



RE: Palisair /Ball/Affifi

2 messages

David Schultz <DSchultz@polsinelli.com>

Wed, May 6, 2015 at 2:49 PM

To: Marc Rohatiner <mrohatiner@wrslawyers.com>, "Dr. Francine Kirkpatrick" <drfkirk@verizon.net>, Karen Olan <karenolan@beckermed.com>, Larry Friedman <lpfriedman1@gmail.com>, Patti Gallagher <p.gallagher2@verizon.net>, "Diana Ungerleider (dianaunger3@gmail.com)" <dianaunger3@gmail.com>, "Miriam Schulman (miriamschulman@hotmail.com)" <miriamschulman@hotmail.com>, "Vi Walquist (viwalquist@gmail.com)" <viwalquist@gmail.com>, "Syd Vinnedge (syd.vinnedge@gmail.com)" <syd.vinnedge@gmail.com>

Thank you for the email Marc. At the outset, I have added the other current board members. Patti Gallagher resigned her position, so I have not included her in my email and will tell her separately that we advised you of this.

With respect to your recommendation that we tender the claim to the insurance company, I agree with that. Do you have a copy of the insurance policy, as that may have the broker's name and tender info? If not, perhaps Francine and Larry can provide you with the contact information in response to this email, in order to assist you in the tender of this claim. I know that you will, but please copy us on the tender.

In response to Mr. Ball attorney's request that he might want a copy of Mr. Afifi's plans, I understand that the board has historically treated plans as the homeowner's property. If Mr. Ball's attorney would like the plans to reference at the mediation, I would imagine that Mr. Afifi could certainly provide it or bring it with him to the mediation. Given that you have been in touch with Mr. Afifi's counsel, it would be best to make the request of him to provide his plans or give his consent to us providing the plans for Mr. Ball to review. If Mr. Afifi has no problem with providing the plans, great. But, assuming that Mr. Afifi does have an objection to providing his plans, that just supports my point of ensuring that he is the one who is asked for those plans. If the roles were reversed and Mr. Ball's plans were being provided to Mr. Afifi, I am sure that Mr. Ball's attorney would want to decide whether to provide that and not have the board do it. In any event, given that a central issue here involves the placement of trees, I would think that photographs of the parties' respective properties would be most helpful to the mediator.

For purposes of scheduling the mediation, as I advised Marc and am advising the rest of the board, I will make myself available whenever is convenient for the Balls and the

Affis. We can then discuss amongst ourselves who else on the board can and wishes to attend with me.

Marc, thank you once again for your assistance in this matter.

Dave.

David Schultz

Principal

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Polsinelli PC, Polsinelli LLP in California

From: Marc Rohatiner [mailto:mrohatiner@wrslawyers.com]
Sent: Wednesday, May 06, 2015 1:59 PM
To: David Schultz; Dr. Francine Kirkpatrick ; Karen Olan; Kim Bantle; Larry Friedman; Patti Gallagher
Subject: Palisair /Ball/Affifi

Dear Board Members:

At the outset, since this is my first communication with some of you, I want to underscore that all communicated between the Board or any of its members and me should be treated as subject to the attorney-client privilege and not disclosed to any non-board member.

I wanted to update you on where things stand. Mr. Affifi, previously agreed to participate in a half day mediation without any pre-conditions. I have spoken to Mr. Ball's attorney who in concept is willing to participate in the mediation as well. He indicated, however, that he may want to condition participation on he and his client being able to review both the plans that were approved by the Association and the plans that were ultimately approved by the City. With respect to the plans that the Association approved and presumably retained, I do not recall if the Association has a stated policy concerning this type of request. Please let me know. As far as the plans approved by the City, if review of that plan is a pre-condition to Mr. Ball agreeing to mediate, I will have to run that by Mr. Affifi.

While there had been some reluctance to tender the potential claim to the carrier, given the tenor of my most recent conversations with Mr. Ball's attorney, I recommend that it be tendered at this time. Practically speaking, I do not expect that the tender of a pre-litigation claim will lead the carrier to even participate in the mediation much less contribute any significant sums. However, given the current posture of the dispute, if the matter is not resolved and there is a lawsuit, I do not want to prejudice the Association's ability to be provided a defense under the policy. If you agree with my recommendation to tender, please provide me the contact information for the Association's insurance agent.

Please feel free to contact me if you have any questions.

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David Schultz <DSchultz@polsinelli.com>

Wed, May 6, 2015 at 2:50 PM

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Well, it looks like I kept Patti on the email. Patti, I assume you want to be kept off further emails. Sorry about that and, as always, thanks.

From: David Schultz

Sent: Wednesday, May 06, 2015 2:49 PM

To: 'Marc Rohatiner'; Dr. Francine Kirkpatrick ; Karen Olan; Larry Friedman; Patti Gallagher; Diana Ungerleider (dianaunger3@gmail.com); Miriam Schulman (miriamschulman@hotmail.com); Vi Walquist (viwalquist@gmail.com); Syd Vinnedge (syd.vinnedge@gmail.com)

Subject: RE: Palisair /Ball/Affifi

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