information about the extent and severity of Mr. Curley's conduct and that his acts after his last effort to claim protection under the federal law all compounded to justify the city's decision.

http://cdn.ca9.uscourts.gov/datastore/opinions/2014/12/02/12-16228.pdf (last accessed Dec. 17, 2014)

Newman v. Twp. of Hamburg – malicious prosecution, qualified immunity, probable cause

Daniel Newman was convicted of murder. Fifteen years later, a panel of the Sixth Circuit granted his petition for habeas corpus and found that a reasonable jury could not have convicted him on the evidence presented. Newman sued to recover damages for his wrongful conviction claiming among other things that one of the officers lied in overstating probable cause for his arrest and sought damages for malicious prosecution. The lower court denied the officer's claim of qualified immunity and the Sixth Circuit reversed. Factually, the court concluded that the officer's statement of probably cause while at odds with the statement of another officer was not so factually different to prove the officer misstated facts so much as it reflected the officers had different recollections of what they had been told.

The Sixth Circuit explained why probable cause is a legal issue and how Rule 56 is intended to work: "Newman responds that only a jury may make the probable cause determination. He is half right. If he presents sufficient evidence that would allow a reasonable jury to find that no probable cause existed for his arrest, he indeed may take his claim to a jury. But the point of Civil Rule 56 is to prevent claims from going to a jury when the court, after drawing all inferences in favor of the non movant (here Newman), determines that no reasonable jury could make such a finding. That is this case. Where the requisite material facts are not in dispute, as is true here, probable cause "retains its legal character" and must be decided by the court. *Hale v. Kart*, 396 F.3d 721, 728 (6th Cir. 2005)."

http://www.ca6.uscourts.gov/opinions.pdf/14a0292p-06.pdf (last accessed Dec. 17, 2014)

AGI v. Town of Hickory – governmental immunity, proprietary, airports

Only those of us in municipal law worry about the governmental – proprietary distinction and while it varies from state to state, this case reminds us to consider the distinction as it may arise in our own states to our own clients. The setting here is North Carolina and concerns a question of North Carolina law: whether governmental immunity from equitable claims is waived when a county or municipality acts in a proprietary, rather than governmental, capacity.

The parties conceded that the city was acting in a proprietary capacity. In Maryland, that might not have been true, so each state must determine whether operating an airport is a proprietary or a governmental function if the distinction matters in your state. Here it mattered, but even where all agreed that the city acted proprietarily, the question that had never been decided by the North Carolina Supreme Court was whether under the facts of this case immunity extended to equitable remedies. The Fourth Circuit predicted that the North Carolina Supreme Court would not extend immunity on these facts. Inexplicably, North Carolina does not provide for certification of questions from the federal court, so the issue could not be decided by the state's highest court.

The city entered into an agreement with a company to operate certain functions at its airport and entered into a lease with the company for certain parcels at the airport and allowed the company to grant security interests in its leasehold interest to obtain financing. The parties agreed that in the event of the company's default, Hickory had a first right to cure, which would allow Hickory to reclaim the leasehold interest free of any security interests.

The company defaulted on its obligations under the agreement and lease and filed for bankruptcy. The bankruptcy court placed Hickory in possession of the leased premises. The holder of the lien claimed that under the agreement between Hickory and the company, Hickory had to first cure the company's financing obligations before taking possession of the leased premises and demanded that Hickory turnover the rental payments it received from tenants of the airport, which Hickory has refused. The lien holder filed suit against the company and Hickory asserting an action for judicial foreclosure, a demand for accounting, disgorgement of rents, and unjust enrichment. Hickory interposed the defense of immunity claiming that when a municipality acts pursuant to a proprietary function, it waives immunity only for tort and contract claims, not for equitable claims such as unjust enrichment and disgorgement of profits.

The Fourth Circuit reasoned that because (1) North Carolina precedent suggests that the Supreme Court of North Carolina would rule that immunity from equitable claims may be waived pursuant to the proprietary function theory and (2) the rationale behind the theory, as articulated by both the United States Supreme Court and the Supreme Court of North Carolina, is consistent with the waiver of immunity for equitable claims, we hold that the district court did not err in its application of North Carolina state law.

http://www.ca4.uscourts.gov/Opinions/Published/132097.P.pdf (last accessed Dec. 17, 2014)

Brooks v. Jenkins – Value of pets, constitutional torts

Maryland's intermediate appellate court decided a case involving a cap on the value of a pet killed by police officers. The case involves a number of complex facts and issues many of which are associated with Maryland's disjointed interpretation of liability of police officers and sheriff's deputies under the Maryland Constitution and its Tort Claims