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MEMORANDUM

To: Harbor Bay Community Development District Board of Supervisors

From: Bricklemyer, Smolker & Bolves P.A.

Date: 25 October 2010

Subject: Seawall Litigation Update
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 by the defendants. Rather than rely on oral reports at Board meetings, the Board has determined that written monthly updates of information to be placed in the public record would be appropriate, subject to the confidentiality limitations discussed above.

Harbor Bay initially filed this action (Case No. 07-CA-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.

As of the end of September, our discovery requests have resulted in a review and indexing of over 50,000 documents. On behalf of the District, we have retained five expert witnesses who have closely reviewed all the available, relevant documents and are prepared to testify. Under direction from our experts, we have conducted limited soils testing and reached an initial determination that the wall was both inadequately engineered, improperly constructed, and the materials may have been manufactured below advertised standards. These results were then provided to the opposing parties, together with an estimate of remedial damages for curing the problems. We continue to conduct testing and investigations in order to formulate a detailed scope of work to cure seawall deficiencies.

The parties continue to take the depositions of key fact witnesses, and this discovery is currently scheduled to be completed the first quarter of 2011. Around that same time, expert witness depositions will begin and are expect to continue until mid-2011. A second mediation is anticipated at the beginning of the second quarter of 2011. Thereafter, the parties will address any dispositive motions before a final pre-trial conference in the third quarter of 2011. A three week jury trial is tentatively scheduled to take place at the beginning of the last quarter of 2011.