

Bob Wilbur

From: "Gwyn Staton" <gwynstaton1@msn.com>
Date: Monday, January 13, 2014 2:16 PM
To: "Bob Wilbur" <bbwilbur@broadstripe.net>; "Dustin Frederick" <dustin@local519.org>; "Nate Palmer" <natepalmer36@gmail.com>; "Carol Del" <caroldchina5@yahoo.com>; "Kurt S. Blankenship" <kblankenship@bluewilliams.com>
Subject: RE: Update from Chris Skinner

We added the individuals to be able to compel their actions and to allege their bad faith and to be able to recover attorney's fees so they cannot be dropped until the case is settled. Only because they were named were we able to move for contempt and got the favorable findings from the judge!

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From: bbwilbur@broadstripe.net
 To: dustin@local519.org; gwynstaton1@msn.com; NatePalmer36@gmail.com; suzypalmer1@me.com; caroldchina5@yahoo.com
 Subject: Update from Chris Skinner
 Date: Mon, 13 Jan 2014 11:03:03 -0800

At least for now, please do not provide this to any of the Board members (other than Carol and Nate can share quietly with spouses) or anyone else. The strategy is just fyi.

So I forwarded the message to Chris that I sent earlier this morning to you, and asked for his opinion, which he promptly provided.

Paraphrasing, he explained that that board can vote to approve the content of the settlement, with any monetary component subject to 1) insurance company's

coverage of fees and costs as part of any damage award, 2) insurance company's willingness to pay fees and costs as part of a means of settling case and preventing future litigation expenses. The board can agree to pay as little or as much as it wishes as part of any settlement agreement, but if we are looking to have those funds covered by the liability policy (and assuming the deductible has been met) the insurer gets the final word on that. So, the \$\$ element of a settlement offer will most likely need to be one that the insurer (Vasu et al) will buy off on. For that reason, *we may not want to be too quick to let the insurer and Vasu know that the fight may be over* – although Chris is pretty confident they will figure that out on their own pretty quickly. **(I guess being silent is also true of Ed and Suzy's attorney too since they are part of the insurance situation —Bob not Chris wondering)**

Jean Salls will only be one vote so there is no current means by which she can hold up a decision of the new board that addresses the lawsuit and pool issues. We may want to consider taking her deposition as well as the depos. of the other board members who were voted out – or threaten to do so – on the ground that she and the others were not acting in the interests of the members etc. That might be a tough one to prove, but if Vasu thinks we are moving in that direction, the insurer might be willing to put some cash into the game to settle the case. For that reason, Chris does not want to be calling Vasu today and telling him the game is over because we can now settle the issues in the case without resistance. The insurer needs incentive to try and save future defense costs. And, seeking more information from the “black hats” would be a legitimate place for us to go – but not necessarily practical because of the extra costs.

We can agree, as part of the settlement proposal, to dismiss individual defendants with prejudice (meaning the claim against them goes away for good) and further, agree that we won't pursue their depositions and any individual damages claim. The primary reason Chris named the board members individually was because we were seeking injunctive relief and Chris believed that the court could only exercise authority to force a board to act if it had personal jurisdiction over each individual board member. Now that we have some confidence that the board of ACBC will make decisions that will allow resolution of the lawsuit without the need for further hearings and trial, Chris recommends working in that direction. Tempting as it may be to amend the complaint and allege some type of malfeasance against the individuals, he doesn't recommend that beyond suggesting to Vasu that such an action is coming if we don't settle and provide some recompense to you for fees and costs.

So, I responded to Chris with two questions: Since we are sort of bluffing with deposition-taking etc., and given that Jean is the only nay vote left, then I suppose we should at least send out the production

requests to help set the stage for the bluff? Assuming so, then maybe it would be good not to spend much time on the content of the request but just make sure it is adequate and send it out more or less as is? Dustin do you agree and/or have questions before we act further? Chris has replied affirmatively and will be sending out the production request and hitting the litigation buttons.