Tom Krueger
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To: EWALLACE, William.Ingersoll, EPetrarca, Deborah.Helms.Smith, kbuo
Subject: Ellsworth

09/09/03 11:46 AM

The County and I have spoken this morning with Jamie Brusslan, counsel for some of the affected residents. He discussed at length the issue of claims for future water bills. I think it's pretty clear to him that the language waiving those claims against the settling parties is not likely to change. He expresses outrage, but he also realizes that if he truly believes those claims are valuable (and I'm skeptical) he can bring them into the case by asserting them against other PRP defendants. Those other defendants would then file cross-claims against the settling PRPs concerning the future water bills.

Jamie also raised two other language issues that I want to run by you. He is concerned that the proposed language may also require his clients to waive claims for punitive damages and pain and suffering. In looking at the language of (a) below (which was merely copied from the language of the original service agreement), I can see that point. I suspect therefore that the PRPs crafted the language for just that purpose. Jamie suggested two revisions to item (c) to address this concern. The first would be to delete "for alternative water supply." The second would be to change "costs" to "damages." I don't see much harm in accepting the first suggestion, and think it can be justified as avoiding a needless threshold issue. For example, we don't want the PRPs to argue that a filtration system is something other than "alternative water supply." It may also give Brusslan at least a shot at arguing that pain and suffering is a "cost" incurred. The second change is clearly meant as a substantive modification to override (a) and so is more likely to meet with resistance as "changing the deal" that the PRPs were relying on. I don't know if this will be the lightning rod that "future water bills" was, but I wouldn't be surprised. Again, Brusslan could still bring the claims against other PRPs and rely on cross-claims. I'm leaning toward proposing to accept Brusslan's first suggestion, but not the second, though I'm very open to persuasion otherwise.

I'd be interested in your thoughts on these two suggestions by Jamie. I'd like to be able to get back to both Brusslan and the PRPs today or tomorrow so we can finalize the modification and issue it. Thanks.

Tom Krueger

"The Owner(s) on behalf of all owners and occupants of the Property, waives and releases
the Village, the County of DuPage, and each of the participating companies providing
funding for the water connection, from all claims pertaining to any such connection and/or
groundwater contamination or condition, if any, except for any potential claims: (a)
regarding personal (bodily) injury or property damage; (b) seeking recovery of the $2000
Village connection charge; or (c) seeking recovery of costs incurred by the Owner(s) prior
to July 15, 2003, for alternative water supply."

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