

APPELLATE LITIGATION ALERT

7/14/17

Roetzel Wins Two Significant Appellate Court Victories in \$35 Million Federal Court Lawsuit and State Court Class Action

By **Stephen W. Funk**, Partner

Roetzel's Appellate Law group, led by Partner Stephen W. Funk, recently won two important appellate court victories in the federal and state courts. On July 12, 2017, the United States Court of Appeals for the Sixth Circuit issued a unanimous decision that affirmed the dismissal of a \$35 million lawsuit that had been filed against Summit County and various departments and officials of Summit County for alleged due process, equal protection, and takings claims arising from the County's enforcement of consumer protection and building code ordinances. The Sixth Circuit's opinion in *Goodwin v. Summit County*, Case No. 16-4193, was authored by Judge Deborah Cook. It affirmed the district court's dismissal of the federal complaint with prejudice, holding that the plaintiffs' claims were barred by the doctrine of res judicata because they could and should have been presented as counterclaims in the state court civil enforcement action, and because the claims against the individual county officials were barred by the statute of limitations and did not relate back to the filing of the original complaint. To read the Sixth Circuit's opinion, [click here](#). Roetzel Partner, **Stephen W. Funk**, served as lead counsel and was joined by Roetzel attorney, **Leighann K. Fink**, on the briefs.

Mr. Funk also won a recent appellate court victory in *Adair v. City of Norton*, 9th Dist. Summit No. 28137, 2017-Ohio-5837, which was decided by the Ohio Court of Appeals for the Ninth Judicial District on June 30, 2017. The *Adair* case involved a putative class action that was filed on behalf of certain residents of the City of Norton to challenge a sanitary sewer surcharge that had been collected since 2003. The trial court previously had granted summary judgment in Norton's favor on the constitutional claims, which the plaintiffs did not appeal. Rather, the appeal centered only on whether the surcharge ordinance itself should be interpreted as applying only to residents who were connected to sanitary sewers owned by Norton. On appeal, however, the Ninth District issued a 3-0 decision that upheld Norton's interpretation of the ordinance, holding that the City's interpretation was supported by the language in the preamble of the original 2003 ordinance and in an engineering study that was referenced in the 2003 ordinance, which both provided that the surcharge should applied to customers who are connected directly or indirectly to sanitary sewers that ultimately discharge into the Barberton sanitary sewer system, regardless of whether they are owned by the City.

To read the Ninth District's opinion, [click here](#). Roetzel Partner, Stephen W. Funk, was the lead counsel in the appeal, and was joined by Roetzel Partner and the City's Law Director, **Justin P. Markey**, on the briefs.

Roetzel's Appellate Law attorneys have significant experience in handling the nuance of appellate advocacy in a variety of complicated and difficult appeals, including a number of cases in the Ohio Supreme Court. For more information about Roetzel's Appellate Law group, [click here](#).

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