

**Bob Wilbur**

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**From:** "Gwyn Staton" <gwynstaton1@msn.com>  
**Date:** Thursday, August 29, 2013 3:16 PM  
**To:** "Bob Wilbur" <bbwilbur@broadstripe.net>; "Dustin Frederick" <dustin@local519.org>; <kblankenship@bluewilliams.com>  
**Subject:** RE: Additional restraints for TRO. I will email about the insurance policy shortly

the nominating committee was not BOARD members then. none were on the Board at the time no Board members - and it nominated others than themselves

Gwyn Staton  
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**From:** bbwilbur@broadstripe.net  
**To:** dustin@local519.org; kblankenship@bluewilliams.com; gwynstaton1@msn.com  
**Subject:** Re: Additional restraints for TRO. I will email about the insurance policy shortly  
**Date:** Thu, 29 Aug 2013 15:06:54 -0700

Okay and agree but there is a catch-22. They aren't announcing until the Board meeting so we cannot know until the slate is officially out. Otherwise, they'd put them all in and make us look stupid. Don't see a way around that unless we delay any filing until after the meeting and that seems to have risks. Two years ago the nominating committee nominated just themselves – right?

Maybe we add that to the complaint later? bob

**From:** [Gwyn Staton](#)  
**Sent:** Thursday, August 29, 2013 12:24 PM  
**To:** [Bob Wilbur](#) ; [Dustin Frederick](#) ; [kblankenship@bluewilliams.com](mailto:kblankenship@bluewilliams.com) ; [Gwyn Staton](#)  
**Subject:** Additional restraints for TRO. I will email about the insurance policy shortly

We must add this restraint if we are not removing the directors and direct this claim to the Board members on the Nominating committee Karen Dan and Maria who are presenting a self interested slate

in breach of their duties as directors.

It is abuse of their positions to only present a slate of nominees that they like and agree with them. The self interested directors voted for themselves, a clear conflict.

In addition it is a breach for Jean to appoint Board members who are running to the committee when the committee has always been members and not incumbents running for re-election. Then the committee has no interest in soliciting new qualified candidates which is the point of having the committee at all. Otherwise presenting all applications to the Board does not require any committee action. Jean formed a committee and removed Suzy as chair so the committee could fabricate reasons not to submit candidates for reasons OTHER THAN our Bylaws' requirement of good standing so this again shows dishonest and self-serving motives.

The bylaws say members in good standing, so we must ask for a restraint that the nominating committee and Board not be permitted NOT to accept nominations of all members in good standing to run for the Board.

Further, we must ask that the assessment bill be deemed invalid and that members' failure to pay does not affect our membership status, so we must ask that the Board be restrained from enforcing the billing.

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From: gwynstaton1@msn.com  
To: bbwilbur@broadstripe.net  
Subject: RE: Support now requested  
Date: Mon, 26 Aug 2013 12:29:58 -0700

Do tell him if he provides the forms, I will do the "associate and/or paralegal" work to get things started so he has something to edit so we do not have to tap our folks for money again. Also if we are calling the special meeting to remove that should slow things down also so we do not need to press him on the time issue. I do want the restraint added about the Board has to accept the nominations and not

pick and choose the slate according to who they want. This is important so a new board can be voted in.

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Subject: Support now requested  
Date: Mon, 26 Aug 2013 09:58:55 -0700

All,

Okay below is a paraphrased explanation our case and costs as Chris Skinner has laid out to Dustin and me yesterday. A core group of us have decided to move forward on this, but we need your support and contributions. We are asking for contributions of \$500 or \$250 which will keep accounting easy should we need to calculate refunds, which is likely. We would greatly appreciate at this time knowing if you are willing to contribute, and any thoughts you might have regarding the injunction.

At the moment we are still figuring out the best way to handle those funds, whether it's Gwyn's trust account or some other special account. Will get that out to you all later today.

In the meantime, I will be delivering my personal check for \$5000 to get Chris started, and then getting

\$4500 back as contributions allow.

Thanks much and back to you soon...Bob

Chris Skinner has drafted a complaint that outlines what he thinks is a viable cause of action both for injunctive relief and damages. He is not asking for declaratory judgment as part of the lawsuit since the court will necessarily have to determine the meaning and significance of the articles and bylaws in order to make a decision on our claim that the board exceeded its authority to try and decommission the pool.

He is taking a very specific approach to the lack of authority argument which is related to the fact that the board did not follow the members wishes and directions expressed in the motion that was approved in October. He is pursuing a more general claim that the board lacks authority to remove the pool no matter what kind of vote it gets because the bylaws only permit it to operate the facilities – not close them or remove them. When you take into account the purpose of the association and the fact that the swimming pool was an express part of the consideration received when deeds were conveyed, he thinks we have a reasonable argument that the pool should be retained to fulfill the purpose of the association and the owners' expectations. Under that theory, the only thing the board should be considering is how much to request in the way of a special assessment for operating the pool – not tearing it down.

The argument that a 2/3 vote was necessary to approve the proposed may not be as strong because the pool is not referenced specifically in the bylaws even though I understand the thought. Since the pool was the primary facility in existence, taking it out seems to fly in the face of the stated purpose of the organization. He may still make that argument but at this point he thinks a general complaint that suggests that the board did not follow the membership's direction, created a confusing and misleading ballot, and lacked authority to decommission in the first place, will get us to the point where we can submit a motion for temporary injunction.

Also, we are adding the specific claim that your property interest is adversely affected if the pool is removed. I think Gwyn feels that way as well. You bought your lots with the idea that ownership in this

association created a unique and valuable element to its location. Seems like the board shouldn't be able to take that away through its actions without paying monetary damages to each lot owner. At least that is the theory. None of these theories are specifically identifiable in other cases but I think they do fit within the general principles of the law. I can't promise that these claims will make it past a summary judgment motion because they are rather unique and fact specific, but I believe they are defensible and will help further your cause without being deemed frivolous or unsupported.

He has not prepared that document yet since he wanted to make sure he could think his way through a defensible claim, which he now thinks we have. Also, he wants to be sure we are ready to proceed before he invests the additional time.

A budget for this case is hard to estimate because we don't know if a trial will be necessary. He is assuming that we will have to prepare for and conduct a hearing on a motion for a temporary injunction at a minimum and that could take approximately \$5000-\$6,000 in time based on experience in other cases that start with restraining orders and temporary hearings. Once the judge rules on the temporary injunction though, we will know whether the case is going forward or not – and the odds are the board may change course if the judge grants that motion after a hearing.

In order to take your case, he requests payment of a \$1500 retainer and a \$3500 fee deposit for a total of \$5000 to start. The retainer is applied to the time and services already provided and other factors that he considers when deciding to take a case. The fee deposit is held in trust and used to apply against time charges that I will incur going forward. He has spent about 4 hours on your case thus far. That is incorporated in the retainer. Time charges at hourly rates would apply from this point on. Chris charges \$325 an hour, his paralegal is billed at \$125 an hour when doing work other than clerical matters, and he has associates in the firm who may work on the case and they are billed at \$250 an hour. If we elect to retain his firm Chris will send a formal engagement letter that outlines the details.

The next step will be the preparation of a motion and declaration for temporary restraining order and order to show cause. That should be something we can get assembled by Wednesday of this week assuming

we go forward today, which a core group is doing.

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