

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

Richard Bisio (P30246)  
Kemp Klein Law Firm  
Attorneys for Plaintiff  
201 West Big Beaver Road, Suite 600  
Troy, MI 48084  
(248) 740-5698  
richard.bisio@kkue.com

James E. Tamm (P38154)  
Kerr, Russel and Weber, PLC  
Attorneys for Defendant  
500 Woodward Ave., Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
jtamm@kerr-russell.com

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**AFFIDAVIT OPPOSING CITY'S MOTION  
TO ENFORCE PURPORTED SETTLEMENT**

Richard Bisio, being sworn, states:

1. I am counsel for plaintiff in this action. I make this affidavit based on my personal knowledge. If sworn as a witness, I could testify competently to the facts stated here.

2. I submit this affidavit to show that defendant City of Village of Clarkston's motion to enforce a settlement is factually unsupported because there is no binding settlement agreement. I represented plaintiff in this action since its inception

in 2015 and represented her in all the relevant proceedings related to the facilitation that took place on February 1, 2021.

3. After winning the case in the Michigan Supreme Court and that court's denial of the city's motion for rehearing, I asked James Tamm, the city's litigation lawyer, to discuss plaintiff's claim for fees as the prevailing party under the Freedom of Information Act. Tamm refused to discuss that. So I filed a motion for an award of fees, costs, and disbursements on October 26, 2020. The Court set the motion for hearing on January 13, 2021. Tamm contacted me in December 2020 and suggested facilitation of the fee claim. On behalf of plaintiff, I agreed to facilitation of the fee claim on January 5, 2021, with retired Circuit Judge Edward Sosnick to serve as facilitator. Exhibit 1 is a copy of my email to the city's lawyer stating the conditions on that agreement. Exhibit 2 is Tamm's email agreeing to those conditions on the city's behalf. The city council held a closed meeting with Tamm on January 6, 2021. I listened to the GoToMeeting broadcast of the open portions of the meeting and had an informal transcript prepared of the mayor's summary of the closed meeting after the council returned to an open session after consulting with Tamm in the closed session. In pertinent part, the mayor said:

All right. So, I, uh, sort of summarized our discussion, uh, in the closed session. Uh, we have, uh, agreed generally to facilitation, uh, it's been discussed with Mr. Bisio, uh, and in respect to, uh, using of Judge Sosnick as our facilitator, uh, in a *non, um, binding facilitation*. Uh, we've agreed generally to Mr. Bisio's, uh, conditions in an email which he wrote to the city on January 5th of this year, uh, and, uh, with a, with a notation that, um, our city's insurance carrier will pay for the facilitation costs.

Emphasis added. Thus the city understood and agreed that the facilitation was non-binding, as is the usual case for facilitative mediation.

4. Once the parties agreed to facilitate the fee claim, plaintiff sought to adjourn the January 13, 2021 hearing on the fee motion. Although the agreement to facilitate (exhibits 1 and 2) provided for adjournment for only 30 days, the Court declined to set a new hearing date and directed me to call back to schedule the motion if the facilitation was not successful. As of now, the motion has not been rescheduled.

5. The facilitator did not present a facilitation agreement to plaintiff and neither she nor I signed a facilitation agreement.

6. In preparation for the facilitation, I provided the facilitator with plaintiff's briefs on the fee motion and updated schedules of fees, costs, and disbursements, which included additional amounts accrued since the fee motion was filed on October 26, 2020. I also provided to both Tamm and the facilitator a proposed settlement agreement that provided for entry of a judgment against the city, with the amount left blank to be filled in if the parties reached an agreement. Exhibit 3. Plaintiff had a motion for fees pending. If the motion went to hearing and decision, it would have resulted in entry of an order determining the amount of the fees. Plaintiff insisted on the same result in a settlement.

7. I also provided the facilitator with a facilitation summary. That summary concluded with this statement:

Plaintiff's agreement to settle will be contingent on (1) a written agreement at the end of facilitation in which the city representatives promise

to recommend the settlement to the city council for approval; (2) approval of the settlement by the city council at the next regularly scheduled council meeting after facilitation or at a special meeting held before then; and (3) entry of a judgment against the city. Plaintiff will not agree to keep the settlement confidential.

8. Entry of a judgment was particularly important to plaintiff because this matter had become a matter of public interest in Clarkston, having been discussed at a number of city council meetings and the subject of numerous newspaper articles. Entry of a judgment against the city was also consistent with the city's settlement of a previous case, also involving lawyer Tamm, where the city agreed to entry of a judgment holding that it held an illegal closed meeting and ordering the city to pay attorney fees. Exhibit 4.

9. The parties participated in facilitation on February 1, 2021 and did not reach agreement. In discussions plaintiff and I had with the facilitator, we made it clear that entry of a judgment against the city was a condition of any settlement. After the facilitator held further discussions with the parties, he suggested that he value plaintiff's fee claim and present that figure to the parties for their consideration. He did so on February 8, 2021 and suggested that the parties respond within two days, by February 10. Exhibit 5.

10. After further discussion with the facilitator, I sent an email to the facilitator that accepted his valuation, but with the explicit condition that a judgment would be entered against the city. Exhibit 6 is my email to the facilitator. The email was sent a few minutes after the facilitator's 5:00 p.m. deadline. Although accepting

the facilitator's valuation, the acceptance was expressly conditioned on entry of a judgment in the form previously circulated to the parties.

11. The facilitator later sent an email to the parties on February 10 stating that both sides accepted his proposed amount. Exhibit 7. That email also stated that the settlement was conditioned on approval by counsel and an agreed settlement agreement. *Id.*

12. Immediately after the emails on February 10, on the next day, February 11, I sent a proposed settlement agreement to city lawyer Tamm, whose firm brings this motion. The proposed agreement included a provision for entry of a judgment against the city. Exhibit 8. When Tamm ignored my email, I sent the same proposed settlement agreement to Mark Peyser, the other city lawyer who participated in the facilitation. Exhibit 9. I sent that email to Peyser on February 11 after I learned that the council was holding a special meeting the next day and after I reviewed the proposed resolution that was part of the meeting information. I informed Peyser that the proposed resolution was not sufficient to legally authorize settlement of the fee claim, since it did not include any terms of the settlement. Peyser's response on February 12 was that he had a doctor's appointment and would get back to me later on the afternoon of February 12. He didn't get back to me that day.

13. The Clarkston city council held a virtual meeting at noon on February 12, 2021. I listened to that meeting by phone. Notwithstanding his supposed schedule conflict, lawyer Peyser attended that meeting. The council went into closed session and then returned to an open session and approved a resolution purporting

to accept a settlement, the same resolution that I previously informed Peyser (in exhibit 9) was not sufficient to authorize settlement of the case. Exhibit 10. The resolution does not include a settlement agreement or any terms of a settlement, stating only that the council authorized a payment of \$35,000 to an unidentified payee. That is not the amount the facilitator recommended.

14. Lawyer Peyser finally responded a few days later by sending a proposed settlement agreement and proposed stipulated order to dismiss the complaint with prejudice. Exhibits 11 (email); 12 (proposed settlement agreement); and 13 (proposed stipulated order). The terms were unacceptable to plaintiff. Peyser and I exchanged emails about our positions but didn't resolve our differences. Exhibits 14 and 15. My last email to Peyser made clear that, if the city council did not approve a settlement including entry of a judgment against the city by the council's February 22 meeting, plaintiff's offer to settle on those terms was withdrawn. Exhibit 15.

15. Thinking that the parties would work out their differences, I informed the Court that plaintiff would withdraw her motion for summary disposition, which was set for hearing on February 18. Exhibit 16. There followed an exchange of emails between counsel and the Court's staff attorney about whether the case had been settled. Exhibits 17 to 20. Lawyer Peyser, who has not entered an appearance in the case, told the staff attorney that there was a "binding settlement." Exhibit 19. I corrected that misrepresentation. Exhibit 20.

16. The city offers no affidavit or other admissible evidence to support the factual claims in its motion, other than the improper affidavit of the facilitator, which

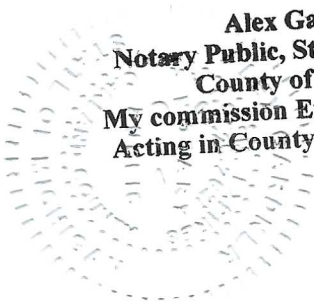
is discussed in the brief opposing the city's motion. The lawyer who signed the city's motion, Kevin A. McQuillan, was not involved in the facilitation. I did not correspond with him about the facilitation or its aftermath. As far as I know, he has no personal knowledge of what happened and whatever he says in the motion is inadmissible hearsay.

  
Richard Bisio

Signed and sworn to before me  
on 3/1, 2021.



Notary Public, State of Michigan,  
County of Oakland, MI  
Acting in Oakland County, MI  
My Commission Expires: 01/25/27

  
**Alex Gardner**  
Notary Public, State of Michigan  
County of Oakland  
My commission Expires 01/25/2027  
Acting in County of Oakland

## Exhibits

- 1 Email from Bisio to Tamm, 1/5/21 – plaintiff's conditions for facilitation
- 2 Email from Tamm to Bisio, 1/7/21 – agreeing to facilitate
- 3 Email from Bisio to Tamm and Sosnick, 1/27/21 and plaintiff's draft settlement agreement
- 4 Consent Judgment, 3/14/16, *Bisio v City of the Village of Clarkston*, case no. 2015-147354-CZ (Oakland Circuit Court)
- 5 Email from Sosnick to Bisio and Peyser, 2/8/21 – proposed settlement amount
- 6 Email from Bisio to Sosnick, 2/10/21, 5:03 p.m. – accepting proposed settlement amount with conditions
- 7 Email from Sosnick to Peyser and Bisio, 2/10/21 – agreement on amount
- 8 Email from Bisio to Tamm, 2/11/21 and plaintiff's draft settlement agreement
- 9 Email from Bisio to Peyser, 2/11/21 (proposed city council resolution insufficient to approve settlement) and plaintiff's draft settlement agreement
- 10 City council resolution, 2/12/21
- 11 Email from Peyser to Bisio, 2/15/21 – city's proposal
- 12 City's proposed settlement agreement, 2/15/21
- 13 City's proposed stipulation and order for dismissal with prejudice, 2/15/21
- 14 Email from Bisio to Peyser, 2/16/21 – rejecting city's proposed settlement agreement
- 15 Email from Bisio to Peyser, 2/17/21 – rejecting city's proposed settlement agreement
- 16 Email from Bisio to King, 2/16/21, 8:56 a.m. – withdrawing plaintiff's motion for summary disposition
- 17 Email from King to Bisio and Tamm, 2/16/21, 9:01 a.m. – inquiring whether case is settled
- 18 Email from Bisio to King, 2/16/21, 10:48 a.m. – informing court that case is not yet settled



- 19 Email from Peyser to King, 2/16/21, 12:13 p.m. – claiming there is a “binding settlement”
- 20 Email from Bisio to King, 2/16/21, 12:30 p.m. – clarifying there is no settlement

**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, January 5, 2021 9:42 AM  
**To:** James Tamm  
**Subject:** RE: Bisio v Clarkston

Dear Mr. Tamm:

Please confirm the following terms for facilitation before Judge Sosnick:

1. The motions scheduled for hearing on January 13, 2021 will be adjourned for 30 days to a date certain. These are the motions to be adjourned:

Plaintiff's Motion for an Award of Fees, Costs, and Disbursements, 10/26/20

Plaintiff's Motion for Decision on its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20

Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20

Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20

Plaintiff will adjourn her motions if the city will agree to adjourn its motion.

2. The February 18, 2021 hearing on plaintiff's motion for summary disposition will not be adjourned at this time.

3. Plaintiff will not participate in facilitation with MMLLPP or Thomas Ryan or his insurer. The city is free to conduct a separate facilitation with them at the same time as the facilitation between plaintiff and the city.

4. The facilitation must be scheduled to take place within one month—by February 5, 2021.

5. The city will pay the full cost of the facilitation.

6. The facilitation will be held by Zoom or other remote electronic means.

If the city agrees to these conditions, you may contact Judge Sosnick for available dates.

Finally, it is a matter of concern for plaintiff that the city continues to resist agreeing that no trial is necessary and continues to refuse to withdraw its fee motion. One would think that the city could acquiesce to the repeated requests on these matters as a show the city's good faith in seeking facilitation to settle this case.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698

FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

\*\*\*\*\*

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**From:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Sent:** Monday, January 4, 2021 3:43 PM  
**To:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Cc:** Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v Clarkston

Mr. Bisio,

Our hope is that will not have to address the issue and the case will resolve through facilitation. To that end, the City will agree to facilitate with retired Oakland County Circuit Court Judge Edward Sosnick. Please confirm that you will adjourn the motions scheduled for January 13.

I can contact Judge Sosnick to obtain potential facilitation dates. Hopefully we will obtain several dates, one of which will ultimately work for the schedules of all involved.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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---

**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Monday, January 4, 2021 3:10 PM  
**To:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Subject:** [EXTERNAL] Bisio v Clarkston

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Dear Mr. Tamm:

Now that the city admits “there is no longer a controversy requiring judicial resolution” as it relates to disclosure of the contested records and “[w]hether the City has defenses is now moot” (city response to summary disposition, pp 4, 1), please advise whether the city will agree that a trial in this case is unnecessary and join in (or not oppose) a motion to vacate the trial notice and cancel the trial. Please also advise whether the city will withdraw its fee motion.

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\*\*\*\*\*

**Richard Bisio**

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**From:** James Tamm <JTamm@kerr-russell.com>  
**Sent:** Thursday, January 7, 2021 6:11 AM  
**To:** Richard Bisio  
**Cc:** Carolyn Rowland  
**Subject:** RE: Bisio v Clarkston

**Follow Up Flag:** Follow up  
**Due By:** Friday, January 8, 2021 8:00 AM  
**Flag Status:** Completed

Mr. Bisio,

The City agrees to facilitate under the terms listed below. As previously noted, the city's insurance carrier will pay the cost of facilitation. Please confirm the adjournment of the motions. I will contact Judge Sosnick regarding his availability.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
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*Attorney*



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[kerr-russell.com](http://kerr-russell.com)

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Wednesday, January 27, 2021 6:54 AM  
**To:** edward@sosnickmediation.com; James Tamm  
**Subject:** Bisio v Clarkston facilitation  
**Attachments:** Clarkston FOIA--settlement agreement.docx

Attached is a proposed facilitation settlement agreement for use if the parties settle plaintiff's fee claim at the February 1 facilitation.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
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## SETTLEMENT AGREEMENT

The Agreement is between Susan Bisio and representatives of the City of the Village of Clarkston (“City”). The parties met with each other and Hon. Edward Sosnick on February 1, 2021 to facilitate the remaining disputes in *Bisio v City of the Village of Clarkston*, Oakland County Circuit Court case no. 2015-150462-CZ.

I. The City representatives will recommend to the City’s city council at the council’s February 8, 2021 meeting or a special meeting held before February 8, 2021, approval of entry of a judgment in the following form:

[Recommended judgment is on next three pages.]

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

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Attorneys for Defendant  
500 Woodward Ave., Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
jtamm@kerr-russell.com

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**JUDGMENT**

The Court enters this judgment on stipulation of Plaintiff Susan Bisio and defendant City of the Village of Clarkston (“City”).

IT IS ORDERED:

1. The Court enters this judgment based on the following facts:

(a) In this Freedom of Information Act case, plaintiff and the City contested whether 18 records (the “contested records”) were public records under the act.

(b) The Michigan Supreme Court held that “the documents at issue are ‘public records’” under the Freedom of Information Act. *Bisio v City of the Village of Clarkston*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (2020) (docket no. 158240); slip op at 14.

(c) The Supreme Court denied the City’s motion for rehearing on September 30, 2020.

(d) The Supreme Court remanded the case to this Court for further proceedings consistent with its opinion.

(e) The City disclosed the contested records to plaintiff in October 2020.

(f) Plaintiff filed a Motion for an Award of Fees, Costs, and Disbursements on October 26, 2020.

(g) The parties participated in facilitation and agreed to settle plaintiff’s fee claim on the terms set forth in this judgment.

2. Plaintiff’s Motion for an Award of Fees, Costs, and Disbursements is GRANTED. JUDGMENT IS ENTERED in plaintiff’s favor against the City for \$----- in attorney fees, costs, and disbursements. The judgment shall bear interest as provided in MCL 600.6013.

5. The following motions are dismissed as moot:

(a) Plaintiff's Motion for Summary Disposition to Require City to Disclose Public Records, 10/7/20.

(b) Plaintiff's Motion for Decision on Its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20.

(c) Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20.

(d) Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20.

6. This judgment is a final judgment, resolves the last pending claim, and closes the case.

---

Hon. Leo Bowman  
Circuit Judge

Dated: February \_\_, 2021

### Stipulation

We stipulate to entry of this judgment.

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

James E. Tamm (P38514)  
Attorney for Defendant

Dated: February \_\_, 2021

Dated: February \_\_, 2021

[End of recommended judgment.]

II. Plaintiff's agreement to settle this case is contingent on the city council's approval of entry of the judgment as provided in paragraph I on or before February 8, 2021. If the city council does not so approve entry of the judgment, this agreement will have no effect.

PLAINTIFF

THE CITY OF THE VILLAGE OF  
CLARKSTON

\_\_\_\_\_  
Susan Bisio

\_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Richard Bisio (P30246)  
Attorney for Plaintiff

\_\_\_\_\_  
James E. Tamm (P38514)  
Attorney for the City

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

RICHARD BISIO,

Plaintiff,

v

Case No. 2015-147354-CZ

THE CITY OF THE  
VILLAGE OF CLARKSTON, et al.,

Hon. Leo Bowman

Defendants.

---

Brian D. Wassom (P60381)  
Honigman Miller Schwartz and Cohn LLP  
Attorneys for Plaintiff  
39400 Woodward Ave. Ste. 101  
Bloomfield Hills, MI 48304  
(248) 566-8490  
[bwassom@honigman.com](mailto:bwassom@honigman.com)

James E. Tamm (P38154)  
O'Connor DeGrazia Tamm O'Connor  
Attorney for Defendants  
40701 Woodward Avenue, Suite 105  
Bloomfield Hills, MI 48304  
(248) 433-2000  
[jetamm@odtlegal.com](mailto:jetamm@odtlegal.com)

---

**CONSENT JUDGMENT**

At a session of said Court, held on: MAR 14 2016

Present: Hon. LEO BOWMAN

On stipulation of the parties,

IT IS ORDERED AND ADJUDGED:

1. Defendant City Council's decision to convene a closed session on March 9, 2015 was in violation of MCL 15.263(1) and 15.268(h) because the stated purpose for convening a

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closed meeting, to discuss an attorney-client communication, was not accompanied by a written memorandum as required by *Booth Newspapers v Wyoming*, 168 Mich App 459, 469 (1988).

2. The documents presented to the City Council that formed the basis of the closed session were and are public records under MCL 15.232(e). In particular, the following documents were and are public records:

(a) A memorandum from City Attorney Thomas J. Ryan addressed to City Manager Carol Eberhardt and Mayor Joseph Luginski dated March 9, 2015 regarding "148 N. Main Street."

(b) A letter dated March 9, 2015 from Hubble, Roth & Clark, Inc. to City Manager Carol Eberhardt regarding "Proposed Muffler Shop Redevelopment - Proposed Environmental and Storm Water Detention System; HRC Job No. 20140245; 148 North Main St., Clarkston, MI."

3. Count III of Plaintiff's First Amended Complaint dated July 16, 2015, is hereby dismissed. The dismissal of this claim shall not bar Susan Bisio from pursuing claims for alleged violations of the Freedom of Information Act.

4. The remaining claims of Plaintiff's First Amended Complaint dated July 16, 2015 are dismissed with prejudice. This dismissal does not constitute a finding of fact or conclusion of law as to the legal theories raised by Plaintiff in those claims, and does not preclude Plaintiff from raising similar legal arguments under other factual circumstances in the future.

5. The entry of this Judgment shall have no effect on the claims in *Susan Bisio v City of the Village of Clarkston*, case no. 2015-150462-CZ, pending in this court.



6. Defendant City of the Village of Clarkston shall pay plaintiff Richard Bisio \$2,500.00 in full satisfaction of his claims for taxable costs and attorney fees.

7. The November 5, 2015 Order regarding Defendants' Motion for Sanctions Against Plaintiff Richard Bisio is vacated and Defendants' Motion for Sanctions is denied.

This Order constitutes a final judgment, resolves the last pending claim, and closes the case.

<u>MAR 14 2016</u>	<u>/s/Leo Bowman</u>	
DATE	Hon. Leo Bowman Circuit Judge	DB

**Stipulation**

We stipulate to entry of this Consent Judgment.

/S/ Brian D. Wassom  
Brian D. Wassom (P60381)  
Attorney for Plaintiff  
[bwassom@honigman.com](mailto:bwassom@honigman.com)

/S/ James E. Tamm  
James E. Tamm (P38154)  
Attorney for Defendant  
[jetamm@odtlegal.com](mailto:jetamm@odtlegal.com)

**Richard Bisio**

---

**From:** Edward Sosnick <edward@sosnickmediation.com>  
**Sent:** Monday, February 8, 2021 2:05 PM  
**To:** Richard Bisio; Mark W. Peyser  
**Subject:** Bisio/Village of Clarkston

Dear Richard and Mark,

Thank you for agreeing to let me give you a mediator's settlement number.

As we know, this has been a difficult case and we have now reached an impasse

When that happens, I try to help resolve the case from a truly objective position and offer a number which I feel is a good and fair settlement number.

I also rely on my 28 years experience as a district and circuit court judge. I emphasize that it is impossible to know the trial outcome. You can, however, control the result by reaching an agreement.

It is often said a good settlement is one where both sides may pay more or accept less to limit their risk/exposure and might experience some pain.

With that said, and after much deliberation, I feel that for this case the appropriate number is \$160,000.00.

I am giving both sides until Wednesday February 10<sup>th</sup> by 5pm to email me your position (accept/reject).

If both sides accept, we have a settlement. If not, the matter will proceed in court.

I will not disclose to each whether the other side objected or rejected the number.

I thank you for allowing me to act as mediator and will always be available if needed.

Retired Judge Edward Sosnick, Mediator.

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Wednesday, February 10, 2021 5:03 PM  
**To:** Edward Sosnick  
**Subject:** Bisio v Clarkston

Dear Judge Sosnick:

Plaintiff will accept \$160,000 in settlement of her fee claim. I previously circulated a form of settlement agreement before the facilitation started and want to see a signed agreement in that form, including agreement to entry of a judgment for \$160,000 plus judgment interest, all contingent on approval of the settlement by the city council at or before its next scheduled meeting on February 22. In addition, plaintiff will not withdraw her motion for summary disposition, which is scheduled for hearing on February 18. The city can easily settle that motion by agreeing that entry of a disclosure order is not necessary after the city disclosed the records, that the city has waived all affirmative defenses, and that the notice for trial of the case should be vacated.

Thank you for your efforts in this case.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

\*\*\*\*\*  
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\*\*\*\*\*

**Richard Bisio**

---

**From:** Edward Sosnick <edward@sosnickmediation.com>  
**Sent:** Wednesday, February 10, 2021 5:15 PM  
**To:** Mark W. Peyser; Richard Bisio  
**Subject:** Mediator's Number

Gentlemen,

I am pleased to inform you that we have a settlement subject to counsel approval.  
If counsel approves, then you will have to agree on a settlement agreement.  
I stand ready to help in any way I can.  
It was a pleasure working with all of you.  
Ed Sosnick

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Thursday, February 11, 2021 7:15 AM  
**To:** James Tamm  
**Subject:** Bisio v Clarkston - Settlement  
**Attachments:** Clarkston FOIA--settlement agreement.docx

Dear Mr. Tamm:

Attached is a proposed settlement agreement that I believe is consistent with the agreement the parties reached in facilitation. Please advise whether the city will execute this agreement.

Plaintiff's motion for summary disposition is scheduled for hearing on February 18. Assuming that the city council does not meet to approve the settlement before then, plaintiff is willing to adjourn or withdraw the motion if the city agrees (1) no disclosure order is necessary as a prerequisite to a fee award; (2) the city does not and will not assert any affirmative defenses; and (3) the trial notice should be vacated because there are no issues remaining for trial.

Please advise.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
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\*\*\*\*\*

## SETTLEMENT AGREEMENT

The Agreement is between Susan Bisio and representatives of the City of the Village of Clarkston (“City”). The parties met with each other and Hon. Edward Sosnick on February 1, 2021 and had further discussions with Judge Sosnick after that to facilitate the remaining disputes in *Bisio v City of the Village of Clarkston*, Oakland County Circuit Court case no. 2015-150462-CZ.

I. The City representatives will recommend to the City’s city council at the council’s February 22, 2021 meeting or a special meeting held before February 22, 2021, approval of entry of a judgment in the following form:

[Recommended judgment is on next three pages.]

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

Richard Bisio (P30246)  
Kemp Klein Law Firm  
Attorneys for Plaintiff  
201 West Big Beaver Road, Suite 600  
Troy, MI 48084  
(248) 740-5698  
richard.bisio@kkue.com

James E. Tamm (P38154)  
Kerr, Russel and Weber, PLC  
Attorneys for Defendant  
500 Woodward Ave., Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
jtamm@kerr-russell.com

---

**JUDGMENT**

The Court enters this judgment on stipulation of Plaintiff Susan Bisio and defendant City of the Village of Clarkston (“City”).

IT IS ORDERED:

1. The Court enters this judgment based on the following facts:

(a) In this Freedom of Information Act case, plaintiff and the City contested whether 18 records (the “contested records”) were public records under the act.

(b) The Michigan Supreme Court held that “the documents at issue are ‘public records’” under the Freedom of Information Act. *Bisio v City of the Village of Clarkston*, 506 Mich 37 (2020).

(c) The Supreme Court denied the City’s motion for rehearing on September 30, 2020.

(d) The Supreme Court remanded the case to this Court for further proceedings consistent with its opinion.

(e) The City disclosed the contested records to plaintiff in October 2020.

(f) Plaintiff filed a Motion for an Award of Fees, Costs, and Disbursements on October 26, 2020.

(g) The parties participated in facilitation and agreed to settle plaintiff’s fee claim on the terms set forth in this judgment.

2. Plaintiff’s Motion for an Award of Fees, Costs, and Disbursements is GRANTED. JUDGMENT IS ENTERED in plaintiff’s favor against the City for \$160,000 in attorney fees, costs, and disbursements. The judgment shall bear interest as provided in MCL 600.6013.

3. The following motions are dismissed as moot:

(a) Plaintiff’s Motion for Decision on Its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20.



(b) Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20.

(d) Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20.

4. This judgment is a final judgment, resolves the last pending claim, and closes the case.

---

Hon. Leo Bowman  
Circuit Judge

Dated: February \_\_, 2021

### **Stipulation**

We stipulate to entry of this judgment.

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

James E. Tamm (P38514)  
Attorney for Defendant

Dated: February \_\_, 2021

Dated: February \_\_, 2021

[End of recommended judgment.]

II. Plaintiff's agreement to settle this case is contingent on the city council's approval of entry of the judgment as provided in paragraph I on or before February 22, 2021. If the city council does not so approve entry of the judgment, this agreement will have no effect.

PLAINTIFF

THE CITY OF THE VILLAGE OF  
CLARKSTON

---

Susan Bisio

---

Eric Haven, Mayor

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

Jonathan Smith  
City Manager

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

James E. Tamm (P38514)  
Attorney for the City

Dated: February \_\_, 2021

**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Thursday, February 11, 2021 5:52 PM  
**To:** Mark W. Peyser  
**Subject:** FW: Bisio v Clarkston - Settlement  
**Attachments:** Clarkston FOIA--settlement agreement.docx

Dear Mr. Peyser:

Please see the attached email that I sent to Jim Tamm earlier today, to which I received no response. I reviewed the agenda and proposed resolution for the city council meeting tomorrow. I'm not aware of what further plans the city has to implement a settlement, since no one has consulted with me in that regard. But please be advised that the resolution in the council packet for tomorrow's meeting is insufficient to settle the case. When I communicated plaintiff's acceptance of the settlement to Judge Sosnick, I made clear that plaintiff's agreement to settle is contingent on entry of a judgment against the city, something that must, by law, be approved by the city council. Plaintiff will not agree to a confidential settlement or a settlement that keeps from the public the full amount that the city has agreed to pay.

In addition, I hope we could settle the issues regarding the motion for summary disposition, which is scheduled for hearing next Wednesday. I would have withdrawn that motion after the city disclosed the contested records, except for the city's continued insistence in its briefing on the fee motion that (1) a disclosure order is a necessary prerequisite to a fee award even though the city has already disclosed the contested records; (2) the city can amend its answer to assert new affirmative defenses, even though the city disclosed the contested records in full with no redactions or claims of exemption; and (3) the city is entitled to proceed with a jury trial that has been scheduled for August. If the city can give me the assurances I requested from Mr. Tamm this morning in that regard, plaintiff would adjourn or withdraw the summary disposition motion.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
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\*\*\*\*\*

**From:** Richard Bisio  
**Sent:** Thursday, February 11, 2021 7:15 AM  
**To:** James Tamm <JTamm@kerr-russell.com>  
**Subject:** Bisio v Clarkston - Settlement

Dear Mr. Tamm:

Attached is a proposed settlement agreement that I believe is consistent with the agreement the parties reached in facilitation. Please advise whether the city will execute this agreement.

Plaintiff's motion for summary disposition is scheduled for hearing on February 18. Assuming that the city council does not meet to approve the settlement before then, plaintiff is willing to adjourn or withdraw the motion if the city agrees (1) no disclosure order is necessary as a prerequisite to a fee award; (2) the city does not and will not assert any affirmative defenses; and (3) the trial notice should be vacated because there are no issues remaining for trial.

Please advise.

Richard Bisio



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I. The City representatives will recommend to the City’s city council at the council’s February 22, 2021 meeting or a special meeting held before February 22, 2021, approval of entry of a judgment in the following form:

[Recommended judgment is on next three pages.]

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

Richard Bisio (P30246)  
Kemp Klein Law Firm  
Attorneys for Plaintiff  
201 West Big Beaver Road, Suite 600  
Troy, MI 48084  
(248) 740-5698  
richard.bisio@kkue.com

James E. Tamm (P38154)  
Kerr, Russel and Weber, PLC  
Attorneys for Defendant  
500 Woodward Ave., Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
jtamm@kerr-russell.com

---

**JUDGMENT**

The Court enters this judgment on stipulation of Plaintiff Susan Bisio and defendant City of the Village of Clarkston (“City”).

IT IS ORDERED:

1. The Court enters this judgment based on the following facts:

(a) In this Freedom of Information Act case, plaintiff and the City contested whether 18 records (the “contested records”) were public records under the act.

(b) The Michigan Supreme Court held that “the documents at issue are ‘public records’” under the Freedom of Information Act. *Bisio v City of the Village of Clarkston*, 506 Mich 37 (2020).

(c) The Supreme Court denied the City’s motion for rehearing on September 30, 2020.

(d) The Supreme Court remanded the case to this Court for further proceedings consistent with its opinion.

(e) The City disclosed the contested records to plaintiff in October 2020.

(f) Plaintiff filed a Motion for an Award of Fees, Costs, and Disbursements on October 26, 2020.

(g) The parties participated in facilitation and agreed to settle plaintiff’s fee claim on the terms set forth in this judgment.

2. Plaintiff’s Motion for an Award of Fees, Costs, and Disbursements is GRANTED. JUDGMENT IS ENTERED in plaintiff’s favor against the City for \$160,000 in attorney fees, costs, and disbursements. The judgment shall bear interest as provided in MCL 600.6013.

3. The following motions are dismissed as moot:

(a) Plaintiff’s Motion for Decision on Its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20.

(b) Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20.

(d) Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20.

4. This judgment is a final judgment, resolves the last pending claim, and closes the case.

---

Hon. Leo Bowman  
Circuit Judge

Dated: February \_\_, 2021

### **Stipulation**

We stipulate to entry of this judgment.

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

James E. Tamm (P38514)  
Attorney for Defendant

Dated: February \_\_, 2021

Dated: February \_\_, 2021

[End of recommended judgment.]



II. Plaintiff's agreement to settle this case is contingent on the city council's approval of entry of the judgment as provided in paragraph I on or before February 22, 2021. If the city council does not so approve entry of the judgment, this agreement will have no effect.

PLAINTIFF

THE CITY OF THE VILLAGE OF  
CLARKSTON

---

Susan Bisio

---

Eric Haven, Mayor

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

Jonathan Smith  
City Manager

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

James E. Tamm (P38514)  
Attorney for the City

Dated: February \_\_, 2021

**CITY OF THE VILLAGE OF CLARKSTON**

**RESOLUTION TO ACCEPT THE FACILITATED SETTLEMENT  
IN THE BISIO V CLARKSTON LAWSUIT**

At a special meeting of the of the City of the Village of Clarkston, City Council, Oakland County, Michigan, held via GoToMeeting pursuant to P.A. 254 on Friday, February 12, 2021, at 11:00 a.m.

PRESENT: Haven, Avery, Cossey  
Kneise, Luginiski, Wylie

ABSENT: Bonser

The following Resolution was offered by Wylie  
with support from Luginiski moves to adopt the following  
resolution:

WHEREAS, in a Closed Session at the Special City Council Meeting held on February 12, 2021, City Council discussed the Susan Bisio v City of the Village of Clarkston lawsuit, Oakland County Circuit Court Case Number 2015-150462-CZ, currently pending before the Honorable Leo Bowman,

NOW, THEREFORE, BE IT RESOLVED that the City of the Village of Clarkston hereby agrees to accept the facilitated settlement in the Susan Bisio v Clarkston lawsuit and authorizes the City Treasurer to immediately authorize a single payment of \$35,000.00 to effectuate the settlement specified by City Attorney, Mark Peyser.

RESOLVED,

AYES: Haven, Avery, Cossey, Kneise, Luginiski, Wylie

NAYES: Ø

ABSENT: Bonser

ABSTENTIONS: Ø

RESOLUTION DECLARED ADOPTED.



Eric Haven, Mayor

**CERTIFICATION**

I, Jennifer Speagle, being the duly appointed and qualified Clerk of the City of the Village of Clarkston, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of a Resolution adopted by the City Council of the City of the Village of Clarkston at special meeting held on February 12, 2021.



JENNIFER SPEAGLE, City Clerk

**Richard Bisio**

---

**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Monday, February 15, 2021 2:17 PM  
**To:** Richard Bisio  
**Cc:** James Tamm; Michael Sullivan; Thomas J. Ryan (sylvanlawtr@gmail.com); Carolyn Rowland; Penelope Calcaterra  
**Subject:** Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice  
**Attachments:** BISIO as of 02-15-21 Settlement Agreement and Release of All Claims 4837-2047-7148 v.1.pdf; Stipulation and Order for Dismissal (D1583403xA18F1).pdf

**Importance:** High

Mr. Bisio:

As you may have heard – last Friday the Clarkston City Council approved the City’s portion of the settlement. So we are on course to get this matter finalized.

I have attached our proposed settlement agreement and Stip & Order of dismissal. Please have you and your client execute the same where indicated and send back to me please. Also – please execute the stip & order and I will refrain from having it entered until we have tendered the settlement check to you and your client.

If you have any concerns with the settlement agreement please let me know and I would be happy to address them with you.

Please confirm that you are not proceeding with your motion currently set for the 18<sup>th</sup>.

Thank you sir.

Mark Peyser



**Mark W. Peyser**  
Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

**“Plaintiff”** means **Susan Bisio**.

**“Litigation”** means Case No. 2015-150462-CZ which was filed in the Circuit Court for the County of Oakland.

**“Defendant”** means the City of the Village of Clarkston and its current and former Mayors, City Council Members, City Managers, and city clerks and employees.

**“Insurer”** means the Michigan Municipal League Liability and Property Pool, Meadowbrook Claims Service and any and all of their current and/or former employees, representatives, board members, personnel, ostensible or actual agents, independent contractors, legal representatives, predecessors, successors, subsidiaries, divisions, departments, assigns, associates, related or affiliated persons or entities.

**“Released Claims”** means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, policy or procedure, known and unknown, against the Defendant and/or City of the Village of Clarkston, that Plaintiff and her counsel, Richard Bisio now has as a result of any claim for damages and/or attorney’s fees and costs, relating to the Litigation and a Freedom of Information Act (FOIA) claim asserted against Defendant arising out of a request for information dated June, 7, 2015 and a response by City attorney Thomas J. Ryan dated June 30, 2015. The released claims include claims of any kind, known or unknown relating to this request. This includes, but is not limited to, all claims or allegations that have been, should have been, or could have been asserted in any forum by the Plaintiff whether directly, indirectly, representatively or in any other capacity against the Defendant City of Village of Clarkston, Thomas J. Ryan or Thomas J. Ryan P.C. and which arise out of, or relate in any manner, to the facts, occurrences, acts, disclosures, statements, omissions or failures to act which were alleged or could have been alleged in the Litigation and/or FOIA claim.

**AGREEMENT**

The undersigned **Plaintiff**, being of lawful age, does hereby and for her heirs, executors, administrators, successors, and assigns, release, acquit and forever discharge the **Defendant and City of Village of Clarkston, Thomas J. Ryan, and Thomas J. Ryan P.C. from the Released Claims** including, but not limited to, any claim for injury and/or damage of any kind, known or unknown, and the consequences thereof, including costs and attorney fees resulting from the alleged FOIA violation, also including, without limitation, any and all claims relating to any act or omission which occurred on all possible dates that could be construed to have caused injuries or damages to **Plaintiff** as stated in the allegations of Plaintiff’s Complaint, amended or otherwise, filed in the Litigation. Plaintiff further understands and agrees that because she is releasing all claims for monetary damages and other forms of personal injury relief, including costs and attorney fees to the extent allowed by law, she may not, and will not, seek or accept monetary damages or other forms of relief through any such claim.

The consideration in exchange for this Release of Claims is as follows: (1) It is agreed that Plaintiff shall be paid the amount of \$160,000.00 by delivering a check made payable to “Susan Bisio and her attorney Richard Bisio” in the amount of \$160,000.00.

By execution of this Release *Plaintiff* expressly waives any appeal, by leave or by right, of any decision made by the court in connection with the *Litigation*. Furthermore, *Plaintiff* expressly agrees to dismiss, with prejudice, and any other claims or Complaints currently pending against the Defendant related in any way to the *Litigation* and/or the FOIA claim.

*Plaintiff* agrees that she is not to be considered the prevailing party in the *Litigation*. It is further acknowledged that the *Defendant* does not admit liability, any fault, proximate cause or damages, and/or an entitlement to attorney’s fees or any aspect of the *Released Claims* by entering into this Agreement, nor do they state that anyone is entitled to recover from them.

*Plaintiff* agrees that she has not assigned or transferred (or purported to assign or transfer), voluntarily or involuntarily, any *Released Claims* or any other part or portion thereof. It is further represented that no other individual or entity has a lien or asserts an entitlement to a reimbursement of any costs, fees or damages, including but not limited Richard Bisio and/or the Kemp Klein Law Firm.

The *Plaintiff* shall be barred from initiating, asserting or prosecuting any claim, proceeding or action of any kind, which is released herein, against the *Defendant and City of Village of Clarkston, Thomas J. Ryan, or Thomas J. Ryan P.C.* in any federal, state, or appellate court or tribunal. If *Plaintiff* elects to file such a claim, it is agreed that *Plaintiff* will indemnify the *Defendant and City of Village of Clarkston, Thomas J. Ryan, and Thomas J. Ryan P.C.* for any and all costs and attorney’s fees associated with such proceedings. Plaintiff and her counsel shall also indemnify and hold Defendant and other released parties harmless from any lien or claims for attorney’s fees that may be brought by any person or entity, including but not limited to the Kemp Klein law firm, and shall indemnify and pay Defendant’s costs and attorney’s fees relating to the defense of any claim or request for attorney’s fees or costs.

*Plaintiff* agrees that this Release is final, conclusive and binding on the *Plaintiff*, her children or other heirs, next of kin, and any other persons or entities who may claim an interest through her in the *Released Claims*, and that upon execution of this Release and payment of the settlement amount, any liability of the *Defendant or City of Village of Clarkston, Thomas J. Ryan or Thomas J. Ryan P.C.* to any person for matters released herein shall cease and be fully and finally discharged. In this regard, *Plaintiff* does further state that the settlement embodied in this Release is fair, reasonable and in her best interest, and in the best interest of those who have incurred damages by virtue of the *Released Claims*. *Plaintiff* further agrees that she will never institute in the future any complaint, suit, action or cause of action in law or equity against *Defendant or City of Village of Clarkston, Thomas J. Ryan , or Thomas J. Ryan P.C.* for or on account of any claims and/or damages released herein.

The terms of this Release are contractual, not a mere recital. The Release is entered into in the State of Michigan and shall be construed and interpreted according to the laws of the State of Michigan.

**Plaintiff** acknowledges that she was advised to consult with an attorney prior to executing this Release, and that she was provided the opportunity to consult an attorney regarding this document and its legal import. **Plaintiff** also acknowledges that she signed this Release knowingly and voluntarily.

\_\_\_\_\_  
SUSAN BISIO

On this date, \_\_\_\_\_, SUSAN BISIO personally appeared before me, a Notary Public, and swore that she has read the foregoing SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS, and that she fully understood it and signed this SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS as her own free act and deed.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_  
\_\_\_\_\_, Michigan  
My Commission Expires:

As attorney for SUSAN BISIO, I certify that I have explained the legal import of this document to her prior to her signing it.

\_\_\_\_\_  
Richard Bisio (P30246)  
Attorney for Plaintiff

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SUSAN BISIO,

Plaintiff,  
vs.

Hon. Leo Bowman  
Case No.: 2015-150462-CZ

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

KEMP KLEIN LAW FIRM  
RICHARD BISIO (P30246)  
Attorney for Plaintiff  
201 W. Big Beaver Road, Ste. 600  
Troy, MI 48084  
(248) 740-5698  
[richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)

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KERR, RUSSELL AND WEBER, PLC  
James E. Tamm (P38154)  
Kevin A. McQuillan (P79083)  
Attorneys for Defendant  
500 Woodward Avenue  
Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)  
[kmcquillan@kerr-russell.com](mailto:kmcquillan@kerr-russell.com)

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**STIPULATION FOR DISMISSAL**

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, that Plaintiff's claims be dismissed in its entirety with prejudice and without costs and attorneys' fees to either party.

/S/  
\_\_\_\_\_  
KEMP KLEIN LAW FIRM  
RICHARD BISIO (P30246)  
Attorney for Plaintiff  
[richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)

/S/ James E. Tamm  
\_\_\_\_\_  
KERR, RUSSELL AND WEBER, PLC  
James E. Tamm (P38154)  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SUSAN BISIO,

Plaintiff,  
vs.

Hon. Leo Bowman  
Case No.: 2015-150462-CZ

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

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KEMP KLEIN LAW FIRM  
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Attorney for Plaintiff  
201 W. Big Beaver Road, Ste. 600  
Troy, MI 48084  
(248) 740-5698  
[richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)

---

KERR, RUSSELL AND WEBER, PLC  
James E. Tamm (P38154)  
Kevin A. McQuillan (P79083)  
Attorneys for Defendant  
500 Woodward Avenue  
Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)  
[kmcquillan@kerr-russell.com](mailto:kmcquillan@kerr-russell.com)

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**ORDER FOR DISMISSAL**

At a session of said Court on: \_\_\_\_\_  
Present: Hon: \_\_\_\_\_

Upon reading and filing the foregoing Stipulation of the parties and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's claims are dismissed in its entirety with prejudice and without costs or attorneys' fees to either party.

This is a final Order and closes the case.

---

Hon.

Order prepared by:  
James E. Tamm (P38154)  
Attorney for Defendant  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)

**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 12:52 PM  
**To:** Mark W. Peyser  
**Cc:** James Tamm; Edward Sosnick  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

Dear Mr. Peyser:

The proposed settlement agreement is not acceptable. Except for the amount plaintiff was willing to settle her fee claim for, plaintiff did not agree to the other proposed terms. Even the discussions about the amount of the fees did not result in an enforceable agreement under MCR 2.507(G) because there was no agreement in writing or on the record. In particular, plaintiff did not and will not agree to release or indemnify the city, persons associated with the city, Thomas Ryan, or his PC. She most certainly did not and will not agree that she was not the prevailing party and the case should be dismissed with prejudice, either of which would have the effect of rendering null the Michigan Supreme Court's decision in her favor and accepting the city's argument that plaintiff didn't actually win this case and have the effect that the city may continue to conceal public documents by holding them in off-premises files of its officers and employees.

I will not go into a complete analysis of the city's proposed settlement agreement because it serves no purpose to discuss these provisions to which plaintiff did not and will not agree. There is one matter properly pending in this case: plaintiff's fee motion. If the city wishes to settle that, the city, through formal action of its city council, will need to agree to entry of a judgment against the city along the lines of the proposed judgment I sent to you and Mr. Tamm last week.

We have been patient with the several weeks' delay caused by the city's request to facilitate the fee claim, even though this case has now entered its sixth year of litigation. But the city's conduct in and after the facilitation causes us to doubt the city's good faith in this process, particularly your misrepresentation to the court's staff attorney that the settlement agreement you drafted without any consultation with plaintiff is a binding agreement. Although plaintiff was willing to settle her fee claim for a discount of more than half the amount in order to terminate this litigation, the city's proposed settlement agreement adds numerous unacceptable terms.

It is time to either put this case to rest or continue the litigation. The city council's next scheduled meeting is on February 22 and the council will then have an opportunity to agree to a settlement acceptable to plaintiff. If the city does not do so, plaintiff's offer to settle the fee claim for \$160,000 is withdrawn and plaintiff will move forward with her fee motion (which will seek the full amount of her fees and expenses) and motions on other issues the city has raised. A settlement reached after that time will have to account for the additional fees and expenses incurred in further litigation. The city may rest assured that, if the city does not wish to settle, she is prepared to fully litigate all outstanding issues and appeal adverse or unacceptable decisions.

I will send a copy of this correspondence to Judge Sosnick with the hope that he may be able to assist the parties in reaching an agreement.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600

Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

\*\*\*\*\*

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**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Monday, February 15, 2021 2:17 PM  
**To:** Richard Bisio <Richard.Bisio@kkue.com>  
**Cc:** James Tamm <JTamm@kerr-russell.com>; Michael Sullivan <Michael.Sullivan@ceflawyers.com>; Thomas J. Ryan (sylvanlawtr@gmail.com) <sylvanlawtr@gmail.com>; Carolyn Rowland <CRowland@kerr-russell.com>; Penelope Calcaterra <pcalcaterra@howardandhoward.com>  
**Subject:** Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice  
**Importance:** High

Mr. Bisio:

As you may have heard – last Friday the Clarkston City Council approved the City’s portion of the settlement. So we are on course to get this matter finalized.

I have attached our proposed settlement agreement and Stip & Order of dismissal. Please have you and your client execute the same where indicated and send back to me please. Also – please execute the stip & order and I will refrain from having it entered until we have tendered the settlement check to you and your client.

If you have any concerns with the settlement agreement please let me know and I would be happy to address them with you.

Please confirm that you are not proceeding with your motion currently set for the 18<sup>th</sup>.

Thank you sir.

Mark Peyser

**Howard & Howard** | Mark W. Peyser  
law for business® Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Wednesday, February 17, 2021 1:20 PM  
**To:** Mark W. Peyser  
**Cc:** James Tamm; Edward Sosnick  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

Dear Mr. Peyser:

I don't think further discussion between us will be productive because you and the city apparently have a fundamental misunderstanding of what we were facilitating, of the history of this case, the fact that the city lost the case, the fact that the facilitation was nonbinding, and the fact that you may have misunderstood Judge Sosnick's communications with you. Your most recent email attempts to justify imposing a one-sided settlement that you drafted without any consultation, with terms that plaintiff did not agree to, and that is in no way "binding" because it is neither in a signed writing nor on the record in open court, as required by the court rules. I see no willingness to negotiate any of this in good faith, but rather your last email just attempts to justify and impose unilateral terms of settlement.

Despite the city's attempt to add new issues, the only remaining matter in this case is the amount of a fee award to plaintiff. That is what we were facilitating. We were not facilitating any other issues that the city's proposed settlement agreement addresses and plaintiff did not agree on any other issues. When I communicated to Judge Sosnick that plaintiff would settle her fee claim for the amount he recommended, I made clear that it was contingent on entry of a judgment against the city for that amount. We did not discuss any other issues with Judge Sosnick.

Judge Sosnick's statements were not to the contrary. First, he has no authority to impose a settlement. The facilitation was nonbinding. Plaintiff did not sign any facilitation agreement or invest Judge Sosnick with authority to impose settlement terms.

Second, we always made clear to Judge Sosnick and to the city's lawyers that plaintiff would insist on entry of a judgment for the fee award. That was in the confidential facilitation summary plaintiff provided to Judge Sosnick. We made that clear in our discussions with Judge Sosnick. When I emailed Judge Sosnick stating that plaintiff would accept his number, I again stated that entry of a judgment would be required. Shortly after that, I sent to Jim Tamm and later to you a proposed judgment.

Third, according to Judge Sosnick, the "settlement" was "subject to counsel [not council] approval." Plaintiff's counsel has not approved the settlement on the terms the city wants to impose. Even if we assume that Judge Sosnick meant to state that the "settlement" was subject to city council approval, that has not happened. All the council approved was a resolution for issuance of a \$35,000 check to an unidentified payee. It did not approve any details of a settlement. Confirming that this was not approval of a complete settlement, your email characterizes the council as having approved only "the city's portion of the settlement."

Fourth, Judge Sosnick further stated that "you will have to agree on a settlement agreement." We have not agreed on a settlement agreement. I sent you and Jim Tamm a proposed agreement, which you both ignored. You sent me a settlement agreement, which plaintiff will not accept. I could as well claim that you agreed to my settlement agreement, which includes entry of a judgment, because I simply sent it to you. In reality, there has been no agreement and no "settlement."

Finally, the fact that Judge Sosnick did not mention entry of a judgment in his final email is irrelevant. He does not have authority to dictate terms of a settlement. And, in any event, I immediately sent Jim Tamm a proposed settlement agreement that included agreement to entry of a judgment. Judge Sosnick did not exclude that as

one of the terms of a settlement agreement. He did not have the authority to do so and he was well aware of plaintiff's insistence on entry of a judgment.

The terms of the city's proposed settlement are unacceptable for several additional reasons.

First, it ignores the history of this case. Plaintiff won the case in the Michigan Supreme Court. Now the city wants plaintiff to agree that she was not the prevailing party and that her complaint, on which she fully prevailed after five years of litigation, should be dismissed with prejudice—as though it were never filed and as though the Supreme Court's decision is meaningless. The case was about transparency. Plaintiff will not now admit her complaint was about nothing. And, in light of the city's personal vilification of both plaintiff and me, its accusations of fraud and other misconduct, and its abusive litigation conduct, the final chapter should be a public vindication of plaintiff's claims by entry of a judgment against the city. Less than that will send the message to all other citizens who want to break through the city's conduct of business in secret that they will have to contend with years of personal attacks and expensive litigation and, in the end, their case will be dismissed.

Second, plaintiff did not and will not agree to a release and indemnity. There is no basis for it. Should the case go to final judgment, the city would not receive a release or indemnity. All that it would receive is the benefit of res judicata, which I believe would be the same whether a judgment were entered by consent or after a decision by the court.

Third, your attempt to add Thomas Ryan and his PC as beneficiaries of a release and indemnity is unwarranted. They are not a parties to the case. And the city has argued on several occasions that Ryan and his firm are not bound by anything in this case, including the Supreme Court opinion.

Fourth, I don't understand why any mention of Kemp Klein Law Firm is appropriate. As far as I know, Kemp Klein has no claims against the city or any of the numerous other releasees in the city's proposed agreement.

Fifth, the one-sided agreement the city proposes does not address the claims the city has made against plaintiff and does not offer to release them. The city accused plaintiff and me of unethical conduct and fraud, among other things. And it refuses to withdraw its still-pending motion for an award of \$93,210 in fees and costs against plaintiff.

Finally, your statement that "settlement agreements contain releases and do not include judgments" is not true. Settlement agreements contain whatever the parties agree on. Nothing precludes a settlement agreement that provides for entry of a judgment. In fact, many do.

The tenor of your email is that you just want to talk to me to convince me that the city's proposed settlement agreement is reasonable, Judge Sosnick approved it, and plaintiff has no legitimate concerns about its one-sided terms. None of that is true. The city's conduct in the facilitation shows the city is not serious about proceeding in good faith. Your misrepresentation to Vicky King yesterday that there is a "binding settlement agreement" confirms that.

The city lost. The only thing left is a fee award. The circumstances of this case are that the award should be embodied in a judgment. Since you indicate no willingness to compromise but rather just want to talk about why plaintiff should accept the city's proposed agreement, I see no reason for a conversation, unless Judge Sosnick wishes to continue to try to facilitate a settlement.

Simply stated, if the city wishes to settle this matter, it must agree to entry of a judgment for the fee award. If the city does not wish to settle on those terms, plaintiff will proceed with her fee motion and obtain a judgment. My email yesterday stated plaintiff's settlement position. If the city council does not approve a settlement consistent with that by February 22, plaintiff's offer to settle her fee claim for \$160,000 is withdrawn.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
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\*\*\*\*\*  
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**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Tuesday, February 16, 2021 5:44 PM  
**To:** Richard Bisio <Richard.Bisio@kkue.com>  
**Cc:** James Tamm <JTamm@kerr-russell.com>; Edward Sosnick <edward@sosnickmediation.com>  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

Mr. Bisio:

Thank you for your email of today.

I think it is best we have a professional discussion on the matter to keep this moving forward towards closure. Are you available to speak with me tomorrow at 9:30AM? If not – then what works for you?

As you know – after extensive good faith negotiations and an impasse occurring, Judge Sosnick issued a recommended number and both parties accepted that number. Subsequently, the Judge sent us an email stating that we have a settlement subject to council approval. His email also made a specific reference to a settlement agreement not a judgment. Last Friday, the Clarkston City Council held a special meeting and approved the City’s portion of the settlement. As you know, settlement agreements contain releases and do not include judgments. So there is nothing unusual about the defendant’s proposed release.

Ever since you filed the case, you have used the Kemp Klein (“KK”) name and address on your pleadings. We included an indemnity provision as to the KK firm to ensure that the defendant is covered for the settlement payment in the event that KK has a lien on the sums recovered for attorney fees and asserts a claim. Do you have a waiver or an assignment to your client and/or you of any claim that KK has for attorney fees recovered in this matter? If so, please forward ASAP for our review. If it proves to be true that you have either a valid release or an assignment from KK then we will consider withdrawing the indemnity provision. Otherwise, you can certainly understand the need for the indemnity provision.

I look forward to speaking with you tomorrow and hopefully we can work out the issues.

Thank you sir and have a nice evening.



Mark W. Peyser



**Mark W. Peyser**  
Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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---

**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Tuesday, February 16, 2021 12:52 PM  
**To:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>  
**Cc:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Edward Sosnick <[edward@sosnickmediation.com](mailto:edward@sosnickmediation.com)>  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

**CAUTION: EXTERNAL EMAIL**

Dear Mr. Peyser:

The proposed settlement agreement is not acceptable. Except for the amount plaintiff was willing to settle her fee claim for, plaintiff did not agree to the other proposed terms. Even the discussions about the amount of the fees did not result in an enforceable agreement under MCR 2.507(G) because there was no agreement in writing or on the record. In particular, plaintiff did not and will not agree to release or indemnify the city, persons associated with the city, Thomas Ryan, or his PC. She most certainly did not and will not agree that she was not the prevailing party and the case should be dismissed with prejudice, either of which would have the effect of rendering null the Michigan Supreme Court's decision in her favor and accepting the city's argument that plaintiff didn't actually win this case and have the effect that the city may continue to conceal public documents by holding them in off-premises files of its officers and employees.

I will not go into a complete analysis of the city's proposed settlement agreement because it serves no purpose to discuss these provisions to which plaintiff did not and will not agree. There is one matter properly pending in this case: plaintiff's fee motion. If the city wishes to settle that, the city, through formal action of its city council, will need to agree to entry of a judgment against the city along the lines of the proposed judgment I sent to you and Mr. Tamm last week.

We have been patient with the several weeks' delay caused by the city's request to facilitate the fee claim, even though this case has now entered its sixth year of litigation. But the city's conduct in and after the facilitation causes us to doubt the city's good faith in this process, particularly your misrepresentation to the court's staff attorney that the settlement agreement you drafted without any consultation with plaintiff is a binding agreement. Although plaintiff was willing to settle her fee claim for a discount of more than half the amount in order to terminate this litigation, the city's proposed settlement agreement adds numerous unacceptable terms.

It is time to either put this case to rest or continue the litigation. The city council's next scheduled meeting is on February 22 and the council will then have an opportunity to agree to a settlement acceptable to plaintiff. If the city does not do so, plaintiff's offer to settle the fee claim for \$160,000 is withdrawn and plaintiff will move forward with her fee motion (which will seek the full amount of her fees and expenses) and motions on other issues the

city has raised. A settlement reached after that time will have to account for the additional fees and expenses incurred in further litigation. The city may rest assured that, if the city does not wish to settle, she is prepared to fully litigate all outstanding issues and appeal adverse or unacceptable decisions.

I will send a copy of this correspondence to Judge Sosnick with the hope that he may be able to assist the parties in reaching an agreement.

Richard Bisio



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Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

\*\*\*\*\*

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\*\*\*\*\*

---

**From:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>  
**Sent:** Monday, February 15, 2021 2:17 PM  
**To:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Cc:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Michael Sullivan <[Michael.Sullivan@cefawyers.com](mailto:Michael.Sullivan@cefawyers.com)>; Thomas J. Ryan (<[sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)>) <[sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>; Penelope Calcaterra <[pcalcaterra@howardandhoward.com](mailto:pcalcaterra@howardandhoward.com)>  
**Subject:** Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice  
**Importance:** High

Mr. Bisio:

As you may have heard – last Friday the Clarkston City Council approved the City’s portion of the settlement. So we are on course to get this matter finalized.

I have attached our proposed settlement agreement and Stip & Order of dismissal. Please have you and your client execute the same where indicated and send back to me please. Also – please execute the stip & order and I will refrain from having it entered until we have tendered the settlement check to you and your client.

If you have any concerns with the settlement agreement please let me know and I would be happy to address them with you.

Please confirm that you are not proceeding with your motion currently set for the 18<sup>th</sup>.



Thank you sir.

Mark Peyser



**Mark W. Peyser**  
Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067

**D:** 248.723.0356 | **F:** 248.645.1568

[mwp@h2law.com](mailto:mwp@h2law.com) | [Bio](#) | [vCard](#) | [LinkedIn](#)

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 8:56 AM  
**To:** kingv@oakgov.com; Bowman Chambers  
**Cc:** James Tamm; Mark W. Peyser  
**Subject:** Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
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**Richard Bisio**

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**From:** King, Victoria <kingv@oakgov.com>  
**Sent:** Tuesday, February 16, 2021 9:01 AM  
**To:** James Tamm; Richard Bisio; Bowman Chambers  
**Cc:** Mark W. Peyser; Carolyn Rowland  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Thank you. I will take it off the docket. Please advise if the parties resolved their claims. Judge Bowman issues a show cause order (essentially a control date) when parties resolve their claims that it can be taken off the active trial docket. I will facilitate preparing the show cause order if that is the case.

*Victoria B. King*  
Judicial Staff Attorney to the  
Honorable Leo Bowman  
Oakland County Circuit Court  
1200 North Telegraph Road  
Pontiac, Michigan 48341  
(248) 452-9183

**[Court Covid19 Emergency Protocol](#)**  
**[Judge Bowman Covid19 Emergency Protocol](#)**

---

**From:** James Tamm <JTamm@kerr-russell.com>  
**Sent:** Tuesday, February 16, 2021 8:59 AM  
**To:** Richard Bisio <Richard.Bisio@kkue.com>; King, Victoria <kingv@oakgov.com>; Bowman Chambers <bowmanchambers@oakgov.com>  
**Cc:** Mark W. Peyser <mwp@h2law.com>; Carolyn Rowland <CRowland@kerr-russell.com>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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**Subject:** [EXTERNAL] Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

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Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 10:48 AM  
**To:** King, Victoria; Bowman Chambers  
**Cc:** Mark W. Peyser; James Tamm  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Dear Ms. King:

The parties participated in a facilitation with retired Judge Edward Sosnick. Although we made some progress, we have not yet settled. We are continuing our discussions.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
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**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Thank you. I will take it off the docket. Please advise if the parties resolved their claims. Judge Bowman issues a show cause order (essentially a control date) when parties resolve their claims that it can be taken off the active trial docket. I will facilitate preparing the show cause order if that is the case.

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Oakland County Circuit Court  
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(248) 452-9183

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**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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**Cc:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>  
**Subject:** [EXTERNAL] Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

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Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



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Troy, MI 48084-4161  
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\*\*\*\*\*

**Richard Bisio**

---

**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Tuesday, February 16, 2021 12:13 PM  
**To:** King, Victoria; Bowman Chambers  
**Cc:** Edward Sosnick; Richard Bisio; James Tamm  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

**Importance:** High

Ms. King:

I was retained as separate counsel for Clarkston and did participate in the facilitation on behalf of the City.

After much negotiations, Judge Sosnick recommend a number which both parties accepted. Thus, we have a binding settlement per Judge Sosnick. You can confirm this with Judge Sosnick.

We have sent our proposed release to Mr. Bisio and are awaiting his comments.

Thank you.

Mark W. Peyser



**Mark W. Peyser**  
Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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Dear Ms. King:

The parties participated in a facilitation with retired Judge Edward Sosnick. Although we made some progress, we have not yet settled. We are continuing our discussions.

Richard Bisio





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**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

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**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

James E. Tamm  
Attorney



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



[kerr-russell.com](http://kerr-russell.com)

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Richard Bisio



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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 12:30 PM  
**To:** King, Victoria; Bowman Chambers  
**Cc:** Edward Sosnick; James Tamm; Mark W. Peyser  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Dear Ms. King:

There is no binding settlement. I won't provide extended discussion, but suffice it to say that the proposed settlement agreement that Mr. Peyser drafted without any input from the plaintiff contains numerous unacceptable provisions. I hope to continue discussions with the city, but, as of now, there is no final, binding settlement.

Richard Bisio



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Troy, MI 48084-4161  
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**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition  
**Importance:** High

Ms. King:

I was retained as separate counsel for Clarkston and did participate in the facilitation on behalf of the City.

After much negotiations, Judge Sosnick recommend a number which both parties accepted. Thus, we have a binding settlement per Judge Sosnick. You can confirm this with Judge Sosnick.

We have sent our proposed release to Mr. Bisio and are awaiting his comments.

Thank you.

Mark W. Peyser



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D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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---

**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Tuesday, February 16, 2021 10:48 AM  
**To:** King, Victoria <[kingv@oakgov.com](mailto:kingv@oakgov.com)>; Bowman Chambers <[bowmanchambers@oakgov.com](mailto:bowmanchambers@oakgov.com)>  
**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

**CAUTION: EXTERNAL EMAIL**

Dear Ms. King:

The parties participated in a facilitation with retired Judge Edward Sosnick. Although we made some progress, we have not yet settled. We are continuing our discussions.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

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\*\*\*\*\*

---

**From:** King, Victoria <[kingv@oakgov.com](mailto:kingv@oakgov.com)>  
**Sent:** Tuesday, February 16, 2021 9:01 AM  
**To:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>; Bowman Chambers <[bowmanchambers@oakgov.com](mailto:bowmanchambers@oakgov.com)>  
**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Thank you. I will take it off the docket. Please advise if the parties resolved their claims. Judge Bowman issues a show cause order (essentially a control date) when parties resolve their claims that it can be taken off the active trial docket. I will facilitate preparing the show cause order if that is the case.

*Victoria B. King*  
Judicial Staff Attorney to the  
Honorable Leo Bowman  
Oakland County Circuit Court  
1200 North Telegraph Road  
Pontiac, Michigan 48341  
(248) 452-9183

**[Court Covid19 Emergency Protocol](#)**  
**[Judge Bowman Covid19 Emergency Protocol](#)**

---

**From:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Sent:** Tuesday, February 16, 2021 8:59 AM  
**To:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>; King, Victoria <[kingv@oakgov.com](mailto:kingv@oakgov.com)>; Bowman Chambers <[bowmanchambers@oakgov.com](mailto:bowmanchambers@oakgov.com)>  
**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



[kerr-russell.com](http://kerr-russell.com)

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---

---

**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Tuesday, February 16, 2021 8:56 AM  
**To:** [kingv@oakgov.com](mailto:kingv@oakgov.com); Bowman Chambers <[bowmanchambers@oakgov.com](mailto:bowmanchambers@oakgov.com)>  
**Cc:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>  
**Subject:** [EXTERNAL] Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

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Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

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\*\*\*\*\*

**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, January 5, 2021 9:42 AM  
**To:** James Tamm  
**Subject:** RE: Bisio v Clarkston

Dear Mr. Tamm:

Please confirm the following terms for facilitation before Judge Sosnick:

1. The motions scheduled for hearing on January 13, 2021 will be adjourned for 30 days to a date certain. These are the motions to be adjourned:

Plaintiff's Motion for an Award of Fees, Costs, and Disbursements, 10/26/20

Plaintiff's Motion for Decision on its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20

Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20

Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20

Plaintiff will adjourn her motions if the city will agree to adjourn its motion.

2. The February 18, 2021 hearing on plaintiff's motion for summary disposition will not be adjourned at this time.

3. Plaintiff will not participate in facilitation with MMLLPP or Thomas Ryan or his insurer. The city is free to conduct a separate facilitation with them at the same time as the facilitation between plaintiff and the city.

4. The facilitation must be scheduled to take place within one month—by February 5, 2021.

5. The city will pay the full cost of the facilitation.

6. The facilitation will be held by Zoom or other remote electronic means.

If the city agrees to these conditions, you may contact Judge Sosnick for available dates.

Finally, it is a matter of concern for plaintiff that the city continues to resist agreeing that no trial is necessary and continues to refuse to withdraw its fee motion. One would think that the city could acquiesce to the repeated requests on these matters as a show the city's good faith in seeking facilitation to settle this case.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698



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\*\*\*\*\*

---

**From:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Sent:** Monday, January 4, 2021 3:43 PM  
**To:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Cc:** Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v Clarkston

Mr. Bisio,

Our hope is that will not have to address the issue and the case will resolve through facilitation. To that end, the City will agree to facilitate with retired Oakland County Circuit Court Judge Edward Sosnick. Please confirm that you will adjourn the motions scheduled for January 13.

I can contact Judge Sosnick to obtain potential facilitation dates. Hopefully we will obtain several dates, one of which will ultimately work for the schedules of all involved.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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---

**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Monday, January 4, 2021 3:10 PM  
**To:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Subject:** [EXTERNAL] Bisio v Clarkston

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Dear Mr. Tamm:

Now that the city admits “there is no longer a controversy requiring judicial resolution” as it relates to disclosure of the contested records and “[w]hether the City has defenses is now moot” (city response to summary disposition, pp 4, 1), please advise whether the city will agree that a trial in this case is unnecessary and join in (or not oppose) a motion to vacate the trial notice and cancel the trial. Please also advise whether the city will withdraw its fee motion.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
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\*\*\*\*\*

**Richard Bisio**

---

**From:** James Tamm <JTamm@kerr-russell.com>  
**Sent:** Thursday, January 7, 2021 6:11 AM  
**To:** Richard Bisio  
**Cc:** Carolyn Rowland  
**Subject:** RE: Bisio v Clarkston

**Follow Up Flag:** Follow up  
**Due By:** Friday, January 8, 2021 8:00 AM  
**Flag Status:** Completed

Mr. Bisio,

The City agrees to facilitate under the terms listed below. As previously noted, the city's insurance carrier will pay the cost of facilitation. Please confirm the adjournment of the motions. I will contact Judge Sosnick regarding his availability.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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---

**From:** Richard Bisio <Richard.Bisio@kkue.com>  
**Sent:** Tuesday, January 5, 2021 9:42 AM  
**To:** James Tamm <JTamm@kerr-russell.com>  
**Subject:** [EXTERNAL] RE: Bisio v Clarkston

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Dear Mr. Tamm:

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Plaintiff's Motion for Decision on its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20

Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20

Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20

Plaintiff will adjourn her motions if the city will agree to adjourn its motion.

2. The February 18, 2021 hearing on plaintiff's motion for summary disposition will not be adjourned at this time.

3. Plaintiff will not participate in facilitation with MMLLPP or Thomas Ryan or his insurer. The city is free to conduct a separate facilitation with them at the same time as the facilitation between plaintiff and the city.

4. The facilitation must be scheduled to take place within one month—by February 5, 2021.

5. The city will pay the full cost of the facilitation.

6. The facilitation will be held by Zoom or other remote electronic means.

If the city agrees to these conditions, you may contact Judge Sosnick for available dates.

Finally, it is a matter of concern for plaintiff that the city continues to resist agreeing that no trial is necessary and continues to refuse to withdraw its fee motion. One would think that the city could acquiesce to the repeated requests on these matters as a show the city's good faith in seeking facilitation to settle this case.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
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**From:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Sent:** Monday, January 4, 2021 3:43 PM  
**To:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Cc:** Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v Clarkston

Mr. Bisio,

Our hope is that will not have to address the issue and the case will resolve through facilitation. To that end, the City will agree to facilitate with retired Oakland County Circuit Court Judge Edward Sosnick. Please confirm that you will adjourn the motions scheduled for January 13.

I can contact Judge Sosnick to obtain potential facilitation dates. Hopefully we will obtain several dates, one of which will ultimately work for the schedules of all involved.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



[kerr-russell.com](http://kerr-russell.com)

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---

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**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Monday, January 4, 2021 3:10 PM  
**To:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Subject:** [EXTERNAL] Bisio v Clarkston

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Tamm:

Now that the city admits “there is no longer a controversy requiring judicial resolution” as it relates to disclosure of the contested records and “[w]hether the City has defenses is now moot” (city response to summary disposition, pp 4, 1), please advise whether the city will agree that a trial in this case is unnecessary and join in (or not oppose) a motion to vacate the trial notice and cancel the trial. Please also advise whether the city will withdraw its fee motion.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
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\*\*\*\*\*

**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Wednesday, January 27, 2021 6:54 AM  
**To:** edward@sosnickmediation.com; James Tamm  
**Subject:** Bisio v Clarkston facilitation  
**Attachments:** Clarkston FOIA--settlement agreement.docx

Attached is a proposed facilitation settlement agreement for use if the parties settle plaintiff's fee claim at the February 1 facilitation.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
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## SETTLEMENT AGREEMENT

The Agreement is between Susan Bisio and representatives of the City of the Village of Clarkston (“City”). The parties met with each other and Hon. Edward Sosnick on February 1, 2021 to facilitate the remaining disputes in *Bisio v City of the Village of Clarkston*, Oakland County Circuit Court case no. 2015-150462-CZ.

I. The City representatives will recommend to the City’s city council at the council’s February 8, 2021 meeting or a special meeting held before February 8, 2021, approval of entry of a judgment in the following form:

[Recommended judgment is on next three pages.]



STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

Richard Bisio (P30246)  
Kemp Klein Law Firm  
Attorneys for Plaintiff  
201 West Big Beaver Road, Suite 600  
Troy, MI 48084  
(248) 740-5698  
richard.bisio@kkue.com

James E. Tamm (P38154)  
Kerr, Russel and Weber, PLC  
Attorneys for Defendant  
500 Woodward Ave., Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
jtamm@kerr-russell.com

---

**JUDGMENT**

The Court enters this judgment on stipulation of Plaintiff Susan Bisio and defendant City of the Village of Clarkston (“City”).

IT IS ORDERED:

1. The Court enters this judgment based on the following facts:

(a) In this Freedom of Information Act case, plaintiff and the City contested whether 18 records (the “contested records”) were public records under the act.

(b) The Michigan Supreme Court held that “the documents at issue are ‘public records’” under the Freedom of Information Act. *Bisio v City of the Village of Clarkston*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (2020) (docket no. 158240); slip op at 14.

(c) The Supreme Court denied the City’s motion for rehearing on September 30, 2020.

(d) The Supreme Court remanded the case to this Court for further proceedings consistent with its opinion.

(e) The City disclosed the contested records to plaintiff in October 2020.

(f) Plaintiff filed a Motion for an Award of Fees, Costs, and Disbursements on October 26, 2020.

(g) The parties participated in facilitation and agreed to settle plaintiff’s fee claim on the terms set forth in this judgment.

2. Plaintiff’s Motion for an Award of Fees, Costs, and Disbursements is GRANTED. JUDGMENT IS ENTERED in plaintiff’s favor against the City for \$----- in attorney fees, costs, and disbursements. The judgment shall bear interest as provided in MCL 600.6013.

5. The following motions are dismissed as moot:

(a) Plaintiff's Motion for Summary Disposition to Require City to Disclose Public Records, 10/7/20.

(b) Plaintiff's Motion for Decision on Its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20.

(c) Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20.

(d) Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20.

6. This judgment is a final judgment, resolves the last pending claim, and closes the case.

---

Hon. Leo Bowman  
Circuit Judge

Dated: February \_\_, 2021

### **Stipulation**

We stipulate to entry of this judgment.

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

James E. Tamm (P38514)  
Attorney for Defendant

Dated: February \_\_, 2021

Dated: February \_\_, 2021

[End of recommended judgment.]

II. Plaintiff's agreement to settle this case is contingent on the city council's approval of entry of the judgment as provided in paragraph I on or before February 8, 2021. If the city council does not so approve entry of the judgment, this agreement will have no effect.

PLAINTIFF

THE CITY OF THE VILLAGE OF  
CLARKSTON

\_\_\_\_\_  
Susan Bisio

\_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Richard Bisio (P30246)  
Attorney for Plaintiff

\_\_\_\_\_  
James E. Tamm (P38514)  
Attorney for the City

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

RICHARD BISIO,

Plaintiff,

v

Case No. 2015-147354-CZ

THE CITY OF THE  
VILLAGE OF CLARKSTON, et al.,

Hon. Leo Bowman

Defendants.

---

Brian D. Wassom (P60381)  
Honigman Miller Schwartz and Cohn LLP  
Attorneys for Plaintiff  
39400 Woodward Ave. Ste. 101  
Bloomfield Hills, MI 48304  
(248) 566-8490  
[bwassom@honigman.com](mailto:bwassom@honigman.com)

James E. Tamm (P38154)  
O'Connor DeGrazia Tamm O'Connor  
Attorney for Defendants  
40701 Woodward Avenue, Suite 105  
Bloomfield Hills, MI 48304  
(248) 433-2000  
[jetamm@odtlegal.com](mailto:jetamm@odtlegal.com)

---

**CONSENT JUDGMENT**

At a session of said Court, held on: MAR 14 2016

Present: Hon. LEO BOWMAN

On stipulation of the parties,

IT IS ORDERED AND ADJUDGED:

1. Defendant City Council's decision to convene a closed session on March 9, 2015 was in violation of MCL 15.263(1) and 15.268(h) because the stated purpose for convening a

closed meeting, to discuss an attorney-client communication, was not accompanied by a written memorandum as required by *Booth Newspapers v Wyoming*, 168 Mich App 459, 469 (1988).

2. The documents presented to the City Council that formed the basis of the closed session were and are public records under MCL 15.232(e). In particular, the following documents were and are public records:

(a) A memorandum from City Attorney Thomas J. Ryan addressed to City Manager Carol Eberhardt and Mayor Joseph Luginski dated March 9, 2015 regarding “148 N. Main Street.”

(b) A letter dated March 9, 2015 from Hubble, Roth & Clark, Inc. to City Manager Carol Eberhardt regarding “Proposed Muffler Shop Redevelopment - Proposed Environmental and Storm Water Detention System; HRC Job No. 20140245; 148 North Main St., Clarkston, MI.”

3. Count III of Plaintiff’s First Amended Complaint dated July 16, 2015, is hereby dismissed. The dismissal of this claim shall not bar Susan Bisio from pursuing claims for alleged violations of the Freedom of Information Act.

4. The remaining claims of Plaintiff’s First Amended Complaint dated July 16, 2015 are dismissed with prejudice. This dismissal does not constitute a finding of fact or conclusion of law as to the legal theories raised by Plaintiff in those claims, and does not preclude Plaintiff from raising similar legal arguments under other factual circumstances in the future.

5. The entry of this Judgment shall have no effect on the claims in *Susan Bisio v City of the Village of Clarkston*, case no. 2015-150462-CZ, pending in this court.

6. Defendant City of the Village of Clarkston shall pay plaintiff Richard Bisio \$2,500.00 in full satisfaction of his claims for taxable costs and attorney fees.

7. The November 5, 2015 Order regarding Defendants' Motion for Sanctions Against Plaintiff Richard Bisio is vacated and Defendants' Motion for Sanctions is denied.

This Order constitutes a final judgment, resolves the last pending claim, and closes the case.

<u>MAR 14 2016</u>	<u>/s/Leo Bowman</u>	
DATE	Hon. Leo Bowman Circuit Judge	DB

**Stipulation**

We stipulate to entry of this Consent Judgment.

/S/ Brian D. Wassom  
Brian D. Wassom (P60381)  
Attorney for Plaintiff  
[bwassom@honigman.com](mailto:bwassom@honigman.com)

/S/ James E. Tamm  
James E. Tamm (P38154)  
Attorney for Defendant  
[jetamm@odtlegal.com](mailto:jetamm@odtlegal.com)

**Richard Bisio**

---

**From:** Edward Sosnick <edward@sosnickmediation.com>  
**Sent:** Monday, February 8, 2021 2:05 PM  
**To:** Richard Bisio; Mark W. Peyser  
**Subject:** Bisio/Village of Clarkston

Dear Richard and Mark,

Thank you for agreeing to let me give you a mediator's settlement number.

As we know, this has been a difficult case and we have now reached an impasse

When that happens, I try to help resolve the case from a truly objective position and offer a number which I feel is a good and fair settlement number.

I also rely on my 28 years experience as a district and circuit court judge. I emphasize that it is impossible to know the trial outcome. You can, however, control the result by reaching an agreement.

It is often said a good settlement is one where both sides may pay more or accept less to limit their risk/exposure and might experience some pain.

With that said, and after much deliberation, I feel that for this case the appropriate number is \$160,000.00.

I am giving both sides until Wednesday February 10<sup>th</sup> by 5pm to email me your position (accept/reject).

If both sides accept, we have a settlement. If not, the matter will proceed in court.

I will not disclose to each whether the other side objected or rejected the number.

I thank you for allowing me to act as mediator and will always be available if needed.

Retired Judge Edward Sosnick, Mediator.

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Wednesday, February 10, 2021 5:03 PM  
**To:** Edward Sosnick  
**Subject:** Bisio v Clarkston

Dear Judge Sosnick:

Plaintiff will accept \$160,000 in settlement of her fee claim. I previously circulated a form of settlement agreement before the facilitation started and want to see a signed agreement in that form, including agreement to entry of a judgment for \$160,000 plus judgment interest, all contingent on approval of the settlement by the city council at or before its next scheduled meeting on February 22. In addition, plaintiff will not withdraw her motion for summary disposition, which is scheduled for hearing on February 18. The city can easily settle that motion by agreeing that entry of a disclosure order is not necessary after the city disclosed the records, that the city has waived all affirmative defenses, and that the notice for trial of the case should be vacated.

Thank you for your efforts in this case.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

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\*\*\*\*\*

**Richard Bisio**

---

**From:** Edward Sosnick <edward@sosnickmediation.com>  
**Sent:** Wednesday, February 10, 2021 5:15 PM  
**To:** Mark W. Peyser; Richard Bisio  
**Subject:** Mediator's Number

Gentlemen,

I am pleased to inform you that we have a settlement subject to counsel approval.  
If counsel approves, then you will have to agree on a settlement agreement.  
I stand ready to help in any way I can.  
It was a pleasure working with all of you.  
Ed Sosnick

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Thursday, February 11, 2021 7:15 AM  
**To:** James Tamm  
**Subject:** Bisio v Clarkston - Settlement  
**Attachments:** Clarkston FOIA--settlement agreement.docx

Dear Mr. Tamm:

Attached is a proposed settlement agreement that I believe is consistent with the agreement the parties reached in facilitation. Please advise whether the city will execute this agreement.

Plaintiff's motion for summary disposition is scheduled for hearing on February 18. Assuming that the city council does not meet to approve the settlement before then, plaintiff is willing to adjourn or withdraw the motion if the city agrees (1) no disclosure order is necessary as a prerequisite to a fee award; (2) the city does not and will not assert any affirmative defenses; and (3) the trial notice should be vacated because there are no issues remaining for trial.

Please advise.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
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\*\*\*\*\*

## SETTLEMENT AGREEMENT

The Agreement is between Susan Bisio and representatives of the City of the Village of Clarkston (“City”). The parties met with each other and Hon. Edward Sosnick on February 1, 2021 and had further discussions with Judge Sosnick after that to facilitate the remaining disputes in *Bisio v City of the Village of Clarkston*, Oakland County Circuit Court case no. 2015-150462-CZ.

I. The City representatives will recommend to the City’s city council at the council’s February 22, 2021 meeting or a special meeting held before February 22, 2021, approval of entry of a judgment in the following form:

[Recommended judgment is on next three pages.]

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

Richard Bisio (P30246)  
Kemp Klein Law Firm  
Attorneys for Plaintiff  
201 West Big Beaver Road, Suite 600  
Troy, MI 48084  
(248) 740-5698  
richard.bisio@kkue.com

James E. Tamm (P38154)  
Kerr, Russel and Weber, PLC  
Attorneys for Defendant  
500 Woodward Ave., Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
jtamm@kerr-russell.com

---

**JUDGMENT**

The Court enters this judgment on stipulation of Plaintiff Susan Bisio and defendant City of the Village of Clarkston (“City”).

IT IS ORDERED:

1. The Court enters this judgment based on the following facts:

(a) In this Freedom of Information Act case, plaintiff and the City contested whether 18 records (the “contested records”) were public records under the act.

(b) The Michigan Supreme Court held that “the documents at issue are ‘public records’” under the Freedom of Information Act. *Bisio v City of the Village of Clarkston*, 506 Mich 37 (2020).

(c) The Supreme Court denied the City’s motion for rehearing on September 30, 2020.

(d) The Supreme Court remanded the case to this Court for further proceedings consistent with its opinion.

(e) The City disclosed the contested records to plaintiff in October 2020.

(f) Plaintiff filed a Motion for an Award of Fees, Costs, and Disbursements on October 26, 2020.

(g) The parties participated in facilitation and agreed to settle plaintiff’s fee claim on the terms set forth in this judgment.

2. Plaintiff’s Motion for an Award of Fees, Costs, and Disbursements is GRANTED. JUDGMENT IS ENTERED in plaintiff’s favor against the City for \$160,000 in attorney fees, costs, and disbursements. The judgment shall bear interest as provided in MCL 600.6013.

3. The following motions are dismissed as moot:

(a) Plaintiff’s Motion for Decision on Its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20.

(b) Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20.

(d) Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20.

4. This judgment is a final judgment, resolves the last pending claim, and closes the case.

---

Hon. Leo Bowman  
Circuit Judge

Dated: February \_\_, 2021

### **Stipulation**

We stipulate to entry of this judgment.

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

James E. Tamm (P38514)  
Attorney for Defendant

Dated: February \_\_, 2021

Dated: February \_\_, 2021

[End of recommended judgment.]

II. Plaintiff's agreement to settle this case is contingent on the city council's approval of entry of the judgment as provided in paragraph I on or before February 22, 2021. If the city council does not so approve entry of the judgment, this agreement will have no effect.

PLAINTIFF

THE CITY OF THE VILLAGE OF  
CLARKSTON

---

Susan Bisio

---

Eric Haven, Mayor

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

Jonathan Smith  
City Manager

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

James E. Tamm (P38514)  
Attorney for the City

Dated: February \_\_, 2021



**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Thursday, February 11, 2021 5:52 PM  
**To:** Mark W. Peyser  
**Subject:** FW: Bisio v Clarkston - Settlement  
**Attachments:** Clarkston FOIA--settlement agreement.docx

Dear Mr. Peyser:

Please see the attached email that I sent to Jim Tamm earlier today, to which I received no response. I reviewed the agenda and proposed resolution for the city council meeting tomorrow. I'm not aware of what further plans the city has to implement a settlement, since no one has consulted with me in that regard. But please be advised that the resolution in the council packet for tomorrow's meeting is insufficient to settle the case. When I communicated plaintiff's acceptance of the settlement to Judge Sosnick, I made clear that plaintiff's agreement to settle is contingent on entry of a judgment against the city, something that must, by law, be approved by the city council. Plaintiff will not agree to a confidential settlement or a settlement that keeps from the public the full amount that the city has agreed to pay.

In addition, I hope we could settle the issues regarding the motion for summary disposition, which is scheduled for hearing next Wednesday. I would have withdrawn that motion after the city disclosed the contested records, except for the city's continued insistence in its briefing on the fee motion that (1) a disclosure order is a necessary prerequisite to a fee award even though the city has already disclosed the contested records; (2) the city can amend its answer to assert new affirmative defenses, even though the city disclosed the contested records in full with no redactions or claims of exemption; and (3) the city is entitled to proceed with a jury trial that has been scheduled for August. If the city can give me the assurances I requested from Mr. Tamm this morning in that regard, plaintiff would adjourn or withdraw the summary disposition motion.

Richard Bisio



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\*\*\*\*\*

**From:** Richard Bisio  
**Sent:** Thursday, February 11, 2021 7:15 AM  
**To:** James Tamm <JTamm@kerr-russell.com>  
**Subject:** Bisio v Clarkston - Settlement

Dear Mr. Tamm:

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Plaintiff's motion for summary disposition is scheduled for hearing on February 18. Assuming that the city council does not meet to approve the settlement before then, plaintiff is willing to adjourn or withdraw the motion if the city agrees (1) no disclosure order is necessary as a prerequisite to a fee award; (2) the city does not and will not assert any affirmative defenses; and (3) the trial notice should be vacated because there are no issues remaining for trial.

Please advise.

Richard Bisio



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I. The City representatives will recommend to the City’s city council at the council’s February 22, 2021 meeting or a special meeting held before February 22, 2021, approval of entry of a judgment in the following form:

[Recommended judgment is on next three pages.]

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CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
OAKLAND COUNTY

SUSAN BISIO,

Plaintiff,

Case No. 2015-150462-CZ

v

Hon. Leo Bowman

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

Richard Bisio (P30246)  
Kemp Klein Law Firm  
Attorneys for Plaintiff  
201 West Big Beaver Road, Suite 600  
Troy, MI 48084  
(248) 740-5698  
richard.bisio@kkue.com

James E. Tamm (P38154)  
Kerr, Russel and Weber, PLC  
Attorneys for Defendant  
500 Woodward Ave., Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
jtamm@kerr-russell.com

---

**JUDGMENT**

The Court enters this judgment on stipulation of Plaintiff Susan Bisio and defendant City of the Village of Clarkston (“City”).

IT IS ORDERED:

1. The Court enters this judgment based on the following facts:

(a) In this Freedom of Information Act case, plaintiff and the City contested whether 18 records (the “contested records”) were public records under the act.

(b) The Michigan Supreme Court held that “the documents at issue are ‘public records’” under the Freedom of Information Act. *Bisio v City of the Village of Clarkston*, 506 Mich 37 (2020).

(c) The Supreme Court denied the City’s motion for rehearing on September 30, 2020.

(d) The Supreme Court remanded the case to this Court for further proceedings consistent with its opinion.

(e) The City disclosed the contested records to plaintiff in October 2020.

(f) Plaintiff filed a Motion for an Award of Fees, Costs, and Disbursements on October 26, 2020.

(g) The parties participated in facilitation and agreed to settle plaintiff’s fee claim on the terms set forth in this judgment.

2. Plaintiff’s Motion for an Award of Fees, Costs, and Disbursements is GRANTED. JUDGMENT IS ENTERED in plaintiff’s favor against the City for \$160,000 in attorney fees, costs, and disbursements. The judgment shall bear interest as provided in MCL 600.6013.

3. The following motions are dismissed as moot:

(a) Plaintiff’s Motion for Decision on Its Fee Motion Without Consideration of any Tardy Response Defendant City May File, 11/17/20.

(b) Defendant the City of the Village of Clarkston's Motion for Leave to File Response in Opposition to Plaintiff's Motion for an Unreasonable Attorney's Fee Award, 11/18/20.

(d) Plaintiff's Motion for Leave to File Reply Brief on Her Motion for Fees, Costs, and Disbursements, 12/4/20.

4. This judgment is a final judgment, resolves the last pending claim, and closes the case.

---

Hon. Leo Bowman  
Circuit Judge

Dated: February \_\_, 2021

### **Stipulation**

We stipulate to entry of this judgment.

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

James E. Tamm (P38514)  
Attorney for Defendant

Dated: February \_\_, 2021

Dated: February \_\_, 2021

[End of recommended judgment.]

II. Plaintiff's agreement to settle this case is contingent on the city council's approval of entry of the judgment as provided in paragraph I on or before February 22, 2021. If the city council does not so approve entry of the judgment, this agreement will have no effect.

PLAINTIFF

THE CITY OF THE VILLAGE OF  
CLARKSTON

---

Susan Bisio

---

Eric Haven, Mayor

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

Richard Bisio (P30246)  
Attorney for Plaintiff

---

Jonathan Smith  
City Manager

Dated: February \_\_, 2021

Dated: February \_\_, 2021

---

James E. Tamm (P38514)  
Attorney for the City

Dated: February \_\_, 2021

CITY OF THE VILLAGE OF CLARKSTON

RESOLUTION TO ACCEPT THE FACILITATED SETTLEMENT  
IN THE BISIO V CLARKSTON LAWSUIT

At a special meeting of the of the City of the Village of Clarkston, City Council, Oakland County, Michigan, held via GoToMeeting pursuant to P.A. 254 on Friday, February 12, 2021, at 11:00 a.m.

PRESENT: Haven, Avery, Cossey  
Kneise, Luginiski, Wylie

ABSENT: Bonser

The following Resolution was offered by Wylie  
with support from Luginiski moves to adopt the following  
resolution:

WHEREAS, in a Closed Session at the Special City Council Meeting held on February 12, 2021, City Council discussed the Susan Bisio v City of the Village of Clarkston lawsuit, Oakland County Circuit Court Case Number 2015-150462-CZ, currently pending before the Honorable Leo Bowman,

NOW, THEREFORE, BE IT RESOLVED that the City of the Village of Clarkston hereby agrees to accept the facilitated settlement in the Susan Bisio v Clarkston lawsuit and authorizes the City Treasurer to immediately authorize a single payment of \$35,000.00 to effectuate the settlement specified by City Attorney, Mark Peyser.

RESOLVED,

AYES: Haven, Avery, Cossey, Kneise, Luginiski, Wylie

NAYES: Ø

ABSENT: Bonser

ABSTENTIONS: Ø



RESOLUTION DECLARED ADOPTED.



Eric Haven, Mayor

**CERTIFICATION**

I, Jennifer Speagle, being the duly appointed and qualified Clerk of the City of the Village of Clarkston, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of a Resolution adopted by the City Council of the City of the Village of Clarkston at special meeting held on February 12, 2021.



JENNIFER SPEAGLE, City Clerk

**Richard Bisio**

---

**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Monday, February 15, 2021 2:17 PM  
**To:** Richard Bisio  
**Cc:** James Tamm; Michael Sullivan; Thomas J. Ryan (sylvanlawtr@gmail.com); Carolyn Rowland; Penelope Calcaterra  
**Subject:** Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice  
**Attachments:** BISIO as of 02-15-21 Settlement Agreement and Release of All Claims 4837-2047-7148 v.1.pdf; Stipulation and Order for Dismissal (D1583403xA18F1).pdf

**Importance:** High

Mr. Bisio:

As you may have heard – last Friday the Clarkston City Council approved the City’s portion of the settlement. So we are on course to get this matter finalized.

I have attached our proposed settlement agreement and Stip & Order of dismissal. Please have you and your client execute the same where indicated and send back to me please. Also – please execute the stip & order and I will refrain from having it entered until we have tendered the settlement check to you and your client.

If you have any concerns with the settlement agreement please let me know and I would be happy to address them with you.

Please confirm that you are not proceeding with your motion currently set for the 18<sup>th</sup>.

Thank you sir.

Mark Peyser

**Howard & Howard** | Mark W. Peyser  
law for business® Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
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**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

**“Plaintiff”** means **Susan Bisio**.

**“Litigation”** means Case No. 2015-150462-CZ which was filed in the Circuit Court for the County of Oakland.

**“Defendant”** means the City of the Village of Clarkston and its current and former Mayors, City Council Members, City Managers, and city clerks and employees.

**“Insurer”** means the Michigan Municipal League Liability and Property Pool, Meadowbrook Claims Service and any and all of their current and/or former employees, representatives, board members, personnel, ostensible or actual agents, independent contractors, legal representatives, predecessors, successors, subsidiaries, divisions, departments, assigns, associates, related or affiliated persons or entities.

**“Released Claims”** means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, policy or procedure, known and unknown, against the Defendant and/or City of the Village of Clarkston, that Plaintiff and her counsel, Richard Bisio now has as a result of any claim for damages and/or attorney’s fees and costs, relating to the Litigation and a Freedom of Information Act (FOIA) claim asserted against Defendant arising out of a request for information dated June, 7, 2015 and a response by City attorney Thomas J. Ryan dated June 30, 2015. The released claims include claims of any kind, known or unknown relating to this request. This includes, but is not limited to, all claims or allegations that have been, should have been, or could have been asserted in any forum by the Plaintiff whether directly, indirectly, representatively or in any other capacity against the Defendant City of Village of Clarkston, Thomas J. Ryan or Thomas J. Ryan P.C. and which arise out of, or relate in any manner, to the facts, occurrences, acts, disclosures, statements, omissions or failures to act which were alleged or could have been alleged in the Litigation and/or FOIA claim.

**AGREEMENT**

The undersigned **Plaintiff**, being of lawful age, does hereby and for her heirs, executors, administrators, successors, and assigns, release, acquit and forever discharge the **Defendant and City of Village of Clarkston, Thomas J. Ryan, and Thomas J. Ryan P.C. from the Released Claims** including, but not limited to, any claim for injury and/or damage of any kind, known or unknown, and the consequences thereof, including costs and attorney fees resulting from the alleged FOIA violation, also including, without limitation, any and all claims relating to any act or omission which occurred on all possible dates that could be construed to have caused injuries or damages to **Plaintiff** as stated in the allegations of Plaintiff's Complaint, amended or otherwise, filed in the Litigation. Plaintiff further understands and agrees that because she is releasing all claims for monetary damages and other forms of personal injury relief, including costs and attorney fees to the extent allowed by law, she may not, and will not, seek or accept monetary damages or other forms of relief through any such claim.

The consideration in exchange for this Release of Claims is as follows: (1) It is agreed that Plaintiff shall be paid the amount of \$160,000.00 by delivering a check made payable to “Susan Bisio and her attorney Richard Bisio” in the amount of \$160,000.00.

By execution of this Release *Plaintiff* expressly waives any appeal, by leave or by right, of any decision made by the court in connection with the *Litigation*. Furthermore, *Plaintiff* expressly agrees to dismiss, with prejudice, and any other claims or Complaints currently pending against the Defendant related in any way to the *Litigation* and/or the FOIA claim.

*Plaintiff* agrees that she is not to be considered the prevailing party in the *Litigation*. It is further acknowledged that the *Defendant* does not admit liability, any fault, proximate cause or damages, and/or an entitlement to attorney’s fees or any aspect of the *Released Claims* by entering into this Agreement, nor do they state that anyone is entitled to recover from them.

*Plaintiff* agrees that she has not assigned or transferred (or purported to assign or transfer), voluntarily or involuntarily, any *Released Claims* or any other part or portion thereof. It is further represented that no other individual or entity has a lien or asserts an entitlement to a reimbursement of any costs, fees or damages, including but not limited Richard Bisio and/or the Kemp Klein Law Firm.

The *Plaintiff* shall be barred from initiating, asserting or prosecuting any claim, proceeding or action of any kind, which is released herein, against the *Defendant and City of Village of Clarkston, Thomas J. Ryan, or Thomas J. Ryan P.C.* in any federal, state, or appellate court or tribunal. If *Plaintiff* elects to file such a claim, it is agreed that *Plaintiff* will indemnify the *Defendant and City of Village of Clarkston, Thomas J. Ryan, and Thomas J. Ryan P.C.* for any and all costs and attorney’s fees associated with such proceedings. Plaintiff and her counsel shall also indemnify and hold Defendant and other released parties harmless from any lien or claims for attorney’s fees that may be brought by any person or entity, including but not limited to the Kemp Klein law firm, and shall indemnify and pay Defendant’s costs and attorney’s fees relating to the defense of any claim or request for attorney’s fees or costs.

*Plaintiff* agrees that this Release is final, conclusive and binding on the *Plaintiff*, her children or other heirs, next of kin, and any other persons or entities who may claim an interest through her in the *Released Claims*, and that upon execution of this Release and payment of the settlement amount, any liability of the *Defendant or City of Village of Clarkston, Thomas J. Ryan or Thomas J. Ryan P.C.* to any person for matters released herein shall cease and be fully and finally discharged. In this regard, *Plaintiff* does further state that the settlement embodied in this Release is fair, reasonable and in her best interest, and in the best interest of those who have incurred damages by virtue of the *Released Claims*. *Plaintiff* further agrees that she will never institute in the future any complaint, suit, action or cause of action in law or equity against *Defendant or City of Village of Clarkston, Thomas J. Ryan , or Thomas J. Ryan P.C.* for or on account of any claims and/or damages released herein.

The terms of this Release are contractual, not a mere recital. The Release is entered into in the State of Michigan and shall be construed and interpreted according to the laws of the State of Michigan.

*Plaintiff* acknowledges that she was advised to consult with an attorney prior to executing this Release, and that she was provided the opportunity to consult an attorney regarding this document and its legal import. *Plaintiff* also acknowledges that she signed this Release knowingly and voluntarily.

\_\_\_\_\_  
SUSAN BISIO

On this date, \_\_\_\_\_, SUSAN BISIO personally appeared before me, a Notary Public, and swore that she has read the foregoing SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS, and that she fully understood it and signed this SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS as her own free act and deed.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires:

As attorney for SUSAN BISIO, I certify that I have explained the legal import of this document to her prior to her signing it.

\_\_\_\_\_  
Richard Bisio (P30246)  
Attorney for Plaintiff

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SUSAN BISIO,

Plaintiff,  
vs.

Hon. Leo Bowman  
Case No.: 2015-150462-CZ

THE CITY OF THE  
VILLAGE OF CLARKSTON,

Defendant.

---

KEMP KLEIN LAW FIRM  
RICHARD BISIO (P30246)  
Attorney for Plaintiff  
201 W. Big Beaver Road, Ste. 600  
Troy, MI 48084  
(248) 740-5698  
[richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)

---

KERR, RUSSELL AND WEBER, PLC  
James E. Tamm (P38154)  
Kevin A. McQuillan (P79083)  
Attorneys for Defendant  
500 Woodward Avenue  
Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)  
[kmcquillan@kerr-russell.com](mailto:kmcquillan@kerr-russell.com)

---

**STIPULATION FOR DISMISSAL**

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, that Plaintiff's claims be dismissed in its entirety with prejudice and without costs and attorneys' fees to either party.

/S/  
\_\_\_\_\_  
KEMP KLEIN LAW FIRM  
RICHARD BISIO (P30246)  
Attorney for Plaintiff  
[richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)

/S/ James E. Tamm  
\_\_\_\_\_  
KERR, RUSSELL AND WEBER, PLC  
James E. Tamm (P38154)  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SUSAN BISIO,

Plaintiff,  
vs.

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THE CITY OF THE  
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RICHARD BISIO (P30246)  
Attorney for Plaintiff  
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Troy, MI 48084  
(248) 740-5698  
[richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)

---

KERR, RUSSELL AND WEBER, PLC  
James E. Tamm (P38154)  
Kevin A. McQuillan (P79083)  
Attorneys for Defendant  
500 Woodward Avenue  
Suite 2500  
Detroit, MI 48226  
(313) 961-0200  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)  
[kmcquillan@kerr-russell.com](mailto:kmcquillan@kerr-russell.com)

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**ORDER FOR DISMISSAL**

At a session of said Court on: \_\_\_\_\_  
Present: Hon: \_\_\_\_\_

Upon reading and filing the foregoing Stipulation of the parties and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's claims are dismissed in its entirety with prejudice and without costs or attorneys' fees to either party.

This is a final Order and closes the case.

---

Hon.

Order prepared by:  
James E. Tamm (P38154)  
Attorney for Defendant  
[jtamm@kerr-russell.com](mailto:jtamm@kerr-russell.com)

**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 12:52 PM  
**To:** Mark W. Peyser  
**Cc:** James Tamm; Edward Sosnick  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

Dear Mr. Peyser:

The proposed settlement agreement is not acceptable. Except for the amount plaintiff was willing to settle her fee claim for, plaintiff did not agree to the other proposed terms. Even the discussions about the amount of the fees did not result in an enforceable agreement under MCR 2.507(G) because there was no agreement in writing or on the record. In particular, plaintiff did not and will not agree to release or indemnify the city, persons associated with the city, Thomas Ryan, or his PC. She most certainly did not and will not agree that she was not the prevailing party and the case should be dismissed with prejudice, either of which would have the effect of rendering null the Michigan Supreme Court's decision in her favor and accepting the city's argument that plaintiff didn't actually win this case and have the effect that the city may continue to conceal public documents by holding them in off-premises files of its officers and employees.

I will not go into a complete analysis of the city's proposed settlement agreement because it serves no purpose to discuss these provisions to which plaintiff did not and will not agree. There is one matter properly pending in this case: plaintiff's fee motion. If the city wishes to settle that, the city, through formal action of its city council, will need to agree to entry of a judgment against the city along the lines of the proposed judgment I sent to you and Mr. Tamm last week.

We have been patient with the several weeks' delay caused by the city's request to facilitate the fee claim, even though this case has now entered its sixth year of litigation. But the city's conduct in and after the facilitation causes us to doubt the city's good faith in this process, particularly your misrepresentation to the court's staff attorney that the settlement agreement you drafted without any consultation with plaintiff is a binding agreement. Although plaintiff was willing to settle her fee claim for a discount of more than half the amount in order to terminate this litigation, the city's proposed settlement agreement adds numerous unacceptable terms.

It is time to either put this case to rest or continue the litigation. The city council's next scheduled meeting is on February 22 and the council will then have an opportunity to agree to a settlement acceptable to plaintiff. If the city does not do so, plaintiff's offer to settle the fee claim for \$160,000 is withdrawn and plaintiff will move forward with her fee motion (which will seek the full amount of her fees and expenses) and motions on other issues the city has raised. A settlement reached after that time will have to account for the additional fees and expenses incurred in further litigation. The city may rest assured that, if the city does not wish to settle, she is prepared to fully litigate all outstanding issues and appeal adverse or unacceptable decisions.

I will send a copy of this correspondence to Judge Sosnick with the hope that he may be able to assist the parties in reaching an agreement.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600



Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

\*\*\*\*\*  
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\*\*\*\*\*

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**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Monday, February 15, 2021 2:17 PM  
**To:** Richard Bisio <Richard.Bisio@kkue.com>  
**Cc:** James Tamm <JTamm@kerr-russell.com>; Michael Sullivan <Michael.Sullivan@ceflawyers.com>; Thomas J. Ryan (sylvanlawtr@gmail.com) <sylvanlawtr@gmail.com>; Carolyn Rowland <CRowland@kerr-russell.com>; Penelope Calcaterra <pcalcaterra@howardandhoward.com>  
**Subject:** Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice  
**Importance:** High

Mr. Bisio:

As you may have heard – last Friday the Clarkston City Council approved the City’s portion of the settlement. So we are on course to get this matter finalized.

I have attached our proposed settlement agreement and Stip & Order of dismissal. Please have you and your client execute the same where indicated and send back to me please. Also – please execute the stip & order and I will refrain from having it entered until we have tendered the settlement check to you and your client.

If you have any concerns with the settlement agreement please let me know and I would be happy to address them with you.

Please confirm that you are not proceeding with your motion currently set for the 18<sup>th</sup>.

Thank you sir.

Mark Peyser

**Howard & Howard** | Mark W. Peyser  
law for business® Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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**Richard Bisio**

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**From:** Richard Bisio  
**Sent:** Wednesday, February 17, 2021 1:20 PM  
**To:** Mark W. Peyser  
**Cc:** James Tamm; Edward Sosnick  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

Dear Mr. Peyser:

I don't think further discussion between us will be productive because you and the city apparently have a fundamental misunderstanding of what we were facilitating, of the history of this case, the fact that the city lost the case, the fact that the facilitation was nonbinding, and the fact that you may have misunderstood Judge Sosnick's communications with you. Your most recent email attempts to justify imposing a one-sided settlement that you drafted without any consultation, with terms that plaintiff did not agree to, and that is in no way "binding" because it is neither in a signed writing nor on the record in open court, as required by the court rules. I see no willingness to negotiate any of this in good faith, but rather your last email just attempts to justify and impose unilateral terms of settlement.

Despite the city's attempt to add new issues, the only remaining matter in this case is the amount of a fee award to plaintiff. That is what we were facilitating. We were not facilitating any other issues that the city's proposed settlement agreement addresses and plaintiff did not agree on any other issues. When I communicated to Judge Sosnick that plaintiff would settle her fee claim for the amount he recommended, I made clear that it was contingent on entry of a judgment against the city for that amount. We did not discuss any other issues with Judge Sosnick.

Judge Sosnick's statements were not to the contrary. First, he has no authority to impose a settlement. The facilitation was nonbinding. Plaintiff did not sign any facilitation agreement or invest Judge Sosnick with authority to impose settlement terms.

Second, we always made clear to Judge Sosnick and to the city's lawyers that plaintiff would insist on entry of a judgment for the fee award. That was in the confidential facilitation summary plaintiff provided to Judge Sosnick. We made that clear in our discussions with Judge Sosnick. When I emailed Judge Sosnick stating that plaintiff would accept his number, I again stated that entry of a judgment would be required. Shortly after that, I sent to Jim Tamm and later to you a proposed judgment.

Third, according to Judge Sosnick, the "settlement" was "subject to counsel [not council] approval." Plaintiff's counsel has not approved the settlement on the terms the city wants to impose. Even if we assume that Judge Sosnick meant to state that the "settlement" was subject to city council approval, that has not happened. All the council approved was a resolution for issuance of a \$35,000 check to an unidentified payee. It did not approve any details of a settlement. Confirming that this was not approval of a complete settlement, your email characterizes the council as having approved only "the city's portion of the settlement."

Fourth, Judge Sosnick further stated that "you will have to agree on a settlement agreement." We have not agreed on a settlement agreement. I sent you and Jim Tamm a proposed agreement, which you both ignored. You sent me a settlement agreement, which plaintiff will not accept. I could as well claim that you agreed to my settlement agreement, which includes entry of a judgment, because I simply sent it to you. In reality, there has been no agreement and no "settlement."

Finally, the fact that Judge Sosnick did not mention entry of a judgment in his final email is irrelevant. He does not have authority to dictate terms of a settlement. And, in any event, I immediately sent Jim Tamm a proposed settlement agreement that included agreement to entry of a judgment. Judge Sosnick did not exclude that as

one of the terms of a settlement agreement. He did not have the authority to do so and he was well aware of plaintiff's insistence on entry of a judgment.

The terms of the city's proposed settlement are unacceptable for several additional reasons.

First, it ignores the history of this case. Plaintiff won the case in the Michigan Supreme Court. Now the city wants plaintiff to agree that she was not the prevailing party and that her complaint, on which she fully prevailed after five years of litigation, should be dismissed with prejudice—as though it were never filed and as though the Supreme Court's decision is meaningless. The case was about transparency. Plaintiff will not now admit her complaint was about nothing. And, in light of the city's personal vilification of both plaintiff and me, its accusations of fraud and other misconduct, and its abusive litigation conduct, the final chapter should be a public vindication of plaintiff's claims by entry of a judgment against the city. Less than that will send the message to all other citizens who want to break through the city's conduct of business in secret that they will have to contend with years of personal attacks and expensive litigation and, in the end, their case will be dismissed.

Second, plaintiff did not and will not agree to a release and indemnity. There is no basis for it. Should the case go to final judgment, the city would not receive a release or indemnity. All that it would receive is the benefit of res judicata, which I believe would be the same whether a judgment were entered by consent or after a decision by the court.

Third, your attempt to add Thomas Ryan and his PC as beneficiaries of a release and indemnity is unwarranted. They are not a parties to the case. And the city has argued on several occasions that Ryan and his firm are not bound by anything in this case, including the Supreme Court opinion.

Fourth, I don't understand why any mention of Kemp Klein Law Firm is appropriate. As far as I know, Kemp Klein has no claims against the city or any of the numerous other releasees in the city's proposed agreement.

Fifth, the one-sided agreement the city proposes does not address the claims the city has made against plaintiff and does not offer to release them. The city accused plaintiff and me of unethical conduct and fraud, among other things. And it refuses to withdraw its still-pending motion for an award of \$93,210 in fees and costs against plaintiff.

Finally, your statement that "settlement agreements contain releases and do not include judgments" is not true. Settlement agreements contain whatever the parties agree on. Nothing precludes a settlement agreement that provides for entry of a judgment. In fact, many do.

The tenor of your email is that you just want to talk to me to convince me that the city's proposed settlement agreement is reasonable, Judge Sosnick approved it, and plaintiff has no legitimate concerns about its one-sided terms. None of that is true. The city's conduct in the facilitation shows the city is not serious about proceeding in good faith. Your misrepresentation to Vicky King yesterday that there is a "binding settlement agreement" confirms that.

The city lost. The only thing left is a fee award. The circumstances of this case are that the award should be embodied in a judgment. Since you indicate no willingness to compromise but rather just want to talk about why plaintiff should accept the city's proposed agreement, I see no reason for a conversation, unless Judge Sosnick wishes to continue to try to facilitate a settlement.

Simply stated, if the city wishes to settle this matter, it must agree to entry of a judgment for the fee award. If the city does not wish to settle on those terms, plaintiff will proceed with her fee motion and obtain a judgment. My email yesterday stated plaintiff's settlement position. If the city council does not approve a settlement consistent with that by February 22, plaintiff's offer to settle her fee claim for \$160,000 is withdrawn.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

\*\*\*\*\*  
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**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Tuesday, February 16, 2021 5:44 PM  
**To:** Richard Bisio <Richard.Bisio@kkue.com>  
**Cc:** James Tamm <JTamm@kerr-russell.com>; Edward Sosnick <edward@sosnickmediation.com>  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

Mr. Bisio:

Thank you for your email of today.

I think it is best we have a professional discussion on the matter to keep this moving forward towards closure. Are you available to speak with me tomorrow at 9:30AM? If not – then what works for you?

As you know – after extensive good faith negotiations and an impasse occurring, Judge Sosnick issued a recommended number and both parties accepted that number. Subsequently, the Judge sent us an email stating that we have a settlement subject to council approval. His email also made a specific reference to a settlement agreement not a judgment. Last Friday, the Clarkston City Council held a special meeting and approved the City’s portion of the settlement. As you know, settlement agreements contain releases and do not include judgments. So there is nothing unusual about the defendant’s proposed release.

Ever since you filed the case, you have used the Kemp Klein (“KK”) name and address on your pleadings. We included an indemnity provision as to the KK firm to ensure that the defendant is covered for the settlement payment in the event that KK has a lien on the sums recovered for attorney fees and asserts a claim. Do you have a waiver or an assignment to your client and/or you of any claim that KK has for attorney fees recovered in this matter? If so, please forward ASAP for our review. If it proves to be true that you have either a valid release or an assignment from KK then we will consider withdrawing the indemnity provision. Otherwise, you can certainly understand the need for the indemnity provision.

I look forward to speaking with you tomorrow and hopefully we can work out the issues.

Thank you sir and have a nice evening.

Mark W. Peyser



**Mark W. Peyser**  
Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Tuesday, February 16, 2021 12:52 PM  
**To:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>  
**Cc:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Edward Sosnick <[edward@sosnickmediation.com](mailto:edward@sosnickmediation.com)>  
**Subject:** RE: Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice

**CAUTION: EXTERNAL EMAIL**

Dear Mr. Peyser:

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We have been patient with the several weeks' delay caused by the city's request to facilitate the fee claim, even though this case has now entered its sixth year of litigation. But the city's conduct in and after the facilitation causes us to doubt the city's good faith in this process, particularly your misrepresentation to the court's staff attorney that the settlement agreement you drafted without any consultation with plaintiff is a binding agreement. Although plaintiff was willing to settle her fee claim for a discount of more than half the amount in order to terminate this litigation, the city's proposed settlement agreement adds numerous unacceptable terms.

It is time to either put this case to rest or continue the litigation. The city council's next scheduled meeting is on February 22 and the council will then have an opportunity to agree to a settlement acceptable to plaintiff. If the city does not do so, plaintiff's offer to settle the fee claim for \$160,000 is withdrawn and plaintiff will move forward with her fee motion (which will seek the full amount of her fees and expenses) and motions on other issues the

city has raised. A settlement reached after that time will have to account for the additional fees and expenses incurred in further litigation. The city may rest assured that, if the city does not wish to settle, she is prepared to fully litigate all outstanding issues and appeal adverse or unacceptable decisions.

I will send a copy of this correspondence to Judge Sosnick with the hope that he may be able to assist the parties in reaching an agreement.

Richard Bisio



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**Sent:** Monday, February 15, 2021 2:17 PM  
**To:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Cc:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Michael Sullivan <[Michael.Sullivan@cefawyers.com](mailto:Michael.Sullivan@cefawyers.com)>; Thomas J. Ryan <[sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)> <[sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>; Penelope Calcaterra <[pcalcaterra@howardandhoward.com](mailto:pcalcaterra@howardandhoward.com)>  
**Subject:** Bisio v. Clarkston - Settlement Agreement and Stip & Order of Dismissal With Prejudice  
**Importance:** High

Mr. Bisio:

As you may have heard – last Friday the Clarkston City Council approved the City’s portion of the settlement. So we are on course to get this matter finalized.

I have attached our proposed settlement agreement and Stip & Order of dismissal. Please have you and your client execute the same where indicated and send back to me please. Also – please execute the stip & order and I will refrain from having it entered until we have tendered the settlement check to you and your client.

If you have any concerns with the settlement agreement please let me know and I would be happy to address them with you.

Please confirm that you are not proceeding with your motion currently set for the 18<sup>th</sup>.

Thank you sir.

Mark Peyser



**Mark W. Peyser**  
Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067

**D:** 248.723.0356 | **F:** 248.645.1568

[mwp@h2law.com](mailto:mwp@h2law.com) | [Bio](#) | [vCard](#) | [LinkedIn](#)

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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 8:56 AM  
**To:** kingv@oakgov.com; Bowman Chambers  
**Cc:** James Tamm; Mark W. Peyser  
**Subject:** Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

\*\*\*\*\*

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\*\*\*\*\*



**Richard Bisio**

---

**From:** King, Victoria <kingv@oakgov.com>  
**Sent:** Tuesday, February 16, 2021 9:01 AM  
**To:** James Tamm; Richard Bisio; Bowman Chambers  
**Cc:** Mark W. Peyser; Carolyn Rowland  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Thank you. I will take it off the docket. Please advise if the parties resolved their claims. Judge Bowman issues a show cause order (essentially a control date) when parties resolve their claims that it can be taken off the active trial docket. I will facilitate preparing the show cause order if that is the case.

*Victoria B. King*  
Judicial Staff Attorney to the  
Honorable Leo Bowman  
Oakland County Circuit Court  
1200 North Telegraph Road  
Pontiac, Michigan 48341  
(248) 452-9183

**[Court Covid19 Emergency Protocol](#)**  
**[Judge Bowman Covid19 Emergency Protocol](#)**

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**From:** James Tamm <JTamm@kerr-russell.com>  
**Sent:** Tuesday, February 16, 2021 8:59 AM  
**To:** Richard Bisio <Richard.Bisio@kkue.com>; King, Victoria <kingv@oakgov.com>; Bowman Chambers <bowmanchambers@oakgov.com>  
**Cc:** Mark W. Peyser <mwp@h2law.com>; Carolyn Rowland <CRowland@kerr-russell.com>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



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**Richard Bisio**

---

**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 10:48 AM  
**To:** King, Victoria; Bowman Chambers  
**Cc:** Mark W. Peyser; James Tamm  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Dear Ms. King:

The parties participated in a facilitation with retired Judge Edward Sosnick. Although we made some progress, we have not yet settled. We are continuing our discussions.

Richard Bisio



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Thank you. I will take it off the docket. Please advise if the parties resolved their claims. Judge Bowman issues a show cause order (essentially a control date) when parties resolve their claims that it can be taken off the active trial docket. I will facilitate preparing the show cause order if that is the case.

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**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
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**Subject:** [EXTERNAL] Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

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Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



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\*\*\*\*\*

**Richard Bisio**

---

**From:** Mark W. Peyser <mwp@h2law.com>  
**Sent:** Tuesday, February 16, 2021 12:13 PM  
**To:** King, Victoria; Bowman Chambers  
**Cc:** Edward Sosnick; Richard Bisio; James Tamm  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

**Importance:** High

Ms. King:

I was retained as separate counsel for Clarkston and did participate in the facilitation on behalf of the City.

After much negotiations, Judge Sosnick recommend a number which both parties accepted. Thus, we have a binding settlement per Judge Sosnick. You can confirm this with Judge Sosnick.

We have sent our proposed release to Mr. Bisio and are awaiting his comments.

Thank you.

Mark W. Peyser

**Howard & Howard** | Mark W. Peyser  
law for business® Attorney and Counselor

450 W. 4th St., Royal Oak, MI 48067  
D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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Dear Ms. King:

The parties participated in a facilitation with retired Judge Edward Sosnick. Although we made some progress, we have not yet settled. We are continuing our discussions.

Richard Bisio



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**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

James E. Tamm  
Attorney



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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**Richard Bisio**

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**From:** Richard Bisio  
**Sent:** Tuesday, February 16, 2021 12:30 PM  
**To:** King, Victoria; Bowman Chambers  
**Cc:** Edward Sosnick; James Tamm; Mark W. Peyser  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Dear Ms. King:

There is no binding settlement. I won't provide extended discussion, but suffice it to say that the proposed settlement agreement that Mr. Peyser drafted without any input from the plaintiff contains numerous unacceptable provisions. I hope to continue discussions with the city, but, as of now, there is no final, binding settlement.

Richard Bisio



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**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition  
**Importance:** High

Ms. King:

I was retained as separate counsel for Clarkston and did participate in the facilitation on behalf of the City.

After much negotiations, Judge Sosnick recommend a number which both parties accepted. Thus, we have a binding settlement per Judge Sosnick. You can confirm this with Judge Sosnick.

We have sent our proposed release to Mr. Bisio and are awaiting his comments.

Thank you.

Mark W. Peyser



**Mark W. Peyser**  
Attorney and Counselor

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D: 248.723.0356 | F: 248.645.1568  
mwp@h2law.com | Bio | vCard | LinkedIn

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e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

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**From:** King, Victoria <[kingv@oakgov.com](mailto:kingv@oakgov.com)>  
**Sent:** Tuesday, February 16, 2021 9:01 AM  
**To:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>; Bowman Chambers <[bowmanchambers@oakgov.com](mailto:bowmanchambers@oakgov.com)>  
**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Thank you. I will take it off the docket. Please advise if the parties resolved their claims. Judge Bowman issues a show cause order (essentially a control date) when parties resolve their claims that it can be taken off the active trial docket. I will facilitate preparing the show cause order if that is the case.

*Victoria B. King*  
Judicial Staff Attorney to the  
Honorable Leo Bowman  
Oakland County Circuit Court  
1200 North Telegraph Road  
Pontiac, Michigan 48341  
(248) 452-9183

**[Court Covid19 Emergency Protocol](#)**  
**[Judge Bowman Covid19 Emergency Protocol](#)**

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**From:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>  
**Sent:** Tuesday, February 16, 2021 8:59 AM  
**To:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>; King, Victoria <[kingv@oakgov.com](mailto:kingv@oakgov.com)>; Bowman Chambers <[bowmanchambers@oakgov.com](mailto:bowmanchambers@oakgov.com)>  
**Cc:** Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>; Carolyn Rowland <[CRowland@kerr-russell.com](mailto:CRowland@kerr-russell.com)>  
**Subject:** RE: Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

Mr. Bisio,

There is no further action required.

**James E. Tamm**  
*Attorney*



**Kerr, Russell and Weber, PLC**  
500 Woodward Avenue, Suite 2500  
Detroit, MI 48226  
P: (313) 961-0200 | F: (313) 961-0388 | D: (313) 484-3818



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**From:** Richard Bisio <[Richard.Bisio@kkue.com](mailto:Richard.Bisio@kkue.com)>  
**Sent:** Tuesday, February 16, 2021 8:56 AM  
**To:** [kingv@oakgov.com](mailto:kingv@oakgov.com); Bowman Chambers <[bowmanchambers@oakgov.com](mailto:bowmanchambers@oakgov.com)>  
**Cc:** James Tamm <[JTamm@kerr-russell.com](mailto:JTamm@kerr-russell.com)>; Mark W. Peyser <[mwp@h2law.com](mailto:mwp@h2law.com)>  
**Subject:** [EXTERNAL] Bisio v City of the Village of Clarkston, case no. 2015-150462-CZ - motion for summary disposition

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Plaintiff withdraws her Motion for Summary Disposition, scheduled for hearing on February 18, 2021 at 10:00 a.m. Please advise if anything further is needed to take this motion off the schedule.

Richard Bisio



201 W. Big Beaver Rd., Ste. 600  
Troy, MI 48084-4161  
Phone: (248) 740-5698  
FAX: (248) 528 5129  
e-mail: [richard.bisio@kkue.com](mailto:richard.bisio@kkue.com)  
<http://www.kempklein.com>

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