

**MCKINLEY ANCHORAGE &
MOORAGE ASSOCIATION, UA,**

Plaintiff,

Case No. 01-CV-003841

vs.

**MILWAUKEE COUNTY,
F. THOMAS AMENT,
SUSAN L. BALDWIN,
GREGORY YOUNGS,**

Defendants.

STIPULATION OF FACTS

The Parties in the above-captioned matter, through their respective attorneys, hereby stipulate and agree that the following factual statements are true and accurate.

The Parties

1. Plaintiff McKinley Anchorage and Moorage Association (“MAMA”) is a nonprofit unincorporated association organized under Ch. 184, Stats., consisting of approximately 100 persons who have joined by mutual consent for the common, nonprofit purpose of protecting and preserving the McKinley Anchorage located at McKinley Marina, behind the breakwater of the Milwaukee Harbor on Lake Michigan within the

County of Milwaukee and adjacent to McKinley Park. None of the members of MAMA is a riparian owner to the McKinley Marina Basin.

2. Defendant Milwaukee County (“Milwaukee County”) is a County in the State of Wisconsin and a political corporation created pursuant to the Statutes of the State of Wisconsin. The land surrounding the McKinley Marina was created by placing landfill on the lakebed and Milwaukee County holds title to this land pursuant to a Lakebed Grant from the State of Wisconsin.

3. Defendant F. Thomas Ament is the Milwaukee County Executive, and as such, is Milwaukee County’s chief executive officer.

4. Defendant Susan L. Baldwin (“Baldwin”), is the Director of the Milwaukee County Department of Parks, Recreation and Culture, which is the Milwaukee County Department operating the parks, including the marina at McKinley Park.

5. Defendant Gregory Youngs (“Youngs”) is the Milwaukee County Deputy Director of Parks and is a person assigned the responsibility of collecting the fee which is the subject of this litigation.

History of McKinley Anchorage

6. The Milwaukee Yacht Club (“MYC”) was founded in 1871. On October 28, 1895, MYC obtained permission by resolution of the Common Council of the City of Milwaukee to construct a clubhouse at its present location, which is adjacent to the

Milwaukee River flushing channel on the shore of Lake Michigan in an area now known as McKinley Park and Marina.

7. From 1895 until the present, MYC and its members have moored sailboats in the anchorage which is located southeast of the clubhouse in an area now known as the McKinley Anchorage.

8. Pursuant to a referendum passed in 1936, the Common Council of the City of Milwaukee transferred ownership of all City park property to Milwaukee County, including the area in and around the MYC clubhouse. In 1950 a dispute concerning ownership of the land upon which the MYC clubhouse was built reached the Wisconsin Supreme Court in *Milwaukee County v. Milwaukee Yacht Club*, 256 Wis. 475, 41 N.W.2d 372 (1950).

9. The dispute over the MYC property was resolved when MYC and Milwaukee County entered into a series of successive leases for the property. A true and accurate copy of the current lease between MYC and Milwaukee County is attached hereto as Exhibit A.

10. The Milwaukee Community Sailing Center (“MCSC”) was created in 1977 and since that time has entered into a series of successive leases with Milwaukee County for property bordering the McKinley Anchorage. Since its creation, MCSC and its members have moored boats in the McKinley Anchorage. A true and accurate copy of the current

lease between MCSC and Milwaukee County is attached hereto as Exhibit B.

Description of McKinley Anchorage, the Moorings, and Regulations

11. The McKinley Anchorage is located within the interstate navigable waters of Lake Michigan, a body of water forming the Eastern boundary of the State of Wisconsin, and is a portion of the Milwaukee Harbor located in the County of Milwaukee which is particularly defined under the Ports and Waterways Safety Act and under 33 C.F.R. Sec. 110.80 (attached hereto as Exhibit C) as the water area east of McKinley Park enclosed by a line beginning at McKinley Park Jetty Light, thence 090 deg., 500 feet to a point on the United States breakwater; thence northerly and northwesterly following the breakwater, piers, jetty and natural shoreline to the point of beginning.

12. The Anchorage is also depicted on U.S. Government Chart 14924, "Milwaukee Harbor," the relevant portion of which is attached hereto as Exhibit D.

13. MAMA's members own moorings which are located in the McKinley Anchorage and obtain shore access to those moorings from either the MYC property or the MCSC property through the use of the MYC tender service or privately-owned dinghies and boats.

14. Each of the moorings owned by MAMA's members is constructed of a mooring anchor located on the lakebed, to which a chain and a buoy (or winter log) is attached through the use of various fittings, shackles and swivels. Attached to the buoy

are pennants which are secured to the boat. The moorings themselves -- which are composed of mooring anchors, chains, cables, ropes, buoys, logs, shackles, swivels, fittings, and pennants -- are privately owned by the mooring owners and are not the property of Milwaukee County.

15. The protected waters of the McKinley Park Marina basin are used by boats which access the basin from privately-owned moorings, from publicly-owned boat slips operated by Milwaukee County, from privately-owned slips operated by MYC, from publicly-owned boat ramps located throughout the County, from privately-owned hoisting cranes operated by MYC, MCSC, and various other boating organizations and boat yards, and from the other surrounding waters of Lake Michigan.

16. Prior to April 23, 1998, McKinley Anchorage was under the jurisdiction of the City of Milwaukee's Harbor Commission ("Harbor Commission").

17. On November 25, 1991, the City of Milwaukee, acting under the authority of Sec. 30.772(3), Stats., enacted Sec. 81-075 of the Milwaukee Code of Ordinances (attached hereto as Exhibit E), which authorized the Harbor Commission to issue permits and regulate moorings located in the McKinley Anchorage.

18. Acting in accordance with the mooring ordinance, the Harbor Commission issued permits to the mooring owners in exchange for payment of the \$25.00 permit fee. The Harbor Commission did not collect any renewal fees for the permits after it

determined that the renewal fees violated the provisions of Sec. 30.772(3)(d)(2), Stats.

19. Before the summer of 1999, management of the swing mooring area was the responsibility of the Milwaukee Harbor Commission. Management of the swing moorings was not, however, well organized or consistently administered. Attempts were made by the Harbor Commission to maintain an inventory of the swing-mooring occupants. The latest list available was one obtained in 1995 and contained the names of 257 vessel owners. The list did not, however, accurately represent the actual number of boats tied to swing moorings. Mooring counts obtained from a 1989 satellite photograph and from a more recent photograph, taken in late June 1996, revealed that far less than 257 vessels were actually using the swing mooring area. Approximately 110 to 115 vessels were counted in the 1996 photograph.

20. The swing moorings existing before 1999 were not formally laid out. Independent contractors hired by the individual boat owner randomly placed the swing mooring anchors in the area. Reasonable attempts are made each spring to reuse the existing anchors. It is unknown how many former and presently unused anchors occupy the bottom.

21. In 1995-1996 Milwaukee County constructed a new wave quieting interior wall inner breakwater in the McKinley Marina Basin at a cost of \$3,865,100.00 designed to protect Marina infrastructure together with boats anchored or moored in the Marina basin

as well as those tied up at Milwaukee County dock slips from lake surge and severe wave agitation in the Marina Basin which is occasioned by lake waves overtopping the Federal breakwater, particularly from the northeast.

22. The swing mooring area was reduced in size in 1996 by the construction by Milwaukee County of the new internal breakwater. However, all of the swing-mooring occupants previously holding positions within the impacted area were successfully relocated to other areas of the swing mooring community. Similarly, the construction of the floating docks (157 slips) in the North Section of the marina displaced about nine swing moorings. They were also successfully relocated to other areas of the basin.

Lakebed Grant and Imposition of the Mooring Fee

23. On April 9, 1998, the Wisconsin legislature enacted 1997 Wis. Act 70, which became effective on April 23, 1998. A copy of this legislation is attached hereto as Exhibit F.

24. Wisconsin Act 70, clarified the use to which the lakebed within the limits of the Lakebed Grant might be put, and also gave Milwaukee County powers similar to those of a harbor commission.

25. Under 1997 Wis. Act 70, title to the lakebed underneath the McKinley Anchorage was transferred from the City of Milwaukee to Milwaukee County. Milwaukee County was also granted the authority to perform all of the duties of a board of harbor

commissioners under Secs. 30.34, 30.35, and 30.38, Stats.

26. In 1999, the Harbor Commission relinquished administrative control of the moorings to Milwaukee County. The County obtained administrative control of the lakebed within the limits of the Lakebed Grant. The moorings continued to function unregulated and without payment of any annual fees to the County.

27. On November 14, 2000, by resolution of the Milwaukee County Board of Supervisors, the 2001 Milwaukee County Budget was adopted.

28. At page 9000-6 of the 2001 Milwaukee County Budget (a copy of which is attached hereto as Exhibit G), the Department of Parks budget listed the following: “A new fee of \$300.00 per season is established for mooring buoys within the McKinley Marina breakwater, resulting in a revenue increase of \$30,000.” At page 9000-9 (attached hereto as Exhibit H), the Department of Parks lists the following: “MOORING BUOYS . . . New Fee . . . \$300.00.”

29. Milwaukee County has not enacted any ordinances regulating the placement and use of moorings in the McKinley Anchorage.

30. On or about February 15, 2001, Youngs sent the letter attached hereto as Exhibit I and the “Mooring Rental Contract” attached hereto as Exhibit J to the mooring owners. The letter demanded that each of the mooring owners sign the rental contract with the County and pay an annual \$300.00 rental fee to Milwaukee County.

31. On or about April 5, 2001, Youngs engaged attorney Michael J. Cain (Cain), Chief Counsel of the Wisconsin Department of Natural Resources, in a telephone conversation in which Cain told Youngs that, in Cain's opinion, under §30.05, Wis. Stats., the Wisconsin Department of Natural Resources did not have the authority to regulate the McKinley Marina moorings (see the phone message notes attached hereto and incorporated herein as Exhibit K).

32. By Resolution adopted on April 12, 2001, the Milwaukee County Board of Supervisors exempted MCSC and UWM Sailing Club from paying the \$300.00 mooring fee for any of the 30 moorings located in the McKinley Anchorage that they collectively own.

33. Members of MAMA and/or others with the subject swing moorings have advertised a willingness to "rent" out the use of their swing moorings for \$300.00 as indicated in the copies of the ads from the "Waterline" publication attached hereto and incorporated herein as Exhibit L. These ads were the basis for the Milwaukee County decision to assess the fees in the amount of \$300.00.

34. In Interrogatories served upon the Defendants during the course of this litigation, the Plaintiff asked the Defendants to explain what is being provided to mooring owners in exchange for the \$300.00 fee. Milwaukee County takes the position that members of MAMA are securing a position in and on Lake Michigan, absent which they

would be considered trespassers since they are not shoreline property owners, protected by interior and exterior break-walling. They are permitted to occupy a prime location of safe water, safe harbor protected by interior and exterior break-walling that no other non-boating residents of Milwaukee County have the right to interfere with. A true and accurate copy of the Defendants' Responses to Plaintiff's Interrogatories is attached hereto as Exhibit M.

Hereby Stipulated and Agreed to by the Attorneys of record for the parties on the dates indicated below.

Dated: 1/31/02

Dated: 1/31/02

By: John D. Uelmen
John D. Uelmen
Plaintiff's Attorney

By: John E. Schapekahn
John E. Schapekahn
Principal Asst. Corp. Counsel
Defendants' Attorney