

Michigan Dam Collapses

On May 19, 2020, at 5:46 p.m., a dam on the Tittabawassee River in Edenville, Michigan collapsed. The resulting floodwaters devastated the cities of Edenville and Midland and damaged or destroyed hundreds of properties. The Sanford Dam, which is downstream of the Edenville Dam, also overflowed. More than 10,000 residents have been evacuated, and the area currently is in a state of emergency.

The dams originally had been constructed in 1924 and were purchased in 2007 by a private company called Boyce Hydro Power, LLC. Boyce Hydro Power's affiliated entities, Bryce Hydro, LLC, and Boyce Michigan, LLC, are believed to have acquired the licenses and operated the dams. Other individuals and companies were involved in ownership and/or management capacities. In 2018, federal permits to operate these two dams were revoked. The state of Michigan assumed oversight and regulatory responsibilities. The state agencies involved included the Michigan Department of Environment, Great Lakes and Energy; and the Michigan Department of Natural Resources. The Michigan Department of Environment noted that it "had strong concerns the dam did not have enough spillway capacity." (Spillways create pathways for high water to safely flow downstream, ensuring the safety of the dam and an orderly flow of water.)

There is a long history of malfeasance on the part of the owners and operators of the hydroelectric dams located in Gladwin and Midland Counties in Michigan. We have assembled a detailed timeline beginning with governmental licensing of four separate projects involving dams, reservoirs, and powerhouses. It is noteworthy that the owners and operators are private actors and therefore not entitled to immunity that likely attaches to the governmental entities involved. These governmental agencies repeatedly directed the project owners and operators to implement remediation of significant deficiencies. Over a long period of time, the owners and operators failed to do so. The governmental entities forecasted a significant risk of flooding, and indeed, on May 19, 2020, the Edenville Dam collapsed, causing a breach of the Sanford Dam. There are numerous common law and statutory causes of action that will support a subrogation recovery against these responsible parties, including a potential "takings" claim under an inverse condemnation theory of liability. The governmental entities have the benefit of statutory immunity, although there is an exception for gross negligence, as well as for a constitutional violation. Under Michigan law, prospective defendants that are governmental entities will require notice, consistent with Michigan procedure, within 45 days of the date of loss.

The potentially applicable ZIP codes are 48640 – 48706. We strongly encourage you to utilize CAT codes to search for and identify potential exposures.

Please contact any of the authors from our Chicago office who will be jointly prosecuting these claims on behalf of our clients, should you need any additional information or require your interests to be protected.



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