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ATTORNEYS & COUNSELORS AT LAW

MEMORANDUM

To: Harbor Bay Community Development District Board of Supervisors

From: Bricklemyer, Smolker & Bolves P.A.

Date: 24 September 2009

Subject: Case Synopsis
BSB No. 22717

As this is a public document, specific details of studies, tests, and legal strategies are not contained in this update. Public discussion of the progress of the litigation must be limited to that information contained in documents provided to the court and obtainable to the defendants. Rather than rely on oral reports at Board meetings, it has been determined that written monthly updates of information to be placed in the public record would be appropriate, subject to the same confidentiality limitations discussed herein.

Harbor Bay initially filed this action (Case No. 07CA-015263) against Woodruff & Sons, Inc ("Woodruff"), Custom Docks By Seamaster ("Seamaster"), Dansco Engineering, P.A. ("Dansco"), Sam Greenberg, P.A. ("Greenberg"), Reuben Clarson Consulting, Inc. ("Clarson Consulting"), and Reuben Clarson, P.E. ("Clarson") on November 9, 2007. Shortly thereafter, we amended the complaint to include St. Paul Fire and Marine Insurance Company, ("St. Paul") as surety for Woodruff. After review of initial discovery, Harbor Bay again amended its complaint to include a products liability claim against the seawall sheet manufacturer, Materials International, Inc. ("Materials") on September 19, 2008.

Our discovery requests have netted in a review and indexing of over 45,000 documents. On behalf of the District, we have retained two expert witnesses who have closely reviewed all the available documents and are prepared to testify. The first expert, Mr. James Hirst, P.E. is a professional engineer specializing in marine structures. The second expert, Mr. Matthew Michalak, is an experienced seawall contractor/ manager. Under direction from our experts we have conducted limited soils testing and reached an initial determination that the wall was both inadequately engineered and improperly constructed. These results were then provided to the opposing parties, together with an estimate of remedial damages for curing the problems.

We have prevented all attempts to dismiss the complaint. We have also forced the defendants to make claims with their insurance carriers. Unfortunately several defendants, Reuben Clarson being the most significant, does not have insurance and are operating under very limited budgets. However, Woodruff, Materials and Seamaster all have insurance carriers as co-counsel. Similarly, St. Paul, as a surety already is an

underwriter for work and has the largest policy of approximately \$13mil. Furthermore, Woodruff, our main defendant has admitted to us that they have had several meetings with their carrier's decision-makers at their headquarters and assure us that they are taking this matter with utmost seriousness.

On April 28 and 29, 2009, we began mediation conferences in an effort to find an agreed remedial action and settle the case. As many of you know, discussions and statements made at mediation are confidential and cannot be used at trial. The mediation period is still open and the case has been extended in an effort to have the parties continue to explore settlement.

We continue to push away from having to discuss whether there is a problem with the seawall but are focusing discussions on what to do about the problem. Once we determine an appropriate approach to fixing the problem, then we can focus on who is ultimately responsible. More immediately, we have been able to shift the thinking and open the door for all the parties to start focusing on both immediate fixes for areas deemed critical as well as other permanent modifications. Our experts have had an opportunity to lay out their findings to all the parties and hear from the defendant's lead expert. As such, all the parties have agreed to provide ample time for all the parties' experts to compile additional information, determine what testing would be needed to provide a fix, and propose a unified plan for testing.

Concurrently, the parties have agreed to start deposing key parties and individuals including the designer of the seawall and the geotechnical engineer responsible for the soils conditions. Depositions are set to begin around the middle of September.

Our goal in resolving the litigation remains the same as it was when we were directed to file the litigation – secure for the community a seawall that will meet the original requirement to have an effective lifespan of 50 years, recover for the district the costs of dealing with the seawall problem and the attorney's fees spent to compel the defendants to correct the problem.