaaf v. Residential Funding Corp., 517 F.3d 544, 544 (8th Cir. 2013)

(quoting Dan B. Dobbs, *Law of Remedies* § 4.1(2), at 558 (2d ed.1993)) (“unjust enrichment does not occur when a defendant ‘is enriched by what he is entitled to under a contract or otherwise.’”); Whitley v. Irwin, 250 Ark. 543, 550 (1971) (“One is not unjustly enriched by receipt of that to which he is legally entitled”); Smith v. Whitener, 42 Ark. App. 225, 228 (1993) (“To find unjust enrichment, a party must have received something of value to which he is not entitled”). See also Air Evac EMS, Inc. v. USAble Mut. Ins. Co., 931 F.3d 647, 655 (8th Cir. 2019)

(“Arkansas Blue was not unjustly enriched because it was acting in accordance with its ‘contractual right[s].’”); State Farm Fire & Cas. Co. v. Silver

Star Health & Rehab, 739 F.3d 579, 584 (11th Cir.

2013) (a party may be held liable for unjust enrichment only if it "accepts and retains benefits that *it is not legally entitled to receive in the first place*").

The Panel's decision makes Massachusetts unique in holding that a party can be enriched unjustly by receiving exactly what it is entitled to receive under a contract. Such a holding subverts basic contract law that is the foundation of our economy and society. The Panel's disregard of the rule that contractual benefits cannot constitute unjust enrichment is novel and underscores the need for this Court's attention.

If the Panel's decision were to be the law of the Commonwealth, the validity of every payment that any party receives under any contract becomes uncertain. This cannot be the law of the Commonwealth and a decision implying as much eviscerates the ability to rely on the terms of freely negotiated contracts in Massachusetts.

II. The Panel's Decision Upends This Court's Precedent Enforcing Contracts According to Their Terms and Instead Allows Courts and Juries to Rewrite Contracts Based on Perceptions About "Fairness"

The Panel's decision also establishes that contracts no longer require enforcement according to

their negotiated terms but instead may be voided or rewritten if they are determined to be "unfair." This holding diverges from this Court's repeated, and recent, binding precedent.

At trial, there was no question (and no one disputed) that Worcester and DCR entered a valid and binding contract and that Worcester billed DCR accurately according to the formula in that contract (the SUA). "Massachusetts law does not permit litigants to override an express contract by arguing unjust enrichment." Platten v. HG Bermuda Exempted Ltd., 437 F.3d 118, 130 (1st Cir. 2006); Shaulis v. Nordstrom, Inc., 865 F.3d 1, 16 (1st Cir. 2017) (same). "'[T]he general rule of our law is freedom of contract . . . [and] it is in the public interest to accord individuals broad powers to order their affairs through legally enforceable agreements' . . . even where, as here, the enforcement of the contract appears to produce harsh results." Cummings Props., LLC v. Hines, 492 Mass. 867, 869 (2023). This Court has recognized that unequal bargaining positions do not render contracts unenforceable or unjust—even if the negotiated terms heavily favor one party. Indeed this Court has stated that "[h]ard bargaining is not

unlawful; it is 'not only acceptable, but indeed, desirable, in our economic system, and should not be discouraged by the courts.'" See, e.g., Cabot Corp v. AVX Corp., 448 Mass. 629, 639 (2007).

Nonetheless, the Panel held that the Superior Court was justified in disregarding the SUA because it was "unfair," notwithstanding that the SUA was the product of an extended negotiation, based on mutual consideration, disclaimed any third-party rights, and neither DCR or Worcester ever challenged its validity or fairness.

The Panel held, without any controlling authority from this Court or any other, "that freedom of contract principles did not compel the judge to enforce the May 2000 SUA as written..."⁸ See Exhibit 4 at p. 12. Instead, the Panel held that the unjust enrichment claim could be used by Holden, a nonparty to the SUA, to rewrite the "unfair" payment terms of the SUA. According to the Panel, "Worcester may not

⁸ While the Panel did not provide any citation for this remarkable new statement of law, its decision did contain some citations to public policy considerations, none of which were applicable to the case at bar.

have had any obligation to accept wastewater from another town, but once it took on that obligation, the jury could have found that it had an obligation to be fair to other towns." Exhibit 4 at p. 12.

This holding marks a sea change in Massachusetts law. Pursuant to the SUA, Worcester's obligation was not "to be fair"; its obligation was to invoice DCR according to the transport rate set forth in the SUA - no more and no less. While this Court has refused to enforce certain contracts on public policy grounds, such as where parties contract to avoid the intended effects of an applicable statute, none of those considerations are present here. Indeed, St. 1932 c. 262, §9 expressly authorized Worcester and DCR to negotiate and contract for a transport rate that was mutually agreeable and for DCR "to make such payments and contributions to said [Worcester] as shall be mutually agreed upon." That is precisely what happened here and yet the Panel held that Worcester could not rely on its contractual rights if the jury believed that the SUA was an "unfair" bargain.

By accepting the finding that the transport rate in the SUA was "unfair" (even though *both* DCR and Worcester agreed to it and did not challenge it), the

Panel held for the first time that Massachusetts law permits a jury to override the terms of an express contract and divest contracting parties of moneys paid in satisfaction of valid contractual obligations based on a theory of unjust enrichment. That remarkable holding, which was premised on the Panel's "public policy considerations," is bold, unsupported, disregards this Court's precedent, and most importantly exposes all Massachusetts contracts to fairness challenges based on unjust enrichment.

The Panel effectively created a new unjust enrichment claim through which parties may employ "fairness" as a public policy standard to void contracts and deprive contracting parties of their valid contractual rights. However, it has never been, and should not now be, the province of Massachusetts judges or juries to determine what contractual terms they believe the parties *should* have agreed upon. As was its right, Worcester only agreed to accept wastewater from DCR because DCR agreed to pay the transport rate that DCR and Worcester negotiated and

mutually agreed upon.⁹ Once it agreed to the SUA and accepted DCR's wastewater, Worcester was entitled to rely on the SUA and be paid according to it - it had no obligation to accept any less and no right to charge more - even if doing so would be more "fair" in the eyes of Holden, the jury, the trial Judge, or the Panel.

Given the Panel's radical deviation from this Court's jurisprudence, this Court's voice is required to reaffirm the importance of enforcing contracts as written and to emphasize that neither courts, nor juries, can be in the business of rewriting contracts and depriving contracting parties the benefit of their bargains - even if those bargains are harsh or "unfair."

III. The Panel Created New Precedent Under Which a Party with a Legal Remedy for an Injury May Elect an Equitable Remedy in Order to Recover the Same Damages For the Same Injury

"[A] party may not seek in equity what he could obtain in an action at law," Frank J. Linhares Co.,

⁹ As noted above, the Panel quoted the SUA in the decision but actually rewrote its terms by replacing the term "MDC" with the term "Holden." Exhibit 4 at p. 5.

Inc. v. Reliance Ins. Co., 4 Mass. App. Ct. 617, 619 (1976). Moreover, “[i]t is the availability of a remedy at law, not the viability of that remedy, that prohibits a claim for unjust enrichment.” Shaulis v. Nordstrom, Inc., 865 F.3d 1, 16 (1st Cir. 2017). See also Tomasella v. Nestlé USA, Inc., 962 F.3d 60, 84 (1st Cir. 2020). While Massachusetts case law establishes that “[a]n equitable remedy for unjust enrichment is not available to a party with an adequate remedy at law,” Tedeschi-Freij v. Percy L. Grp., P.C., 99 Mass. App. Ct. 772, 780 (2021), this doctrine had not been addressed where a party brought a legal claim against one party and an unjust enrichment claim against another seeking the same recovery for the same injury.

The Panel did not specifically recognize this issue of first impression. Instead, it stated that “Holden’s claims were based on distinct injuries by two different parties at different times.” Exhibit 4 at p. 14. However, Holden’s claim at law, a breach of contract claim against DCR, and its equitable claim, an unjust enrichment claim against Worcester, are premised on the exact same purported overcharges by DCR. Holden’s trial counsel specifically argued that

"DCR committed the same wrong" as Worcester and stated that Holden sought the same recovery for the same injury from both DCR and Worcester.

The issue of first impression for this Court to determine is whether a party that has suffered a single injury can elect to pursue an equitable remedy against one party notwithstanding a viable legal remedy against another. This issue is not one that appears to have ever been addressed in a published decision and thus it also demonstrates the reason that further appellate review is warranted.

Conclusion

Further appellate review is appropriate given the Panel's disregard for binding precedent, its announcement of new equitable legal theories which abrogate centuries of law endorsing freedom of contract, and the existence of important issues of first impression which the Panel did not meaningfully address.

It cannot be overstated that, notwithstanding its unpublished status, the Panel's decision states new law and establishes new legal theory under which Massachusetts juries and Courts can rewrite contracts on the basis of fairness and deprive contracting

parties of their contractual entitlements. It further outlines a guide for those with no contractual rights to interfere in others' contracts by claiming unjust enrichment.

Without binding precedential guidance from this Court, there will remain significant questions regarding whether parties can rely on their contracts without risk of being dispossessed of their contractual entitlements based on a third-party's claim of unjust enrichment.

WHEREFORE, Worcester respectfully requests that this Court allow its application for further appellate review.

Respectfully submitted,
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Date: September 8, 2025

COMMONWEALTH OF MASSACHUSETTS

S.J.C. No. FAR-_____

APPEALS COURT NO. 2023-P-0794
WORCESTER, SS. SUPERIOR COURT DEPT.
NO. 1385CV00910

TOWN OF HOLDEN

v.

DEPARTMENT OF CONSERVATION AND RECREATION
AND THE CITY OF WORCESTER

CERTIFICATE OF SERVICE
PURSUANT TO MASS. R. APP. P. 13(E)

I, Michael P. Angelini, certify under the penalties of perjury that on September 8, 2025, I electronically filed the Application for Further Appellate Review of City of Worcester via the Court's electronic filing system, which sent notification of such filing to all registered users therewith.

I also served copies of the Application for Further Appellate Review of City of Worcester via electronic mail to the following:

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CERTIFICATE OF COMPLIANCE
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I, Michael P. Angelini, certify that the foregoing application complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. App. P. 16(a)(13) (addendum);
Mass. R. App. P. 16(e) (references to the record);
Mass. R. App. P. 18 (appendix to the briefs);
Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents);
Mass. R. App. P. 21 (redaction);
Mass. R. App. P. 27.1 (Further appellate review).

I further certify that the foregoing application complies with the applicable length limitation in Mass. R. App. P. 20 and Mass. R. App. P. 27.1(b) because it is produced in the monospaced font Courier New at size 12, which is 10 characters per inch, and contains a brief Statement of Reasons Why Further Appellate Review is Appropriate consisting of 10 total non-excluded pages.

/s/ Michael P. Angelini
Michael P. Angelini

ADDENDUM

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**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

1385CV00910 Town of Holden vs. Department of Conservation and Recreation et al

CASE TYPE: Actions Involving the State/Municipality	FILE DATE: 05/24/2013
ACTION CODE: AB1	CASE TRACK: A - Average
DESCRIPTION: Tortious Action involving the Commonwealth, Municipality, MBTA, etc.	
CASE DISPOSITION DATE: 04/26/2023	CASE STATUS: Suspended-Covid-19
CASE DISPOSITION: Judgment after Jury Verdict	STATUS DATE: 05/24/2013
CASE JUDGE:	CASE SESSION: Civil D

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COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report

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Added Date: 05/11/2022



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

Defendant Department of Conservation and Recreation	Attorney Michael P Angelini Bowditch and Dewey, LLP Bowditch and Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3400 Added Date: 05/11/2022	019340
	Private Counsel Sally A Vander Weele Office Of The Attorney General Office Of The Attorney General One Ashburton Place Trial Division Floor 18 Boston, MA 02108 Work Phone (617) 963-2214 Added Date: 06/03/2013	541950
	Attorney Katherine B Dirks Office of the Attorney General Office of the Attorney General One Ashburton Place Trial Division 18th floor Boston, MA 02108 Work Phone (617) 963-2277 Added Date: 03/13/2017	673674



**COMMONWEALTH OF MASSACHUSETTS
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EVENTS				
Date	Session	Event	Result	Resulting Judge
06/04/2013	Civil D	Hearing on Preliminary Injunction	Rescheduled	
06/11/2013	Civil D	Hearing on Preliminary Injunction	Held as Scheduled	
11/12/2013	Civil D	Rule 56 Hearing	Held as Scheduled	
04/08/2014	Civil D	Rule 16 Conference	Rescheduled	
04/29/2014	Civil D	Rule 16 Conference	Held as Scheduled	
06/25/2014	Civil D	Status Review	Held as Scheduled	
08/07/2014	Civil D	Motion Hearing to Compel	Held as Scheduled	
10/15/2014	Civil D	Status Review	Held as Scheduled	
11/25/2014	Civil D	Hearing for Judgment on Pleading	Rescheduled	
11/25/2014	Civil D	Hearing: Strike	Rescheduled	
11/25/2014	Civil D	Hearing	Rescheduled	
12/02/2014	Civil D	Hearing for Judgment on Pleading	Held as Scheduled	
12/02/2014	Civil D	Hearing: Strike	Held as Scheduled	
12/02/2014	Civil D	Hearing	Held as Scheduled	
12/15/2014	Civil D	Status Review	Held as Scheduled	
01/28/2016	Civil D	Motion Hearing to Amend Deadline	Held as Scheduled	Wrenn
05/26/2016	Civil D	Motion Hearing to Amend Deadline	Rescheduled	Davis
06/09/2016	Civil D	Motion Hearing to Amend Deadline	Rescheduled	Davis
06/23/2016	Civil D	Motion Hearing	Canceled	Davis
06/23/2016	Civil D	Motion Hearing to Amend Deadline	Canceled	Davis
06/23/2016	Civil D	Motion Hearing to Amend Deadline	Held as Scheduled	Davis
06/23/2016	Civil D	Motion Hearing	Held as Scheduled	Davis
11/17/2016	Civil D	Final Trial Conference	Canceled	Davis
11/17/2016	Civil D	Rule 56 Hearing	Held as Scheduled	Ricciardone
12/20/2016	Civil D	Final Pre-Trial Conference	Canceled	Ricciardone
05/23/2019	Civil D	Rule 16 Conference	Rescheduled	Reardon
06/11/2019	Civil D	Rule 16 Conference	Rescheduled	Reardon



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06/11/2019	Civil B	Rule 16 Conference	Held as Scheduled	Ricciardone
02/11/2020	Civil D	Final Pre-Trial Conference	Rescheduled	Wrenn
03/05/2020	Civil D	Final Pre-Trial Conference	Not Held	Wrenn
03/05/2020	Civil A	Final Pre-Trial Conference	Held as Scheduled	Wrenn
03/26/2020	Civil D	Conference to Review Status	Rescheduled-Covid-19 emergency	Frison
05/05/2020	Civil D	Final Trial Conference	Rescheduled-Covid-19 emergency	Frison
05/12/2020	Civil D	Jury Trial	Rescheduled-Covid-19 emergency	Frison
06/02/2020	Civil D	Conference to Review Status	Rescheduled-Covid-19 emergency	Yarashus
07/23/2020	Civil D	Conference to Review Status	Rescheduled-Covid-19 emergency	Frison
07/23/2020	Civil D	Conference to Review Status	Held as Scheduled	Frison
03/01/2021	Civil D	Conference to Review Status	Rescheduled	Frison
04/22/2021	Civil D	Conference to Review Status	Held via Video/Phone	Hodge
04/27/2021	Civil D	Final Trial Conference	Not Held	Hodge
05/03/2021	Civil D	Jury Trial	Not Held	Hodge
06/21/2021	Civil D	Trial Assignment Conference	Held via Video/Phone	Hodge
07/12/2022	Civil D	Final Trial Conference	Held as Scheduled	Manitsas
07/25/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
07/26/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
07/27/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
07/28/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
08/01/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
08/02/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
08/03/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
08/04/2022	Civil D	Jury Trial	Held as Scheduled	Manitsas
08/30/2022	Civil D	Conference to Review Status	Rescheduled	Manitsas
09/15/2022	Civil D	Conference to Review Status	Rescheduled	Manitsas
09/21/2022	Civil D	Conference to Review Status	Held as Scheduled	Manitsas
11/02/2022	Civil D	Motion Hearing	Decision rendered Held - Under advisement	Manitsas Manitsas



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INFORMATIONAL DOCKET ENTRIES			
Date	Ref	Description	Judge
05/24/2013	1	Complaint & civil action cover sheet filed	
05/24/2013		Origin 1, Type D99, Track F.	
05/24/2013		Filing fee paid in the amount of \$275 including \$15.00 surcharge and \$20.00 security fee.	
05/24/2013	2	Defendant Department of Conservation and Recreation's MOTION for Preliminary Injunction to place disputed funds in escrow; Memo in support; and Affidavit of Paul D Brinkman in support of Motion	
05/24/2013	3	Affidavit of John R Woodsmall III PE Town of Holden Director of Public Works	
05/24/2013	4	Affidavit of Peter L Mello	
05/24/2013	5	Plaintiff Town of Holden's MOTION for Short Order of Notice	
05/24/2013	6	Plaintiff Town of Holden's MOTION for appointment of special process server Francis J Trapasso & Associates	
05/24/2013		Motion (P#5) ALLOWED (Dennis P. McManus, Clerk) Notices mailed 5/24/2013	
05/24/2013		Motion (P#6) ALLOWED (Dennis P. McManus, Clerk) Notices mailed 5/24/2013	
05/24/2013	6.1	Affidavit of Paul D Brinkman in support of Plff's Motion for Preliminary Injunction	
05/24/2013		Track changed to A, Origin 1, Type E03.	
05/31/2013	7	SERVICE RETURNED (order of notice): Department of Conservation and Recreation 5-28-13 (agent person in charge)	
05/31/2013	8	SERVICE RETURNED (order of notice): Attorney General's office	
05/31/2013	9	SERVICE RETURNED (order of notice): City Hall	
05/31/2013	10	Faxed copy of Assented to Motion to change hearing date for Pliffs Motion for PI from 6/4/13 to 6/11/13	
06/03/2013		Motion (P#10) ALLOWED as requested (Daniel M. Wrenn, Justice) Notices mailed 6/3/2013	
06/11/2013		Hearing on (P#2) held, matter taken under advisement. (Daniel M. Wrenn, Justice)	
06/11/2013		Atty Sally A VanderWeele's notice of appearance for Department of Conservation and Recreation	
06/11/2013		Atty Andrew W Koster's notice of appearance for Department of Conservation and Recreation	
06/11/2013	10.1	Opposition of Deft, Dept of Conservation and Recreation to Pliffs Motion for PI (Re#2)	
06/11/2013	10.2	Opposition of Deft, City of Worcester to Pliffs Motion for PI (Re#2)	
06/11/2013	10.3	Affidavit of Paula Davison	



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06/11/2013	10.4	Rebuttal Affidavit of Paul D Brinkman
06/11/2013	10.5	Affidavit of Matthew J Labovites
06/14/2013	11	Reply Memorandum of Defendant City of Worcester
06/17/2013	12	Defendant Department of Conservation and Recreation's MOTION to strike the expert opinion of Paul D Brinkman and reply memorandum by Department of Conservation and Recreation ;
06/17/2013	12.1	Authenticating Affidavit of Peter L Mello for the Town of Holden 's reply Memo
06/17/2013	12.2	Amended complaint of Town of Holden
06/17/2013	12.3	Court received Pliffs reply to Defts' Oppositions to Pliff's Motion for Preliminary Injunction
06/17/2013	12.4	Plaintiff Town of Holden's MOTION to strike portions of the Affidavits of Paul Davison and Matthew J Labovites filed in court; and Opposition of Defts to Pliffs Motion to strike portions of the Affidavit of Paul Davison
06/17/2013	12.5	Conditional Motion of Pliff to stay the court's decision on the Town's Motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept filed in court
06/17/2013	12.6	Defendant Department of Conservation and Recreation's MOTION to strike the index of essential documents for Holden MPI review
06/19/2013	12.7	Opposition of Deft, DCR to conditional Motion of the Town of Holden to stay the court's decision on the Town's Motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept (Re#12.5)
06/21/2013	13	Pliff's Town of Holden opposition to deft. Department of Conservation and Recreation motions to strike the expert opinion of Paul D. Brinkman and reply and index of essential documents for Holden MPI review (re:#12)
06/26/2013		Motion (P#12) DENIED. Affidavit is accepted for consideration by the court (Daniel M Wrenn, Justice) Notices mailed 7/11/2013
06/26/2013		Motion (P#12.4) DENIED. Both parties have submitted affidavits with legal conclusions. The court is able to sift thru this issue so all affidavits are accepted and the court will determine the weight to give each affidavit (Daniel M Wrenn, Justice) Notices mailed 7/11/2013
06/26/2013		Motion (P#12.5) DENIED as this is a new motion and does not comply with Rule 9A (Daniel M Wrenn, Justice) Notices mailed 7/11/2013
06/26/2013		Motion (P#12.6) DENIED. The court accepts the submission but will not consider the arguments contained in the document (Daniel M Wrenn, Justice) Notices mailed 7/11/2013
06/28/2013		Motion (P#2) DENIED, See Memorandum of Decision of the Court (Daniel M Wrenn, Justice) Notices mailed 7/11/2013



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07/11/2013	14	MEMORANDUM AND DECISION on Plaintiff, Town of Holden's Motion for preliminary injunction to place disputed funds in escrow. CONCLUSION: Based on the Court's above stated findings and discussion, the plaintiff, Town of Holden's Motion for Preliminary Injunction is DENIED. (Daniel M Wrenn, Justice) Entered and copies mailed 7/11/13
07/11/2013	15	ANSWER: Department of Conservation and Recreation(Defendant) (First Amended Complaint)
07/15/2013	16	Request upon clerk to default (55a) re: City of Worcester by Town of Holden
07/16/2013	17	Default (55a) as to defendant City of Worcester. A motion for an assessment of damages and default judgment pursuant to Mass.R.Civ.P.55(b)2 and subject to Mass.R.Civ.P.54(b) and 55(b)4 as amended by 8/14/2013. Copies mailed 7/16/2013 DEFAULT VACATED 7/18/13
07/16/2013	18	Defendant City of Worcester's emergency MOTION to set aside entry of default
07/18/2013		Motion (P#18) ALLOWED (Shannon Frison, Justice) Notices mailed 7/19/2013
07/18/2013	19	ANSWER: City of Worcester(Defendant)
07/18/2013		COUNTERCLAIM of City of Worcester v Town of Holden
07/19/2013	20	Plaintiff's OPPOSITION to Defendant's Emergency Motion to set aside entry of default ; Affidavit of Peter L Mello ; Plaintiff's Request for a hearing (re#18)
08/08/2013	21	ANSWER by Town of Holden to COUNTERCLAIM of City of Worcester
08/09/2013		Atty Wendy L Quinn's notice of appearance for City of Worcester; Certificate of Service
09/23/2013	22	Plaintiff Town of Holden's MOTION for Partial Summary Judgment as to Count 6 of the First Amended Complaint; Memorandum of Law in Support of Plff's motion; City of Worcester's Opposition to Plff's Motion; Consolidated Statement of Material Facts in Support of the Plff's Motion; Joint Appendix Index of Ependix Exhibits; Certification of Notice of Filing; List of documents; Request for Hearing; Certificate of Service
11/12/2013		Hearing on (P#22) held, matter taken under advisement. (Robert L. Ullmann, Justice)
11/12/2013	23	JOINT Motion of parties to amend track designation filed in court
11/12/2013		Motion (P#23) ALLOWED (Robert L. Ullmann, Justice) Notices mailed 11/14/2013



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11/13/2013		Motion (P#22) DENIED without prejudice after hearing as not yet ripe for summary judgment. However, on or before 11/27/13, defendant City of Worcester shall provide a written response to plaintiff's March 29, 2013 public records request, setting forth (1) the categories of requested documents that it is prepared to release; (2) the cost of obtaining one copy of said documents; (3) the categories of requested documents that it is not prepared to release; and (4) the grounds on which said documents are being withheld, e.g., attorney-client privilege, pending administrative pleadings. For guidelines, the City should review Lafferty v Martha's Vineyard Commission, Middlesex Civ. No. 03-3397 (Ma. Super Apr 9, 2004) (Robert L. Ullmann, Justice) Notices mailed 11/14/2013
11/14/2013		Tracking deadlines amended: Motion to amend track from "F" to "A" - All'd; changed in header; Copies mailed 11/14/13
01/02/2014		Atty C. Vered Jona's notice of appearance for Department of Conservation and Recreation
01/02/2014		Atty Andrew W Koster's withdrawal of appearance filed re: Department of Conservation and Recreation
02/20/2014	24	Plaintiff Town of Holden's Motion to Schedule Conference Under Mass R.Civ.P. 16; City of Worcester's Response to Plaintiff's Request; Certification of Notice of Filing; List of Documents;
04/29/2014	25	Court received List of examples of documents not produced by Worcester, to facilitate during the court's conference under MRCP 16 filed in court



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04/30/2014		Motion (P#24) Upon consideration of the parties written submissions and the oral arguments of counsel, it is hereby ORDERED that, on or before May 30, 2014, Worcester shall prepare and serve a supplemental response to the Plaintiff's Requests, and shall search for and produce the following documents to Holden in response to the following specific requests: Request No. 7: Documents sufficient to identify and establish the costs passed on to Holden by Worcester and/or DCR relating to storm water management for the period January 1, 2007 to the present; Request No. 9: Documents sufficient to establish how the Fiscal Year 2014 budget for Worcester's Department of Public Works and Parks (DPW) was created and what it encompasses, including, without limitation, all financial transfers or allocations contained or reflected in such budget; Request No. 10: Documents sufficient to establish the actual annual expenditures by Worcester and/or its DPW for sewer services for the period January 1, 2007 to the present; Request No. 11: All final annual budgets for Worcester's DPW for Fiscal Years 2007 through and including 2013, and all accountings and reconciliations of the actual annual expenditures of Worcester's DPW for the same fiscal years; Request No. 12: Documents sufficient to identify and establish, for the years 1999 to the present, the sewer overflows and sewage flows transported through the Worcester sewer system that did not reach the Upper Blackstone Water Pollution Abatement District treatment plant, including, without limitation, all such flows generated by any commercial, wholesale or municipal customers; and Request No. 15: The 525 pages of documents responsive to this request that were identified in the November 27, 2013 letter from Matthew J. Labovites to Peter L. Mello, Esq. The parties shall appear for a further status conference on June 25, 2014 at 2:00 p.m. Any motions that the parties wish the Court to address at that conference shall be filed with the Court no later than June 23, 2014. (Brian A. Davis, Justice). Notices mailed 5/7/2014
06/09/2014		Atty Brian A. Schwartz's notice of appearance for City of Worcester
06/19/2014	26	Plaintiff Town of Holden's MOTION to compel Attendance of Matthew J Labovites at Continued Deposition; Memo in Support Filed
06/19/2014	26.1	Defendant City of Worcester's MOTION for a Protective Order for the Continued Deposition of Matthew J Labovites
06/19/2014	26.2	City of Worcester's OPPOSITION to Plaintiff's Motion to Compel Attendance of Matthew J Labovites at Continued Deposition and Memo in Support of Worcester's Motion for Protective Order; Plaintiff's Memo in OPPOSITION to Worcester's Motion for a Protective Order; Notice of Filing; Request for Hearing; (re#26, 26.1)
06/19/2014	27	Plaintiff Town of Holden's MOTION to compel Documents and ESI and Rule 37 MOTION for Sanctions and Attorneys' Fees; Memo in Support Filed; City of Worcester's OPPOSITION to Motion; Notice of Filing; Request for Hearing
06/23/2014	28	Defendant City of Worcester's MOTION for leave to File Rule 12 Motion beyond the Tracking Order Deadline; Plaintiff's OPPOSITION to Motion; Plaintiff's Memo in support of Opposition; Notice of Filing; Document Listing;



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06/25/2014		Motion (P#26, 26.1 & 27) (See endorsement of Judge Davis) (Brian A. Davis, Justice). Notices mailed 6/30/2014
06/25/2014		Motion (P#28) ALLOWED. Defendant shall serve any Rule 12(c) motion that it intends to file on or before 8/8/14, and the Plaintiff shall have until 9/12/14 to serve its response. (Brian A. Davis, Justice) Notices mailed 6/30/2014
07/07/2014	29	Plff. Town of Holden's MOTION for Letter Rogatory, affid. Atty. Christopher L. Brown & notice of filing pursuant to Sup. Court Rule 9a
07/08/2014		Motion (P#29) ALLOWED (Daniel M. Wrenn, Justice) Notices mailed 7/9/2014
07/08/2014		Letter Rogatory: (Daniel M. Wrenn, Justice) Original mailed to Petrini & Assoc.
07/08/2014		Commission to take Out of State Deposition: (Daniel M. Wrenn, Justice) Original mailed to Peterini & Assoc.
07/31/2014	30	City of Worcester's Statement Regarding Electronically Stored Information
08/25/2014	31	ORDER establishing protocol for discovery of electronically stored information (See Order) (Brian A Davis, Justice) Copies mailed 8/25/14
08/27/2014	32	Defendant City of Worcester's MOTION for Stay of Electronic Discovery; Memo in Support of Motion; Plaintiff's OPPOSITION to Motion; Plaintiff's Memo in support of Opposition; Notice of Filing; List of Documents;
08/28/2014		re# 32 ORIGINAL MOTION FOR A STAY MAILED TO JUDGE DAVIS IN SUFFOLK SUPERIOR COURT
08/28/2014	33	ORDER establishing protocol for discovery of electronically stored information (See Order) (Brian A Davis, Justice) Copies mailed 8/28/14
09/02/2014	34	Revised Order Establishing Protocol for Discovery of Electronically Stored Information. (See Revised Order) (Davis, J.) Copies mailed 9/2/14
09/18/2014	35	Defendant City of Worcester's MOTION for Judgment on the Pleadings; Memo in Support Filed; DCR's Response to City of Worcester's Motion for Judgment on the Pleadings; Town of Holden's OPPOSITION to Motion; Memo in Support of Opposition; Holden's Request for Hearing; Notice of Filing; Document Listing
09/18/2014	35.1	Plaintiff Town of Holden's MOTION to strike portions of Worcester's Motion for Judgment on the Pleadings; City of Worcester's OPPOSITION to Motion to Strike (re#35)
09/18/2014	35.2	Holden's Rule 56(F) MOTION Relative to Worcester's Motion for Judgment on the Pleadings; City of Worcester's OPPOSITION to Plaintiff's Motion ;(re#35)
09/18/2014		Motion (P#32) DENIED (see attached endorsement) (Davis,, Justice) Notices mailed 9/23/2014



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09/18/2014	36	Denied Endorsement re: defendant City of Worcester's motion to stay electronic discovery (docket # 32) (Brian A Davis, J) copies mailed 9/23/14.
09/30/2014	37	Defendant City of Worcester's emergency MOTION for Clarification and Modification of ESI Order; Memo in Support Filed;
09/30/2014		re# 37 ORIGINAL MOTION FOR A STAY MAILED TO JUDGE DAVIS IN SUFFOLK SUPERIOR COURT
10/06/2014	38	Plaintiff's OPPOSITION to the Defendant's Emergency Motion for Clarification and Modification of ESI Order; Memo in Support Filed (emailed to Judge Davis)
11/04/2014	39	Court received Plaintiff's Request to file abrief reply memorandum to Defendant's Opposition to Plaintiff's Motion to Strike Portions of Worcester's Motion for Judgment on Pleadings
11/04/2014		Motion (P#39) ALLOWED (D Wrenn, Justice) Notices mailed 11/4/2014
11/17/2014	40	Plaintiff's Reply to the Defendant City of Worcester's Opposition to Plaintiff's Motion to Strike Portions of Worcester's Motion for Judgment on the Pleadings (re#35)
12/02/2014		Hearing on (P#35) Deft, City of Worcester's Motion for judgment on the pleadings held, matter taken under advisement. (Shannon Frison, Justice)
12/02/2014		Hearing on (P#35.1) Pliffs Motion to strike held, matter taken under advisement. (Shannon Frison, Justice)
12/02/2014		Hearing on (P#35.2) Pliffs Rule 56(F) Motion relative to Defts Motion for judgment on the pleadings held, matter taken under advisement. (Shannon Frison, Justice)
12/15/2014		Motion (P#37) Preliminary Order regarding Defendant, City of Worcester's Motion for clarification and modification of ESI Order (See Order) (Brian A Davis, Justice). Copies mailed 12/17/2014
01/20/2015	41	Defendant's Report on the status of the dispute regarding electronically stored information (ESI)
01/20/2015	42	Plaintiff's Report regarding the ESI Consultants' meeting and remaining disputed ESI Issues between Holden and Worcester
02/03/2015	43	Defendant Department of Conservation and Recreation's emergency MOTION for an Extension to Complete ESI Discovery in light of the Blizzard
02/11/2015		Motion (P#43) ALLOWED (Daniel M. Wrenn, Justice) Notices mailed 2/12/2015
03/10/2015	44	ORDER Regarding Defendant City Of Worcesters Motion for Clarification and Modification of ESI Order (re:P#37); Worcester's Motion for Clarification is ALLOWED in Part. (See Order) (Brian A. Davis, Justice) copies mailed 3/10/2015.



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03/23/2015	45	MEMORANDUM OF DECISION AND ORDER ON WORCESTER'S MOTION FOR JUDGMENT ON THE PLEADINGS - For the foregoing reasons, the Defendant's Motion for Judgment on the Pleadings is DENIED. (Shannon Frison, Justice) Entered and Copies mailed 3/23/15	
05/20/2015	45.1	General correspondence regarding Plaintiff Town of Holden Status Report Pursuant to Court's Order Dated March 9, 2015	
05/21/2015	46	Received from Defendant Department of Conservation and Recreation: Answer to original complaint;	
05/21/2015	47	General correspondence regarding City of Worcester's status report on ESI	
08/12/2015	48	General correspondence regarding Plaintiff Town of Holden Status Report	
08/17/2015	49	General correspondence regarding City of Worcester's Status Report on ESI	
08/17/2015	50	ORDER: REGARDING HEARING ON FURTHER COMPLIANCE WITH ESI ORDER- (See Order) Copies mailed 8/17/15	Davis
01/08/2016	51	Defendant City of Worcester's EMERGENCY Motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's Counterclaims	
01/08/2016	52	Defendant City of Worcester, Department of Conservation and Recreation's EMERGENCY Joint Motion to extend time for Discovery and Summary Judgment Deadlines	
01/08/2016	52.1	General correspondence regarding letter from Atty Christopher Petrini re: request for leave to file memorandum of law in support of Plff's forthcoming Motion for summary judgment	
01/12/2016	53	Opposition to paper #51.0 Defendants' Emergency Joint Motion to extend discovery and summary judgment deadlines and Worcester's Emergency Motion for leave for an enlargement of time for serving an opposition to Plaintiff's Motion for summary judgment as to Worcester's Counterclaim filed by Town of Holden (re: p# 51, 52)	
01/12/2016	53.1	Affidavit of Peter L Mello Esq.	
01/12/2016	53.2	Request for hearing filed	
		Applies To: Town of Holden (Plaintiff)	
01/13/2016		The following form was generated: Notice to Appear Sent On: 01/13/2016 10:01:53	
01/21/2016	54	Plaintiff Town of Holden's Motion for summary judgment, MRCP 56 as to the City of Worcester's Counterclaim	
01/21/2016	54.1	Town of Holden's Memorandum in support of Motion for Summary Judgment	
01/21/2016	54.2	The parties' Consolidated Statement of Material Facts regarding the Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims	



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01/21/2016	54.3	Affidavit of Christopher L Brown	
01/21/2016	54.4	Plaintiff Town of Holden's Joint Appendix of Exhibits Notice of Filing	
01/28/2016		Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 01/28/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled	Wrenn
02/01/2016		Endorsement on Motion for summary judgment, MRCP 56 (#54.0): Withdrawn Withdrawn by the moving party. Notices mailed 2/1/16	Wrenn
03/21/2016	55	General correspondence regarding Court received Documents from Atty Brown re: outstanding issues	
04/13/2016		Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 05/26/2016 03:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	Davis
04/13/2016		The following form was generated: Notice to Appear Sent On: 04/13/2016 09:30:23	
04/19/2016		Endorsement on Request for leave (#52.1): ALLOWED ALLOWED. The Defendant may, but are not required to submit responses of equal length. Notices Mailed 4/21/16	Davis
04/21/2016		Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 06/09/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	Davis
04/21/2016		The following form was generated: Notice to Appear Sent On: 04/21/2016 15:39:47	
04/21/2016		Attorney appearance On this date Christopher Lee Brown, Esq. added for Plaintiff Town of Holden	
04/21/2016		The following form was generated: Notice to Appear Sent On: 04/21/2016 15:44:39	
05/20/2016	56	Plaintiff Town of Holden's Assented to Motion to Conform Tracking Order Deadlines	



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05/20/2016		Endorsement on Motion to Conform Tracking Order Deadlines (#56.0): ALLOWED (See Order of the Court this day) Tracking order amended. Notices mailed 5/31/16	Davis
05/20/2016	57	ORDER: Tracking Order (See Order) Copies mailed 5/31/16	Davis
06/06/2016	58	Plaintiff Town of Holden's Joint Motion to change tracking order by all parties	
06/15/2016		Endorsement on Motion to change track (#58.0): Other action taken See order of Judge Davis dated 6/15/16. (Attest: Laurie Jurgiel Asst Clerk) Notices Mailed 6/17/16	Davis
06/15/2016	59	ORDER: Order regarding Motion to Change Tracking Order by All Parties (Docket No. 58.0) (See attached Order) Copies Mailed 6/17/16	Davis
06/17/2016		The following form was generated: Notice to Appear Sent On: 06/17/2016 08:33:27	
06/17/2016		Event Result: The following event: Motion Hearing scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date	Davis
06/17/2016		Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date	Davis
06/23/2016		Event Result: The following event: Motion Hearing scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled	Davis
06/23/2016		Event Result: The following event: Motion Hearing to Amend Deadline scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled	Davis
06/24/2016		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 06/24/2016 09:18:58	
06/24/2016		Event Result: The following event: Final Trial Conference scheduled for 11/17/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: By Court prior to date	Davis



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06/28/2016	60	ORDER: Order Following Status Conference (See attached order)	Davis
		Copies Mailed 6/28/16	
08/05/2016	61	Defendant Department of Conservation and Recreation's Request for Leave to File a Memorandum of Law in support of Defendant's Motion for Summary Judgment	
08/15/2016		Endorsement on Request for Leave to File a Memorandum of Law in support of Defendant's Motion for Summary Judgment (#61.0): ALLOWED Notices mailed 8/15/16	Wrenn
08/19/2016	62	Defendant City of Worcester's Motion for Leave to disclose expert beyond Deadline	
08/19/2016	62.1	Opposition to to Motion for Leave to Disclose expert beyond Deadline filed by	
08/19/2016	62.2	Request for hearing filed	
		Applies To: City of Worcester (Defendant)	
08/19/2016	62.3	Rule 9A notice of filing	
		Applies To: City of Worcester (Defendant)	
08/19/2016	62.3	Rule 9A list of documents filed.	
		Applies To: City of Worcester (Defendant)	
08/24/2016		Endorsement on Motion for Leave to Disclose Expert Beyond Deadline (#62.0): ALLOWED As requested. Notices mailed 8/24/16	Wrenn
09/02/2016	63	General correspondence regarding letter requesting leave to file a Memo of Law of up to 30 pages in length	
09/07/2016		Endorsement on Request for Leave to file a Memo of Law of up to 30 pages in length (#63.0): ALLOWED Notices mailed 9/9/16	Wrenn
09/24/2016	64	Department of Conservation and Recreation's Request for leave to leave to file in excess of 12 pages	
09/24/2016		Endorsement on Motion to file a Reply of up to 12 pages (#64.0): ALLOWED	Wrenn
10/06/2016	63.1	Opposition to Request of Defendant Department of Conservation and Recreation's Request to Submit Reply Memorandum in Excess of Five pages in Length filed by Town of Holden	
10/11/2016	65	Plaintiff Town of Holden's Motion for Summary Judgment	
		Applies To: City of Worcester (Defendant)	
10/11/2016	65.1	Town of Holden's Memorandum in support of Motion for Summary Judgment as to City of Worcester's Counterclaims	
10/11/2016	65.2	Opposition to to Holdens Motion for Summary Judgment as to City of Worcester's Counterclaims (re #65) filed by City of Worcester	



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10/11/2016	65.3	Brief filed: Reply Holden's Reply to City of Worcester's Opposition to Holden's Motion for Summary Judgment as to City of Worcester's Counterclaims Applies To: Town of Holden (Plaintiff)
10/11/2016	65.4	Statement of Undisputed Facts (parties consolidated Statement of material facts) Applies To: Town of Holden (Plaintiff)
10/11/2016	65.5	Town of Holden's Joint Appendix of Exhibits Applies To: Town of Holden (Plaintiff); City of Worcester (Defendant)
10/11/2016	65.6	Rule 9A notice of filing Applies To: Town of Holden (Plaintiff); City of Worcester (Defendant)
10/11/2016	67.1	Opposition to to Defendant DCR Motion to strike portion of plaintiffs statement of material facts filed by Town of Holden
10/11/2016	72.3	Opposition to to Defendant Department of conservation and recreation Motion for summary judgment filed by
10/11/2016	76.3	Rule 9A notice of filing Applies To: Town of Holden (Plaintiff)
10/11/2016	66	Plaintiff Town of Holden's Motion for Summary Judgment as to Holden's Claims
10/11/2016	72.6	Brief filed: Reply in support of Defendants (Department of Conservation and recreation's) Motion for Summary judgment DCRS REPLY Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	66.1	Town of Holden's Memorandum in support of Town of Holden's Summary Judgment as to Holden's Claims
10/11/2016	74.2	Rule 9A list of documents filed. Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	66.2	Opposition to Town of Holden's Summary Judgment as to Holden's Claims (re#66) filed by City of Worcester Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)



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10/11/2016	74.3	Rule 9A notice of filing	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	66.3	Opposition to Town of Holden's Summary Judgment as to Holden's Claims (re#66) filed by Department of Conservation and Recreation	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	75.2	Opposition to City of Worcester's Summary judgment filed by Town of Holden	
10/11/2016	66.4	Brief filed: Reply to City of Worcester's Opposition to Town of Holden's Summary Judgment as to Holden's Claims	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	66.5	Brief filed: Reply to DCRS Opposition to Town of Holden's Summary Judgment as to Holden's Claims	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	67	Defendant Department of Conservation and Recreation's Motion to Strike a portion of Plaintiffs Statement of facts	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	67.2	General correspondence regarding City of Worcester's Notice of Joinder of DCRs Motion to strike Portions of Holden's statement of Material facts.	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	68	Plaintiff Town of Holden's Motion to Strike certain Defendant City of Worcester statement of fact, supporting Exhibit and portions of the City of Worcester's MEMO of Law in opposition to Holden's Motion for Summary judgment.	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	68.1	Opposition to Plaintiffs Motion to Strike the Markus Affidavit filed by City of Worcester WORCESTERS CROSS MOTION to Strike.	Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)



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10/11/2016	69	Statement of Undisputed Facts - Parties statement of material facts regarding Holden's Motion for Summary Judgment as to Holden's Claims (Re #66) Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	70	Town of Holden's Joint Appendix of Exhibits (1-55) Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	71	Rule 9A notice of filing Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	72	Defendant Department of Conservation and Recreation's Motion for Summary Judgment Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	72.1	Affidavit of Assistant Attorney General Andrew W Koster in support of The Department Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	72.2	Department of Conservation and Recreation's Memorandum in support of The Department of Conservation Motion for Summary judgment Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	72.4	Affidavit of Christopher Brown in Support of Plaintiff Town of Holden Oppositions to Defendants (Department of Conservation and recreation's) Motion for Summary judgment Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	72.5	Town of Holden's Memorandum in support of Plaintiff Town of Holden Opposition to Defendants (Department of Conservation and recreation's) Motion for Summary judgment Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	72.7	Statement of Undisputed Facts (Department of Conservation and Recreations) Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)



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10/11/2016	73	Defendant Department of Conservation and Recreation's Motion to Strike a Portion of Town of Holden's Additional material facts
		Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	74	Plaintiff Town of Holden's Motion to strike certain defendant Department of conservation and recreations statements of fact and supporting exhibits to defendant Department of conservation and recreations motion for summary judgment
		Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	74.1	Opposition to to plaintiffs motion to strike certain defendant Department of conservation and recreations statements of fact and supporting exhibits to defendant Department of conservation and recreations motion for summary judgment filed by Department of Conservation and Recreation
		Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	75	Defendant City of Worcester's Motion for Summary judgment
		Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	75.1	City of Worcester's Memorandum in support of City of Worcester's Summary judgment
		Applies To: Town of Holden (Plaintiff); Department of Conservation and Recreation (Defendant); City of Worcester (Defendant)
10/11/2016	75.2	Opposition to to Defendants City of Worcester's Summary judgment filed by
10/11/2016	75.3	Town of Holden's Memorandum in support of Defendants City of Worcester's Summary judgment
		Applies To: Town of Holden (Plaintiff)
10/11/2016	75.4	Brief filed: Reply to Holden's Opposition to Worcester's Motion for Summary Judgment
		Applies To: Town of Holden (Plaintiff)
10/11/2016	75.5	Statement of Undisputed Facts (City of Worcester's)
		Applies To: Town of Holden (Plaintiff)
10/11/2016	76	Plaintiff Town of Holden's Motion to Strike certain defendant City of Worcester Statements of fact and supporting Exhibits to Defendant City of Worcester's Motion for Summary Judgment
		Applies To: Town of Holden (Plaintiff)



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10/11/2016	76.1	Opposition to to Plaintiffs Motion to Strike certain defendant City of Worcester Statements of fact and supporting Exhibits to Defendant City of Worcester's Motion for Summary Judgment filed by WORCESTERS CROSS MOTION to strike	
		Applies To: Town of Holden (Plaintiff)	
10/11/2016	76.2	Rule 9A list of documents filed.	
		Applies To: Town of Holden (Plaintiff)	
10/11/2016	77	Department of Conservation and Recreation, City of Worcester's Appendix of Exhibits Volume 1 and 2	
		Applies To: Town of Holden (Plaintiff)	
10/17/2016	78	Opposition to to DCRS Motion to strike a portion of Town of Holden's Additional material Facts with Exhibits A and B (re #74) filed by	
10/17/2016	79	Opposition to City of Worcester Cross Motion to strike and reply to City of Worcester's Opposition to plaintiffs Motion to strike certain statement of facts and supporting exhibits to Worcester Motion for Summary Judgment(re #76.1) filed by	
10/17/2016	80	Opposition to to Worcester's Cross motion to strike and reply to City of Worcester's Opposition to plaintiffs Motion to strike the Markus Affidavit and Markus Opinion Materials.(Re #68.1) filed by	
10/17/2016	81	Opposition to to City of Worcester Notice of joinder to DCRs Motion to strike portions of Holden's Statement of facts (re#67.2) filed by	
11/14/2016	82	Department of Conservation and Recreation's Motion for leave to file an amended answer	
11/14/2016	82.1	Opposition to DCR's Motion for leave to file an amended answer filed by Town of Holden	
11/14/2016	82.2	Rule 9A list of documents filed.	
		Notice of Filing:	
11/17/2016		Matter taken under advisement The following event: Rule 56 Hearing scheduled for 11/17/2016 02:00 PM has been resulted as follows: Result: Held - Under advisement	Ricciardone
12/12/2016	83	Plaintiff Town of Holden's Motion to continue / reschedule an event	
12/12/2016		Endorsement on Motion to continue / reschedule an event (#83.0): ALLOWED Attest: Laurie Jurgiel Asst. Clerk	Ricciardone
		Notices Mailed 12/14/2016	



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12/14/2016	Event Result: The following event: Final Pre-Trial Conference scheduled for 12/20/2016 02:00 PM has been resulted as follows: Result: Canceled Reason: Joint request of parties	Ricciardone
03/13/2017	Attorney appearance On this date Katherine B. Dirks, Esq. added for Defendant Department of Conservation and Recreation	
08/02/2017	Attorney appearance On this date Brian A Schwartz, Esq. dismissed/withdrawn as Private Counsel for Defendant City of Worcester	
12/29/2017	Endorsement on Motion to Strike a Portion of Plaintiff's Statement of Facts (#67.0): DENIED Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017	Endorsement on Motion to Strike a Portion of Town of Holden's Additional Material Facts (#73.0): DENIED Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017	Endorsement on Motion to Strike Certain Defendant City of Worcester Statement of Fact, Supporting Exhibit and Portions of Worcester's Memorandum of Law in Opposition to Holden's Motion for Summary Judgment (#68.0): DENIED Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017	Endorsement on Motion to Strike Certain Defendant Department of Conservation and Recreation Statements of Fact and Supporting Exhibits to Defendant Department of Conservation and Recreation's Motion for Summary Judgment (#74.0): DENIED Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017	Endorsement on Motion to Strike Certain Defendant City of Worcester Statements of Fact and Supporting Exhibits to Defendant City of Worcester's Motion for Summary Judgment (#76.0): DENIED Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017	Endorsement on Motion for Leave to File an Amended Answer (#82.0): DENIED Essentially for reasons expressed in the opposition hereto; see also "omnibus memorandum of decision and order on motion for summary judgment", this date. Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone



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12/29/2017		Endorsement on Motion for Summary Judgment as to City of Worcester's Counterclaims (#65.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017		Endorsement on Motion for Summary Judgment as to Holden's Claims (#66.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017		Endorsement on Motion for Summary Judgment by Defendant Conservation and Recreation (#72.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
12/29/2017		Endorsement on Motion for Summary Judgment by Defendant City of Worcester (#75.0): Other action taken See Memorandum of Decision and Order of Judge Ricciardone dated 12/29/17. Notices mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
01/10/2018	84	MEMORANDUM & ORDER: ON PARTIES' MOTIONS FOR SUMMARY JUDGMENT (OMNIBUS)- ORDER: For the foregoing reasons, this court hereby ORDERS that: Holden's Motion for Summary Judgment as to Worcester's counterclaims (Paper#65) is ALLOWED. Holden's Motion for Summary Judgment as to its claims against DCR (Paper#66) is DENIED. As to Holden's claims against Worcester (Paper#66), Holden's Motion for Summary Judgment is DENIED. The DCR's Motion for Summary Judgment as to Holden's claims (Paper#72) is ALLOWED, as to Count II (violation of Chapter 286) and Count V (unconstitutional tax), and is DENIED, as to all remaining counts against it. Worcester's Motion for Summary Judgment as to its counterclaims (Paper#75) is DENIED. As to Holden's claims against it, Worcester's Motion for Summary Judgment (Paper#75) is ALLOWED, as to Count II (violation of Chapter 286), and is DENIED, as to all remaining counts against it. Entered and Copies mailed 1/10/18 Judge: Ricciardone, Hon. David	Ricciardone
03/26/2018	85	Defendant Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment	
03/26/2018	85.1	Department of Conservation and Recreation's Memorandum in support of Motion for Reconsideration of the Order on Summary Judgment	
03/26/2018	85.2	Opposition to to Defendant Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment filed by Town of Holden	



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03/26/2018	85.3	Town of Holden's Memorandum in support of Plaintiff Town of Holden's Opposition to Defendant Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment
03/26/2018	85.4	Department of Conservation and Recreation's Reply Memorandum in support of its Motion for Reconsideration of the Order on Summary Judgment
03/26/2018	85.5	Rule 9A list of documents filed.
03/26/2018	85.6	Rule 9A notice of filing
04/11/2018	86	Plaintiff Town of Holden's Motion for Partial Reconsideration of Summary Judgment Order
04/11/2018	86.1	Town of Holden's Memorandum in support of Plaintiff Town of Holden's Motion for Partial Reconsideration of Summary Judgment Order
04/11/2018	86.2	Opposition to the Plaintiff's Motion for Reconsideration filed by Department of Conservation and Recreation
04/11/2018	86.3	Opposition to Holden's Motion for Partial Reconsideration of the Summary Judgment Order filed by City of Worcester
04/11/2018	86.4	Plaintiff Town of Holden's Reply to the Defendants' Oppositions to Holden's Motion for Partial Reconsideration of Summary Judgment Order
04/12/2018	86.5	Rule 9A notice of filing Pursuant to Superior Court Rule 9A
04/23/2018	87	Defendant City of Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order
04/23/2018	87.1	City of Worcester's Memorandum in support of City of Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order
04/23/2018	87.2	Opposition to Defendant City of Worcester's Motion for Partial Reconsideration of Summary Judgment Order filed by Town of Holden
04/23/2018	87.3	Town of Holden's Memorandum in support of Plaintiff Town of Holden's Opposition to Defendant City of Worcester's Motion for Partial Reconsideration of Summary Judgment Order
04/23/2018	87.4	Defendant City of Worcester's Reply to Holden's Opposition to Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order
04/23/2018	87.5	Rule 9A notice of filing
04/23/2018	87.6	Rule 9A list of documents filed.
04/30/2018		General correspondence regarding MOTIONS P# 85, 86 & 87 SENT TO RICCIARDONE, J
05/11/2018	88	Plaintiff Town of Holden's Motion to schedule conference under Mass. R. Civ. P. 16



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05/11/2018	88.1	Defendant City of Worcester's Response to plaintiffs notion to schedule a final pre-trial conference	
05/11/2018	88.2	Plaintiff Town of Holden's Reply to the defendant City of Worcester's response to plaintiffs motion to schedule conference under Mass. R. Civ. P. 16	
05/11/2018	88.3	General correspondence regarding affidavit of compliance and NO receipt of Opposition under Superior Court Rule 9A	
05/11/2018	88.4	Affidavit of compliance with Superior Court Rule 9A and certificate of notice of filing	
		Applies To: Town of Holden (Plaintiff)	
05/21/2018		Endorsement on Motion to Schedule Conference Under Mass. R. Civ. P. 16 (#88.0): DENIED Without prejudice at this time pending decision on the outstanding dispositive motions. Notices mailed 5/24/18	Reardon
		Judge: Reardon, Jr., Hon. James G	
11/29/2018	89	General correspondence regarding Court received Correspondence addressed to Judge Ricciardone at the Hampden Superior Court from Attorney Petrini Re: Cross-Motions for Reconsideration	
04/22/2019		Endorsement on Motion for Reconsideration of the Order on Summary Judgment (Defendant Department of Conservation and Recreation) (#85.0): DENIED See court's omnibus memorandum of decision and order. Notices mailed 4/22/19	Ricciardone
		Judge: Ricciardone, Hon. David	
04/22/2019		Endorsement on Motion for Partial Reconsideration of Summary Judgment Order (#86.0): DENIED See court's omnibus memorandum of decision and order. Notices mailed 4/22/19	Ricciardone
		Judge: Ricciardone, Hon. David	
04/22/2019		Endorsement on Motion for Partial Reconsideration of the Summary Judgment Decision and Order (City of Worcester) (#87.0): DENIED See court's omnibus memorandum of decision and order. Notices mailed 4/22/19	Ricciardone
		Judge: Ricciardone, Hon. David	



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04/22/2019	90	MEMORANDUM & ORDER:	Ricciardone
		ON PARTIES' MOTIONS FOR RECONSIDERATION (P.#'s 85,86, and 87)- ORDER: For the foregoing reasons, this court hereby ORDERS that: The Department of Conservation and Recreation's Motion for Reconsideration of the Order on Summary Judgment (Paper# 85) is DENIED. Town of Holden's Motion for Partial Reconsideration of the Order on Summary Judgment (Paper# 86) is DENIED. City of Worcester's Motion for Partial Reconsideration of the Summary Judgment Decision and Order (Paper# 87) is DENIED. The court further ORDERS that this matter be scheduled for Rule 16 conference within thirty (30) days. Entered and Copies mailed 4/22/19	
		Judge: Ricciardone, Hon. David	
04/22/2019		The following form was generated:	
		Notice to Appear Sent On: 04/22/2019 12:52:55	
04/24/2019		Attorney appearance On this date Andrew Walter Koster, Esq. dismissed/withdrawn as Private Counsel for Defendant Department of Conservation and Recreation	
04/24/2019		Attorney appearance On this date Peter D McCarthy, Esq. added for Defendant Department of Conservation and Recreation	
05/15/2019		Event Result:: Rule 16 Conference scheduled on:	Reardon
		05/23/2019 02:00 PM	
		Has been: Rescheduled	For the following reason: By Court prior to date
		Hon. James G Reardon, Jr., Presiding	
		Staff:	
		Laurie Jurgiel, Assistant Clerk Magistrate	
05/15/2019		The following form was generated:	
		Notice to Appear Sent On: 05/15/2019 10:18:46	
06/11/2019		Event Result:: Rule 16 Conference scheduled on:	Reardon
		06/11/2019 02:00 PM	
		Has been: Rescheduled	For the following reason: Transferred to another
		session	
		Hon. James G Reardon, Jr., Presiding	
		Staff:	
		Laurie Jurgiel, Assistant Clerk Magistrate	
06/11/2019		Event Result:: Rule 16 Conference scheduled on:	Ricciardone
		06/11/2019 02:00 PM	
		Has been: Held as Scheduled	
		Comments: FTR Room 19	
		Hon. David Ricciardone, Presiding	
		Staff:	
		Gregory Benoit, Assistant Clerk Magistrate	
		Gail Dempsey, Assistant Clerk Magistrate	



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06/11/2019		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 06/11/2019 14:38:45	
06/19/2019		Attorney appearance On this date Michael K Terry, Esq. added for Plaintiff Town of Holden	
07/29/2019		Attorney appearance On this date Kevin M Gould, Esq. added for Defendant City of Worcester	
01/10/2020	91	Defendant Department of Conservation and Recreation's Assented to Motion to Reschedule the Final Pretrial Conference	
01/17/2020		Endorsement on Motion to Reschedule the Final Pre-Trial Conference (#91.0): ALLOWED The Final Pre-Trial Conference is continued from 2/11/20 to 3/5/20. Notices mailed 1/21/2020 Judge: Krupp, Hon. Peter B	Krupp
01/21/2020		Event Result:: Final Pre-Trial Conference scheduled on: 02/11/2020 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Daniel M Wrenn, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Wrenn
01/21/2020		The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 01/21/2020 12:05:16	
03/02/2020	92	Joint Pre-Trial Memorandum filed: (final) (E-FILED)	
03/04/2020		Event Result:: Final Pre-Trial Conference scheduled on: 03/05/2020 02:00 PM Has been: Not Held For the following reason: Transferred to another session Hon. Daniel M Wrenn, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Wrenn
03/05/2020		Event Result:: Final Pre-Trial Conference scheduled on: 03/05/2020 02:00 PM Has been: Held as Scheduled Comments: FTR - 2:45 PM Hon. Daniel M Wrenn, Presiding Staff: Cheryl Riddle, Assistant Clerk Magistrate	Wrenn
03/05/2020		The following form was generated: Notice to Appear Sent On: 03/05/2020 14:54:22	



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03/19/2020		Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 03/26/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Frison
03/19/2020		Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Final Trial Conference scheduled on: 05/05/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Frison
03/19/2020		Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Jury Trial scheduled on: 05/12/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Frison
03/19/2020		The following form was generated: Notice to Appear Sent On: 03/19/2020 14:15:36	
04/16/2020		Attorney appearance On this date Peter D McCarthy, Esq. dismissed/withdrawn for Defendant Department of Conservation and Recreation	
05/08/2020		The following form was generated: Notice to Appear Sent On: 05/08/2020 10:15:35	
05/08/2020		Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 06/02/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Yarashus
07/10/2020	93	Plaintiff, Defendant Town of Holden, Department of Conservation and Recreation's Joint, PROPOSED Request for Case Management Order	
07/16/2020		Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Conference to Review Status scheduled on: 07/23/2020 02:00 PM Has been: Rescheduled-Covid-19 emergency Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Frison



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07/23/2020	Event Result:: Conference to Review Status scheduled on: 07/23/2020 12:00 PM Has been: Held as Scheduled Comments: FTR- rm 25 Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Frison
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:33 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey & Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169	
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:34 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702	
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:34 Notice Sent To: Christopher Lee Brown, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702	
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:34 Notice Sent To: Michael K Terry, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702	
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:35 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108	
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:35 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108	
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:35 Notice Sent To: David M Moore, Esq. City of Worcester Law Department 455 Main St, Worcester, MA 01608	



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07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:36 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:36 Notice Sent To: Kevin M Gould, Esq. City of Worcester Law Department 455 Main St City Hall Rm 301, Worcester, MA 01608
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:42:37 Notice Sent To: File Copy
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:24 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey & Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:24 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:24 Notice Sent To: Christopher Lee Brown, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:25 Notice Sent To: Michael K Terry, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702
07/27/2020	The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:25 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108



**COMMONWEALTH OF MASSACHUSETTS
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07/27/2020		The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:25 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108
07/27/2020		The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:26 Notice Sent To: David M Moore, Esq. City of Worcester Law Department 455 Main St, Worcester, MA 01608
07/27/2020		The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:26 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608
07/27/2020		The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:27 Notice Sent To: Kevin M Gould, Esq. City of Worcester Law Department 455 Main St City Hall Rm 301, Worcester, MA 01608
07/27/2020		The following form was generated: Notice to Appear Sent On: 07/27/2020 13:43:27 Notice Sent To: File Copy
01/08/2021	94	Plaintiff, Defendant Town of Holden, Department of Conservation and Recreation, City of Worcester's Joint Request for Status Conference Regarding Trial Date (E-FILED)



**COMMONWEALTH OF MASSACHUSETTS
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02/03/2021	The following form was generated:	
	Notice to Appear Sent On: 02/03/2021 09:36:28 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey & Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702 Notice Sent To: Christopher Lee Brown, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Michael K Terry, Esq. Petrini & Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108 Notice Sent To: David M Moore, Esq. 30 Kanes Crossing, Worcester, MA 01609 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608 Notice Sent To: Kevin M Gould, Esq. City of Worcester Law Department 455 Main St City Hall Room 301, Worcester, MA 01608	
02/25/2021	Event Result:: Conference to Review Status scheduled on:	Frison
	03/01/2021 11:00 AM	
	Has been: Rescheduled For the following reason: By Court prior to date	
	Hon. Shannon Frison, Presiding	
04/22/2021	Event Result:: Conference to Review Status scheduled on:	Hodge
	04/22/2021 12:00 PM	
	Has been: Held via Video/Teleconference	
	Comments: FTR - rm 25	
	Hon. David Hodge, Presiding	
04/22/2021	Event Result:: Final Trial Conference scheduled on:	Hodge
	04/27/2021 02:00 PM	
	Has been: Not Held For the following reason: By Court prior to date	
	Hon. David Hodge, Presiding	
04/22/2021	Event Result:: Jury Trial scheduled on:	Hodge
	05/03/2021 09:00 AM	
	Has been: Not Held For the following reason: By Court prior to date	
	Hon. David Hodge, Presiding	
06/08/2021	Attorney appearance On this date Kevin M Gould, Esq. dismissed/withdrawn for Defendant City of Worcester	
06/09/2021	Defendant City of Worcester's Notice of Withdrawal of Appearance (E-FILED) Applies To: Gould, Esq., Kevin M (Attorney) on behalf of City of Worcester (Defendant)	



**COMMONWEALTH OF MASSACHUSETTS
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06/21/2021		Event Result:: Trial Assignment Conference scheduled on: 06/21/2021 10:00 AM Has been: Held via Video/Teleconference Comments: FTR - rm 25 Hon. David Hodge, Presiding	Hodge
06/22/2021		Scheduled: Event: Jury Trial Date: 07/25/2022 Time: 09:00 AM Result: Held as Scheduled	
06/22/2021		The following form was generated: Notice to Appear Sent On: 06/22/2021 14:58:38 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey and Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169 Notice Sent To: Christopher Lee Brown, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Michael K Terry, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108 Notice Sent To: David M Moore, Esq. N.A. 30 Kanes Crossing, Worcester, MA 01609 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608	
06/22/2021		The following form was generated: Notice to Appear Sent On: 06/22/2021 14:59:27 Notice Sent To: Christopher J Petrini, Esq. Petrini and Associates PC 372 Union Ave, Framingham, MA 01702 Notice Sent To: Peter Louis Mello, Esq. Murphy, Hesse, Toomey and Lehane, LLP 300 Crown Colony Drive Suite 410, Quincy, MA 02169 Notice Sent To: Christopher Lee Brown, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Michael K Terry, Esq. Petrini and Associates, P.C. 372 Union Ave, Framingham, MA 01702 Notice Sent To: Sally A Vander Weele, Esq. Office Of The Attorney General One Ashburton Place Trial Division Floor 18, Boston, MA 02108 Notice Sent To: Katherine B Dirks, Esq. Office of the Attorney General One Ashburton Place Trial Division 18th floor, Boston, MA 02108 Notice Sent To: David M Moore, Esq. N.A. 30 Kanes Crossing, Worcester, MA 01609 Notice Sent To: Wendy L Quinn, Esq. City of Worcester Law Department City Hall Room 301 455 Main Street, Worcester, MA 01608	
07/07/2021	95	Plaintiff Town of Holden's Assented to Motion for Clarification of Overall Case Management Order	



**COMMONWEALTH OF MASSACHUSETTS
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07/14/2021		Endorsement on Motion for Clarification of Overall Case Management Order (#95.0): ALLOWED Notices mailed 7/15/21	Wrenn
		Judge: Wrenn, Hon. Daniel M	
07/14/2021	96	ORDER: CASE MANAGEMENT ORDER- (See Order) Copies mailed 7/15/21	Wrenn
		Judge: Wrenn, Hon. Daniel M	
07/15/2021		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Plaintiff, Attorney: Peter Louis Mello, Esq. pmello@mhtl.com Plaintiff, Attorney: Christopher Lee Brown, Esq. cbrown@petrinilaw.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Wendy L Quinn, Esq. quinnwl@worcesterma.gov	
03/25/2022		Attorney appearance On this date Jared John Madison, Esq. added for Defendant City of Worcester	
03/25/2022		Attorney appearance On this date Wendy L Quinn, Esq. dismissed/withdrawn as Private Counsel for Defendant City of Worcester	
04/08/2022		Plaintiff Town of Holden's Submission of Withdrawal of Appearance (E-FILED) Applies To: Mello, Esq., Peter Louis (Attorney) on behalf of Town of Holden (Plaintiff)	
05/05/2022		Plaintiff Town of Holden's Notice of Withdrawal of Appearance of Christopher L. Brown (E-FILED) Applies To: Brown, Esq., Christopher Lee (Attorney) on behalf of Town of Holden (Plaintiff)	
05/11/2022		Attorney appearance electronically filed.	
05/11/2022		Attorney appearance electronically filed.	
05/11/2022		Attorney appearance On this date Andrew Bartholomew, Esq. added for Defendant City of Worcester	
05/11/2022		Attorney appearance On this date Michael P Angelini, Esq. added for Defendant City of Worcester	



**COMMONWEALTH OF MASSACHUSETTS
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06/06/2022		Attorney appearance On this date Jared John Madison, Esq. dismissed/withdrawn for Defendant City of Worcester
07/05/2022	97	Plaintiff Town of Holden's Motion in limine to preclude testimony of DCR's listed witness, Mark Smith. (E-FILED)
07/05/2022	97.1	Opposition to to the Town of Holden's motion in limine to preclude testimony of DCR's listed witness, Mark Smith. (E-FILED) filed by Department of Conservation and Recreation
07/05/2022	98	Plaintiff Town of Holden's Motion in limine to preclude Worcester Official and Worcester Proffered expert Kenneth Croft from offering expert opinions for failure to properly and timely identify them in answers to interrogatories. (E-FILED)
07/05/2022	98.1	Opposition to plaintiffs motion in limine to preclude Worcester Official and Worcester Proffered expert Kenneth Croft from offering expert opinions for failure to properly and timely identify them in answers to interrogatories. (E-FILED) filed by City of Worcester
07/05/2022	98.2	Reply/Sur-reply Plaintiffs reply to Defendant City of Worcester's opposition to plaintiffs motion in limine to preclude Worcester Official and Worcester Proffered expert Kenneth Croft from offering expert opinions for failure to properly and timely identify them in answers to interrogatories. (E-FILED)
		Applies To: Town of Holden (Plaintiff)
07/05/2022	99	Plaintiff Town of Holden's Motion in limine to preclude defendants from referring to the 1999 agreement as an "unenforceable agreement to agree" or presenting such evidence at trial. (E-FILED)
07/05/2022	99.1	Opposition to motion in limine to preclude defendants from referring to the 1999 agreement as an "unenforceable agreement to agree" or presenting such evidence at trial. (E-FILED) filed by Department of Conservation and Recreation
07/05/2022	99.2	Reply/Sur-reply Plaintiffs reply to Defendant, Department of Conservation and Recreation's opposition to plaintiffs motion in limine to preclude defendants from referring to the 1999 agreement as an "unenforceable agreement to agree" or presenting such evidence at trial. (E-FILED)
		Applies To: Town of Holden (Plaintiff)
07/05/2022	100	Plaintiff Town of Holden's Motion in limine to exclude evidence regarding the timeliness of Holden's objections to Wastewater Transport charges. (E-FILED)
07/05/2022	100.1	Opposition to Town of Holdens motion in limine to exclude evidence regarding the timeliness of Holden's objections to Wastewater Transport charges. (E-FILED) filed by Department of Conservation and Recreation, City of Worcester



**COMMONWEALTH OF MASSACHUSETTS
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07/05/2022	100.2	Reply/Sur-reply	Plaintiffs reply to defendants opposition to the Town of Holdens motion in limine to exclude evidence regarding the timeliness of Holden's objections to Wastewater Transport charges. (E-FILED)
			Applies To: Town of Holden (Plaintiff)
07/05/2022	101	Plaintiff Town of Holden's Motion in limine to admit evidence regarding the calculation of Holdens wastewater transport charges under prior agreements. (E-FILED)	
07/05/2022	101.1	Opposition to Town of Holdens motion in limine to admit evidence regarding the calculation of Holdens wastewater transport charges under prior agreements. (E-FILED) filed by Department of Conservation and Recreation, City of Worcester	
07/05/2022	101.2	Reply/Sur-reply	Plaintiff Town of Holdens reply to defendants opposition to the Town of Holdens motion in limine to admit evidence regarding the calculation of Holdens wastewater transport charges under prior agreements. (E-FILED)
			Applies To: Town of Holden (Plaintiff)
07/05/2022	102	Plaintiff Town of Holden's Motion in limine to preclude defendants from presenting evidence regarding the amount of money of Holden has spent on attorneys fees. (E-FILED)	
07/05/2022	102.1	Opposition to to plaintiffs motion in limine 1, 3, and 10. (E-FILED) filed by Department of Conservation and Recreation, City of Worcester	Response and Limited Opposition
07/05/2022	103	Plaintiff Town of Holden's Motion in limine to determine the damages period for Holdens unjust enrichment claim against Worcester. (E-FILED)	
07/05/2022	103.1	Opposition to plaintiffs motion in limine to determine the damages period for Holdens unjust enrichment claim against Worcester. (E-FILED) filed by City of Worcester	
07/05/2022	103.2	Reply/Sur-reply	Holdens reply memorandum in support of motion in limine to determine the damages period for Holdens unjust enrichment claim against Worcester. (E-FILED)
			Applies To: Town of Holden (Plaintiff)
07/05/2022	104	Plaintiff Town of Holden's Motion in limine to exclude introduction of April 21, 1983 letter from Brutsch to Grady into evidence. (E-FILED)	
07/05/2022	104.1	Opposition to The Town of Holdens motion in limine to exclude introduction of April 21, 1983 letter from Brutsch to Grady into evidence. (E-FILED) filed by Department of Conservation and Recreation	



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07/05/2022	105	Plaintiff Town of Holden's Motion in limine to allow for attorney conducted voir dire and supplemental juror questionnaire. (E-FILED)
07/05/2022	106	Opposition to Plaintiffs motions in limine 1, 3, and 10. (E-FILED) filed by City of Worcester, Department of Conservation and Recreation Omnibus Response and Limited Opposition
07/05/2022	107	Plaintiff Town of Holden's Submission of proposed voir dire questions. (E-FILED)
07/05/2022	107.1	Plaintiff Town of Holden's Submission of Proposed voir dire questions. (E-FILED)
07/05/2022	107.2	Opposition to Plaintiffs proposed voir dire questions. (E-FILED) filed by City of Worcester, Department of Conservation and Recreation
07/05/2022	108	Plaintiff Town of Holden's Motion in limine to preclude certain anticipated testimony of Worcester designated expert, David Russell. (E-FILED)
07/05/2022	108.1	Opposition to Plaintiffs motions in limine 1, 3, and 10. (E-FILED) filed by City of Worcester, Department of Conservation and Recreation Omnibus Response and Limited Opposition
07/05/2022	109	Plaintiff Town of Holden's Motion in limine to preclude certain anticipated testimony of Worcester's designated expert, Edward Markus. (E-FILED)
07/05/2022	109.1	Opposition to plaintiffs motions in limine to preclude certain anticipated testimony of Worcester designated expert, Edward Markus. (E-FILED) filed by City of Worcester
07/05/2022	109.2	Reply/Sur-reply Plaintiff Town of Holdens reply to defendant City of Worcester's opposition to plaintiffs motions in limine to preclude certain anticipated testimony of Worcester designated expert, Edward Markus. (E-FILED)
07/05/2022	110	Defendant Department of Conservation and Recreation's Motion in limine to exclude The Town of Holdens claim for monetary relief from the Commonwealth. (E-FILED)
07/05/2022	110.1	Plaintiff Town of Holden's Submission of Opposition to defendant Department of Conservation and Recreation's Motion in limine. (E-FILED)
07/05/2022	110.2	Plaintiff Town of Holden's Memorandum of Law in support of its opposition to defendant Department of Conservation and Recreation's Motion in limine. (E-FILED)
07/05/2022	110.3	Defendant Department of Conservation and Recreation's Reply in support of its motion in limine to exclude The Town of Holdens claim for monetary relief from the commonwealth. (E-FILED)
07/05/2022	110.4	Defendant Department of Conservation and Recreation's Submission of Rule 9A Notice of Filing. (E-FILED)



**COMMONWEALTH OF MASSACHUSETTS
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07/05/2022	111	Defendant City of Worcester's Motion in limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement [Corrected Motion] (E-FILED)
07/05/2022	111.1	Opposition to p#120: Motion in limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement filed by Town of Holden (E-FILED)
07/05/2022	111.2	Defendant City of Worcester's Notice of Filing (E-FILED)
07/05/2022	112	Plaintiff Town of Holden's Motion in limine to Allow Admission of Charts Summarizing Data Contained in Public Records (E-FILED)
07/05/2022	112.1	Opposition to P#112 filed by City of Worcester, Department of Conservation and Recreation(LIMITED) to Plaintiff's Motion in Limine to Allow Admission of Charts Summarizing Data Contained in Public Records (E-FILED)
07/05/2022	113	Plaintiff Town of Holden's Motion to Admit Audiovisual Deposition of Joseph McGinn (E-FILED)
07/05/2022	113.1	Opposition to P#113 filed by Department of Conservation and Recreation, City of Worcester to the Town of Holden's Motion in Limine to Admit Audiovisual Deposition of Joseph McGinn (E-FILED)
07/05/2022	114	Plaintiff Town of Holden's Motion to Read Evidentiary Admissions to Jury (E-FILED)
07/05/2022	114.1	Opposition to P#114 filed by Department of Conservation and Recreation, City of Worcester to the Town of Holden's Motion in Limine to Read Evidentiary Admissions to the Jury (E-FILED)
07/05/2022	114.2	Reply/Sur-reply of Plaintiff Town of Holden to Defendants' Opposition to Plaintiff's Motion in Limine to Read Evidentiary Admissions to Jury (E-FILED)
07/06/2022	115	City of Worcester's Memorandum in support of Corrected Motion in limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement (P#111) (E-FILED)



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07/08/2022	116	Plaintiff Town of Holden's Submission of Proposed Precharge Jury Instructions (E-FILED)	
07/08/2022	117	Plaintiff Town of Holden's Submission of Proposed Empanelment Jury Instructions (E-FILED)	
07/08/2022	118	Plaintiff Town of Holden's Submission of Excerpts of Deposition Transcripts to be Read to Jury (E-FILED)	
07/08/2022	119	Party(s) file Agreement as to Statement of Case to be Read to Jury (E-FILED)	
		Applies To: Moore, Esq., David M (Attorney) on behalf of City of Worcester (Defendant); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff); Vander Weele, Esq., Sally A (Attorney) on behalf of Department of Conservation and Recreation (Defendant)	
07/08/2022	120	Plaintiff Town of Holden's Submission of Agreed Statement of Facts (E-FILED)	
07/11/2022	121	Plaintiff Town of Holden's Submission of Agreed and Contested Exhibits (E-FILED)	
07/12/2022		Event Result:: Final Trial Conference scheduled on: 07/12/2022 02:00 PM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
07/13/2022	122	Defendant City of Worcester's EMERGENCY Motion for Leave to File Summary Judgment Outside of the Tracking Order (E-FILED)	
07/13/2022		Endorsement on Motion in Limine to Preclude Testimony of DCR's Listed Witness Mark Smith (#97.0): DENIED Notices mailed 7/14/22	Manitsas
		Judge: Manitsas, Hon. James M	
07/13/2022		Endorsement on Motion in Limine to Preclude Worcester Officials and Worcester Proffered Expert Kenneth Croft From Offering Expert Opinions for Failure to Properly and Timely Identify Them in Answers to Interrogatories (#98.0): DENIED Any issues of inadequate expert disclosures will be reserved for time of trial. Notices mailed 7/14/22	Manitsas
		Judge: Manitsas, Hon. James M	



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07/13/2022	Endorsement on Motion in Limine to Preclude Defendants From Referring to the 1999 Agreement as an "Unenforceable Agreement to Agree" or Presenting Such Evidence at Trial (#99.0): DENIED The parties are free to argue all reasonable inferences from the evidence introduced at trial. Notices mailed 7/14/22 Judge: Manitsas, Hon. James M	Manitsas
07/13/2022	Endorsement on Motion in Limine to Exclude Evidence Regarding the Timeliness of Holden's Objections to Wastewater Transport Charges (#100.0): DENIED As the subject of the Town of Holden's objection to the wastewater transportation charges may prove relevant on the topic of an agreement through a course of dealing. Notices mailed 7/15/22 Judge: Manitsas, Hon. James M	Manitsas
07/13/2022	Endorsement on Motion in Limine to Admit Evidence Regarding the Calculation of Holden's Wastewater Transport Charges Under Prior Agreements (#101.0): Reserved Reserved until the time of trial. The parties prior course of dealings may be relevant on the intended meaning of any subsequent agreement. Notices mailed 7/15/22 Judge: Manitsas, Hon. James M	Manitsas
07/13/2022	Endorsement on Motion in Limine to Preclude Defendants From Presenting Evidence Regarding the Amount of Money Holden has Spent on Attorneys' Fees (#102.0): ALLOWED Allowed by agreement, unless and until the Plaintiff, opens the door, and makes the subject relevant. Should this occur, the Defendant's are instructed to address the court on this issue seeking to offer such evidence. Notices mailed 7/15/22 Judge: Manitsas, Hon. James M	Manitsas
07/13/2022	Endorsement on Motion in Limine to Exclude Introduction of April 21, 1983 Letter From Brutsch to Grady into Evidence (#104.0): Reserved Reserved until the time of trial. Notices mailed 7/15/22 Judge: Manitsas, Hon. James M	Manitsas
07/13/2022	Endorsement on Motion in Limine to Allow for Attorney Conducted Voir Dire and Supplemental Juror Questionnaire (#105.0): ALLOWED Motion Allowed as to Attorney conducted voir dire. Notices mailed 7/15/22 Judge: Manitsas, Hon. James M	Manitsas
07/13/2022	Endorsement on Submission of Proposed Voir Dire Questions (#107.0): No Action Taken Parties were instructed on jury empanelment procedures at the final trial conference on July 12, 2022. Notices mailed 7/15/22 Judge: Manitsas, Hon. James M	Manitsas



**COMMONWEALTH OF MASSACHUSETTS
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07/13/2022	Endorsement on Motion in Limine to Preclude Certain Anticipated Testimony of Worcester's Designated Expert, David Russell (#108.0): No Action Taken Defendant City of Worcester reports that David Russell will not testify at trial. Motion may be re-newed, should Defendant seek to call this witness. Notices mailed 7/15/22	Manitsas
	Judge: Manitsas, Hon. James M	
07/13/2022	Endorsement on Motion in Limine to Preclude Certain Anticipated Testimony of Worcester's Designated Expert, Edward Markus (#109.0): Reserved Reserved until the time of trial. Notices mailed 7/15/22	Manitsas
	Judge: Manitsas, Hon. James M	
07/13/2022	Endorsement on Motion in Limine to Allow Admission of Charts Summarizing Data Contained in Public Records (#112.0): No Action Taken The parties are to confer on a possible agreement regarding the admission of summary charts. (See Mass G. Evidence § 1006.) If no agreement can be reached, the court, will address the issue of an appropriate time period at trial. Notices mailed 7/15/22	Manitsas
	Judge: Manitsas, Hon. James M	
07/13/2022	Endorsement on Motion to Admit Audiovisual Deposition of Joseph McGinn (#113.0): Reserved Notices mailed 7/15/22	Manitsas
	Judge: Manitsas, Hon. James M	
07/13/2022	Endorsement on Motion to Read Evidentiary Admissions to Jury (#114.0): No Action Taken Notices mailed 7/15/22	Manitsas
	Judge: Manitsas, Hon. James M	
07/13/2022	Endorsement on Submission of Excerpts of Deposition Transcripts to be Read to Jury (#118.0): No Action Taken Notices mailed 7/15/22	Manitsas
	Judge: Manitsas, Hon. James M	
07/14/2022	EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	



**COMMONWEALTH OF MASSACHUSETTS
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07/14/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
07/14/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
07/14/2022		Endorsement on Motion in Limine to Determine the Damages Period for Holden's Unjust Enrichment Claim Against Worcester (#103.0): Other action taken See order dated 7/14/22. Notices mailed 7/15/22	Manitsas
		Judge: Manitsas, Hon. James M	
07/14/2022	123	ORDER: RE: P#103 Motion in Limine to Determine the Damages Period for Holden's Unjust Enrichment Claim Against Worcester- (See Order) Copies mailed 7/15/22	Manitsas
		Judge: Manitsas, Hon. James M	
07/15/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	



**COMMONWEALTH OF MASSACHUSETTS
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07/15/2022

EDocument sent:

A Clerk's Notice (eDoc) was generated and sent to:

Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com

Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com

Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com

Defendant, Attorney: Sally A Vander Weele, Esq.

sally.vanderweele@mass.gov

Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov

Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com

Defendant, Attorney: Andrew Bartholomew, Esq.

abartholomew@bowditch.com

07/15/2022

EDocument sent:

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**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

07/15/2022

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**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

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07/15/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com
07/15/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com
07/15/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com
07/18/2022	124	Plaintiff Town of Holden's Submission of Disclosure of Identity and Order of Testifying Witnesses (E-FILED)
07/18/2022	125	Plaintiff Town of Holden's Submission of Proposed Verdict Form (E-FILED)



**COMMONWEALTH OF MASSACHUSETTS
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07/18/2022	126	Plaintiff Town of Holden's Submission of Proposed Jury Instructions (E-FILED)	
07/19/2022		Attorney appearance electronically filed.	
		Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff)	
07/19/2022	127	Department of Conservation and Recreation's Memorandum (SUPPLEMENTAL) in Further Support of It's Motion in Limine to Exclude the Town of Holden's Claim for Monetary Relief from the Commonwealth (P#110) (E-FILED)	
07/19/2022	128	Defendant Department of Conservation and Recreation's Submission of Witness List (E-FILED)	
07/19/2022	129	Opposition to P#122 filed by Town of Holdento Worcester's "Emergency" Motion for Leave to File a Further Summary Judgment Motion (E-FILED)	
07/19/2022	148	General correspondence regarding Defendant City of Worcester's Proposed Jury Instructions	
07/19/2022	149	General correspondence regarding The Department of Conservation and Recreation's Proposed Jury Instructions	
07/19/2022	150	General correspondence regarding Defendant City of Worcester's Proposed Special Verdict Slip	
07/20/2022	130	Defendant City of Worcester's EMERGENCY Motion for Rulings as a Matter of Law (E-FILED)	
07/20/2022	131	Defendant Department of Conservation and Recreation's EMERGENCY Motion for Rulings as a Matter of Law (E-FILED)	
07/20/2022		Endorsement on Motion in Limine to Exclude the Town of Holden's Claim for Monetary Relief From the Commonwealth (#110.0): Reserved The parties are instructed on the subject of arguing damages to review and comply with MRCP Rule 51 (a)(2). Notices mailed 7/21/22	Manitsas
		Judge: Manitsas, Hon. James M	
07/20/2022		Endorsement on Motion in Limine to Preclude Evidence of any Proposed Rate for the Use of Worcester's Sewer System or, Alternatively, if Holden Acknowledges tha the 2000 Sewer Use Agreement Exclusively Controls that Rate, then to Preclude Only Evidence of a Rate Inconsistent with Said Agreement [Corrected Motion] (#111.0): Reserved The parties are instructed on the subject of arguing damages to review and comply with MRCP Rule 51 (a)(2). Notices mailed 7/21/22	Manitsas
		Judge: Manitsas, Hon. James M	



**COMMONWEALTH OF MASSACHUSETTS
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07/20/2022		Endorsement on Motion for Leave to File Summary Judgment Outside of the Tracking Order (#122.0): DENIED Notices mailed 7/21/22	Manitsas
		Judge: Manitsas, Hon. James M	
07/21/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
07/21/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
07/21/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
07/21/2022	132	Plaintiff Town of Holden's Submission of Opposition to the Defendant of Conservation and Recreation's "Emergency" Motion for Rulings as a Matter of Law (P#132) (E-FILED)	
07/21/2022	133	Opposition to P#130 filed by Town of Holdento Defendant City of Worcester's Further "Emergency" Motion for Rulings as a Matter of Law (E-FILED)	



**COMMONWEALTH OF MASSACHUSETTS
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07/21/2022		Attorney appearance electronically filed.	
		Applies To: Johl, Esq., Rauvin A (Attorney) on behalf of Department of Conservation and Recreation (Defendant)	
07/21/2022	134	Plaintiff Town of Holden's Submission of Disclosure of Trial Chalks (E-FILED)	
07/21/2022		Endorsement on Motion for Rulings as a Matter of Law (#130.0): Other action taken The court cannot rule on this motion as it seeks the disclosure of the nature of the Plaintiff's claim. It is assumed that these questions were presented by the Defendant to the Plaintiff in discovery requests. Further, Defendant's footnotes #2 and #3 appear to answer Defendant's own question. Notices mailed 7/25/22	Manitsas
		Judge: Manitsas, Hon. James M	
07/21/2022	138	ORDER: RE: P# 131- No action taken at this time. The Plaintiff is to file its response and/or opposition by the start of trial on July 25, 2022. Copies mailed 7/25/22	Manitsas
		Judge: Manitsas, Hon. James M	
07/22/2022	135	Plaintiff Town of Holden's Notice of Intent to Suggest a Specific Monetary Amount of Damages to the Jury Pursuant to Mass.R.Civ.P. Rule 51(a)(2) and G.L. c. 231, sec. 16B (E-FILED)	
07/25/2022	136	Opposition to Plaintiff's Proposed Jury Instructions and Proposed Verdict Form filed by City of Worcester (E-FILED)	
07/25/2022	137	Defendant City of Worcester's Motion to Preclude Any Reference to Certain Statutes, Contracts, and Agreements (E-FILED)	
07/25/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@wilmerhale.com Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
07/25/2022	139	Plaintiff Town of Holden's Submission of Proposed Jury Instructions (E-FILED)	



**COMMONWEALTH OF MASSACHUSETTS
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07/25/2022	140	Defendant Department of Conservation and Recreation's Submission of Proposed Verdict Slip (E-FILED)	
07/25/2022		Event Result:: Jury Trial scheduled on: 07/25/2022 09:00 AM Has been: Held as Scheduled Comments: To continue for 2 weeks Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
07/25/2022	152	General correspondence regarding Pocket Brief of Town of Holden Memo of Implied Impermissibility of Municipality Entering Into Implied Contracts- Filed in Court	
07/25/2022	153	Response, Objection to City of Worcester's Proposed Jury Instructions filed by Town of Holden Filed in Court	
07/25/2022	154	Response, Objection to City of Worcester's Proposed Special Verdict Slip filed by Town of Holden Filed in Court	
07/25/2022	155	Response, Objection to The Department of Conservation and Recreation's Proposed Jury Instructions filed by Town of Holden Filed in Court	
07/25/2022	156	Response, Objection to The Department of Conservation and Recreation's Proposed Verdict Slip filed by Town of Holden Filed in Court	
07/26/2022		Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 07/26/2022 Time: 09:00 AM Result: Held as Scheduled	Manitsas
07/26/2022		Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 07/27/2022 Time: 09:00 AM Result: Held as Scheduled	Manitsas
07/26/2022		Event Result:: Jury Trial scheduled on: 07/26/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
07/26/2022		Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 07/28/2022 Time: 09:00 AM Result: Held as Scheduled	Manitsas



**COMMONWEALTH OF MASSACHUSETTS
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07/26/2022	151	Response to to Defendants' Objections to Holden's Proposed Chalks filed by Town of Holden Filed in Court	
07/27/2022		Event Result:: Jury Trial scheduled on: 07/27/2022 09:00 AM Has been: Held as Scheduled Comments: continuing over multiple days Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
07/27/2022		Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/01/2022 Time: 09:00 AM Result: Held as Scheduled	Manitsas
07/27/2022		Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/02/2022 Time: 09:00 AM Result: Held as Scheduled	Manitsas
07/28/2022		Event Result:: Jury Trial scheduled on: 07/28/2022 09:00 AM Has been: Held as Scheduled Comments: FTR - rm 25 - continues over multiple days Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
07/28/2022	157	Defendant Department of Conservation and Recreation's Motion for Directed Verdict- Filed in Court	
07/29/2022	141	Defendant City of Worcester's Motion for Directed Verdict (E-FILED)	
07/29/2022	141.1	City of Worcester's Memorandum in Support of Defendant City of Worcester's Motion for Directed Verdict (E-FILED)	
08/01/2022	142	Opposition to P#___ filed by Town of Holdento Department of Conservation and Recreation's Motion for Directed Verdict (E-FILED)	
08/01/2022	143	Opposition to P#141 filed by Town of Holdento City of Worcester's Motion for Directed Verdict (E-FILED)	
08/01/2022		Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/03/2022 Time: 09:00 AM Result: Held as Scheduled	Manitsas



**COMMONWEALTH OF MASSACHUSETTS
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08/01/2022		Event Result:: Jury Trial scheduled on: 08/01/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
08/01/2022		Endorsement on Motion for Directed Verdict (#157.0): DENIED Notices mailed 8/23/22 Judge: Manitsas, Hon. James M	Manitsas
08/01/2022	158	Brief filed: Other - On the Calculation of Pre-Judgment Interest- Filed in Court Applies To: Town of Holden (Plaintiff)	
08/01/2022		Endorsement on Motion for Directed Verdict by Defendant City of Worcester (#141.0): DENIED Denied, as to Counts one and counts four. Allowed as to counts five. Notices mailed 8/23/22 Judge: Manitsas, Hon. James M	Manitsas
08/02/2022		Event Result:: Jury Trial scheduled on: 08/02/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
08/02/2022		Scheduled: Judge: Manitsas, Hon. James M Event: Jury Trial Date: 08/04/2022 Time: 09:00 AM Result: Held as Scheduled	Manitsas
08/02/2022	159	General correspondence regarding Plaintiff Town of Holden's Supplemental Proposed Jury Instructions- Filed in Court	
08/02/2022	160	General correspondence regarding Defendant City of Worcester's Third Revised Proposed Special Verdict Slip- Filed in Court	
08/02/2022	161	General correspondence regarding Defendant City of Worcester's Fourth Revised Proposed Special Verdict Slip- Filed in Court	
08/02/2022	162	General correspondence regarding The Department of Conservation and Recreation's Revised Proposed Verdict Slip- Filed in Court	
08/02/2022	163	General correspondence regarding The Department of Conservation and Recreation's Revised Proposed Jury Instructions- Filed in Court	



**COMMONWEALTH OF MASSACHUSETTS
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08/03/2022		Event Result:: Jury Trial scheduled on: 08/03/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
08/03/2022	146	General correspondence regarding Verdict Form I	
08/03/2022	164	Plaintiff Town of Holden's Motion in Limine to Preclude Evidence and Attorney Statements Regarding the Alleged Wealth of Town of Holden Residents - Filed in Court	
08/04/2022		Event Result:: Jury Trial scheduled on: 08/04/2022 09:00 AM Has been: Held as Scheduled Comments: FTR25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
08/04/2022	144	Defendant City of Worcester's EMERGENCY Motion for Leave to Submit Proposed Findings and Rulings Before Further Action by the Court (E-FILED)	
08/04/2022	147	General correspondence regarding Verdict Form II on Unjust Enrichment Claim	
08/08/2022		The following form was generated: Notice to Appear Sent On: 08/08/2022 11:20:24	
08/08/2022	145	Opposition to p#144: Emergency Motion to Submit Proposed Findings and Rulings Before Further Action by the Court filed by Town of Holden (E-FILED)	
08/12/2022		Event Result:: Conference to Review Status scheduled on: 08/30/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
08/12/2022		The following form was generated: Notice to Appear Sent On: 08/12/2022 10:32:36	
08/12/2022		Exhibits Returned Atty Chris Petrini (BY AGREEMENT OF ALL PARTIES) All exhibits 1 - 25; and ID A - CC	



**COMMONWEALTH OF MASSACHUSETTS
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08/23/2022	165	List of exhibits Witness and Exhibit List for the Jury Trial commenced in Room 25 on 7/25/22 before the Honorable James Manitsas
08/29/2022	166	Plaintiff Town of Holden's Submission of Filing of Certain Pre-Trial and Trial Transcripts (E-FILED)
09/07/2022	167	Defendant City of Worcester's Motion for Judgment Notwithstanding the Verdict (E-FILED)
09/07/2022	167.1	City of Worcester's Memorandum in Support of Motion for Judgment Notwithstanding the Verdict (E-FILED)
09/07/2022	167.2	Opposition to P#167 filed by Town of Holdento Defendant, City of Worcester's Motion for Judgment Notwithstanding the Verdict (E-FILED)
09/07/2022	167.3	Reply/Sur-reply of Defendant City of Worcester's to Plaintiff Town of Holden's Opposition to Worcester's Motion for Judgment Notwithstanding the Verdict (E-FILED)



**COMMONWEALTH OF MASSACHUSETTS
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09/07/2022	167.4	Defendant City of Worcester's Notice of Filing (E-FILED)	
09/12/2022	168	Plaintiff Town of Holden's Submission of Rule 59(e) Motion to Alter Judgment to Set Aside Inconsistent Portion of Jury Verdict as to Defendant, Department of Conservation and Recreation (E-FILED)	
09/12/2022	168.1	Town of Holden's Memorandum in Support of Its Rule 59(e) Motion to Alter Judgment and Set Aside Inconsistent Portion of Jury Verdict as to Defendant, Department of Conservation and Recreation (E-FILED)	
09/12/2022	168.2	Opposition to P#168 filed by Department of Conservation and Recreation to Plaintiff's Rule 59(e) Motion to Alter Judgment and Set Aside Portions of the Jury Verdict (E-FILED)	
09/12/2022	168.3	Reply/Sur-reply of Plaintiff to DCR's Opposition to Holden's Rule 59(e) Motion (E-FILED)	
09/12/2022	168.4	Plaintiff Town of Holden's Submission of Superior Court Rule 9A List of Documents (E-FILED)	
09/14/2022		Event Result:: Conference to Review Status scheduled on: 09/15/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
09/14/2022		The following form was generated: Notice to Appear Sent On: 09/14/2022 08:31:18	
09/21/2022		Event Result:: Conference to Review Status scheduled on: 09/21/2022 02:00 PM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
10/14/2022	169	Proposed Filings/Orders Request for Findings of Fact and Conclusions of Law (E-FILED) Applies To: Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff)	



**COMMONWEALTH OF MASSACHUSETTS
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10/14/2022	169.1	Town of Holden's Memorandum in Further Support of Request for Findings of Fact and Rulings of Law on Issue of Retraction of Waiver (E-FILED)
10/14/2022	170	Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master (E-FILED)
10/14/2022	171	Proposed Filings/Orders Defendant City of Worcester's Propose Findings of Fact an Rulings of Law
10/17/2022	172	Defendant Department of Conservation and Recreation's Submission of Post-Trial Brief, Proposed Conclusions of Law, and Request for Judgment Pursuant to Rule 58(a)(2) (E-FILED)
10/18/2022	173	Exhibits/Appendix Defendant City of Worcester's Filing of Certain Trial Transcripts [E-FILED]
10/28/2022	174	Opposition to Town of Holden's Motion in the Alternative to Appoint a Special Master filed by Department of Conservation and Recreation See paper #170 [E-FILED]
10/28/2022	175	Defendant Department of Conservation and Recreation's Response to the Town of Holden's and the City of Worcester's Requests for Findings of Fact and Conclusions of Law See papers #169 and #171 [E-FILED]
10/28/2022	176	Defendant Department of Conservation and Recreation's Submission of Supplemental Post-Trial Brief on the Issue of Retraction [E-FILED]
10/28/2022	177	Defendant City of Worcester's Response to Plaintiff Town of Holden's Requests for Findings of Facts and Conclusions of Law and Department of Conservation and Recreation's Post-Trial Brief, Proposed Conclusions of Law, and Request for Judgment See papers #169 and #172 [E-FILED]
10/28/2022	178	Defendant City of Worcester's Objection to Town of Holden's Requests for Findings of Facts and Conclusions of Law See paper #169 [E-FILED]
10/28/2022	179	Opposition to the Department of Conservation and Recreation's Requests for Findings of Fact, Conclusions of Law and Entry of Judgment filed by Town of Holden See paper #172 [E-FILED]



**COMMONWEALTH OF MASSACHUSETTS
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10/28/2022	180	Opposition to To Proposed Findings of Fact and Rulings of Law by Defendant, City of Worcester filed by Town of Holden See paper #171 [E-FILED]	
11/02/2022		Matter taken under advisement: Motion Hearing scheduled on: 11/02/2022 02:00 PM Has been: Held - Under advisement Comments: FTR - rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate	Manitsas
11/04/2022	181	Defendant City of Worcester's Submission of Filing of Cases Concerning Unjust Enrichment [E-FILED]	
11/09/2022	182	Defendant City of Worcester's EMERGENCY Request for leave to file opposition to Plaintiff Town of Holden's motion in the alternative to appoint a special master (E-FILED)	
11/14/2022	183	Opposition to P#182 filed by Town of Holdento City of Worcester's "Emergency" Request for Leave to File Opposition to Holden's Motion in the Alternative to Appoint Special Master (E-FILED)	
11/15/2022	184	Reply/Sur-reply Defendant City of Worcester's Reply to Plaintiff Town of Holden's Opposition to Worcester's Emergency Request for Leave to File Opposition to Holden's Motion in the Alternative to Appoint a Special Master See paper #183 [E-FILED]	
11/15/2022		Endorsement on Request for Leave to File Opposition to Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master (#182.0): ALLOWED Further, Plaintiff and Co-Defendant are granted 1 (one) week, following the filing of the opposition, to file a reply (will be limited to (2) two pages). Notices mailed 11/17/22 Judge: Manitsas, Hon. James M	Manitsas
11/15/2022	185	Opposition to Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master filed by City of Worcester	



**COMMONWEALTH OF MASSACHUSETTS
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11/17/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
11/18/2022	186	Plaintiff Town of Holden's Motion for Clarification of Court's Endorsement on City of Worcester's Emergency Request for Leave to File Opposition to Plaintiff Town of Holden's Motion in the Alternative to Appoint a Special Master (Docket Paper No. 182) and to Strike Worcester's Reply (Docket Paper No. 184) (E-FILED)	
11/23/2022	187	Reply/Sur-reply Town of Holden's Reply to City of Worcester's Opposition to Motion in the Alternative to Appoint Special Master (P#185) (E-FILED)	
12/14/2022	188	ORDER: FINDINGS OF FACT AND RULINGS OF LAW ON TOWN OF HOLDEN'S CLAIMS FOR DECLARATORY JUDGMENT - (See Order) Copies mailed 12/20/22 Judge: Manitsas, Hon. James M	Manitsas
12/22/2022	189	MEMORANDUM & ORDER: ON CROSS-MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT- ORDER: For the foregoing reasons, the City of Worcester's Motion for Judgment Notwithstanding the Verdict is DENIED. The Town of Holden's Motion to Amend Judgment Pursuant to Rule 59(e) is DENIED. Entered and Copies mailed 12/22/22 Judge: Manitsas, Hon. James M	Manitsas
12/29/2022	190	Defendant City of Worcester's Motion to Defer Entry of Judgment Pending Ruling on Its Limited Motion for Reconsideration [E-FILED]	
01/04/2023	191	Opposition to paper #190, Defendant's motion to defer entry of judgment and limited motion for reconsideration filed by Town of Holden (E-FILED)	



**COMMONWEALTH OF MASSACHUSETTS
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01/06/2023	192	Plaintiff Town of Holden's Request for award of prejudgment interest and costs (E-FILED)	
01/09/2023	193	Defendant City of Worcester's Submission of Limited Motion for Reconsideration Relating to the Court's Ruling of Law (E-FILED)	
01/09/2023	193.1	Opposition to P#193 filed by Town of Holdento City of Worcester's Motion to Defer Entry of Judgment and Limited Motion for Reconsideration (E-FILED)	
01/09/2023	193.2	Defendant Department of Conservation and Recreation's Response to the City of Worcester's Limited Motion for Reconsideration (E-FILED)	
01/09/2023	193.3	Reply/Sur-reply of Defendant City of Worcester to Plaintiff Town of Holden's Opposition to Worcester's Motion to Defer Entry of Judgment and Limited Motion for Reconsideration (E-FILED)	
01/09/2023	193.4	Defendant City of Worcester's Notice of Filing (E-FILED)	
01/12/2023		Endorsement on Motion to Defer Entry of Judgment Pending Ruling on its Limited Motion for Reconsideration (#190.0): DENIED Notices mailed 1/18/23 Judge: Manitsas, Hon. James M	Manitsas
01/12/2023		Endorsement on Request for Award of Prejudgment Interest and Costs (#192.0): DENIED Denied without prejudice. Plaintiff to comply with Rule 9A and 9C. Notices mailed 1/18/23 Judge: Manitsas, Hon. James M	Manitsas
01/12/2023		Endorsement on Motion for Reconsideration Relating to the Court's Ruling of Law (#193.0): DENIED See decision dated 1/11/23. Notices mailed 1/18/23 Judge: Manitsas, Hon. James M	Manitsas
01/12/2023		Endorsement on Motion to Defer Entry of Judgment Pending Ruling on its Limited Motion for Reconsideration (#190.0): DENIED Notices mailed 2/6/23 Judge: Manitsas, Hon. James M	Manitsas
01/12/2023		Endorsement on Request for Award of Prejudgment Interest and Costs (#192.0): DENIED Denied without prejudice. Plaintiff to comply with Rule 9A and 9C. Notices mailed 2/6/23 Judge: Manitsas, Hon. James M	Manitsas



**COMMONWEALTH OF MASSACHUSETTS
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01/12/2023		Endorsement on Motion for Reconsideration Relating to the Court's Rulings of Law (#193.0): DENIED See decision dated 1/11/23. Notices mailed 2/6/23 Judge: Manitsas, Hon. James M	Manitsas
01/13/2023	194	Defendant City of Worcester's Notice of Defendant City of Worcester's intent to respond to Town of Holden's request for award of prejudgment interest and costs (E-FILED)	
01/18/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
01/18/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
01/18/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

01/18/2023	195	MEMORANDUM & ORDER:	Manitsas
		ON CITY OF WORCESTER'S MOTION FOR RECONSIDERATION- (See Order) Entered and Copies mailed 1/18/23	
		Judge: Manitsas, Hon. James M	
02/06/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@wilmerhale.com Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
02/06/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@wilmerhale.com Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
02/06/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@wilmerhale.com Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
02/08/2023	196	Plaintiff Town of Holden's Assented to Motion for Leave Pursuant to Superior Court Rule 9A(a)(6)	



**COMMONWEALTH OF MASSACHUSETTS
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02/13/2023	Endorsement on Motion for Leave Pursuant to Superior Court Rule 9A(a)(6) (#196.0): ALLOWED Counsel shall be granted 7 days to file a reply. Notices mailed 2/13/23 Judge: Manitsas, Hon. James M	Manitsas
02/13/2023	EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: Rauvin A Johl, Esq. rauvin.johl@wilmerhale.com Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
02/14/2023	Case file images 1. Complaint (1) 2. Motion for a preliminary injunction to place disputed funds in escrow (2) 3. Affidavit of John R. Woodsmall, III, P.E., Town of Holden Director of Public Works (3) 4. Authenticating affidavit of Peter L. Mello (4) 5. Plaintiff's motion for short order of notice (5) *PREVIOUSLY FILED PLEADINGS*	
02/14/2023	Case file images 1. Plaintiff's motion for appointment of special process server (6) 2. Affidavit of Paul D. Brinkman in support of Plaintiff's motion for preliminary injunction (6.1) 3. Notice of appearance of Sally A. VanderWeele as attorney for Defendant 4. Notice of appearance of Andrew W. Koster for Defendant 5. Summons for Department of Conservation and Recreation (7) 6. Summons for Office of the Attorney General (8) 7. Summons for the City of Worcester (9) 8. Assented-to emergency motion to change the hearing date for the Plaintiff's motion for a preliminary injunction (10) 9. Department of Conservation and Recreation's opposition to the Town of Holden's motion for a preliminary injunction (10.1) 10. Defendant City of Worcester's opposition to Plaintiff's motion for a preliminary injunction (10.2) 11. Affidavit of Paul Davison (10.3) 12. Rebuttal affidavit of Paul D. Brinkman (10.4) 13. Affidavit of Matthew J. Labovites (10.5) *PREVIOUSLY FILED PLEADINGS*	



**COMMONWEALTH OF MASSACHUSETTS
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02/14/2023

Case file images

1. Reply memorandum of Defendant City of Worcester (11)
2. Motion to strike the expert opinion of Paul D. Brinkman and Reply Memorandum by Department of Conservation and Recreation (12)
3. Authenticating affidavit of Peter L. Mello for the Town of Holden's reply memorandum (12.1)
4. First amended complaint (12.2)
5. Plaintiff Town of Holden's reply to Defendants' oppositions to Plaintiff's motion for preliminary injunction (12.3)
6. Plaintiff Town of Holden's motion to strike portions of the affidavits of Paula Davison and Matthew J. Labovites (12.4)
7. Conditional motion of Town of Holden to stay the court's decision on the town's motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept (12.5)
8. DCR's motion to strike the index of essential documents for Holden MPI review (12.6)
9. DCR's opposition to conditional motion of Town of Holden to stay the court's decision on the town's motion for a preliminary injunction pending DCR's institution of a cherry sheet intercept (12.7)
10. Plaintiff Town of Holden's opposition to Defendant Department of Conservation and Recreation's motions to strike the expert opinion of Paul D. Brinkman and reply and index of essential documents for Holden MPI review (13)
11. Memorandum and decision on Plaintiff, Town of Holden's motion for a preliminary injunction to place disputed funds in escrow (14)
12. Answer of the Department of Conservation and Recreation to first amended complaint (15)

PREVIOUSLY FILED PLEADINGS

02/14/2023

Attorney appearance

On this date Rauvin A Johl, Esq. dismissed/withdrawn for Defendant
Department of Conservation and Recreation

02/14/2023

Case file images

1. Plaintiff Town of Holden's application for entry of default against the City of Worcester under Mass.R.Civ.P. Rule 55(a) (16)
2. Default Order (Mass.R.CIV.P. 55a) (17)
3. City of Worcester's emergency motion to set aside entry of default (18)
4. Answer, affirmative defenses and counterclaims of Defendant City of Worcester (19)
5. Plaintiff Town of Holden's opposition to the City of Worcester's emergency motion to set aside entry of default (20)

PREVIOUSLY FILED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
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02/14/2023

Case file images

1. Plaintiff Town of Holden's answer to Defendant City of Worcester's counterclaim (21)
2. Notice of appearance of Wendy L. Quinn for the Defendant, City of Worcester
3. Plaintiff Town of Holden's motion for partial summary judgment as to count six of the first amended complaint (22)
4. Joint motion to amend track designation (23)
5. Notice of appearance of C. Vered Jona for Defendant, Department of Conservation and Recreation
6. Motion to schedule conference under Mass. R. Civ. P. 16 (24)
7. List of examples of documents not produced by Worcester, to facilitate during the court's conference under Mass. R. Civ. P. 16 (25)
8. Notice of appearance of Briant Schwartz for City of Worcester

PREVIOUSLY FILED PLEADINGS

02/15/2023

Case file images

1. Plaintiff Town of Holden's answer to Defendant City of Worcester's counterclaim (21)
2. Notice of appearance of Wendy L. Quinn for Defendant, City of Worcester
3. Plaintiff Town of Holden's motion for partial summary judgment as to count six of the first amended complaint (22)
4. Joint motion to amend track designation (23)
5. Notice of appearance of C. Vered Jona for Defendant, Department of Conservation and Recreation
6. Notice of withdrawal of Andrew W. Koster for Defendant, Department of Conservation and Recreation
7. Motion to schedule conference under Mass. R. Civ. P. 16 (24)
8. List of examples of documents not produced by Worcester, to facilitate during the court's conference under Mass. R. Civ. P. 16 (25)
9. Notice of appearance of Brian A. Schwartz for Defendant, City of Worcester

PREVIOUSLY FILED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
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02/15/2023	Case file images	1. Motion to compel attendance of Matthew J Labovites at continued deposition (26) 2. City of Worcester's motion for a protective order for the continued deposition of Matthew J. Labovites (26.1) 3. City of Worcester's opposition to Plaintiff's motion to compel attendance of Matthew J. Labovites at continued deposition and memorandum in support of Worcester's motion for a protective order (26.2) 4. Motion to compel documents and ESI and Rule 37 motion for sanctions and attorneys' fees (27) 5. City of Worcester's motion for leave to file Rule 12 motion beyond the tracking order deadline (28) 6. Plaintiff Town of Holden's motion for letters rogatory (29) 7. Letter Rogatory 8. Order directing issuance of a commission 9. City of Worcester's statement regarding electronically stored information (30)
PREVIOUSLY FILED PLEADINGS		
02/15/2023	Case file images	1. Order establishing protocol for discovery of electronically stored information (31) 2. City of Worcester's motion for a stay of electronic discovery (32) 3. Order establishing protocol for discovery of electronically stored information (33) 4. Revised order establishing protocol for discovery of electronically stored information (34) 5. Defendant City of Worcester's motion for judgment on the pleadings (35)
PREVIOUSLY FILED PLEADINGS		
02/15/2023	Case file images	correspondence from Petrini & Associates, P.C. including undocketed pleadings re: motion to schedule conference call to discuss ESI issues
PREVIOUSLY FILED PLEADINGS		
02/16/2023	197	Plaintiff Town of Holden's Request for Award of Prejudgment Interest and Costs [E-FILED]
02/16/2023	197.1	Opposition to P# 197: Plaintiff's Request for Award of Prejudgment Interest and Costs filed by City of Worcester [E-FILED]
02/16/2023	197.2	Reply/Sur-reply Town of Holden's Memorandum in Reply to P#197.1: City of Worcester's Opposition to Holden's Request for Award of Prejudgment Interest and Costs [E-FILED]



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
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02/16/2023	197.3	Reply/Sur-reply
		Defendant City of Worcester's Surreply in Opposition to Holden's Request for Award of Prejudgment Interest and Costs [E-FILED]
02/16/2023	197.4	Plaintiff Town of Holden's Submission of Rule 9A List of Documents [E-FILED]
02/16/2023	197.5	Affidavit of Compliance with Superior Court Rule 9C [E-FILED]
02/23/2023		Case file images
		1. Correspondence from Petrini & Assoc., copy of the Town's proposed order establishing protocols for discovery of electronically stored information 2. Endorsement regarding Defendant City of Worcester's motion to stay electronic discovery (36) 3. City of Worcester's emergency motion for clarification and modification of ESI order (37) 4. Plaintiff Town of Holden's opposition to the Defendant City of Worcester's emergency motion for clarification and modification of ESI order (38) 5. Request for leave to file a brief reply memorandum (39) 6. Plaintiff Town of Holden's reply to Defendant City of Worcester's opposition to Plaintiff's motion to strike portions of Worcester's motion for judgment on the pleadings (40)
		PREVIOUSLY FILED PLEADINGS
02/23/2023		Case file images
		Correspondence from Petrini & Associates, non numbered/non docketed pleadings
		1. Motion to schedule conference call to discuss ESI issues 2. City of Worcester's partial opposition to Plaintiff's motion for a conference call 3. Memorandum of law in support of City of Worcester's partial opposition 4. Plaintiff Town of Holden's opposition to Defendant City of Worcester's cross motion for clarification and modification of ESI order 5. Memorandum of law in support of Town of Holden's opposition to the Defendant City of Worcester's cross motion for clarification and modification of ESI order 6. Notice of filing pursuant to Superior Court Rule 9A
		PREVIOUSLY FILED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
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02/23/2023

Case file images

1. Correspondence from City of Worcester reporting on the status of the dispute regarding ESI
2. Plaintiff Town of Holden report regarding the ESI consultant's meeting and remaining disputed ESI issues between Holden and Worcester (42)
3. DCR's emergency motion for an extension to complete ESI discovery in light of the blizzard (43)
4. Order regarding Defendant City of Worcester's motion for clarification and modification of ESI order (44)
5. Memorandum of decision and order on Worcester's motion for judgment on the pleadings (45)
6. Plaintiff Town of Holden status report pursuant to Court's order dated March 9, 2015 (45.1)

PREVIOUSLY FILED PLEADINGS

02/23/2023

Case file images

1. Emergency motion by Defendant Department of Conservation and Recreation for an extension
2. City of Worcester's status report on ESI (47)
3. Plaintiff Town of Holden status report (48)
4. Correspondence from City of Worcester reporting the status of the production of ESI
5. City of Worcester's status report on ESI (49)
6. Order regarding hearing on further compliance with ESI order (50)

PREVIOUSLY FILED PLEADINGS



COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
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Case file images

1. City of Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (51)
2. Defendants' joint emergency motion to extend discovery and summary judgment deadlines (52)
3. Correspondence from Petrini & Assoc. requesting leave to file a memorandum of law in support of Plaintiff's forthcoming motion for summary judgment (52.1)
4. Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery and summary judgment deadlines and Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53)
5. Affidavit of Peter L. Mello Esq. in support of Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery and summary judgment deadlines and Worcester's emergency motion for leave to file for an enlargement of time for serving an opposition as to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53.1)
6. Plaintiff Town of Holden's request for hearing (53.2)
7. Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (54)
8. Memorandum of law in support of Holden's motion for summary judgment on Worcester's counterclaims (54.1)
9. The parties consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (54.2)
10. Affidavit of Christopher L. Brown (54.3)
11. Notice of filing pursuant to Superior Court Rule 9A

PREVIOUSLY FILED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
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Docket Report**

02/23/2023

Case file images

1. City of Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (51)
2. Defendants' joint emergency motion to extend discovery and summary judgment deadlines (52)
3. Correspondence requesting leave to file a memorandum of law in support of Plaintiff's forthcoming motion for summary judgment (52.1)
4. Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery and summary judgment deadlines and Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53)
5. Affidavit of Peter L. Mello, Esq. in support of Plaintiff Town of Holden's opposition to the Defendants' emergency joint motion to extend discovery and summary judgment deadlines and Worcester's emergency motion for leave for an enlargement of time for serving an opposition to Plaintiff's motion for summary judgment as to Worcester's counterclaims (53.1)
6. Plaintiff Town of Holden's request for hearing (53.2)
7. Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (54)
8. Memorandum of law in support of Holden's motion for summary judgment on Worcester's counterclaims (54.1)
9. The parties' consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to the City of Worcester's counterclaims (54.2)
10. Affidavit of Christopher L. Brown (54.3)
11. Notice of filing pursuant to Superior Court Rule 9A

PREVIOUSLY FILED PLEADINGS

02/24/2023

Case file images

1. Joint appendix index of appendix exhibits pursuant to Superior Court Rule 9A(b)(5)(vi) (54.4)

PREVIOUSLY FILED PLEADINGS

02/24/2023

Case file images

1. Correspondence from Petrini & Assoc. re: outstanding issues (55)
2. Plaintiff Town of Holden's assented-to motion to confirm tracking order deadlines (56)
3. Order re: Town of Holden's assented to motion to confirm tracking order deadlines (57)
4. Motion to change tracking order deadlines by all parties (58)
5. Order re: Town of Holden's motion to change tracking order deadlines (59)
6. Order following status conference (60)

PREVIOUSLY SCANNED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
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02/24/2023

Case file images

1. Correspondence from Petrini & Assoc. requesting leave to file a memorandum of law in support of DCR's motion for summary judgment (61)
2. City of Worcester's motion for leave to disclose expert beyond deadline (62)
3. Plaintiff Town of Holden's opposition to Worcester's motion for leave to disclose expert beyond deadline (62.1)
4. Request for hearing (62.2)
5. City of Worcester's certificate of notice of filing Rule 9A package (62.3)
6. City of Worcester's document listing per Superior Court Rule 9A (62.4)
7. Correspondence from Petrini & Assoc. requesting leave to file a memorandum of law in support of Holden's forthcoming opposition to Worcester's motion or summary judgment (63)
8. Plaintiff Town of Holden's opposition to request of Defendant Department of Conservation and Recreation's request to submit reply memorandum in excess of five pages in length (63.1)
9. Notice of appearance of Katherine B. Dirks for Defendant, Department of Conservation and Recreation
10. Department of Conservation and Recreation's request for leave to file a reply of up to 12 pages (64)
11. Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (65)
12. Memorandum of law in support of Holden's motion for summary judgment on Worcester's counterclaims (65.1)
13. City of Worcester's opposition to Holden's motion for summary judgment as to Worcester's counterclaims (65.2)
14. Plaintiff Town of Holden's reply to Defendant City of Worcester's opposition to Town's motion for summary judgment as to Worcester's counterclaim (65.3)
15. Parties consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (65.4)
16. Joint Appendix for Plaintiff Town of Holden's motion for summary judgment as to City of Worcester's counterclaims (65.5)
- *not scanned, bound volume*
17. Notice of filing pursuant to Superior Court Rule 9A (65.6)

PREVIOUSLY FILED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

02/24/2023

Case file images

1. Plaintiff Town of Holden's motion for summary judgment as to Holden's claims (66)
2. Memorandum of law in support of Plaintiff Town of Holden's motion for summary judgment as to Holden's claims (66.1)
3. City of Worcester's opposition to Holden's motion for summary judgment as to Holden's claims (66.2)
4. Department of Conservation and Recreation's opposition to Town of Holden's motion for summary judgment as to Holden's claims (66.3)
5. Holden's reply to City of Worcester's opposition to Holden's motion for summary judgment as to Holden's claims (66.4)
6. Holden's reply to DCR's opposition to the Town of Holden's motion for summary judgment as to Holden's claims (66.5)
7. Defendant's motion to strike a portion of Plaintiff's statement of facts (67)
8. Plaintiff Town of Holden's opposition to Defendant DCR's motion to strike a portion of Plaintiff's statement of facts (67.1)
9. City of Worcester's notice of joinder of DCR's motion to strike portions of Holden's statements of fact (67.2)
10. Plaintiff Town of Holden's motion to strike certain Defendant City of Worcester statements of fact, supporting exhibit and portions of Worcester's memorandum of law in opposition to Holden's motion for summary judgment (68)
11. City of Worcester's opposition to Plaintiff's motion to strike the markus affidavit and Worcester's cross-motion to strike (68.1)
12. Parties consolidated statement of material facts regarding the Plaintiff Town of Holden's motion for summary judgment as to Holden's claims (69)
13. Joint Appendix for Plaintiff Town of Holden's motion for summary judgment as to Holden's Claims, Volume I (70)

not scanned, bound volume

PREVIOUSLY FILED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

02/24/2023

Case file images

1. Notice of filing pursuant to Superior Court Rule 9A (71)
2. Department of Conservation and Recreation's motion for summary judgment (72)
3. Affidavit of Assistant Attorney General Andrew W. Koster in support of Department of Conservation and Recreation's motion for summary judgment (72.1)
4. Memorandum in support of Department of Conservation and Recreation's motion for summary judgment (72.2)
5. Plaintiff Town of Holden's opposition to Defendant Department of Conservation and Recreation's motion for summary judgment (72.3)
6. Affidavit of Christopher L. Brown in support of Plaintiff Town of Holden's oppositions to Defendants' motions for summary judgment (72.4)
7. Memorandum of law in support of Plaintiff Town of Holden's opposition to Defendant Department of Conservation and Recreation's motion for summary judgment (72.5)
8. DCR's reply in support of its motion for summary judgment (72.6)
9. Department of Conservation and Recreation's statement of material facts (72.7)

PREVIOUSLY FILED PLEADINGS

02/24/2023

Case file images

1. Defendant's motion to strike a portion of Town of Holden's additional material facts (73)
2. Plaintiff Town of Holden's motion to strike certain Defendant Department of Conservation and Recreation statements of fact and supporting exhibits to Defendant Department of Conservation and Recreation's motion for summary judgment (74)
3. Defendant Department of Conservation and Recreation's opposition to Plaintiff's motion to strike certain statements of fact and supporting exhibits to DCR's motion for summary judgment (74.1)
4. 9A list of documents (74.2)
5. Notice of filing (74.3)
6. City of Worcester's motion for summary judgment (75)
7. Memorandum of law in support of Defendant City of Worcester's motion for summary judgment (75.1)
8. Plaintiff Town of Holden's opposition to Defendant City of Worcester's motion for summary judgment (75.2)
9. Memorandum of law in support of Plaintiff Town of Holden's opposition to Defendant City of Worcester's motion for summary judgment (75.3)
10. City of Worcester's reply to Holden's opposition to Worcester's motion for summary judgment (75.4)
11. City of Worcester's statement of undisputed material facts (75.5)

PREVIOUSLY FILED PLEADINGS



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

02/27/2023

Case file images

1. Plaintiff Town of Holden's motion to strike certain Defendant City of Worcester statements of fact and supporting exhibits to Defendant City of Worcester's motion for summary judgment (76)
2. City of Worcester's opposition to Plaintiff's motion to strike certain statements of fact and supporting exhibits to Worcester's motion for summary judgment and Worcester's cross-motion to strike (76.1)
3. City of Worcester's document listing per Superior Court Rule 9A (76.2)
4. City of Worcester's certificate of notice of filing Rule 9A package (76.3)
5. Joint Appendix for the Department of Conservation and Recreation and City of Worcester's motions for summary judgment, Volume 1 (77) *not scanned, bound copy*
- Volume 2 (77) *not scanned, bound copy*
6. Holden's opposition to DCR's motion to strike a portion of Town of Holden's additional material facts with Exhibits A and B (78)
7. Holden's opposition to City of Worcester's cross motion to strike and reply to City of Worcester's opposition to Plaintiff's motion to strike certain statements of fact and supporting exhibits to Worcester's motion for summary judgment (79)

PREVIOUSLY FILED PLEADINGS

02/27/2023

Case file images

1. Holden's opposition to Worcester's cross-motion to strike and reply to City of Worcester's opposition to Plaintiff's motion to strike the markus affidavit and markus opinion materials (80)
2. Holden's opposition to City of Worcester's notice of joinder to DCR's motion to strike portions of Holden's statement facts (81)
3. DCR's motion for leave to file an amended answer (82)
4. Plaintiff Town of Holden's opposition to DCR's motion for leave to file an amended answer (82.1)
5. 9A list of documents (82.2)
6. Joint motion to continue pre-trial conference (83)
7. Notice of withdrawal for Brian A. Schwartz for Defendant, City of Worcester

PREVIOUSLY FILED PLEADINGS

04/10/2023

Endorsement on Motion for Award of Prejudgment Interest and Costs (#197.0): Other action taken
See decision of Judge Manitsas dated 4/10/23. Notices mailed 4/19/23

Manitsas

Judge: Manitsas, Hon. James M

04/10/2023

198

ORDER: DECISION ON PLAINTIFF'S MOTION FOR AWARD OF PREJUDGMENT INTEREST- (See Order) Copies mailed 4/19/23

Manitsas

Judge: Manitsas, Hon. James M

04/10/2023

199

ORDER: DECISION ON PLAINTIFF'S MOTION FOR TAXATION OF COSTS- (See Order) Copies mailed 4/19/23

Manitsas

Judge: Manitsas, Hon. James M



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

04/19/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
04/26/2023	200	ORDER: ENTRY OF FINAL JUDGMENT- (See Judgment) Entered and Copies mailed 4/26/23 Judge: Manitsas, Hon. James M	Manitsas
04/26/2023		Disp for statistical purposes	
05/15/2023	201	Notice of appeal filed. (E-FILED) Applies To: Angelini, Esq., Michael P (Attorney) on behalf of City of Worcester, Department of Conservation and Recreation (Defendant); Bartholomew, Esq., Andrew (Attorney) on behalf of City of Worcester (Defendant) (notices with notice of appeal mailed 5/18/2023)	
05/24/2023	202	Notice of appeal filed (E-FILED) Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff); Terry, Esq., Michael K (Attorney) on behalf of Town of Holden (Plaintiff); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff) (notices with copy of notice of appeal mailed 5/25/2023)	
05/30/2023	203	CD of Transcript of 07/25/2022 09:00 AM Jury Trial, 07/26/2022 09:00 AM Jury Trial, 07/27/2022 09:00 AM Jury Trial, 07/28/2022 09:00 AM Jury Trial, 08/01/2022 09:00 AM Jury Trial, 08/02/2022 09:00 AM Jury Trial, 08/04/2022 09:00 AM Jury Trial received from Bay State Reporting Agency.	
05/30/2023		Pursuant to Mass. R. App. P. 8 (b)(3), the parties are hereby notified that all transcripts have been received by the clerk's office and that the record will be assembled pursuant to Mass. R. Civ. P. 9(e).	



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

05/30/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Heather Colleen White, Esq. hwhite@petrinilaw.com Plaintiff, Attorney: Michael K Terry, Esq. mterry@petrinilaw.com Plaintiff, Attorney: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Defendant, Attorney: Katherine B Dirks, Esq. katherine.dirks@mass.gov Defendant, Attorney: David M Moore, Esq. dmoore0794@gmail.com Defendant, Attorney: Michael P Angelini, Esq. mangelini@bowditch.com Defendant, Attorney: Andrew Bartholomew, Esq. abartholomew@bowditch.com
05/30/2023	204	Defendant City of Worcester's Notice of ordering all trial transcripts in this matter that have not already been delivered to the clerk (8/3/2022)
06/01/2023	205	CD of Transcript of 07/12/2022 02:00 PM Final Trial Conference, 07/25/2022 09:00 AM Jury Trial, 08/02/2022 09:00 AM Jury Trial, 08/03/2022 09:00 AM Jury Trial received from Raymond F. Catuogno, Jr.
06/05/2023	206	Plaintiff Town of Holden's Notice of Certification Pursuant to Mass. R.A.P. 8 and 9 that all transcripts which the Plaintiff deems necessary for determination of the appeal have been filed with the court Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff); Terry, Esq., Michael K (Attorney) on behalf of Town of Holden (Plaintiff); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff)
06/28/2023	207	Notice of assembly of record sent to Counsel
06/28/2023	208	Appeal: Statement of the Case on Appeal (Cover Sheet).
06/29/2023		Docket Note: Assembly of record on appeal transmitted to Appeals Court (8822)
07/12/2023	210	Appeal entered in Appeals Court on 07/12/2023 docket number 2023-P-0795
07/12/2023	209	Appeal entered in Appeals Court on 07/12/2023 docket number 2023-P-0794
08/02/2023	211	Party(s) file Stipulation pursuant to Mass. R. App. P. 8(e)(1) to add transcript of November 2, 2022, to record on appeal Applies To: White, Esq., Heather Colleen (Attorney) on behalf of Town of Holden (Plaintiff); Terry, Esq., Michael K (Attorney) on behalf of Town of Holden (Plaintiff); Petrini, Esq., Christopher J (Attorney) on behalf of Town of Holden (Plaintiff); Angelini, Esq., Michael P (Attorney) on behalf of City of Worcester (Defendant); Dirks, Esq., Katherine B (Attorney) on behalf of Department of Conservation and Recreation (Defendant); Bartholomew, Esq., Andrew (Attorney) on behalf of City of Worcester (Defendant)
08/02/2023	212	Transcript received of November 2, 2022, hearing (CD)



**COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY
Docket Report**

08/08/2023	Endorsement on Stipulation to Add transcript of November 2, 2022, to record on appeal (#211.0): ALLOWED Notices mailed 8/9/23	Goodwin
	Judge: Goodwin, Hon. Karen	
08/09/2023	EDocument sent: Clerk's Notice (eDoc) Sent On: 08/09/2023 09:02:54 Notice Sent To: Heather Colleen White, Esq. hwhite@petrinilaw.com Notice Sent To: Michael K Terry, Esq. mterry@petrinilaw.com Notice Sent To: Christopher J Petrini, Esq. cpetrini@petrinilaw.com Notice Sent To: Michael P Angelini, Esq. mangelini@bowditch.com Notice Sent To: Sally A Vander Weele, Esq. sally.vanderweele@mass.gov Notice Sent To: Katherine B Dirks, Esq. katherine.dirks@mass.gov Notice Sent To: David M Moore, Esq. dmoore0794@gmail.com Notice Sent To: Andrew Bartholomew, Esq. abartholomew@bowditch.com	
08/09/2023	Docket Note: Updated Appeals Court entry statement and docket report emailed to Appeals Court	

A true copy by photostatic process

Attest:

Asst. Clerk

APPEALS COURT
Full Court Panel Case
Case Docket

Town of Holden vs. Department of Conservation and Recreation et al
2023-P-0794

CASE HEADER

Case Status	Decided: Summary Disposition Rule 23.0	Status Date	08/18/2025
Nature	Governmental/municipal	Entry Date	07/12/2023
Appellant	Both Plf & Deft	Case Type	Civil
Brief Status		Brief Due	
Arg/Submitted	10/09/2024	Decision Date	08/18/2025
Panel	Meade, Walsh, Smyth, JJ.	Citation	105 Mass. App. Ct. 1144
Lower Court	Worcester Superior Court	TC Number	1385CV00910
Lower Ct Judge	James Manitsas, J.	TC Entry Date	05/24/2013
SJ Number		FAR Number	
SJC Number			

INVOLVED PARTY

Town of Holden
Plaintiff/Appellee
Red brief & reply br filed
2 Enls, 39 Days

City of Worcester
Defendant/Appellant
Blue br, app & reply br filed
1 Enl, 39 Days

Department of Conservation and Recreation
Defendant/Appellee
Red brief filed
2 Enls, 107 Days

ATTORNEY APPEARANCE

[Heather C. White, Esquire](#)
[Michael K. Terry, Esquire](#)
[Christopher J. Petrini, Esquire](#)

[Andrew Bartholomew, Esquire](#) - Withdrawn
[David M. Moore, Esquire](#)
[Michael P. Angelini, Esquire](#)
[Joshua A. Lewin, Esquire](#)
[Brian Edmonds, Esquire](#)

[Michael P. Angelini, Esquire](#) - Withdrawn
[Sally A. VanderWeele, A.A.G.](#) - Inactive
[Katherine B. Dirks, A.A.G.](#)
[Benjamin Noah Ernst, A.A.G.](#)
[Monica Naranjo, A.A.G.](#)

DOCUMENTS

[Appellant Brief](#) 
[Town of Holden Appellee Brief](#) 
[Dept of Conservation Appellee Brief](#) 
[Reply City of Worcester Part 1 of 3 Brief](#) 

[Reply City of Worcester Part 2 of 3 Brief](#) 
[Reply City of Worcester Part 3 of 3 Brief](#) 
[Town of Holden Reply Brief](#) 

ORAL ARGUMENTS

 0:00 / 0:00





DOCKET ENTRIES

Entry Date	Paper	Entry Text
10/02/2023		**** Cross Appeal ****
07/12/2023	#1	Lower Court Assembly of the Record Package
07/12/2023		Notice of entry sent.
07/12/2023	#2	Civil Appeal Entry Form Worcester - Civil Appeal Entry Form filed for City of Worcester by Attorney Andrew Bartholomew.
07/13/2023	#3	[Order entered on 2023-P-0795] ORDER: Entry vacated as having entered in error. The civil appeal entry form and the entry fee paid by the Town of Holden is transferred to 23-P-794. Notice
07/13/2023		Returned eMail: Notice of Case Entry sent to David M. Moore returned as undeliverable. Notice re-sent to updated email address on file.
07/20/2023	#4	Joint motion to set briefing schedule filed for Town of Holden by Attorney Heather Colleen White.
07/20/2023		RE#4:No action taken pending receipt of the docketing statement, now due on or before 07/27/2023.*Notice sent
07/20/2023	#5	Docketing Statement filed for Town of Holden by Attorney Heather Colleen White.
07/27/2023	#6	Docketing Statement filed for Town of Holden by Attorney Christopher Petrini.

07/27/2023	#7	Docketing Statement filed for City of Worcester by Attorney Michael Angelini.
08/02/2023		RE#4: The motion is allowed to the extent the appellant is granted an enlargement of time to 9/29/23 to file its brief and appendix. The remaining requests are denied without prejudice to renewal following the filing and acceptance of the preceding brief. *Notice
08/02/2023		DAR-29452 opened.
08/07/2023	#8	Motion for clarification regarding briefing deadlines filed for Town of Holden by Attorney Christopher Petrini.
08/07/2023	#9	RESPONSE filed for City of Worcester by Attorney Andrew Bartholomew.
08/08/2023	#10	RESPONSE filed for Town of Holden by Attorney Christopher Petrini.
08/09/2023	#11	Copy of updated docket sheet received from Worcester Superior Court.
08/09/2023	#12	Copy of amended entry statement received from Worcester Superior Court.
08/15/2023		RE#8: Holden is considered an appellee/cross-appellant and, as reflected on this Court's docket, its principal/response brief is not presently due until 10/30/23. See Mass. R. A. P. 10(a)(7) and 19(b)(2). Pursuant to Mass. R. A. P. 20(a)(3)(B) that brief is limited to 60 pages to address its appeals as to both DCR and Worcester. Any request to exceed the page limit is denied without prejudice to renewal with a motion demonstrating extraordinary reasons. See Mass. R. A. P. 20(a)(3)(G). Any request to extend the deadline is denied without prejudice to renewal following the filing and acceptance of Worcester's brief. *Notice.
09/18/2023	#13	Notice of appearance filed for Department of Conservation and Recreation by Attorney Benjamin Ernst.
09/27/2023		DAR DENIED (on 09/27/2023).
09/29/2023	#14	Appellant brief filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#15	Appendix (Vol I of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#16	Appendix (Vol II of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#17	Appendix (Vol III of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#18	Appendix (Vol IV of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#19	Appendix (Vol V of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#20	Appendix (Vol VI of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#21	Appendix (Vol VII of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#22	Appendix (Vol VIII of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#23	Appendix (Vol IX of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#24	Appendix (Vol X of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#25	Appendix (Vol XI of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#26	Appendix (Vol XII of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#27	Appendix (Vol XIII of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#28	Appendix (Vol XIV of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#29	Appendix (Vol XV of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#30	Appendix (Vol XVI of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#31	Appendix (Vol XVII of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#32	Appendix (Vol XVIII of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#33	Appendix (Vol XIX of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#34	Appendix (Vol XX of XXI) filed for City of Worcester by Attorney Michael Angelini.
09/29/2023	#35	Appendix (Vol XXI of XXI) filed for City of Worcester by Attorney Michael Angelini.
10/11/2023	#36	MOTION of Appellee to extend brief due date filed for Town of Holden by Attorney Christopher Petrini.
10/11/2023	#37	MOTION to file non-conforming brief filed for Town of Holden by Attorney Christopher Petrini.
10/16/2023	#38	RESPONSE filed for City of Worcester by Attorney Brian Edmonds.
10/18/2023		RE#36, 37 & 38: In the unusual circumstances of this case, which involves not only a cross appeal but also appellee/cross appellant Town of Holden's need to brief the issues related to a third-party claim, appellee's request to exceed the length limit provided in Mass. R. A. P. 20(a)(3)(B) is allowed, in part. Appellee is granted an additional 10 pages, or 2,500 words, for its principal and response brief. The brief is now due on or before 12/1/23. (Englander, J.). *Notice.
11/13/2023	#39	MOTION to file supplemental appendix filed for Town of Holden by Attorney Christopher Petrini.
11/14/2023		RE#39: The appellant City of Worcester may file amended versions of Volumes XVI and XX of the appendix with Amended on the cover of each volume on or before 11/21/23. *Notice.
11/28/2023	#40	Appendix (Amended (Vol XVI of XXI)) filed for City of Worcester by Attorney Michael Angelini.
11/28/2023	#41	Appendix (Amended (Vol XX of XXI)) filed for City of Worcester by Attorney Michael Angelini.
12/01/2023		Notice of rejection of brief/appendix of Town of Holden as noncompliant for the reasons indicated on the checklist: 11 (Pages 98-112, 15, 125-127 in Addendum), 12 (allowed 10 additional pages or 2500 additional words, 19 additional non-excluded pages submitted). Accordingly, on or before 12/08/2023, you must correct the above-listed nonconformities and submit a conforming brief and/or appendix. *Notice sent.
11/30/2023	#42	MOTION to strike filed for Town of Holden by Attorney Christopher Petrini.
12/01/2023		RE#42: Denied without prejudice to renewal of arguments in Appellee's brief. *Notice.

12/05/2023	#43	Appellee brief filed for Town of Holden by Attorney Christopher Petrini.
12/08/2023	#44	MOTION of Appellee to extend brief due date filed for Department of Conservation and Recreation by Attorney Katherine Dirks.
12/11/2023		RE#44: Allowed to 03/04/2024. Notice sent.
01/04/2024	#45	Reply brief filed for City of Worcester by Attorney Michael Angelini.
02/15/2024	#46	MOTION of Appellee to extend brief due date filed for Department of Conservation and Recreation by Attorney Benjamin Ernst.
02/20/2024		RE#46: Allowed to 03/25/2024. Notice sent.
03/20/2024	#47	Notice of withdrawal as counsel filed for City of Worcester by Attorney Michael Angelini.
03/20/2024	#48	Notice of withdrawal as counsel filed for City of Worcester by Attorney Michael Angelini.
03/20/2024	#49	Notice of appearance filed for City of Worcester by Attorney Joshua Lewin.
03/20/2024	#50	Notice of appearance filed for City of Worcester by Attorney Brian Edmonds.
03/25/2024	#51	Appellee brief filed for Department of Conservation and Recreation by Attorney Katherine Dirks.
04/01/2024	#52	Motion Seeking Leave to Increase Number of Pages in Reply Brief and to Extend Deadline for Filing Reply Brief filed for Town of Holden by Attorney Christopher Petrini.
04/01/2024	#53	RESPONSE filed for City of Worcester by Attorney Brian Edmonds.
04/04/2024	#54	MOTION of Appellee to extend brief due date filed for Town of Holden by Attorney Christopher Petrini.
04/04/2024		RE#54: Allowed to 05/13/2024. *Notice.
04/04/2024	#55	RESPONSE filed for City of Worcester by Attorney Brian Edmonds.
04/12/2024		RE#52: The Town of Holden seeks leave to file a reply brief of 40 pages. In support, it asserts in part that the City of Worcester's brief (P#45) was governed by MRAP 16(c). Worcester's brief, however, despite being labeled a reply brief, was in substance a response and reply brief, see MRAP 20(a)(3)(C), filed after Holden's principal and response brief (P#43), see MRAP 16)(i)(2) and MRAP 20(a)(3)B). As such, Worcester's brief was permitted to contain appellant argument replying to Holden's response to Worcester's principal brief, as well as cross-appellee argument responding to Holden's principal argument as cross-appellant. Holden's forthcoming reply brief is limited by MRAP 16(i)(3) and MRAP 20(a)(3)(D) to replying to the appellee arguments made by Worcester in P#45 (which totaled 11 pages) and by DCR in P#51. Accordingly, Holden is granted leave to file a reply brief of not more than 30 pages, limited to reply argument and not containing sur-reply argument. To the extent P#52 sought an enlargement of time to file Holden's brief, no action is necessary in light of the action allowing Holden's superseding motion (P#54). (Sacks, J.). *Notice.
05/13/2024	#56	Reply brief filed for Town of Holden by Attorney Christopher Petrini.
08/15/2024		Notice sent seeking information on unavailability for oral argument in October 2024
08/19/2024		Response from Katherine B. Dirks, A.A.G. re: available all dates for oral argument. (Received 08/15/24).
08/19/2024	#57	Response from Christopher J. Petrini, Esquire re: unavailable for oral argument October 10, 21. (Received 08/15/24).
08/19/2024	#58	Response from Brian Edmonds, Esquire re: unavailable for oral argument October 1, 2, 3, 4, 10. (Received 08/16/24).
08/30/2024	#59	Notice of 10/09/2024, 9:30 AM argument at Western New England Law School sent.
09/03/2024		Response from Michael P. Angelini, Esquire re: will appear and argue on 10/09/2024.
09/04/2024		Response from Katherine B. Dirks, A.A.G. re: will appear and argue on 10/09/2024. (Received 09/03/2024)
09/04/2024		Response from Christopher J. Petrini, Esquire re: will appear and argue on 10/09/2024. (Received on 8/30/2024)
09/13/2024	#60	Notice of change of address filed for City of Worcester by Attorney Michael Angelini.
09/13/2024	#61	Notice of change of address filed for City of Worcester by Attorney Joshua Lewin.
09/13/2024	#62	Notice of change of address filed for City of Worcester by Attorney Brian Edmonds.
10/07/2024	#63	Motion for clarification of oral argument time limit filed for Town of Holden by Attorney Heather Colleen White.
10/08/2024		ORDER: (RE#63) Denied. Should the panel determine that more time is necessary for its further understanding of the case, or to pose more questions, that decision will be made during the oral argument. (Meade, Walsh, Smyth, JJ.). *Notice.
10/09/2024		Oral argument held. (Meade, J., Walsh, J., Smyth, J.).
02/18/2025		ORDER: The one hundred and thirty day guideline for the above entitled case is waived by the order of the Court. (Meade, Walsh, & Smyth, JJ.) *Notice.
08/18/2025	#64	Decision: Rule 23.0 Judgment affirmed. (Meade, Walsh, Smyth, JJ.). *Notice.

As of 08/20/2025 3:15pm

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 23-P-794

TOWN OF HOLDEN

vs.

DEPARTMENT OF CONSERVATION AND RECREATION & another.

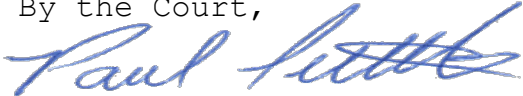
Pending in the Superior

Court for the County of Worcester

Ordered, that the following entry be made on the docket:

Judgment affirmed.

By the Court,

 , Clerk

Date August 18, 2025.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

23-P-794

TOWN OF HOLDEN

vs.

DEPARTMENT OF CONSERVATION AND RECREATION & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

In May 2013, the town of Holden (Holden) commenced this action against the defendants, the Department of Conservation and Recreation (DCR) and the city of Worcester (Worcester), claiming the defendants had overcharged it for the transportation of Holden's sewage through Worcester to its final destination at a wastewater treatment facility in Millbury (treatment facility). Following an eight-day trial in the summer of 2022, the jury found against Holden on its breach of contract claim against DCR, but in favor of Holden on its unjust enrichment claim against Worcester. The trial judge adopted the

¹ City of Worcester.

jury's findings of fact and their special verdict on the unjust enrichment claim.² See Delaney v. Chief of Police of Wareham, 27 Mass. App. Ct. 398, 401 (1989). The judge subsequently denied Worcester's motion for judgment notwithstanding the verdict (judgment n.o.v.) on the unjust enrichment claim and Holden's cross motion to set aside the verdict on the contract claim. These cross appeals from the final judgment followed. We affirm.

Background. We recite the facts the jury could have found, as supplemented by the judge's findings of fact, reserving certain details for later discussion. See Tocci v. Tocci, 490 Mass. 1, 3 (2022). In the late 1980s, the Wachusett Reservoir and its watershed -- the public water supply for over 2.5 million people -- was at risk from failing septic systems. In

² Answering special questions, the jury found that DCR committed a breach of its agreement with Holden to charge Holden only its "proportionate applicable [wastewater] transport costs" each time DCR billed Holden, but that the breaches were excused by waiver. The jury further found that Worcester knowingly received a valuable benefit from Holden and that it would be inequitable to allow Worcester to keep the benefit. Further finding that Holden had not unreasonably delayed bringing its unjust enrichment claim against Worcester, the jury found that the value of the benefit unlawfully retained by Worcester was \$14,604,237. The judge subsequently determined that the jury found, consistent with his instructions, an absence of prejudice to Worcester. Having reserved the declaratory judgment count to himself, the judge made additional findings and ultimately concluded that Holden was not entitled to the declaratory judgment it sought. No aspect of the declaratory judgment count is before us in this appeal.

1993, the Massachusetts Water Resources Authority (MWRA), DCR,³ and the Massachusetts Department of Environmental Protection (DEP) entered into a consent order requiring the MWRA and DCR to implement a watershed protection plan for the area. The DEP imposed a series of deadlines on DCR and the MWRA for the planning and construction of treatment facilities that would bring the watershed area into compliance with State and Federal environmental laws. The facilities plan developed by MWRA and DCR called for the expansion of sewer systems in three towns located in the watershed area (Holden, West Boylston, and Rutland), the transportation of the towns' sewage to the treatment facility through neighboring Worcester, and improvements to Worcester's sewer system to accommodate the increased flow of wastewater through it. The State made significant contributions to the project.

Around 1996 negotiations over a master sewer use agreement between the three towns, Worcester, and the DCR began but broke down; at that point, DCR, aided by the Massachusetts Executive Office of Environmental Affairs, began negotiating solely with Worcester for a sewer use agreement. During the negotiations,

³ Many of the relevant documents in this litigation were entered into by the Metropolitan District Commission and other predecessor agencies of DCR. Where nothing turns on this and for ease of reference, we shall refer in this decision to both DCR and its predecessor agencies as DCR.

Worcester expressly rejected Holden's transport rate proposal that included Worcester's actual total flow in the calculus, deeming it "grossly inadequate" to what Worcester was seeking in total revenue for the use of its sewer system.

In December 1999, upon DCR's completion of the sewer expansion project in Holden, DCR and Holden entered into a contract transferring to Holden the care, custody, and control of the new sewer components (1999 Holden-DCR contract). Pursuant to the fourth paragraph of that contract, Holden agreed "to pay directly to [DCR] all proportionate applicable transport costs (as finally determined and agreed to by the Town of Holden) for the transport of sewage . . . to the [treatment facility], including the costs of sewage transport through the City of Worcester." But for this "critical" provision requiring Holden's approval of the transport rate, Holden would not have signed the agreement. Worcester was not a party to the 1999 Holden-DCR agreement.

By the spring of 2000, "time was running out" to bring the watershed area into compliance with Federal and State law, and DCR "was anxious to turn the valve on" allowing sewage to flow into Worcester. In May 2000, Worcester and DCR entered into a "Sewer Use Agreement . . . For Intermunicipal Sewer Use" (May 2000 SUA). The agreement referenced the 1993 consent order, the public interest in expanding the public sewer system, and the

financial assistance from the State. Pursuant to that contract, Worcester agreed to "receive, transport and convey [Holden's] wastewater . . . from points of connections . . . to the Treatment Plant." The agreement established a rate calculation methodology (May 2000 SUA formula) for determining the amount owed to Worcester for transporting the towns' sewage through it. The May 2000 SUA formula allowed Worcester to (1) pass along significant and unproportionate costs to Holden, including stormwater management and capital costs that had nothing to do with Holden's use of the Worcester sewer system, and (2) undercount its actual billable flow (increasing Holden's share of the costs).⁴ For example, the judge found, and Worcester does not dispute, that Worcester's costs for its sewer system, consisting of forty-five percent stormwater pipes and fifty-five percent sanitary sewer pipes, are managed together; and that although Holden does not use any of Worcester's stormwater system, Worcester includes the costs for it in the fees charged to Holden. DCR had voiced objections to the fairness of the

⁴ The rate methodology was at odds with (1) the stated intention of DCR referenced in the agreement to adopt "a revised method of computing a sewer use rate reflecting [Holden's] proportional use of the [Worcester] sewer system to be paid by [Holden]" and (2) the agreement's definition of "[u]ser charges" ("charges levied in proportion to the use of sewage works"). Not only was Holden's approval of the formula not secured, the May 2000 SUA expressly disclaimed the "creat[ion of] a contractual relationship" with any third parties.

formula but ultimately signed the agreement.⁵ Both before and after the execution of the May 2000 SUA, Holden objected to DCR and to Worcester about the unfair methodology.⁶ Holden declined to sign the May 2000 SUA or to execute a similar sewer use agreement with DCR or Worcester incorporating the May 2000 SUA formula.

In the spring of 2000, Holden made the necessary connections, went online, and began sending its sewage through Worcester to the treatment facility.⁷ Commencing at that time,

⁵ The chief negotiator for DCR noted that the formula "produces a higher rate of return to the city than the actual cost to the city for the operation and maintenance of its sewer system . . . [and] represents a significant cost sharing with the city by the towns without any apparent proportional benefit to the towns." Worcester recognized that implementation of the May 2000 SUA would increase the city's revenue at a "minimal increase in cost" to Worcester's ratepayers; and that the May 2000 SUA formula, including "[a]voidance of [the] total flow methodology," would produce a "distinct economic advantage to Worcester." Worcester rejected DCR's alternative proposed methodologies that DCR explained would produce "fair and equitable compensation."

⁶ The judge found that Worcester was aware that Holden objected to the amount of the fees and paid them under protest.

⁷ DCR considered and rejected a number of possible solutions that did not require Holden to transport its sewage through Worcester, including a water filtration plant that would have cost the State approximately one billion dollars to construct. As the trial judge found, the expansion of sewage treatment and the transport of Holden's wastewater was determined to be the most cost effective alternative for the protection of the watershed area.

DCR billed Holden quarterly for the wastewater transport.⁸ Since 2000, Holden has made all quarterly payments.⁹ In 2013, Holden filed a complaint in the Superior Court and began including letters of protest with each quarterly payment.¹⁰

Discussion. 1. Standard of review. "We must uphold the jury verdict as long as anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn in favor of the plaintiff" (quotation and citation omitted).¹¹ Rabassa v.

⁸ The judge found that beginning in the early 2000s, the parties adopted a general practice whereby Worcester, using the May 2000 SUA formula, calculated the amount owed by Holden for each quarter and sent the bills to DCR. In turn, DCR forwarded Worcester's bills to Holden with instructions to send checks made payable to Worcester back to DCR. Upon receipt, DCR delivered the checks to Worcester, which accepted and negotiated Holden's checks.

⁹ Under the May 2000 SUA, DCR had the ability to institute a "Cherry Street" interceptor process, which would allow it to take what Holden owed in transport fees out of Holden's local aid from the Legislature to satisfy Worcester's charges. Holden received one such letter from DCR threatening to start the process if Holden failed to pay its bill.

¹⁰ Holden paid Worcester a total of \$21,436,842.30 for sewage transport between May 2007 and May 2022. Holden's expert witnesses testified that of that amount, Holden paid \$17,382,826 in overcharges to Worcester and explained that a Holden ratepayer paid ten times as much for sewage transport through the Worcester system as did a Worcester ratepayer. Worcester does not challenge the amount of damages, just its liability for them.

¹¹ Worcester stated in its principal brief that "the trial judge" decided the unjust enrichment claim. In its reply brief, Worcester claimed for the first time that the judge did not

Cerasuolo, 97 Mass. App. Ct. 809, 814 (2020). See Dobos v. Driscoll, 404 Mass. 634, 656, cert. denied, 493 U.S. 850 (1989) (articulating standard for reviewing judge's denial of motion for judgment n.o.v.). We review legal conclusions de novo. See Governo Law Firm LLC v. Bergeron, 487 Mass. 188, 199 (2021).

2. Unjust enrichment. a. Sufficiency of evidence.

"Restitution is an equitable remedy by which a person who has been unjustly enriched at the expense of another is required to repay the injured party" (citation omitted). Metropolitan Life Ins. Co. v. Cotter, 464 Mass. 623, 643 (2013). To prevail on a claim for unjust enrichment, a plaintiff must establish "not only that the defendant received a benefit, but also that such a benefit was unjust." Id. at 644. See Santagate v. Tower, 64 Mass. App. Ct. 324, 329 (2005) (basis of right of recovery under doctrine of unjust enrichment is "that in a given situation it

decide the claim as promised, but rather violated Mass. R. Civ. P. 39 (c), 365 Mass. 801 (1974), by, sua sponte, treating the jury's special verdict as binding against Worcester's wishes. These positions seem inconsistent, and the claim of error, raised for the first time in a reply brief, comes too late. See Katz, Nannis & Solomon, P.C. v. Levine, 473 Mass. 784, 795 n.15 (2016). In any event, any procedural error was harmless where the judge fully adopted the jury's special findings on unjust enrichment as his own, and as Worcester acknowledges, the standard of review in this situation is the same, both on findings of fact and rulings of law. See Merola v. Exergen Corp., 423 Mass. 461, 463 (1996). See also H1 Lincoln, Inc. v. South Washington St., LLC, 489 Mass. 1, 13 (2022); Governo Law Firm LLC v. Bergeron, 487 Mass. 188, 199 (2021).

is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another. With no other test than what, under a given set of circumstances, is just or unjust, equitable or inequitable, conscionable or unconscionable, it becomes necessary in any case where the benefit of the doctrine is claimed to examine the circumstances and the conduct of the parties and apply this standard" [citation omitted]). "The injustice of the enrichment or detriment in quasi-contract equates with the defeat of someone's reasonable expectations" (citation omitted). Metropolitan Life Ins. Co., supra.

Worcester contends that the evidence was insufficient to show that Holden conferred a measurable benefit on Worcester and that the benefit received cannot be deemed unjust. We conclude that the jury's findings of fact and verdict in favor of Holden on the unjust enrichment claim were amply supported by the evidence.

First, to the extent that Worcester seeks cover in the terms of the 1999 Holden-DCR agreement -- pursuant to which Holden's payments were to be made to DCR -- there was evidence presented from which the jury could have found that Worcester was the real beneficiary of Holden's payments and that DCR was a mere conduit of the checks made payable to Worcester. It was undisputed that Worcester placed the transport fees paid by

Holden in an enterprise fund to help sustain the operation of Worcester's sewer department.¹² The jury, moreover, heard evidence about Holden's expectation before the May 2000 SUA was signed that it would pay a fee based on its proportionate share of the costs of the sewage transport through Worcester. Knowing full well Holden's expectations, Worcester and DCR forged ahead with the May 2000 SUA that, as the judge determined, charged Holden fees unrelated to Holden's actual use of Worcester's sewer system and manipulated the volume of flows to justify disproportionate fees to Holden. As the judge concluded, the fact that Worcester and DCR agreed on the formula did not preclude a finding by the jury that Worcester knew the fees charged to Holden were unfair in the first instance. In short, the jury could have found that Holden's reasonable expectations about paying a fair and proportionate fee for the sewage transport were defeated, and further that Worcester was no mere innocent party billing for amounts it believed were due under its May 2000 SUA, but rather, as the judge put it, an active participant "in imposing excessive and disproportionate charges on Holden."¹³

¹² Worcester's sewer department operates as an independent business unit within the city known as an enterprise fund, and maintains a separate budget.

¹³ Even assuming that Worcester's underlying actions here consisted simply of calculating sewage transport fees due

b. Worcester's defenses. Worcester maintains that a number of defenses required judgment to be entered in its favor on Holden's unjust enrichment claim. We consider each in turn.

i. Freedom of contract principles. "'[T]he general rule of our law is freedom of contract . . . [and] it is in the public interest to accord individuals broad powers to order their affairs through legally enforceable agreements' . . . even where, as here, the enforcement of the contract appears to produce harsh results" (citation omitted). Cummings Props., LLC v. Hines, 492 Mass. 867, 869 (2023). It is equally true that "contract rights are [not] absolute; for government cannot exist if the citizen may at will . . . exercise his freedom of contract to work . . . harm [to his fellow citizens]. Equally fundamental with the private right is [the right] of the public to regulate it in the common interest" (citation omitted). Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 320 (1996). In other words, sometimes public policy considerations outweigh the public interest in freedom of contract. See id. at 320-321. See A.Z. v. B.Z., 431 Mass. 150, 160 n.24 (2000) (Supreme Judicial Court noted it has "refused to

pursuant to the May 2000 SUA with DCR, liability under Massachusetts law "may extend to recipients who were not responsible for wrongful conduct." Sacks v. Dissinger, 488 Mass. 780, 790 (2021).

enforce contracts in a variety of contexts" due to public policy concerns).

We conclude that freedom of contract principles did not compel the judge to enforce the May 2000 SUA as written and to enter judgment in Worcester's favor on the unjust enrichment claim. The May 2000 SUA impacted not just the two parties to it, but also the ratepayers of the three towns in the watershed area. Worcester may not have had any obligation to accept wastewater from another town, but once it took on that obligation, the jury could have found that it had an obligation to be fair to the other towns; to the extent that Worcester argued that the May 2000 SUA formula was fair, the jury could have found otherwise. Freedom of contract does not extend to charging unjust fees that would ultimately be paid by a municipality that had no rights under that agreement, over its objection and in defeat of its reasonable expectations.¹⁴ This

¹⁴ At the oral argument, Worcester's attorney maintained that Worcester could have charged whatever it wanted for the transport, including "unreasonable" fees. As examples, he suggested \$1 million per day for the use of its sewer system or requiring the installation of free, high-speed rail service from Boston to Worcester would have been permissible user fees. The rule of proportionality engrained in our law and constitution do not support Worcester's assertions. See G. L. c. 83, § 16 (requiring "just and equitable" charges for use of municipal sewer systems); Carson v. Sewerage Comm'rs of Brockton, 175 Mass. 242, 244 (1900) (Holmes, C.J.) (common sewer assessment to individual "must be proportional to the benefit, and not in excess of it"), aff'd, 182 U.S. 398, 403-404 (1901) ("legislative power [may] assess the amount of benefit specially

is especially true, we think, where the public water supply was involved and Holden had no other viable option for transporting its sewage to the treatment facility.¹⁵ See Somerset Sav. Bank v. Chicago Title Ins. Co., 420 Mass. 422, 431-432 (1995) (after balancing needs and expectations of policy purchasers, their lack of bargaining power, and possible harm to public against freedom of contract principles, court declined to enforce integration clause exculpating insurer from loss arising from its own negligence).

ii. Contract bar rule. It is black letter law that a party may not seek recovery on a theory of unjust enrichment "where a valid contract defines the obligations of the parties." Malden Police Patrolman's Ass'n v. Malden, 92 Mass. App. Ct. 53, 60 (2017). See Metropolitan Life Ins. Co., 464 Mass. at 641;

received . . . so long as such amount is not grossly excessive, or out of all proportion to the benefit received"). See also Part II, c. 1, § 1, art. 4, of the Constitution of the Commonwealth (granting authority to Legislature "to impose and levy proportional and reasonable assessments, rates, and taxes").

¹⁵ Worcester's apple orchard example is inapposite. It is true that the owner of the only apple orchard in a geographical area may command a very good price for its apples from its customers without fear of liability for unjust enrichment. The factual situation in this case is much different. The players are public entities in a highly regulated area. While Worcester accommodated DCR's need to transport the sewage from three towns, it did not do so out of the goodness of its heart. The State paid significant amounts of money to Worcester for improvements to its sewer system.

Zelby Holdings, Inc. v. Videogenix, Inc., 92 Mass. App. Ct. 86, 92 (2017). See also Restatement (Third) of Restitution and Unjust Enrichment § 2(2) (2011) ("A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment").

The rule has no application here where Holden's counterpart in the express contract (the 1999 Holden-DCR contract), DCR, subsequently entered into a second contract with a third party (Worcester) that violated its agreement with Holden, and, with Worcester's knowledge and active participation, worked a serious injustice on Holden. No principle of Massachusetts law bars Holden's claim against Worcester in this context. We find no error in the conclusion reached by three different judges over the course of this litigation that the existence of the 1999 Holden-DCR contract did not preclude Holden's unjust enrichment claim against Worcester.

iii. Adequate remedy of law. The same three judges rejected Worcester's related argument that the availability of a remedy of law under the 1999 Holden-DCR contract barred Holden's unjust enrichment claim. We discern no error. One universally-accepted tenet of contract law prohibits a party from negotiating and entering into an express written contract governing a particular subject matter and thereafter seeking to override one of its provisions through a claim of unjust

enrichment. See County Comm'rs of Caroline County v. J. Roland Dashiell & Sons, Inc., 358 Md. 83, 97-98 & n.8 (2000) (exhaustively collecting State and Federal cases). Here, Holden never had an express agreement with Worcester about sewage transport that it sought to supplant through the equitable remedy of unjust enrichment. Contrast Malden Police Patrolman's Ass'n, 92 Mass. App. Ct. at 60 (collective bargaining agreement governing paid details performed by police officers precluded union's unjust enrichment claim against city). Nor did the 1999 Holden-DCR contract purport to define Worcester's obligations to Holden. The fact that Holden had an "adequate remedy of law" against DCR pursuant to that contract thus did not bar an unjust enrichment claim against Worcester. See Boston Med. Ctr. Corp. v. Secretary of the Executive Office of Health & Human Servs., 463 Mass. 447, 467 (2012) ("A plaintiff is not entitled to recovery on a theory of quantum meruit where there is a valid contract that defines the obligations of the parties"); Biltcliffe v. CitiMortgage, Inc., 772 F.3d 925, 931 (1st Cir. 2014) ("Under Massachusetts law, the existence of a contractual relationship between the parties typically precludes an unjust enrichment claim arising out of that contract" [emphasis added]). In addition, as the trial judge explained, Worcester's sweeping statement that "there can be no unjust enrichment in contract cases is plainly erroneous": courts have allowed

recovery on equitable grounds notwithstanding the existence of a fully integrated written contract between the parties. See, e.g., Sugarman & Sugarman, P.C. v. Shapiro, 102 Mass. App. Ct. 816, 819-820 & n.7 (2023). Worcester's argument based on the "longstanding maxim" that Holden cannot recover in equity due to the availability of a legal remedy fails for the reason that it is based on a faulty factual premise. Holden's breach of contract and unjust enrichment claims did not seek recovery "based on the same circumstances and based on the exact same injury." To the contrary, Holden's claims were based on distinct injuries inflicted by two different parties at different times.

iv. Laches. Finally, we conclude Worcester's reliance on the affirmative defense of laches to set aside the unjust enrichment verdict is unavailing. As Worcester acknowledges, the finding as to laches must stand unless clearly erroneous. See A.W. Chesterton Co. v. Massachusetts Insurers Insolvency Fund, 445 Mass. 502, 517 (2005). A successful defense of laches requires a showing not only of unreasonable delay, "but delay that works disadvantage to another" (citation omitted). Id. See West Broadway Task Force v. Boston Hous. Auth., 414 Mass. 394, 400 (1993) (unreasonable delay in bringing claim that "results in some injury or prejudice to the defendant" operates to bar claim). Contrary to Worcester's assertion, there was

evidence that Holden put Worcester on notice that it was objecting to the May 2000 SUA formula dating back to the negotiation period of that document. Even assuming that the finding that Holden's delay in bringing suit was reasonable was clearly erroneous, Worcester failed to demonstrate prejudice. Worcester's theory of material disadvantage is that using Holden's overpayments, it lowered its sewer rates for over a decade, benefiting this group of ratepayers, but that many of the current ratepayers were not users during that time period and would be unfairly forced to pay for the judgment. This is all theoretical, however. First, Worcester presented no evidence comparing the subsets of users -- or any evidence that it had at least attempted to compile the statistics. Second, Worcester presented no evidence that it actually lowered its rates. For all we know, the money paid by Holden was placed in the enterprise reserve fund and never used (as opposed to decreasing amounts paid by Worcester ratepayers). Worcester has not met its burden of showing that the finding of a lack of prejudice was clearly erroneous. See Santagate, 64 Mass. App. Ct. at 333.

3. Prejudgment interest. There was no error in the judge's grant of prejudgment interest under G. L. c. 231, § 6C (§ 6C). See Anastos v. Sable, 443 Mass. 146, 154-155 (2004).

First, Holden's unjust enrichment claim is quasi contractual in nature. Salamon v. Terra, 394 Mass. 857, 859 (1985) ("A quasi contract . . . is an obligation created by law for reasons of justice, without any expression of assent and sometimes even against a clear expression of dissent It is not really a contract, but a legal obligation closely akin to a duty to make restitution" [quotations and citations omitted]). Second, as the judge noted, this court has ruled that § 6C applies to equity-based claims, including not only quantum meruit, see Zabin v. Picciotto, 73 Mass. App. Ct. 141, 151, 155-156 (2008), but also unjust enrichment, see Brennan v. Ferreira, 102 Mass. App. Ct. 315, 319 (2023) (shareholder was entitled to prejudgment interest on her derivative claim). See also Suominen v. Goodman Indus. Equities Mgt. Group, LLC, 78 Mass. App. Ct. 723, 728 n.5 (2011) (allowing prejudgment interest on unjust enrichment damages award to stand); SiOnyx LLC v. Hamamatsu Photonics K.K., 981 F.3d 1339, 1347 (1st Cir. 2020) (holding that § 6C applies to damages for unjust enrichment).

Finally, we disagree with Worcester's characterization of the jury's monetary award as "purely restitutionary" and based on "disgorgement of profits." See Governo Law Firm LLC, 487 Mass. at 199-200 (monetary awards based on disgorgement of profits are measured by defendant's gain rather than plaintiff's loss, are not designed to make plaintiff whole, and do not

constitute "damages"). The jury here awarded compensatory damages measured by Holden's overpayments on a quarterly basis to Worcester. During those time periods, Holden was wrongfully deprived of the use of its money. An award of prejudgment interest added to the compensatory damages will make Holden whole for the loss of the use of its money. See Anastos, 443 Mass. at 155.

On the view we take of the case, there is no need, as Holden agrees, to reach Holden's cross appeal against Worcester and the DCR.

Judgment affirmed.

By the Court (Meade, Walsh &
Smyth, JJ.¹⁶),

A handwritten signature in blue ink, appearing to read "Paul Little".

Clerk

Entered: August 18, 2025.

¹⁶ The panelists are listed in order of seniority.

**Agreement for Transfer of Completed Sewer System Components for
Operation and Use
Between The Town of Holden
And The
Metropolitan District Commission**

**Project No WM 97-061-C1A
Fast Track Sewer Construction Project
Holden/West Boylston**

Agreement, made this 16th Day of December 1999, by and between the Town of Holden, hereinafter the "Town", and the Metropolitan District Commission, hereinafter the "Commission", pursuant to the provisions of MGL c92 s110 and MGL c21, s40 to safeguard the Wachusett Reservoir Watershed and as authorized pursuant to St.1996 c 15, s63 authorizing the Commission to "do all things necessary to design, construct, test and transfer ownership..." and further authorizing the Commission to enter into contract with the Town, to transfer care, custody and control (only) of that portion of the Sewer Project within the confines of Holden including the Mark Bradford Drive Pumping Station and all appurtenances to the Sewer System.

Whereas the Town and Commission have agreed that these facilities, including pumping stations and both gravity and force main sewers, have been constructed by the Commission and are to be transferred in ownership including land takings, easements, operation and maintenance manuals, permits and related materials to the Town on July 1, 2000; and,

Whereas the Town has agreed to assume responsibility for the care, custody and control of these facilities from July 1, 1999 through July 1, 2000 for the beneficial use and occupancy of the Town.

Now therefore and in consideration thereof, the MDC and the Town of Holden hereby agree as follows:

1. The MDC hereby transfers care, custody and control of the Pinecroft Fast-track Sewer Project components within the Town of Holden to the Town of Holden for its beneficial use and occupancy.
2. The MDC hereby certifies, as indicated by letter from its Engineer/Representative, Camp Dresser & McKee dated July , 1999, that said sewer system components have been constructed in accordance with the plans and specifications for this project and that said sewer system components are complete and ready for beneficial use and occupancy by the Town, as of July 30, 1999.

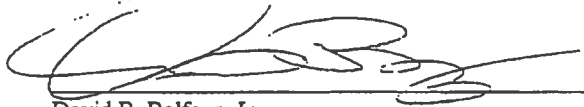
HOLD-P-0000755

3. The Town of Holden agrees to pay directly all applicable costs for wastewater treatment as a member community of the Upper Blackstone Water Pollution Abatement District (hereinafter the "District").
4. The Town of Holden agrees to pay directly to the Metropolitan District Commission all proportionate applicable transport costs (as finally determined and agreed to by the Town of Holden) for the transport of sewage through the Rutland-Holden Sewer System to the District, including the costs of sewage transport through the City of Worcester.
5. The Town of Holden agrees to assume full responsibility for all operational requirements, including but not limited to labor, electrical, fuel, maintenance, staffing, and other operational costs associated with the operation and maintenance of the sewer system components and appurtenances within the town and the Mark Bradford Drive pumping facilities.
6. The Town of Holden shall provide continuous service on a 24 hour per day operation mode.
7. The Town of Holden shall adhere to all State and Federal permit requirements in order to ensure uninterrupted operation of all facilities and all appurtenances to the sewer collection system.
8. The Town of Holden shall provide and maintain access to all facilities and all appurtenances to the sewer collection system for inspection, observation and other purposes as needed, during this period to the MDC, its employees, consultants and representatives.
9. The Town agrees to provide the MDC with quarterly reports of metered water volume within the Pinecroft sewer service area in the town of Holden tributary to the MDC Rutland-Holden Sewer via the Woodland Street Pumping Station in West Boylston.
10. This Agreement expressly acknowledges the intermunicipal "Agreement for Wastewater Collection and Transmission Services Between the Town of Holden and the Town of West Boylston" which sets forth the mutual obligations and purposes of the towns in the use and operation of the sewer system components referred to herein.
11. The Town agrees to provide copies of all communications between itself and the town of West Boylston relative to the operation and maintenance and cost sharing in the operation and maintenance of the Woodland Street Pumping Station with the MDC.

12. It is understood and acknowledged by the parties hereto that it is anticipated that a Master Sewer Use Agreement, so-called, presently under development to include the towns of Holden, West Boylston and Rutland, the City of Worcester and the MDC will set forth the mutual obligations of the parties thereto for the allocation of capacity for the transport of sewage through the Worcester sewer system to the District treatment facilities and the sewer user charge provisions related to such sewage transport. Said Master Sewer Use Agreement will reflect the allocation of capacity as set forth in the intermunicipal agreement between the town of Holden and West Boylston referenced in paragraph 10 herein.

In witness whereof, the parties to this agreement have hereby affixed their respective signatures as of the date first entered above:

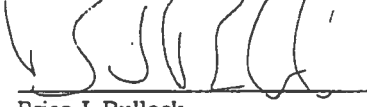
METROPOLITAN DISTRICT COMMISSION



David B. Balfour, Jr.
Commissioner

Date: 12/16/99

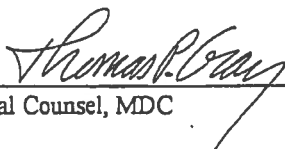
TOWN OF HOLDEN



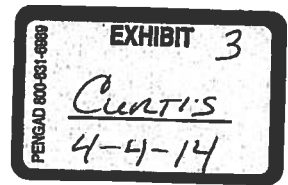
Brian J. Bullock
Town Manager

Date: 12/6/99

APPROVED AS TO FORM:


General Counsel, MDC

HOLD-P-0000757



SEWER USE AGREEMENT
BETWEEN
COMMONWEALTH OF MASSACHUSETTS
METROPOLITAN DISTRICT COMMISSION
AND
CITY OF WORCESTER
FOR INTERMUNICIPAL SEWER USE

THIS SEWER USE AGREEMENT ("the AGREEMENT") is entered into as of this 11th Day of May, 2000 between the Metropolitan District Commission ("MDC") and the City of Worcester ("Worcester"), referred to collectively as "the Parties".

RECITALS

- I. **Proposed Expansion of Public Sewer System**
- A. The Consent Order executed by the Massachusetts Water Resources Authority ("MWRA"), MDC and the Massachusetts Department of Environmental Protection ("DEP"), dated June 11, 1993, requires the MWRA and the MDC to implement a watershed protection plan for the Wachusett Reservoir. MDC has determined that the project described herein is necessary under M.G.L. c. 92, §110 and M.G.L. c.21, §40 to safeguard the Wachusett Reservoir Watershed;
 - B. As part of this effort and for the protection of their own water supplies, and with financial assistance from the Commonwealth of Massachusetts and the MWRA, West Boylston intends to publicly sewer a portion of its town and Holden intends to expand its publicly sewered area;
 - C. The portions of Holden and West Boylston to be sewered under the proposed project to protect the Wachusett Reservoir Watershed are described in the Facilities Plan prepared by Weston & Sampson, Inc., dated December, 1994, and referenced as the MDC Project No. WM93-001-S1A, Wastewater Facilities Plan West Boylston-Holden-Wachusett Reservoir Watershed, including the Environmental Impact Report approved by the Secretary of the Executive Office of Environmental Affairs, dated March 20, 1998 ("the Project");
 - D. The Project is authorized for financing under St. 1996, C.15, §2, Item 2420-7961, and §63, and St.1996, c.15, § 2, Items 2420-7962 and 2429-7963; and St. 1999, c. 55, s. 2F, Item 1599-4994.
- II. **Locations**
- A. Rutland transports, and desires to continue to transport, wastewater from presently sewered areas shown on Exhibit C through the R-H Interceptors and through the Worcester Interceptors to the Upper Blackstone Water Pollution Abatement District Treatment Plant ("the Treatment Plant");
 - B. Holden proposes to expand its publicly sewered areas as shown on Exhibit D and to transport its total wastewater flows through the R-H and Worcester Interceptors to the Treatment Plant;
 - C. West Boylston proposes to publicly sewer those areas shown on Exhibit E and to transport its total wastewater flows from the Industrial and the St. Pierre Development areas through the R-H and Worcester Interceptors to the Treatment Plant;

III. Prior Legislation and Agreements Regarding Sewer Operations

- A. Previously, MDC, under the authority of St. 1926, c. 375, St. 1932, C. 262, St. 1947, c. 583, and St. 1979, c. 783, constructed approximately 9.5 miles of trunk sewer from the center of Rutland to the Holden/Worcester line (referred to as the "Rutland-Holden Interceptor" and approximately 8.3 miles of relief trunk sewer paralleling the original trunk sewer (referred to as the "Relief Interceptor," and collectively as the "R-H Interceptors") to provide increased capacity to the Towns of Holden and Rutland; and Worcester, under authority of St. 1932, C. 262, constructed the Northwest, Main, and Cambridge Street Interceptors in Worcester (referred to as the "Worcester Interceptors");
- B. St. 1932 c. 262, §9 authorizes the MDC to make "mutually agreed upon" payments to Worcester for Worcester's receiving and disposing of wastewater from the Rutland-Holden Interceptor;
- C. Under its 1933 contract with Worcester, amended 1984, MDC paid from state and federal funds for part of the construction of the Worcester Interceptors and the Treatment Plant and secured from Worcester a capacity allocation of 2.16 million gallons per day (mgpd) in such transport and treatment facilities, including expansion of the Holden sewer system;
- D. St. 1939 c. 286 (Holden) and St. 1939 c. 287 (Rutland) authorize the past construction of municipal sewer systems in the two Towns and their connection to the R-H Interceptors, and the reimbursement of the MDC for Holden's and Rutland's "proportionate share" of the cost of "receiving, caring for and disposing" of the wastewater under agreements MDC entered into with Holden and Rutland in 1938, and amended in 1945;
- E. St. 1968, c. 752 authorized the establishment of the Upper Blackstone Water Pollution Abatement District ("the District") to assume responsibility for wastewater treatment and disposal from the City and further authorized the City and the towns of Auburn, Holden, Rutland, Boylston, West Boylston, Millbury, and Leicester to become members of the District;
- F. The towns of Holden, Rutland and West Boylston have voted to become members of the District pursuant to the provisions of St. 1968, c. 752, as amended, and with membership costs paid by the Commonwealth pursuant to the provisions of St. 1968, c. 752 and St. 1996, c. 15, s. 2, Items 2420-7962 and 2420-7963.

IV. Intent of Parties

- A. MDC desires to replace its existing Contract No. 42, 1933, as amended in 1984, with Worcester with a new agreement to include an expansion of reserved capacity through the City on behalf of the towns of Holden, Rutland and West Boylston and to include provisions for capacity improvements in the City system necessary to accommodate the increased flows from the towns and a revised method of computing a sewer use rate reflecting the towns proportional use of the City sewer system to be paid by the towns;
- B. Worcester desires to develop (a) a rate to charge MDC for transport of towns wastewater in order to cover the cost of operation, maintenance and repair (OM&R), and (b) an assessment for recovering the capital cost of projects needed to accommodate that additional capacity to be assigned to the MDC or an equivalent capital project to be substituted for the assessment; and (c)

to replace its existing agreement with MDC to incorporate these provisions.

C. The parties intend to assume the following responsibilities:

- (1) MDC - Own, operate and maintain the R-H Interceptors; maintain and calibrate wastewater flow meters on the R-H Interceptors; and report and certify metered flow figures to the Parties;
- (2) Worcester - Accept wastewater from the MDC and the towns at designated points of connection; transport sewage to the Treatment Plant via city sewer system; own, operate, maintain and upgrade city sewer system to ensure agreed-upon reservations of capacity for the MDC;

V. Legislative Authority

- A. The Parties are authorized pursuant to St. 1996, c.15, §63, M.G.L. c. 40, § 4, M.G.L. c. 83, §1, to enter into this Agreement**

NOW, THEREFORE, in consideration of the mutual agreements and provisions set forth herein, and the payments and obligations hereunder, and for other good and valuable consideration, the receipt and adequacy of which consideration is hereby acknowledged, the Parties hereby agree as follows:

1.0 Basic Obligations

1.1 Worcester

Worcester shall receive, transport and convey MDC wastewater as hereinafter defined from points of connections described in Section 2.0 in the amounts specified in Section 3.0 to the Treatment Plant in accordance with all existing or future laws and regulations, permits, and orders or decrees of EPA and DEP or other governmental authority having jurisdiction over the Worcester sewer system and shall perform necessary OM&R of the portions of the Worcester system so used. MDC wastewater shall mean wastewater flows contributed from the towns of Holden, Rutland, and West Boylston collected from the geographic sewer service areas delineated on Exhibits C, D and E, attached hereto, irrespective of the owner of the interceptor or other connection entering Worcester at the points specified in Section 2.0.

1.2 MDC

MDC shall receive wastewater from the Towns and transport the wastewater through the R-H Interceptors to the Worcester Interceptors in accordance with all existing or future laws and regulations, permits, and orders or decrees of EPA and DEP or other government authorities having jurisdiction over the transmission of wastes and shall perform necessary OM&R of the R-H Interceptors.

2.0 Points of Connection

2.1 Connection Points

Worcester agrees to accept MDC wastewater in part via the R-H Interceptors operated by the MDC and in part directly at the following points of connection located at the Worcester boundary to be transported through Worcester along the following routes:

2.10 Rutland, Holden (except Parker-Cook) and West Boylston (except Industrial Area and St. Pierre):

R-H Interceptor into Worcester Northwest Interceptor

2.11 Pinecroft neighborhood located in Holden and West Boylston:

To the Woodland Street Pumping Station in West Boylston and from the Woodland Street Pumping Station via Holden to MDC R-H Interceptor into Worcester Northwest Interceptor.

2.12 Industrial Area: (West Boylston)

Shrewsbury Street/Hartwell Street to Burncoat Street via Pumping Station to Maplewood Interceptor

2.13 St. Pierre: (West Boylston)

Via Maplewood Interceptor at East Mountain Street

2.14 Parker – Cook: (Holden)

Via Eastern Interceptor at Lanesboro Road

2.15 Doyle Avenue: (Holden)*

Via Wendover Road

2.16 Brattle Street: (Holden)*

Via Brattle Street

*Subject to final review and approval by Worcester based on available hydraulic capacity.

3.0 Capacity Allocations

3.1 Present Trunk Sewer Capacities

MDC shall allocate and maintain physical capacity in the presently existing R-H Interceptors of 2.85 mgd annual average daily flow and 8.95 mgd peak flow, to be generally allocated among the contributing towns as set forth in Table A.

3.2 Capacity through Worcester Sewers from MDC Rutland-Holden Interceptor Connection

Worcester shall allocate and maintain physical capacity in the Worcester Interceptors to transport up to 2.67 mgd annual average daily flow and 8.55 mgd peak flow within the Term of this Agreement and up to 2.85 mgd annual average daily flow and 8.95 mgd peak flow, thereafter, from the point of connection of the R-H Interceptors with the Worcester Interceptors to the District Treatment Plant.

Table A (mgd annual average daily flow)

	RUTLAND	HOLDEN*	W. BOYLSTON	TOTALS
Present Flow (1995)	0.43	0.85		1.28
Initial Flow (2005)	0.45	1.45	0.48	2.38
Design Flow (2020)	0.55	1.53	0.59	2.67
Full Build-Out	0.63	1.61	0.61	2.85

Note: For purposes of planning, the parties estimate the projected flows beyond the term of the Agreement as indicated in Full Build-Out.

*Includes flows projected for Holden Connections 2.15 (Doyle Avenue) and 2.16 (Brattle Street).

3.3 Capacity through Worcester from St. Pierre and West Boylston Industrial Areas and Parker – Cook Area of Holden

Worcester shall transport the amounts indicated in Table B for the areas indicated for the years listed as follows:

Table B (mgd annual average daily flow)

	ST. PIERRE	W.BOYLSTON INDUSTRIAL AREA	PARKER – COOK HOLDEN	TOTALS
Present Flow (1995)	0	0	0.05	0.05
Initial Flow (2005)	0.0562	0.057	0.05	0.1632
Design Flow (2020)	0.0562	0.130	0.07	0.2562
Full Build-Out (2050)	0.0562	0.269	0.08	0.4052

Note: For purposes of planning, the parties estimate the projected flows beyond the term of the Agreement as indicated in Full Build-Out.

3.4 Conditions

In the event the annual average daily flows exceed the design flows projected for the year 2020 as shown on Tables A and B, respectively, prior to 2020, the MDC and Worcester may notify the towns that the MDC and Worcester desire to renegotiate the capacity terms set forth herein in accordance with Section 8.0 of this Agreement.

3.5 Summary Table of MDC Flows

Table C. Summary of MDC Flows

	Rutland	Holden	West Boylston	Total
Present Flow (1995)	0.43 mgd	0.90 mgd		1.33 mgd
Initial Flow (2005)	0.45 mgd	1.50 mgd	0.5932 mgd	2.5432 mgd
Design Flow (2020)	0.55 mgd	1.60 mgd	0.7762 mgd	2.9262 mgd
Full Build-out (2050)	0.63 mgd	1.69 mgd	0.9352 mgd	3.2552 mgd

4.0 Financial Terms

4.1 Financial Contribution to Worcester for Capacity Related Capital Improvements

- A. In order to accommodate the addition flow to the Holden/Rutland Interceptor sewer, the MDC shall construct a relief sewer on Cambridge Street in Worcester to eliminate capacity deficits as determined by Weston & Sampson Capacity Analysis dated July 19, 1996 which shall include Segments C-301 through C-307 inclusive, subject to the provisions of Item 1599-4994 in Section 2F, Chapter 55 of the Acts of 1999. MDC agrees to commence the project upon execution of this Agreement with the objective of completion of the work by November 1, 2000.
- B. Within five years of introduction of new flows to the Holden/Rutland interceptor sewer, but no later than July 1, 2005, the MDC shall fund the City to ensure the elimination of sewer capacity deficits in the Newton Square area as determined by the Weston & Sampson Analysis, Segments C0187; C-213 through C-227 inclusive, subject to the provisions of Item 1599-4994 in Section 2F, Chapter 55 of the Acts of 1999.
- C. Commensurate with the initiation of design associated with the Newton Square area improvements identified in paragraph 4.1 B, the MDC shall also initiate a detailed hydraulic analysis of the Pleasant Street – Park Avenue sewer system from segments C-237 through C-255 including updated modeling of flow and potential surcharging conditions in these segments as previously analyzed by Weston & Sampson Engineers in a report entitled "Report on MDC and Worcester Interceptor Capacity Analysis", dated July, 1996 to determine whether any additional capacity related improvements may be required within these segments or in contributing areas. The costs associated with any such improvements will be borne by each party based on the contribution to the surcharging as determined by the hydraulic analysis conducted hereunder, using the existing flow measured during the aforementioned Capacity Analysis in July 1996 as the baseline condition for MDC and City flows in these segments.

4.2 Annual Sewer Use Charges (Transport Rate) Paid by Towns

Worcester shall compute annually and submit to the MDC on or before April 1 of each year, a transport rate in accordance with the computation method incorporated herein as Exhibit F, including all essential supporting financial, budget and flow information and computations. Worcester shall use this rate to establish the Annual Sewer Use charge to be billed to MDC by the City for transport of sewage from the MDC points of connection through the City to the Treatment Plant.

4.3 Connection Fee to Worcester

In lieu of a connection fee otherwise payable to Worcester, the MDC agrees to expend the amount of \$2,875,000.00, which amount is equivalent to the estimated value of the construction improvements associated with increased capacity in the City's interceptors as set forth in section 4.1 and expansion of Worcester's sewer system in the Summit area

by the MDC for flows projected and reserved through full build-out as shown on Table A and Table B in Section 3.2 and 3.2, respectively, resulting in no net payment.

5.0 Flow Measurement

5.1 MDC's Responsibilities

MDC shall operate and maintain the existing flow measuring devices from Rutland to the R-H Interceptors and the flow into Worcester from the R-H Interceptors. MDC shall cause a measuring device to be installed at the West Boylston Woodland Street Pump Station.

MDC shall measure annual wastewater flows as follows: For Rutland, MDC shall make a direct reading; for West Boylston, MDC shall compute the flows by reading the annual wastewater flow recorded through the West Boylston pump station and subtracting the prorated wastewater flow from the neighborhood in Holden serviced by the West Boylston pump station. The prorated wastewater flow from Holden will be based on the ratio of water meter readings from the Holden neighborhood tributary to the West Boylston pump station divided by the total water meter readings from said Holden neighborhood and West Boylston neighborhood served by the West Boylston pumping station. The ratio multiplied by the annualized wastewater flow pumped through the West Boylston station will yield the prorated wastewater flows for Holden and West Boylston. To arrive at the total flows for Holden, the MDC shall subtract the metered Rutland sewage and the prorated West Boylston wastewater flow (as computed above) from the total wastewater flow metered where the R-H Interceptors cross the Worcester city line.

West Boylston shall provide to the MDC on a quarterly basis (a) the total wastewater flows recorded through the West Boylston pump station, (b) the total water meter readings from West Boylston tributary to the West Boylston pump station, (c) the total wastewater flows from the Industrial Park, and (d) the metered potable water used by St. Pierre within West Boylston.

Holden shall provide to the MDC on a quarterly basis the total wastewater meter readings from Holden tributary to the West Boylston pump station; the Parker-Cook metering station; and the Doyle Avenue and Brattle Street connection points.

MDC shall ensure that flow metering devices on the R-H Interceptor and each other point of connection are properly installed and periodically calibrated (annually, at a minimum) in conformance with accepted wastewater standards to ensure accuracy. MDC shall install a remote telemetry device where the R-H Interceptor enters the Worcester system to enable Worcester to monitor daily flow and to enable Worcester to anticipate problems during periods of peak flow.

MDC shall report all flows from all connections on behalf of the towns to the City on a quarterly basis.

5.2 Worcester's Responsibilities

Worcester shall apply the flow measurements reported by MDC in making the

calculations required under Section 4.2. Worcester agrees to provide a credit for connections to the city system which flow through the MDC West Boylston connections (acknowledged to be approximately 22 house connections) in the making the calculations hereunder and to supply the MDC with statements of estimates of such sewage volumes as may be associated with these connections.

6.0 Billings and Payments

6.1 Billing

Worcester shall provide the MDC with quarterly invoices reflecting the Transport Charge calculated for the amount of MDC wastewater flows covering the applicable billing period in accordance with section 4.2. Such invoices shall be sent to the Director of the MDC Division of Watershed Management. The MDC shall then prepare and forward invoices to each town within ten business days of receipt of each invoice from the City.

6.2 Payments

Upon receipt of payments from the towns, the MDC shall promptly remit payment to the City. The MDC shall notify each town of their obligation to remit payment within 30 days of the receipt of the MDC's invoice. Should any town fail to remit such payment within 30 days, the MDC shall initiate the Cherry Sheet Intercept process against that town and request a legislative appropriation and authorization to pay Worcester.

6.3 Financial Statements

Worcester shall provide MDC with annual financial statements summarizing such costs and revenue received from sewer services provided as set forth in Exhibit G.

7.0 Sewer Use Regulations

7.1 Sewer Use Regulations

Within one year from the effective date of the Agreement, the MDC shall provide copies of sewer use regulations adopted by the towns to the City. Such regulations shall at all times be no less stringent than the sewer use regulations then governing the use of the Worcester sewer system during the course of this Agreement. MDC shall also provide Worcester with documentation that all towns whose wastewater constitutes a portion of the MDC wastewater conforms to all industrial pretreatment rules applicable to users of the Worcester sewer system and to the industrial pretreatment regulations as adopted by the UBWPAD.

8.0 Dispute Resolution

It is contemplated that from time-to-time that the Parties may desire to settle disputes arising from alleged breaches of the terms of the Agreement.

In each of such instances, the Party requesting an amendment or supplement to the Agreement or desiring to settle any dispute arising from an alleged breach of the terms of the Agreement shall notify in writing the other Party of such request or desire and

identify the terms which such Party is seeking to renegotiate, the reason for the requested change and the specific change requested or the dispute which such Party is seeking to settle, and the Parties for such matter shall (a) meet within thirty (30) days of such request to commence negotiations in response to the request, (b) exchange within twenty (20) days of such initial meeting all necessary information and documents, and * make all reasonable efforts to reach agreement. The Parties in such negotiations shall at all times act in good faith and shall adhere to the applicable governmental laws and regulations and the general framework and principles set forth in the Agreement.

If a matter cannot be resolved through negotiation within sixty (60) days of the date of the written request (unless extended by agreement of the Parties in dispute), the Parties shall, within thirty (30) days of the end of such period as the same may be extended, hire a mediator or mediators who will serve to facilitate settlement of the dispute. The Parties shall meet with the mediator(s) and the other Party as appropriate to endeavor in good faith to resolve the matter in dispute. The mediator(s) and other costs of the mediation will be divided equally between the Parties.

If the matter still has not been resolved through negotiation within sixty (60) days after the appointment of the mediator(s), or if the Parties fail to hire a mediator within the required period, the exclusive remedy of the Party seeking resolution of the dispute shall be to submit the matter to the Superior Court of the Commonwealth or other court of competent jurisdiction under Massachusetts law.

9.0 Term and Renewal of Master Agreement

9.1 Term

The term of the Agreement ("the Term of the Agreement") is twenty (20) years from the Effective Date hereof.

9.2 Renewal

Commencing on or before two (2) years from the end of the term of the Agreement, the parties shall meet to negotiate a renewal of the Agreement. The parties shall continue negotiations in good faith with the objective of reaching agreement and entering into an amendment to the agreement or a new agreement. If the parties do not accomplish the foregoing on or before one (1) year prior to the end of the term of the Agreement, the parties agree to follow the procedure in Section 8.0.

9.3 Continuation Pending Renewal

Should the Parties not reach agreement on renewal, the provisions of this Agreement shall continue in effect until such time a new agreement is reached.

10.0 Effect of Agreement on Prior Agreements

10.1 Termination of Prior Agreements

During the Term of the Agreement, the provisions of this Agreement replace and terminate the provisions of all prior agreements relating to sewer capacity, connections

and costs thereof.

11.0 General Provisions

11.1 Successors Bound

The Agreement shall insure to the benefit of and shall be binding upon the parties and their successors and assigns.

11.2 Force Majeure

In the event of floods that cause wastewater flows in the system to exceed capacity limits set forth in this Agreement, and/or that result in an unsafe condition, and/or that cause, or threaten to cause, harm to the public health, the time periods for holding meetings and making decisions under the Agreement shall no longer apply and the Parties shall cooperate fully in all reasonable ways to resolve such capacity, safety, and public health concerns in accordance with the broad objectives of the Agreement and applicable laws and regulations.

11.3 Covenant of Good Faith and Fair Dealing

Each Party shall use reasonable efforts and take and employ all necessary actions to ensure that the rights secured by the other Party through this Agreement can be enjoyed and neither Party shall take any action that will deprive the other Party of the enjoyment of the rights secured through this Agreement.

11.4 Attorneys' Fees

In the event of any litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorneys' fees.

11.5 Governed by Massachusetts Law

The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

11.6 No Reliance by Third Parties

Nothing contained in the Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either of the Parties.

11.7 Entire Agreement

The Agreement and the exhibits hereto represent the entire agreement among the Parties pertaining to the subjects covered therein and expressly supersede all prior negotiations, representations and formal or informal agreements leading up to the final approval and execution of this Agreement respecting such subjects except as set forth in Section 13.1.

11.8 Amendments in Writing

The Agreement may be amended only by written instrument signed by all the Parties.

11.9 Effect of Invalidity of One Part of the Agreement

The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections herein contained shall not affect the validity or enforceability of the remaining portions of the Agreement.

11.10 Exhibits

All exhibits listed attached hereto are incorporated by reference into the Agreement.

11.11 Effective Date

The effective date of the Agreement shall be _____.

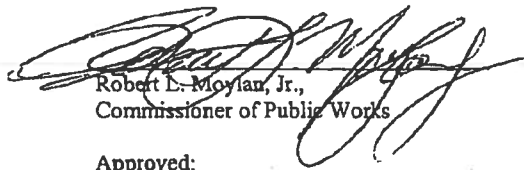
11.12 Original Agreements

This Agreement may be executed in any number of counterpart copies, all of which constitute one and the same agreement and each shall constitute an original.

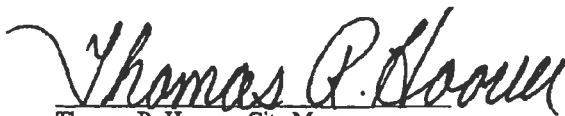
IN WITNESS WHEREOF, each party has executed the Agreement as an instrument under seal as of the date first written above.

City of Worcester:

Recommended:


Robert L. Moylan, Jr.,
Commissioner of Public Works

Approved:

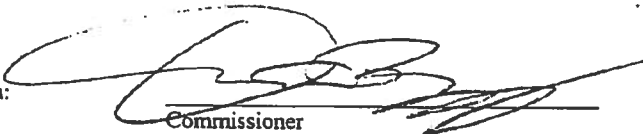

Thomas R. Hoover, City Manager

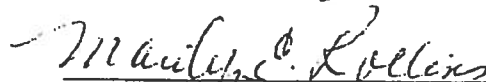
Authorized by Vote of City Council of May 2, 2000

Approved as to form:


David M. Moore, City Solicitor

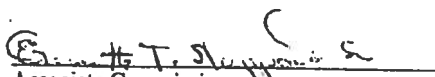
Metropolitan District Commission:


Commissioner


Associate Commissioner


Associate Commissioner


Associate Commissioner


Associate Commissioner

ORDERED: that the City Manager be and he is hereby authorized to enter into an agreement between the Metropolitan District Commission and the City of Worcester for the conveyance of sewage, as defined in the agreement, from the towns of Holden, Rutland, and West Bolyston through the City of Worcester to the Upper Blackstone Water Pollution Abatement District plant.

In City Council:

May 2, 2000

Order adopted by a ye and nay vote of 10 Yeas and 0 Nays

A Copy. Attest:

David J. Rushford

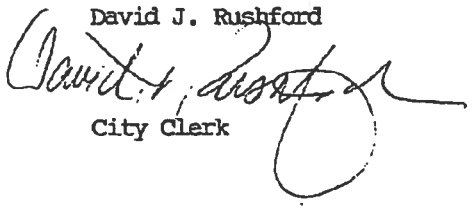

City Clerk

EXHIBIT A

GLOSSARY

1.	I/I	-	Infiltration & Inflow
2.	SSS	-	Separate sanitary system
3.	SSO	-	Sanitary system overflow
4.	CSS	-	Combined sewer system
5.	CSO	-	Combined Sewer Overflow
6.	EPA	-	U.S. Environmental Protection Agency
7.	DEP	-	Massachusetts Department of Environmental Protection
8.	OM&R	-	Operation, Maintenance, and Repair
9.	MGD	-	Million Gallons Per Day
10.	CCF	-	One Hundred Cubic Feet
11.	CCFD	-	One Hundred Cubic Feet Per Day

EXHIBIT B
DEFINITIONS

1. **Metropolitan District Commission ("MDC")**

State Agency established by St. 1919, c. 350, §123 et seq. responsible for the operation, maintenance and preservation of water quality in the watershed system that supplies water to the Greater Boston area. Watershed system includes the Quabbin, Ware, Wachusett and North and South Sudbury Watersheds and associated reservoirs, dams and other structures.
2. **Metropolitan District Water Sewer Commission ("MDWSC")**

Established by St. 1926, c. 375 and consists of the Commissioners of the MDC and two associate commissioners appointed by the Governor. Authorized to extend and increase the water supply of the metropolitan water system including the diversion of rivers. Subsequently authorized to construct various interceptors and sewer lines necessary for maintenance of the water supply.
3. **Northwest and Main Interceptors**

Connection line in Worcester which conveys wastewater from the Rutland-Holden Interceptor to the Upper Blackstone Treatment Plant.
4. **Rutland- Holden Interceptor**

Built by MDWSC with authorization from St. 1932. C. 262. Conveys wastewater from sewer lines in Rutland and Holden to sewer lines in Worcester.
5. **Rutland-Holden Relief Interceptor**

Built in the late 1970s to early 1980s, runs parallel to and at multiple points connects to the original Interceptor to handle increased flow from the towns. Authorized by St. 1979, c.798.
6. **Upper Blackstone Water Pollution Abatement District ("UBWPAD" or "Upper Blackstone" or the "District")**

Authorized by St. 1968, c. 752. Current members include Worcester, Auburn, Holden, Rutland, West Boylston and Millbury. Treats sewage at the former Worcester treatment plant which has since been upgraded and is partially located in Millbury.
7. **User Charges**

"User Charges" shall mean charges levied in proportion to the use of sewage works. As required by Section 204 (b)(1)(A) of Public Law 95-217, as amended, and by regulations promulgated by the U.S. Environmental Protection Agency, such charges must, to the extent possible, distribute operation and maintenance (including replacement) cost to each user in proportion to the user's contribution to the total loading of the sewage works, where construction of such works has been financed in part by a federal grant.

8. Infiltration

Water, other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

9. Inflow

Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

10. Separate Sanitary System

A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

11. Combined Sewer System

A combined sewer system that conveys both sanitary wastes and stormwater runoff.

12. Sanitary System Overflows

Discharges of untreated sewage from a separate sanitary sewer system with insufficient capacity.

13. Combined Sewer Overflows

Discharges of untreated sewage from a combined sewer system.

14. Operation, Maintenance and Repair

Activities required to assure the dependable and economical functioning of sewage transport works, including, but not limited to:

(a) Maintenance: Preservation of functional integrity and efficiency of pipes, conduits and equipment which make up the transport system. This includes preventive maintenance and corrective maintenance.

(b) Operation: Control of such transport system. This includes financial and personnel management; recordkeeping, and safety and emergency planning.

(c) Repair: Fixing or replacing of deteriorated sections of the transport system. This does not include replacement or expansion of the transport system caused by a Party's or Parties' desire to expand capacity over that which has been allocated under the Term of the Agreement. This is referred to as capital replacement.

15. Annual Average Daily Flow

Total annual flow as measured in accordance with the Agreement divided by 365 days.

16. Effective Date

The calendar date as of which the terms of this Agreement become effective and in full force.

17. Towns' Wastewater Flows

Flows as determined under Section 3.0 by the MDC from records at the respective metering stations described in Section 5.0.

18. Worcester's OM&R Cost

The annual cost of OM&R incurred by Worcester upon which Worcester bases the rate it charges its residents and businesses.

19. Term of the Agreement

The twenty (20) year term of the Agreement.

20. Peak Flow

The largest volume of flow measured over a one-hour period recorded each day averaged over a one-year period.

LIST OF EXHIBITS

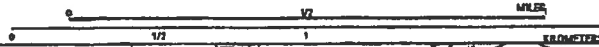
- A. Glossary
- B. Definitions
- C. Map of Sewered Areas in Town of Rutland
- D. Map of Existing and Proposed Sewered Areas in Town of Holden
- E. Map of Proposed Sewered Areas in Town of West Boylston
- F. Transport Rate Computation Method and Example Computation
- G. Worcester's cost accounting records and annual financial statements

-  Existing Sewer Lines
-  Watershed Boundary
-  Roadway
-  Town Boundaries

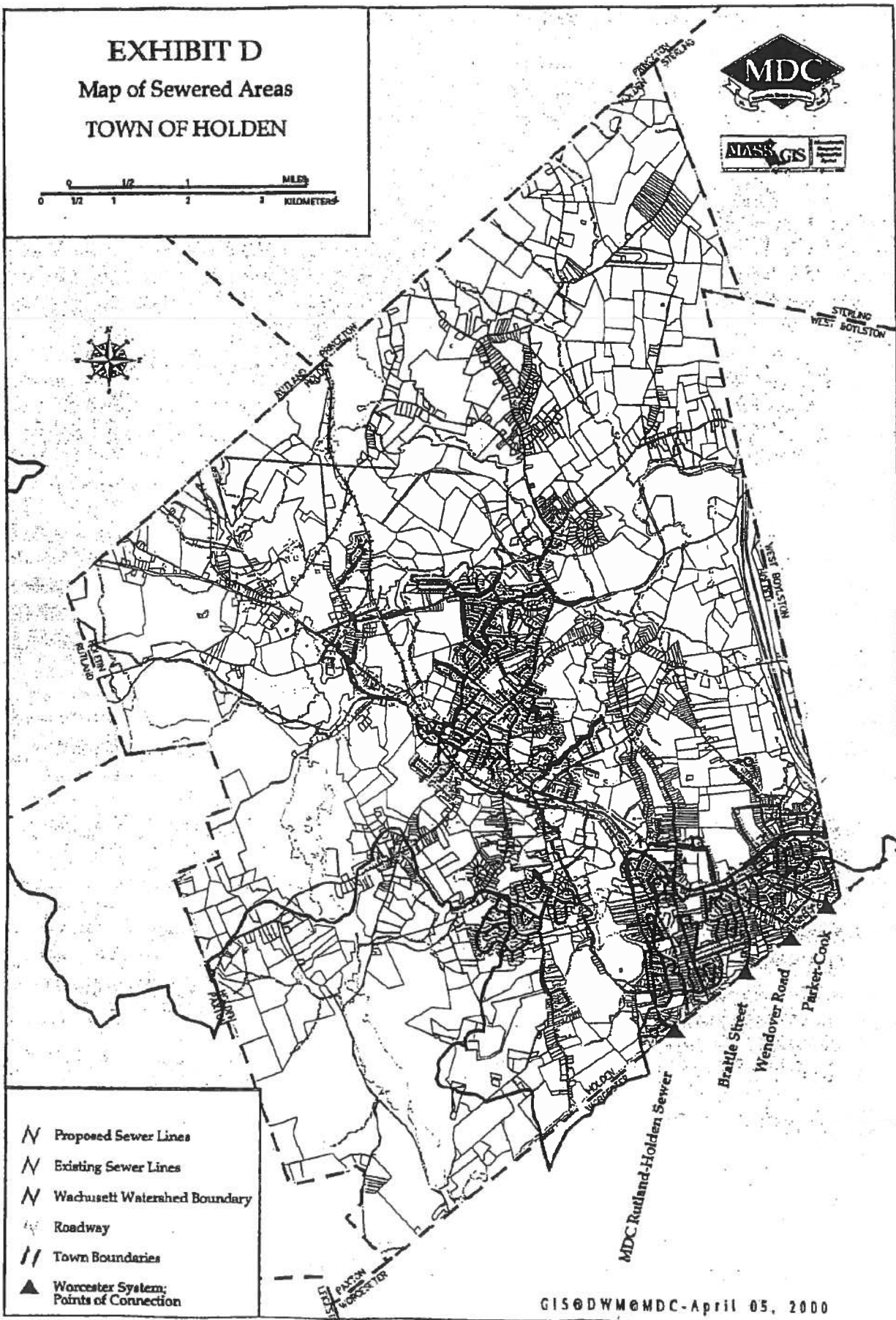
Exhibit C

Map of Sewer Areas

TOWN OF RUTLAND



GIS/IT/MDC : April 14, 2000



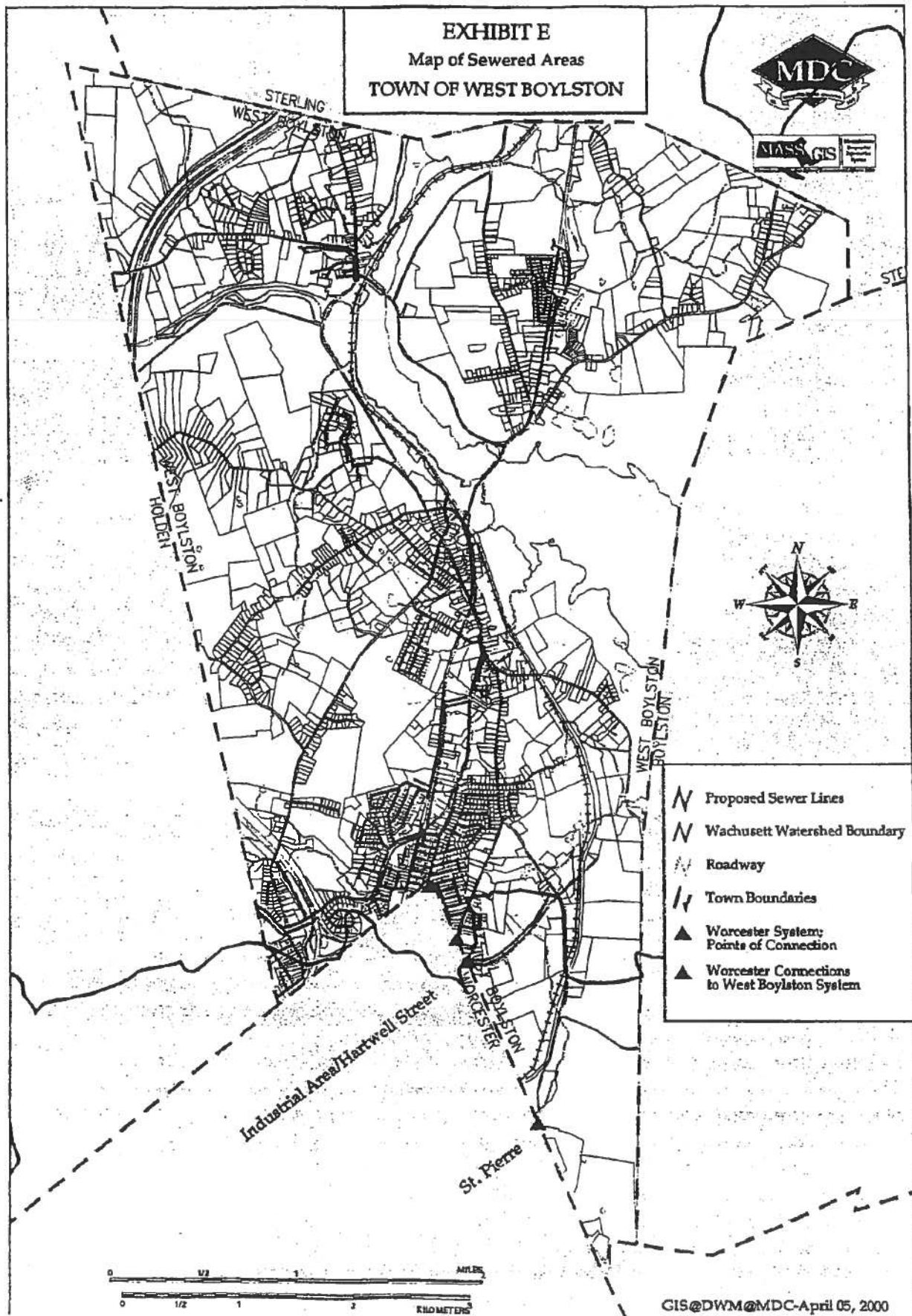


EXHIBIT F

Rate Structure

1. $(\text{Total Worcester DPW sewer division budget} - \text{UBWPAD sewage treatment charges}) / (\text{Worcester non-MDC sales (ccf)} + \text{MDC sales (ccf)}) = \text{Charge per CCF } (\$x.xx)$
2. $\text{Charge per ccf from step 1} \times \text{MDC sales (ccf)} = \text{Gross MDC charge}$
3. $(\text{Worcester debt service} / \text{total Worcester DPW sewer division budget}) \times \text{Gross MDC charge} + (\text{Worcester direct expenses} / \text{total Worcester DPW sewer division budget}) \times \text{Gross MDC charge} \times .70 = \text{MDC Credit}$
4. $\text{Gross MDC Charge} - \text{MDC Credit} = \text{MDC Billed Charge}$

Direct expenses = all non-personnel, non-debt service, non-transfer-of-services, non-fringe benefits, non-sewage treatment expenses included in total Worcester DPW sewer division budget.

Debt service = redemption of bonds + interest on bonds (or other repayment of long-term loans).

Revised Proposal

Existing Rate Structure except credit is now:

$$.7 \times (\text{debt service} / \text{gross budget} + \text{maintenance budget} / \text{gross budget}) \times \text{MDC charge}$$

(Maintenance budget = Worcester's non-personal direct expenses - treatment costs)
(Maintenance Budget = \$4,283,460 - \$2,888,772)

	FY2000	FY2001	FY2005	FY2050
Total Budget	\$14,000,000	\$14,000,000	\$14,000,000	\$14,000,000
UBWPAD	\$ 2,888,722	\$ 2,888,722	\$ 2,888,722	\$ 2,888,722
MDC Gross	\$11,131,278	\$11,131,278	\$11,131,278	\$11,131,278
In-City Sales	\$ 7,631,000	\$ 7,631,000	\$ 7,631,000	\$ 7,631,000
MDC Sales	\$ 680,000	\$ 815,000	\$ 1,184,327	\$ 1,392,417
Total	\$ 8,311,000	\$ 8,446,000	\$ 8,795,327	\$ 9,023,417
Charge per ccf	\$1.34	\$1.32	\$1.27	\$1.23
MDC charge	\$ 910,753	\$ 1,074,117	\$ 1,473,561	\$ 1,717,684
Debt Service	\$ 214,878	\$ 253,185	\$ 347,339	\$ 404,883
Credit	\$ 92,061	\$ 108,583	\$ 148,935	\$ 173,609
Maintenance				
Credit				
70% of Credits	\$ 214,710	\$ 253,223	\$ 347,392	\$ 404,944
Net MDC	\$ 696,043	\$ 820,894	\$ 1,126,169	\$ 1,312,740
Billed Rate	\$1.02	\$1.01	\$0.97	\$0.94

FOR EXAMPLE PURPOSES ONLY

EXHIBIT G

CITY OF WORCESTER - RECOMMENDED APPROPRIATION FOR FISCAL 2000
DEPARTMENT OF PUBLIC WORKS - SEWER DIVISION

FY 99 TOTAL POSITIONS	APPROVED FY 99 AMOUNT	PAY GRADE	TITLE	FY 00 TOTAL POSITIONS	RECOMMENDED FY 00 AMOUNT
	\$ 1,630.00		TELEPHONES		\$ 1,630.00
	39,494.00		CHANNEL DIVERSION		39,494.00
	24,000.00		USWYAD PROCESSING		24,000.00
	114,630.00		SEWER ORDINARY MAINTENANCE		114,630.00
	364,834.00		SEWAGE PUMPING		364,834.00
	9,430.00		CATCH BASINS		9,430.00
	38,545.00		YARD CRUSHING MAINTENANCE		38,545.00
	129,100.00		QUINIGAMOND PLANT		129,100.00
	83,000.00		CATCH BASIN DISPOSAL		83,000.00
	292,000.00		STORM WATER MANAGEMENT		292,000.00
	221,000.00		VEHICLE SERVICE		221,000.00
	92,003.00		GAS & OIL		92,003.00
	2,665,772.00		SEWERAGE TREATMENT		2,665,772.00
	<u>\$ 4,284,391.00</u>		TOTAL RECOMMENDED ORDINARY MAINTENANCE		<u>\$ 4,284,391.00</u>
	<u>\$ 24,300.00</u>		TOTAL OTHER CAPITAL OUTLAY		<u>\$ -</u>
			DEBT SERVICE		
	\$ 2,184,441.00		REDEMPTION OF BONDS		\$ 2,230,374.00
	1,173,761.00		INTEREST ON BONDS		1,066,439.00
	<u>\$ 3,358,202.00</u>		TOTAL DEBT SERVICES		<u>\$ 3,296,813.00</u>
	<u>\$ 2,641,956.00</u>		TRANSFER OF SERVICES		<u>\$ 2,732,991.00</u>
			FRINGE BENEFITS		
	\$ 697,486.00		HEALTH INSURANCE		\$ 709,666.00
	39,494.00		NON CONTRIBUTORY PENSIONS		23,683.00
	710,740.00		CONTRIBUTORY PENSIONS		771,203.00
	<u>\$ 1,447,720.00</u>		TOTAL FRINGE BENEFITS		<u>\$ 1,510,552.00</u>
	<u>\$ 2,126,419.53</u>		TOTAL PERSONNEL SERVICE		<u>\$ 2,198,192.81</u>
	<u>\$13,867,388.53</u>		TOTAL SEWER		<u>\$ 14,021,890.81</u>

FOR EXAMPLE PURPOSES ONLY

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION No. 1385CV00910

TOWN OF HOLDEN

vs.

DEPARTMENT OF CONSERVATION AND RECREATION and CITY OF WORCESTER

FINDINGS OF FACT AND RULINGS OF LAW ON
TOWN OF HOLDEN'S CLAIM FOR DECLARATORY JUDGMENT

BACKGROUND

The plaintiff, the Town of Holden ("Holden"), brought this action in 2013 seeking damages for the amount it was being charged for sewer transport fees. In 1999, Holden and the Department of Conservation and Recreation ("DCR") entered into a contract for the transport of Holden's sewage through the City of Worcester's ("Worcester") sewage system. The 1999 contract provided that DCR would charge Holden its "proportionate applicable transport costs" for the use of Worcester's system. Thereafter, in 2000, Worcester and DCR entered into a separate contract, which specified the rate DCR would pay Worcester for the transport of Holden's sewage. Holden took issue with the rate set forth in the 2000 contract, and refused to execute a parallel agreement with DCR incorporating the 2000 rate. Nonetheless, DCR, Holden and Worcester went "on-line" in 2000 with the transport of Holden's sewage through Worcester's sewage system. Thereafter, Worcester billed DCR, and DCR in turn billed Holden, every quarter from 2000 to 2013 based on the 2000 rate. Holden timely paid every bill.

In 2013, this lawsuit was commenced. Holden asserted claims for breach of contract against DCR, as well as claims for unjust enrichment against Worcester. It also sought a declaratory judgment setting a new rate for the sewer transport fees. All parties to this action asserted a right to a jury trial. A constitutional right to a jury trial exists in claims involving contractual damages. *Dalis v. Buyer Advertising, Inc.*, 418 Mass. 220, 223-24 (1994). But there is no constitutional right to a jury trial when the cause of action arises in equity. *Demoulas v. Demoulas Super Markets, Inc.*, 424 Mass. 501, 526 (1997). Where a case includes both jury and nonjury claims, the equitable claims may be presented to a jury for an advisory verdict. *International Totalizing Systems, Inc. v. PepsiCo, Inc.*, 29 Mass. App. Ct. 424, 434 (1990). And where the parties agree to frame the issues to the jury in special questions, the Court

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may treat the jury verdicts as binding. *Delaney v. Chief of Police of Wareham*, 27 Mass. App. Ct. 398, 401-02 (1989).

The Town's claims for breach of contract and unjust enrichment were tried together to a jury in the Worcester Superior Court from July 25, 2022 through August 4, 2022. Its claim for a declaratory judgment was reserved for the court. With regard to Holden's claim against DCR for breach of contract, the jury found that DCR breached the 1999 contract by charging Holden more than its proportionate costs. However, the jury also found that the breaches were excused by "waiver, condition precedent, contract modification or impossibility." Judgment is to enter for the Defendant DCR on Count One, Declaratory Judgement, and Count Two, Breach of Contract, of the Amended Complaint.

As to the claims for unjust enrichment against Worcester, presented for decision by special questions, the jury found (1) Worcester received a valuable benefit from Holden, (2) Worcester knew or had reason to know that it received this valuable benefit from Holden, (3) that it would be unfair for Worcester to retain the benefit it received from Holden, and (4) Holden had not delayed unreasonably before bringing this action. The jury assessed the benefit conferred by Holden that was unfairly retained by Worcester to have a value of \$14,604,237.00.

FINDINGS OF FACT

1. The court accepts and adopts the specific verdict findings of the jury. Specifically, the court adopts the following findings found by the jury:

- (1) Worcester received a valuable benefit from Holden.
- (2) Worcester knew or had reason to know that it received this valuable benefit from Holden.
- (3) It was unfair for Worcester to retain the benefit it received from Holden.
- (4) Holden did not delay unreasonably before bringing this action against Worcester.
- (5) The value of the benefit from Holden unfairly retained by Worcester amounted to \$14,604,237.00.

In addition, the court makes the following additional findings of fact, with respect to the reserved claim for declaratory judgment:

2. The Town of Holden is a Massachusetts municipal corporation with a principal place at business at 1204 Main Street, Holden, MA. The Massachusetts Department of Conservation and Recreation is an agency of the Commonwealth of Massachusetts with a principal place of business at 251 Causeway Street, Boston, MA. The City of Worcester is a Massachusetts municipal corporation with a principal place of business at 455 Main Street, Worcester, MA.

3. On June 11, 1993, a consent order was entered into between and among the Massachusetts Department of Environmental Protection ("DEP"), DCR's predecessor, and the Massachusetts Water Resource Authority ("MWRA") ("1993 Consent Order"). The 1993 Consent Order required DCR's predecessor to implement a watershed protection plan for the watershed area surrounding the Wachusett Reservoir.
4. The watershed protection plan was designed to address the handling of wastewater within the watershed area.
5. As a large number of the homes within Holden potentially impact the watershed, and the expansion of sewage treatment and transport of Holden's wastewater was determined to be the most cost effective alternative for the protection of drinking water from the Wachusett Reservoir.
6. On December 16, 1999, DCR and Holden entered into an agreement entitled "Agreement for Transfer of Completed Sewer System Components for Operation and use Between the Town of Holden and the Metropolitan District Commission" ("1999 Agreement").
7. Paragraph 4 of the 1999 Agreement provides as follows: "[t]he Town of Holden agrees to pay directly to DCR all proportionate applicable transport costs (as finally determined and agreed to by the Town of Holden) for the transport of sewage through the Rutland-Holden Sewer System to Upper Blackstone Clean Water ("UBCW"), including the costs of sewage transport through the City of Worcester."
8. Holden and DEP, DCR's predecessor, are the signatories to the 1999 Agreement. Worcester is not a signatory to this agreement.
9. The 1999 Agreement obligated DCR to charge Holden "proportionate applicable transport costs" for wastewater transport through the Worcester sewer system.
10. In May of 2000, DCR and Worcester executed an agreement entitled "Sewer Use Agreement between Commonwealth of Massachusetts Metropolitan District Commission and City of Worcester for Intermunicipal Sewer Use" ("2000 SUA").
11. Holden participated in and was aware of the terms of the 2000 SUA; but chose not to execute the agreement as negotiated between Worcester and DCR.
12. In the Spring of 2000, following the execution of the 2000 SUA, Holden, Worcester and DCR went on-line with the discharge of Holden's wastewater into Worcester's sewage transport system.
13. Since going on-line in the Spring 2000, DCR has issued quarterly bills to Holden for wastewater transport based on the Formula, as calculated by Worcester, set out in the 2000 SUA.
14. Beginning in the early 2000's, the parties adopted a general practice, in which Worcester would issue a bill to DCR based on Holden's wastewater transport calculated using the 2000 SUA formula. DCR would then forward the bill to Holden with the instructions for Holden to return

payment in the form of a check made payable to Worcester. Holden would then submit a check to DCR, and DCR would then deliver the check to Worcester. Worcester then accepted and cashed Holden's check.

15. Worcester operates a sewage transport system and a separate storm sewer system ("MS4") for the transport and discharged of rainwater.
16. Worcester's sewer system consists of approximately 45% stormwater pipes and 55% sanitary sewer pipes.
17. Worcester's operation and budgeted costs for its sewage transport and MS4 systems are managed together.
18. Holden's sanitary sewage transported through Worcester to the UBCW treatment plant does not utilize any of Worcester's MS4 system.
19. The 2000 SUA formula calculates Holden's sewage transport bill as a volume of flow multiplied by a rate based upon all of Worcester's budgeted costs for both its sewage transport and MS4 systems.

RULINGS OF LAW

Unjust enrichment is defined as the retention of money or property of another against the fundamental principles of justice or equity and good conscience. *Santagate v. Tower*, 64 Mass. App. Ct. 324, 329 (2005). An unjust enrichment claim sounds in equity by which a person who has been unjustly enriched at the expense of another is required to repay the injured party. *Sacks v. Dissinger*, 488 Mass. 780, 790 (2021).

A plaintiff must demonstrate the following elements to succeed on a claim of unjust enrichment: (1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge of the benefit by the defendant; and (3) the acceptance or retention of the benefit by the defendant under circumstances which make such acceptance or retention inequitable. 12 Williston on Contracts § 1479 (3d ed. 1957).

While waiver of a contract breach is the intentional relinquishment of a known right, *Bourgeois-White, LLP v. Sterling Lion, LLC*, 91 Mass. App. Ct. 114, 119 (2017), laches is an equitable defense based on the combination of unreasonable delay in instituting an action coupled with injury or prejudice to the defendant. *Yetman v. Cambridge*, 7 Mass. App. Ct. 700, 707 (1979). Laches is not merely unreasonable delay, but delay that works disadvantage to another. *Wadsworth's Case*, 461 Mass. 675, 691 (2012).

With regard to Holden's claim against DCR for breach of contract, the jury found that DCR breached the 1999 contract by charging Holden more than its proportionate costs. However, the jury also found that the breaches were excused by "waiver, condition precedent, contract modification or impossibility."

As to the claims for unjust enrichment against Worcester, presented for decision by special questions, the jury found (1) Worcester received a valuable benefit from Holden, (2) Worcester knew or had reason to know that it received this valuable benefit from Holden, (3) that it would be unfair for Worcester to retain the benefit it received from Holden, and (4) Holden had not delayed unreasonably before bringing this action. The jury assessed the benefit conferred by Holden that was unfairly retained by Worcester to have a value of \$14,604,237.00.

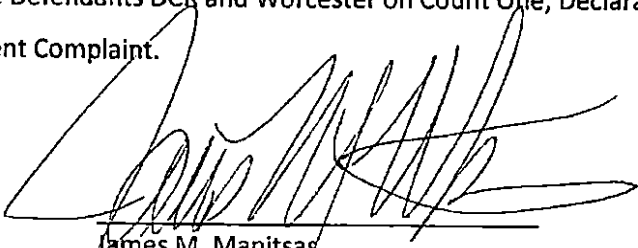
Finally, as to the Holden's claim for a declaratory judgment, the court determines that any judgment or decree as to the proper rate of sewer transport fees would not terminate the uncertainty or controversy giving rise to this proceeding. G.L. 231A sec. 3; *City of Everett v. Local 1656, Int'l Assoc. of Firefighters*, 411 Mass. 361, 369 (1991). Specifically, the fixing of rates is not a proper judicial function. A court is not clothed with legislative power. It may enforce the specific performance of an existing legal obligation, but it cannot create the obligation. *Western U. Tel. Co. v. Myatt*, 98 F. 335, 343 (1899). Furthermore, the jury found in favor of DCR on the only contract to which Holden was a party. And the 2000 SUA between DCR and Worcester expired in 2020. Thus, there is no existing framework of any agreement of the parties capable of determination. Nor did any of the evidence presented furnish the court with a basis for calculating a new rate. Therefore, the court is not persuaded that it would serve any useful purpose for it to unilaterally and arbitrarily impose a rate that is binding upon the parties to this action. Thus, Holden is not entitled to the declaration it seeks.

ORDER

For the foregoing reasons:

- 1) Judgment is to enter for the defendant Department of Conservation and Recreation on Count Two, Breach of Contract, of the Amended Complaint.
- 2) Judgment is to enter for the plaintiff on Count Four, Unjust Enrichment, of the Amended Complaint, in the amount of \$14,604,247.00.

- 3) Judgment is to enter for the Defendants DCR and Worcester on Count One, Declaratory Judgment, of the Amendment Complaint.



James M. Manitsas
Associate Justice of the Superior Court

Date: December 14, 2022