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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN  
FREDERICK,

Plaintiffs,

v.

ADMIRAL'S COVE BEACH CLUB, a  
Washington non-profit corporation; and JEAN  
SALLS, MARIA CHAMBERLAIN, KAREN  
SHAAK, ROBERT PEETZ, ELSA PALMER,  
ED DELAHANTY AND DAN JONES,  
individuals,

Defendants.

Case No.: 13-2-00741-4

DECLARATION OF JAY CARLSON IN  
OPPOSITION TO PLAINTIFF'S AND  
DEFENDANT'S SECOND MOTION FOR  
SUMMARY JUDGMENT

SUE CORLISS,

Intervenor,

v.

DUSTIN FREDRICK, ROBERT WILBUR,  
ADMIRAL'S COVER BEACH CLUB, a  
Washington non-profit corporation, and its  
BOARD OF DIRECTORS.

Defendants.

My name is Jay Carlson, and I am counsel for Intervenor. I am over the age  
of 18 and I make this declaration based on my own personal knowledge.

1. Attached as Exhibit 1 is a true and accurate copy of the final Opinion of the  
Court of Appeals in this matter.

1 2. Attached as Exhibit 2 is a true and accurate copy of pages of the Verbatim  
2 Report of Proceedings from the March 6, 2017 hearing before the Honorable Judge  
3 Hancock on Plaintiff Wilbur's Motion to Amend the Complaint.

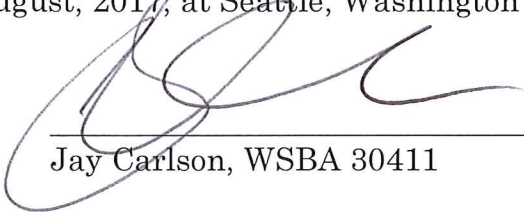
4 3. Attached as Exhibit 3 is a true and accurate copy of a notation ruling issued  
5 by the Court of Appeals in this matter on June 6, 2016.

6 4. Attached as Exhibit 4 are true and accurate copies of e-mails between  
7 plaintiff Wilbur and certain present and past Board members including Dustin  
8 Frederick and current Board president Kurt Blankenship. These documents were  
9 produced in discovery by Wilbur and by the Board.

10 5. Attached as Exhibit 5 is a true and accurate copy of an e-mail string between  
11 Board members. This document was produced by the Board in discovery.

12 I declare under penalty of perjury under the laws of the State of Washington  
13 that the foregoing is true and correct.

14  
15 Done on this 20<sup>th</sup> day of August, 2017, at Seattle, Washington

16  
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18 \_\_\_\_\_  
19 Jay Carlson, WSBA 30411  
20  
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# EXHIBIT 1

RICHARD D. JOHNSON,  
Court Administrator/Clerk

*The Court of Appeals*  
of the  
*State of Washington*  
Seattle

DIVISION I  
One Union Square  
600 University Street  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

August 1, 2016

Jay S Carlson  
Carlson Legal  
315 5th Ave S Ste 860  
Seattle, WA 98104-2679  
jay@carlsonlegal.org

Christon Clark Skinner  
Law Offices of Christon C. Skinner, P.S  
791 SE Barrington Dr  
Oak Harbor, WA 98277-3278  
chris@skinnerlaw.net

Christopher Joseph Nye  
Reed McClure  
1215 4th Ave Ste 1700  
Seattle, WA 98161-1087  
cnye@rmlaw.com

Marilee C. Erickson  
Reed McClure  
1215 4th Ave Ste 1700  
Seattle, WA 98161-1087  
merickson@rmlaw.com

CASE #: 73725-2-1

Susan Corliss, Appellant v. Admiral's Cove Beach Club et al, Respondents  
Island County, Cause No. 13-2-00741-4

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Accordingly, we reverse and remand for further proceedings consistent with this opinion"

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of \$200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

ssd

Enclosure

c: The Honorable Alan Hancock

Ex. 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ROBERT WILBUR and DUSTIN FREDERICK,	)	No. 73725-2-I
	)	
Plaintiffs,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation; and JEAN SALLS, MARIA CHAMBERLAIN, KAREN SHAAK, ROBERT PEETZ, ELSA PALMER, ED DELAHANTY and DAN JONES, individuals,	)	FILED: August 1, 2016
	)	
Defendants,	)	
	)	
SUE CORLISS,	)	
	)	
Appellant,	)	
	)	
DUSTIN FREDERICK, ROBERT WILBUR, ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation, and its BOARD OF DIRECTORS,	)	
	)	
Respondents.	)	

---

LEACH, J. — In this dispute regarding interpretation of a nonprofit corporation's governing documents, intervenor Susan Corliss appeals from an order granting partial summary judgment and a declaratory judgment in favor of Robert Wilbur. Because Wilbur failed to establish that he was entitled to such a judgment as a matter of law, we reverse and remand for further proceedings.

FACTS

The Plat of Admiral's Cove, Divisions 1 through 7, is located on Whidbey Island. Owners of lots within the plat are eligible for membership in the Admiral's Cove Beach Club (Club), a nonprofit corporation. Incorporated in 1969, the Club governs the development. Club members enjoy the use of Club-owned recreational facilities, including an outdoor Olympic-sized pool with views of Puget Sound and the Olympic Mountains. The Club owns other recreational assets: a large waterfront beach area, fire pit and picnic area, volleyball and basketball courts, and a playground.

A Board of Directors (Board), elected by the members at the Club's annual membership meeting, manages the Club's day-to-day operations. The Board levies annual dues and is authorized to propose "special assessments" for unexpected costs or maintenance "at any time." A simple majority vote is required to impose special assessments on Club members. Club members vote by mail-in ballot.

Article V of the Club's articles of incorporation state its "purposes, objects and powers." Pertinent to this lawsuit, these include the power:

1. To construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefit of the members.

4. To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property . . . .

5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets.

The articles of incorporation make no specific reference to a pool, but the Club's bylaws do. The Club's bylaws list two objectives: to "[p]rovide and operate recreational facilities for the benefit of the members" and to "procure, maintain, operate, and protect the recreational (and associated safety) concerns of the members of the community." The bylaws also establish six standing committees. Two are devoted to the pool. The Pool Operations and Safety Committee "set[s] policies for operation of the club swimming pool, and establish[es] and enforce[s] safety rules and procedures." The Pool Maintenance and Improvement Committee is responsible for "maintenance of the Club Swimming Pool and the operating machinery, the buildings housing the pool equipment, rest rooms, office and fence enclosing the pool complex, pool supplies, heating, lighting, etc." and "shall obtain estimates as necessary for accomplishing such maintenance."

Over time, the pool fell into a state of disrepair. By 2012, it was largely unusable. At the Club's October 2012 annual meeting, the members unanimously passed the following motion:

By November 10, 2012, Pool Planning by members of the Pool Maintenance, Long Range Planning and Budget Committees will work with a nonresident facilitator, as an ex-officio team member and may consult with legal counsel as warranted . . . .

Under the overall objective of having the pool open as soon as a funding and construction schedule allow, the committees shall have three (3) tasks to complete by February 28, 2013, or sooner:

(1) To identify and evaluate various options related to the pool's future, including but not limited to needed equipment, a permanent pool cover, and repairs to the pool and its building, foundation, plumbing, and electrical system, and to recommend the best cost and timing options. A basic and simple plan to identify projects for contractor bidding shall be developed to guide these efforts; the plan shall also recommend an implementation schedule for ADA [Americans with Disability Act] compliance from both a financial and legal standpoint.

(2) Investigate and develop payment options related to assessment costs and dues under task one and to select the approach that produces the best balance between recreational benefits and costs to members. The assessment total will be offset by the amount of donations accumulated for that purpose.

(3) Upon completion of tasks 1 and 2, the committees shall submit the findings to the Board and subsequently work with Board as appropriate.

Over the next several months, committee members held meetings and gathered cost estimates. A consultant's inspection revealed widespread problems with the pool and pool buildings, and the consultant recommended significant renovations at a cost of approximately \$650,000. The committee presented this information to the Board.

In May 2013, the Board sent a ballot to all Club members for a vote about the pool's future. The ballot presented two choices: (1) "refurbish, remodel and update the pool," requiring a special assessment of approximately \$650,000, or (2) "remove the pool," requiring a special assessment of approximately \$200,000. The Board included a two-page "Frequently Asked Questions" document explaining various options and



issues related to the vote. In a relatively close vote, a majority of Club members voted to remove the pool instead of refurbish it.

In September 2013, Robert Wilbur, a "pro-pool" Club member, filed a lawsuit against the Club seeking a declaration that (1) the May 2013 vote was invalid because it was inconsistent with the October 2012 motion and (2) the Club's articles of incorporation and bylaws did not permit the Board to remove or decommission the pool. Wilbur also sought an injunction restraining the Club from taking any action to remove the pool.

Wilbur moved for summary judgment. The Club took "no position" on the motion and asked the trial court to issue a declaratory ruling clarifying its legal responsibilities regarding the pool.<sup>1</sup> Corliss, an "anti-pool" Club member, intervened and filed a cross motion for dismissal of Wilbur's complaint.

The trial court granted partial summary judgment in favor of Wilbur and issued the following declaratory judgment:

1. The Admiral's Cove Beach Club ("ACBC") swimming pool and related facilities are among the athletic and recreational facilities contemplated under Article V of the Articles of Incorporation of ACBC which provides that the purpose of ACBC is "[t]o construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefits of the members."

---

<sup>1</sup> After Wilbur filed his complaint but prior to the summary judgment hearing, Club members held their annual elections and replaced several "anti-pool" directors with "pro-pool" candidates.

2. ACBC and its Board of Directors must adhere to the requirements and directives set forth in the motion that was made and approved at the Defendant's annual membership meeting on October 27, 2012, unless said motion is properly repealed or amended to remove the duties of the Board of Directors and ACBC, which duties are presently embodied in this motion. That particular motion, as approved, does not contain language that could be construed to permit the demolition or decommissioning of the swimming pool or related facilities as an option for the membership's future consideration.
3. The prior Board's action to present a ballot to the membership with the option to decommission the pool was contrary to the October 27, 2012, motion. It was therefore invalid and of no force and effect.
- .....
6. In consideration of the applicable provisions of the Articles of Incorporation and Bylaws, the context in which they were promulgated, the circumstances surrounding their promulgation, and the other rules for their interpretation, the general power to dispose of property as set forth in the Articles of Incorporation and Bylaws governing ACBC, does not provide authority to the Board to dispose of the ACBC swimming pool and related facilities.
7. Any vote on a motion or other action item submitted to the membership at a regular or special meeting of the membership that would result in the demolition or decommissioning of the ACBC swimming pool, would be invalid and of no effect unless the governing documents of ACBC were first properly amended or changed to allow such action.
8. Under the governing documents as presently constituted, the members of the Board of Directors of ACBC have a legal duty and fiduciary obligation:
  - a. to maintain, repair and operate the swimming pool and its related facilities in a reasonable manner and as may be required by local, state

and federal law and the governing documents themselves; and

- b. to take affirmative action, consistent with the governing documents of Admiral's Cove Beach Club, to budget for and raise funds through properly authorized dues and assessments to carry out these duties.
9. The Board's duties in this regard include sufficient budgeting and funding decisions that will allow for the future and continued operation and maintenance of the swimming pool and related facilities.

The trial court denied Wilbur's request for injunctive relief. Corliss appeals.<sup>2</sup>

#### ANALYSIS

##### I. Necessary Parties

As a preliminary matter, we address Corliss's claim that the trial court lacked the authority to enter a declaratory judgment because Wilbur failed to join all Club members as necessary parties. Corliss relies on RCW 7.24.110. This statute requires that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." A "necessary party" for a

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<sup>2</sup> In her assignments of error, Corliss challenges the grant of partial summary judgment in favor of Wilbur and the denial of her motion for summary judgment dismissal. However, the trial court did not deny Corliss's motion. Corliss failed to renote her motion following a request for a continuance, and it was not properly before the trial court at the time of the hearing. Instead, the trial court declined to rule on Corliss's cross motion as moot.

declaratory judgment action is one "whose ability to protect its interest in the subject matter of the litigation would be impeded by a judgment."<sup>3</sup>

We disagree with Corliss. There are only two positions in this case: that the Club has the authority to remove the pool or that it does not. Both positions are adequately represented by the parties to the case. The joinder of additional Club members as parties was not necessary to resolve this controversy.

II. Summary Judgment

We review the grant of summary judgment de novo.<sup>4</sup> Summary judgment is appropriate only if the moving party is entitled to judgment as a matter of law.<sup>5</sup> We interpret the governing documents of a corporation in accordance with accepted rules of contract interpretation.<sup>6</sup> We give the words in a contract their plain, ordinary meaning unless the contract as a whole clearly demonstrates a contrary intent.<sup>7</sup> Articles of incorporation and bylaws are "correlated documents" that are construed together.<sup>8</sup> "[S]ummary judgment is proper if the parties' written contract, viewed in light of the parties' other objective manifestations, has only one reasonable meaning."<sup>9</sup>

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<sup>3</sup> Primark, Inc. v. Burien Gardens Assocs., 63 Wn. App. 900, 907, 823 P.2d 1116 (1992).

<sup>4</sup> Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

<sup>5</sup> CR 56(c).

<sup>6</sup> Roats v. Blakely Island Maint. Comm'n, Inc., 169 Wn. App. 263, 273-74, 279 P.3d 943 (2012).

<sup>7</sup> 4105 1st Ave. S. Invs., LLC v. Green Depot WA Pac. Coast, LLC, 179 Wn. App. 777, 784, 321 P.3d 254, review denied, 181 Wn.2d 1004 (2014).

<sup>8</sup> Roats, 169 Wn. App. at 274 (quoting Rodruck v. Sand Point Maint. Comm'n, 48 Wn.2d 565, 577, 295 P.2d 714 (1956)).

<sup>9</sup> Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 85, 60 P.3d 1245 (2003) (quoting Hall v. Custom Craft Fixtures, Inc., 87 Wn. App. 1, 9, 937 P.2d 1143 (1997)).

First, we consider if the Board had the authority to present Club members with the option of voting to remove the pool. We conclude that it did.

The October 2012 motion required the establishment of a committee to identify needed repairs, investigate costs, and submit this information to the Board. Wilbur does not dispute that the committee performed its assigned task. Instead, Wilbur contends the Board ignored the committee's findings and presented the Club's members with the option to remove the pool, a choice not contemplated by the motion. He argues that this option is inconsistent with the motion's stated objective of "having the pool open as soon as a funding and construction schedule allow." But the October 2012 motion governed only the actions of the committee. It did not impose any duties or constraints on the Board. And the Club's bylaws permit the Board to present special assessments to the members for a vote "at any time," regardless of whether they have been approved by motion. As a matter of law, Wilbur fails to establish the invalidity of the May 2013 vote.

Corliss also asserts that the Club has the authority, pursuant to its governing documents, to remove the pool at any time. We agree.

The articles of incorporation expressly give the Club the power to "sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets."<sup>10</sup> "Dispose of" is defined as "to transfer into new hands or to

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<sup>10</sup> This language is identical to that found in RCW 24.03.035(5), which provides that any nonprofit corporation has the power to "sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets."

the control of someone else (as by selling or bargaining away) . . . to get rid of: throw away: discard . . . to treat or handle (something) with the result of finishing or finishing with."<sup>11</sup> Thus, a plain reading of the Club's governing documents demonstrates the Club has the broad authority to remove or decommission any of its "property and assets."

Wilbur argues that the words "property" and "assets" are general terms that do not include the pool. Instead, Wilbur contends, the pool is an "athletic and recreational facility" which the articles of incorporation require to be "maintained and operated." We find this interpretation strained. First, the articles of incorporation state that the Club may dispose of "all or any part" of the property. This phrase states that anything the Club owns is subject to disposal. The articles of incorporation do not mention the pool by name or specifically exempt the pool from disposal. Second, the use of the phrase "property and assets" elsewhere in the bylaws shows an intent that these words include the pool. For example, article III, section 7 of the bylaws, which provides that Club membership is appurtenant to ownership of property in Admiral's Cove, states that "no member whose membership is transferred [through sale or devise of the property] shall be entitled to share or participate in any of the property or assets of the Club." (Emphasis added.) This clearly indicates that if a Club member ceases to belong to the Club, he or she loses the benefits of Club membership, including use of the swimming pool.

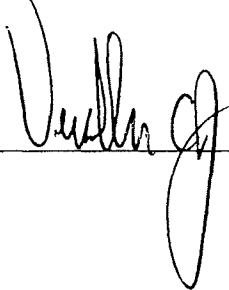
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<sup>11</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 654 (2002).

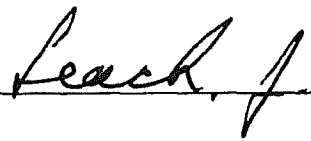
Wilbur argues that because the bylaws establish two committees devoted to pool-related issues, this shows a strong intent to maintain and operate the pool. But the existence of these committees does not guarantee or compel the perpetual presence of a pool.<sup>12</sup> For example, the bylaws also establish a Grounds and Building Committee, which is responsible for maintenance of and improvements to the Club's grounds, including "playfields, playground equipment, the shelter and stoves, picnic tables, flower beds, etc." But this does not mean that the Club lacks the authority to get rid of a broken swing set or a dilapidated picnic shelter.

We conclude that the Club's current governing documents give it the power to remove or decommission the pool. We also conclude that the October 2012 motion did not prohibit the Club from allowing the members to vote whether to remove the pool. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

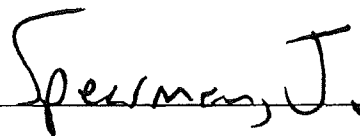
WE CONCUR:



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COURT OF APPEALS OF THE  
STATE OF WASHINGTON

<sup>12</sup> We note that while Wilbur argued below that he possessed a property interest in the pool, he expressly abandons this claim on appeal.

# EXHIBIT 2



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR, )  
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Plaintiff, )  
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vs. )  
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ADMIRAL'S COVE BEACH CLUB, a )  
Washington non-profit )  
Corporation; )  
 )  
Defendant. )

Cause No: 13-2-00741-4

SUE CORLISS, )  
 )  
Intervenor, )  
 )  
vs. )  
 )  
DUSTIN FREDERICK, ROBERT )  
WILBUR, ADMIRAL'S COVE BEACH )  
CLUB, a Washington non-profit )  
corporation, and its BOARD OF )  
DIRECTORS, )  
 )  
Defendants. )

Verbatim Report of Proceedings

BE IT REMEMBERED, that on Monday,  
March 6, 2017, the above-named and numbered cause came  
on regularly for hearing before the HONORABLE ALAN R.  
HANCOCK, sitting as judge in the above-entitled court,  
at the Island County Courthouse, in the town of

Ex. 2

1 Coupeville, state of Washington.

2 The plaintiff appeared through his attorney,  
3 Christon C. Skinner;

4 The defendant Admiral's Cove Beach Club  
5 appeared through its attorney, Christopher J. Nye;

6 The intervenor appeared through her  
7 attorney, Jay Carlson.

8 WHEREUPON, the following proceedings were  
9 had, to-wit:

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INDEX

	<u>PAGE</u>
By Mr. Skinner . . . . .	3
By Mr. Carlson . . . . .	9
By Mr. Nye . . . . .	12
By Mr. Skinner (rebuttal) . . . . .	15
Court's Ruling . . . . .	16

1                   THE COURT:   Okay.   Next, we have the case of  
2   *Wilbur v. Admiral's Cove Beach Club*.   This comes before  
3   the Court today pursuant to the plaintiff's motion for  
4   leave to amend the complaint.   I received and read the  
5   papers and am prepared to hear argument; five minutes  
6   per side, please.   Mr. Skinner.

7                   MR. SKINNER:   Thank you, Your Honor.   I  
8   represent the plaintiff, Robert Wilbur.   The Court, I'm  
9   certain, recalls the history on this case.   The matter  
10   was resolved at a summary judgment hearing.   The Court  
11   entered an order determining a number of different  
12   issues that had been presented about the obligation that  
13   the Board of Directors had to preserve and maintain the  
14   pool.   And also the Court concluded as a matter of law  
15   that the governing documents did not permit the pool to  
16   be removed.

17                   The Court of Appeals, in its infinite  
18   wisdom, had a different view of that particular legal  
19   issue and basically found that the governing documents  
20   did permit the Board of Directors to make a decision to  
21   remove the pool if they elected to do that.

22                   Time marched on since the Court filed its  
23   decision in the summary judgment matter.   After  
24   Ms. Corliss filed her appeal, approximately 16, 18  
25   months has gone by.   In March of 2016, or thereabouts,

1 quote, "When a single occurrence gives rise to multiple  
2 claims against a defendant, the plaintiff will want to  
3 assert all such claims in a single lawsuit. Washington  
4 does not allow the plaintiff to bring multiple lawsuits  
5 as the result of a single occurrence, a practice  
6 commonly known as claim splitting."

7           Professor Tegland makes reference to this  
8 and other cases on these matters in Volume 3A of  
9 Washington Practice: Rules Practice, that's the 2006  
10 edition.

11           In the *Landry* case, the court went on to say  
12 that "a claimant may not split a single cause of action  
13 or claim. Such a practice would lead to duplicitous  
14 suits and force a defendant to incur the cost of effort  
15 of defending multiple suits."

16           It is true that the cases in which the  
17 matter of claim splitting and the res judicata doctrine  
18 have been applied involve separate cases rather than a  
19 situation involved in the present case. But the same  
20 policy reasons apply in the present case as they would  
21 have had the claim that is now being asserted by the  
22 plaintiff in the present case been brought in a separate  
23 lawsuit to assert this additional claim.

24           So I rule that the portion of the amended  
25 complaint that would challenge the 2013 ballot on the

1 grounds that it didn't include the no-action alternative  
2 cannot be permitted. This should have been raised in  
3 the previous matters that were heard by the Court that  
4 resulted in a final judgment by this court, and the  
5 Court of Appeals has issued its decision. Of course,  
6 that's binding on this court and the Court will follow  
7 that, naturally.

8           In response to some of the other comments,  
9 of course I have not prejudged in any manner this matter  
10 of the 2013 vote and whether that could be rescinded or  
11 not. I think it's my obligation to explore ways in  
12 which matters should be resolved outside of court.  
13 There are doctrines in that regard.

14           From the colloquy here, it sounds like both  
15 parties may agree that it is not possible to rescind the  
16 2013 vote on decommissioning or repairing. And so if  
17 that's true, then this court will have to resolve the  
18 complaint as it's now been amended, which is the matter  
19 of the alleged inconsistency between the 2013 and 2016  
20 votes. So I just wanted to raise that as a possible  
21 method of resolving the case that perhaps had not been  
22 considered or may have been considered.

23           Anyway, in any event, I have not in any way  
24 prejudged any issues that will be brought before this  
25 court. So I'll entertain the appropriate order.

1 MR. CARLSON: I have a proposed order.

2 MR. SKINNER: Could I have just a little  
3 further clarification on that, Your Honor? As Mr. Nye  
4 pointed out, there is language in the original complaint  
5 that addresses this particular question and that has --  
6 that's not what the Court is addressing today. It's  
7 strictly whether we can amend the complaint in the form  
8 that we proposed.

9 THE COURT: Perhaps it could be argued that  
10 there is language that could have raised this issue  
11 previously or perhaps impliedly raised this issue in the  
12 original complaint, but again, the claim splitting  
13 doctrine prohibits splitting claims that ultimately  
14 result in a final judgment, which this did. And so I  
15 don't accept that argument.

16 MR. CARLSON: I've handed a proposed order  
17 to Mr. Nye.

18 Your Honor, could I ask for a brief moment  
19 on another -- a procedural issue?

20 MR. SKINNER: Your Honor, I'm not willing to  
21 have just an ad hoc procedural issue come up. We're  
22 here strictly on --

23 MR. CARLSON: I just want to ask the Court  
24 for some guidance.

25 THE COURT: You can ask an informal

1 question. I'm not sure I can answer it, particularly if  
2 there's objection to me answering the question. So go  
3 ahead.

4 MR. CARLSON: So it's pretty clear to me  
5 that based on the Court of Appeals' ruling we're  
6 entitled to an order of summary judgment on our cross  
7 motion that had been denied as moot when this court  
8 reviewed the case prior to appeal.

9 And my question is, you know, does the Court  
10 care to give guidance how to present that to you? Can I  
11 file a proposed order? Do you want me to refile and  
12 renote the summary judgment motion in total? How do you  
13 want to proceed in that regard?

14 MR. SKINNER: And I object --

15 THE COURT: Response?

16 MR. SKINNER: -- to any attempt by counsel  
17 to try to get the guidance from the Court about how to  
18 handle his case. It's not appropriate.

19 THE COURT: Any comment, Mr. Nye?

20 MR. NYE: I would agree. That's not the  
21 issue we're here on, is intervenor's motion for summary  
22 judgment.

23 MR. CARLSON: I just thought I could save  
24 the parties some time.

25 THE COURT: I understand. I don't take

1 issue with you raising the question, but I really better  
2 leave it to the motions practice. As I recall, the  
3 Court of Appeals remanded for further proceedings, so  
4 you may proceed in the way that you deem appropriate,  
5 Mr. Carlson.

6 MR. CARLSON: Thank you, Your Honor.

7 THE COURT: Thank you very much.

8 MR. CARLSON: I'll leave the order.

9 MR. SKINNER: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. NYE: Your Honor, we have some  
12 disagreement over the language of the proposed order.  
13 Would you prefer that we just convene on our own time  
14 and submit an order later?

15 MR. CARLSON: I can hand it up.

16 THE COURT: Yes.

17 MR. CARLSON: It's very brief.

18 THE COURT: All right. Hand it up. I'll  
19 take a look at it. What is the objection to form,  
20 Mr. Skinner?

21 MR. SKINNER: My objection is the editorial  
22 complaint in paragraph one, "claims regarding the 2013  
23 vote have already been litigated, including through a  
24 full-merits appeal." That's -- that is, at a minimum,  
25 in dispute and not part of what the Court ruled on



1 today. The Court simply denied the request to amend the  
2 complaint to add the additional cause of action that we  
3 asserted. Whether or not the Court of Appeals' decision  
4 fully addresses and is dispositive of anything relating  
5 to the 2013 vote, is not properly before us today, and  
6 that should not be included in this order.

7 MR. CARLSON: Your Honor, I certainly have  
8 no objection --

9 THE COURT: Just a minute.

10 Mr. Nye.

11 MR. NYE: Well, I disagree with the  
12 full-merits language. What we had was a granting of a  
13 motion for summary judgment on very particular issues.  
14 This was not the same thing as a trial. It just so  
15 happened that the issues that were raised were  
16 sufficient to dispose of the case. This is not full  
17 merits.

18 THE COURT: All right. Final comment,  
19 Mr. Carlson?

20 MR. CARLSON: I mean, I have no objection to  
21 you making whatever change you feel is necessary to  
22 bring the order into conformity with your oral ruling.  
23 I just -- if it's not already there, it's pretty close.  
24 So I -- you know, I think we all understand you've --  
25 what your ruling is and -- thank you.

1                   THE COURT: I've read the proposed order  
2 denying in part and granting in part plaintiff Wilbur's  
3 motion to amend the complaint. This is the order  
4 presented by Mr. Carlson. This is the appropriate order  
5 to be entered and this is the basis for the Court's  
6 ruling so I'm going to enter that.

7                   MR. CARLSON: Thank you, Your Honor.

8                   THE COURT: That is all.

9                   MR. NYE: Thank you, Your Honor.

10                   (Whereupon, the proceedings in this matter  
11 were concluded for the day.)

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C E R T I F I C A T E

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I, JEANNE M. WELLS, do hereby certify that the foregoing verbatim report of proceedings were taken by me and completed on Monday, March 6, 2017, and thereafter, transcribed by me by means of computer-aided transcription;

That I am not a relative, employee, attorney, or counsel of any such party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith filing the original with the Court of Appeals and emailing one copy to Jay Carlson.

\_\_\_\_\_  
Jeanne M. Wells, RPR  
CCR #: 2298

March 15, 2017

# EXHIBIT 3

*The Court of Appeals*  
of the  
*State of Washington*

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

June 6, 2016

Jay S Carlson  
Carlson Legal  
315 5th Ave S Ste 860  
Seattle, WA 98104-2679  
jay@carlsonlegal.org

Christon Clark Skinner  
Law Offices of Christon C. Skinner, P.S  
791 SE Barrington Dr  
Oak Harbor, WA 98277-3278  
chris@skinnerlaw.net

Christopher Joseph Nye  
Reed McClure  
1215 4th Ave Ste 1700  
Seattle, WA 98161-1087  
cnye@rmlaw.com

Marilee C. Erickson  
Reed McClure  
1215 4th Ave Ste 1700  
Seattle, WA 98161-1087  
merickson@rmlaw.com

CASE #: 73725-2-1

Susan Corliss, Appellant v. Admiral's Cove Beach Club et al, Respondents

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on June 3, 2016:

Appellant Susan Corliss has filed a motion for a stay/injunction under RAP 8.3 to prevent respondent Admiral Cove Beach Club from taking steps to implement a recent, second vote regarding disposition of an existing community swimming pool.

Admiral Cove Beach Club has an old swimming pool that has become dilapidated. In 2013 the 600 community members were given a choice between repairing/refurbishing the pool at a cost of \$650,000, or decommissioning/removing the pool at a cost of \$200,000. A majority of voters chose to decommission the pool (166/153). Club member Robert Wilbur then filed a lawsuit against the Club and sought a permanent injunction to invalidate the vote. The trial court ruled that the vote was invalid as outside the governing articles of incorporation and bylaws, which the court ruled do not permit the Board to dispose of the pool and related facilities, and that the Board has a duty to maintain, operate and repair the pool. The trial court denied the request to maintain jurisdiction, noting that the order does not limit any party from seeking further and additional relief based on facts/issues not presented or that have arisen since the order. In short, the decision does nothing other than invalidate the vote to decommission the pool.

Intervenor/club member Susan Corliss filed a notice of appeal challenging the trial court order. At the time, no one sought a stay of the trial court order. Briefing on the appeal is complete.

In the meantime, in March 2016 a reconstituted Board conducted a second vote regarding the disposition of the pool, to wit: an assessment of \$500/\$1000 per lot to refurbish the pool; and an additional assessment for a heat pump option. Members could vote yes or no on both propositions. A majority of voters favored the first assessment (144/125); the second, additional assessment failed. The Board is now in the process of collecting the assessments and making plans to begin work on the pool.

Appellant Corliss now seeks a stay to prevent the Board from collecting the assessment, which she says will cause a financial hardship for some members, and from beginning work on refurbishing the pool, which may moot the appeal. The Club and Wilbur oppose a stay.

If appellant Corliss prevails on appeal and this court reverses the trial court order invalidating the vote to decommission the pool, the initial vote to decommission the pool would be upheld. It appears that any issues regarding the effect of the second vote to refurbish the pool would be resolved on remand. To the extent that Corliss suggests that the second vote was invalid due to disenfranchisement of some members and/or other improper voting procedures, the issues are not part of the current appeal, and at this point apparently no lawsuit or other action has been brought to invalidate the second vote.

The Board has taken steps to minimize the potential financial hardship for members by allowing six months to pay the assessment without finance charges and has agreed to make additional arrangements on an individual basis. At this point Corliss has not demonstrated a legal basis to stop the Board from beginning to collect the assessment. But if the Board begins to spend some of the money it has collected and begin work on refurbishing the pool, Corliss could be deprived at least in part of the benefit of a successful appeal. A stay is warranted to preserve the benefit of a successful appeal. The Board has provided evidence that delay until September 2016 may result in a 5% cost increase, and that delay for a second year may cost an additional 5-7%, plus additional consulting fees of \$5,000 - \$7,000. The briefing is complete, and the appeal is ready to be set before a panel. A supersedeas cash or bond of \$30,000 (5% of the total project cost of \$600,000) is appropriate.

Accordingly, upon appellant posting a supersedeas cash or bond of \$30,000 in the superior court registry, a partial stay is granted to permit the Board to collect the assessment, which shall be placed in a separate fund not to be spent until the appeal in this court is completed.

Therefore, it is

Page 3 of 3  
June 6, 2016  
CASE #: 73725-2-1

ORDERED that upon appellant posting a supersedeas cash or bond of \$30,000 in the superior court registry, a partial stay is granted to permit the Board to begin collecting the assessment, which shall be placed in a separate fund not to be spent until the appeal in this court is complete.

Sincerely,

A handwritten signature in black ink, appearing to read 'R.D. Johnson', with a long horizontal flourish extending to the right.

Richard D. Johnson  
Court Administrator/Clerk

lls

# EXHIBIT 4



From: Gwyn Staton <gwynstaton1@msn.com>  
Sent: Sunday, January 05, 2014 6:40 PM  
To: Bob Wilbur; Carol Del; Dustin Frederick; Kurt and Jackie  
Blankenship;  
Nate Palmer  
Subject: RE: Strategy forward

Id like to meet after the annual meeting and definitely want people to get proxies asap!

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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From: [bbwilbur@broadstripe.net](mailto:bbwilbur@broadstripe.net)  
To: [caroldchina5@yahoo.com](mailto:caroldchina5@yahoo.com); [dustin@local519.org](mailto:dustin@local519.org); [gwynstaton1@msn.com](mailto:gwynstaton1@msn.com); [kblankenship@bluewilliams.com](mailto:kblankenship@bluewilliams.com); [NatePalmer36@gmail.com](mailto:NatePalmer36@gmail.com)  
Subject: Re: Strategy forward  
Date: Sun, 5 Jan 2014 17:56:50 -0800

Hi Carol,  
Sorry, traveling and on the run all day, but just to be clear, are you maybe talking about two meetings, the thousand club and the annual ? My call was just about the 1000 club to decide what our legal course is forward, and we have two attorneys to help us figure out the intricacies of all of that. As for the annual meeting, Iím sure we are all concerned so do shed more light if/when able but we are with your friendly board spouses.

When you think about it, isnít it telling that two board members who were ipro poolí had to

Ex. 4

have their own counsel ñ I thought the other five were also pro-pool ñ  
so why not one for all  
and all for one?

Yeah,  
bob

From: Carol Del  
Sent: Sunday, January 05, 2014 1:18 PM  
To: Dustin Frederick ; Bob Wilbur ; Gwyn Staton ; Kurt and Jackie  
Blankenship ; Nate Palmer  
Subject: Re: Strategy forward

We will arrive back on Island sometime on Friday afternoon and except  
for taking my "sitter" to the shuttle  
stop I'm free anytime. We can meet at my house if you like.

Next weekend, or another time very soon, we should have a get-together  
with the whole group to discuss  
finances and where we go from here. Depending on how things go.

I'm concerned about a number of things about the meeting itself.  
One is having a quorum of  
members. Should we contact our list (and neighbors) about being at  
the meeting. If someone can't be  
there, ask them for a proxy - who knows what will come up.

As the budget didn't get revised to reflect pool covering or  
maintenance, that should be brought up. We  
should all be looking for the agenda to be posted and evaluating it's  
content. The minutes - particularly  
the motion and friendly amendment- should be checked when they are  
read as I don't think they will be  
posted ahead of time.

Question: Since the lawsuit is something they will not discuss in open  
session, will the new board  
members be included in the executive session they may have to discuss  
same?

Sorry if this is disjointed. Forgot how exhausting two year olds  
are.

Carol

On Saturday, January 4, 2014 11:12 AM, Dustin Frederick  
<dustin@local519.org> wrote:  
I think sometime after the annual meeting makes the most sense.  
Either Sat pm or Sunday  
early afternoon 1ish---but Iím flexible.

From: Bob Wilbur [mailto:bbwilbur@broadstripe.net]  
Sent: Saturday, January 04, 2014 8:20 AM  
To: Dustin Frederick; Gwyn Staton; Carol Del; Kurt and Jackie  
Blankenship; Nate Palmer  
Subject: Strategy forward

How do all of you feel about getting together late afternoon of the 10th to discuss the strategy options forward? Or, the other option would be sometime after the annual meeting (Sat PM) or Sunday, which might be better since we would know the results of the election then.

...Bob

From: Bob Wilbur  
Sent: Friday, January 03, 2014 9:32 AM  
To: Gwyn Staton ; Dustin Frederick ; Carol Del ; Kurt and Jackie  
Blankenship  
Subject: Problem

Okay all 5 of us in the \$1000+ club,  
We have a problem, that we need to keep just among us as we don't want this to leak out to the opposition.

We have a Dec. bill for \$7262, and a banked balance of \$5,455, all recent contributions included (Dustin \$1000, Carol \$1000, Kurt Blankenship \$750, and Nate Palmer \$250), which minus the \$2500 owing me leaves a balance of \$2955 available. Or we are shortfall of \$4307. So what to do ñ suggestions?

I don't think we can afford to go to trial, or at least to do so, we need a lot more show of \$\$ support, which seems unlikely. Now if we were reasonably certain of getting all or most of that back, perhaps we would be

willing to risk \$  
going forward. But short of that, I suppose the next best thing is for  
us hope  
for a good election result, and negotiate through the motion mandate  
to some  
positive resolution for the pool, and concurrently get a strong bylaws  
committee to fix the loopholes and conflicts in the bylaws.

If we don't get a friendly board majority, the fat lady may be  
singing. Thoughts,  
suggestions?

**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!

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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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 depositions 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.

**Bob Wilbur**

---

**From:** "Gwyn Staton" <gwynstaton1@msn.com>  
**Date:** Tuesday, November 18, 2014 8:16 PM  
**To:** "Bob Wilbur" <bbwilbur@broadstripe.net>  
**Subject:** RE: Lawsuit alternative

you are well reasoned. The problem is no one else is as much as you and no one wants to work too much any more.

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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From: bbwilbur@broadstripe.net  
To: dustin@local519.org; gwynstaton1@msn.com; caroldchina5@yahoo.com  
CC: wilbur\_brenda@yahoo.com  
Subject: Lawsuit alternative  
Date: Tue, 18 Nov 2014 08:23:06 -0800

All,

I am having to consider other ways to resolve our situation based on the growing reality that we may be unable to raise enough money to continue. We had two donors at \$5000, one at \$4000, a fourth at \$2000 and a \$10,000 insurance payment, or \$26,000 of the costs to date (roughly \$33,000). And when we pay the bill for this November we will have a balance right around zero I suspect. I don't believe the big contributors are there any more. So, I am not too optimistic about raising a sufficient amount to continue forward.

So, before we spend a lot of time looking at dismantling the Corliss declarations, we should at least consider the alternative. The TRO was basically done to stop what we



believed was an illegal tactic and the judge basically agreed. So it is unlikely that we have to worry about decommissioning the pool in that manner again, at least for some time.

That in mind, instead of looking to the judge to fix our problems, we (the BOD and the members) do it ourselves. That is, retool the bylaws and maybe the AOI so to remove ambiguity and to clearly explain the rules. Who needs the judge?

Some bylaws changes needed to comply with the AOI and/or laws could be done without member approval vote, maybe even those to comply with the TRO. Others would have to be approved by the membership.

To give the opposition little time to organize, we would perhaps need to do this quickly and with as little profile as possible and then get the changes out for a vote within the minimum time frame allowed. That would likely need a few of us to do a lot of preliminary work and then come to the bylaws committee with that ready to go where we could fast-track it through and to the BOD with as little kerfuffle as possible.

Or alternatively, maybe with both sides represented by a few reasonable folks on the bylaws committee, they could develop revisions both sides would agree to sponsor and support. That would be the better way to be sure.

If we were able to get this done expeditiously, like in December, we might be able to hold onto the lawsuit with little added expense, just in case we need/want it.

From: Dustin Frederick  
Sent: Thursday, February 06, 2014 5:12 PM  
To: Gwyn Staton  
Subject: RE: attys fees

Yes it should be permanent.

From: Gwyn Staton [mailto:gwynstaton1@msn.com]  
Sent: Thursday, February 06, 2014 4:58 PM  
To: Bob Wilbur; Dustin Frederick  
Subject: RE: attys fees

I want the docs preserved; that's it. We can get all this done by next week. just make sure chris has sent the requests. then simultaneously we will finish the judgment. I need to add back a couple things if we are stating it is a perm injunction which I think we should.

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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From: bbwilbur@broadstripe.net  
To: dustin@local519.org; gwynstaton1@msn.com  
Subject: Re: attys fees  
Date: Thu, 6 Feb 2014 09:09:13 -0800

Hi Dustin and Gwyn,  
Dustin, not sure if you saw this before but I think it would produce the dollars we are after (see yellow). I need to do more work and research on the Exhibits but I think it has a reasonable chance of getting the dollars we are after. I want to get this to the board today or tomorrow, and have them request Chris Nye's input. Then we would get Skinners.

As for getting the production requests out and not releasing the bad 5, I'm okay with it if you and Gwyn can explain what the benefit is and how the value outweighs the risk, which Kurt Blankenship feels is not trivial. As I understand it, to get any benefit, we would need to take the material and depositions, etc., forward at added legal expense to the point that the other side would fold and pay some few dollars added to the \$20,000 we might obtain through just the action below. So guess I see it as a fighting over crumbs and would rather go for the entre (below).

That said, if the \$\$ request produces little or nothing, then yes, I would be on board with production and depositions, etc., and Gwyn, check the added language to that effect and some other stuff added here and there, so re-read may be needed.

...Bob

**Statement in Support of Plaintiff's Request for Attorney Fees**

Having reviewed the following evidence presented by the plaintiff, the current (2014) Board of Directors of the Admiral's Cove Beach Club (ACBC) agree that the prior Board (2012 & 2013) acted in bad faith by 1) contravening the member motion of October 27, 2012, and flagrantly disregarded numerous members' warnings to the board that their actions were not in compliance, 2) hastily prepared and sent out an invalid ballot to destroy the pool without pool committee and full board discussion, 3) subsequently sent out an invalid assessment that attempted to ignore the ACBC bylaws requirement of 30 days to pay for an assessment, instead demanding payment within 2 weeks, and 4) ignored a request and justification by five club members to conduct a pool ballot do-over that would be consistent with the October motion, refused to meet with them, and disregarded a warning that failure to do so would result in legal action against ACBC.

Based on the supporting materials, the Judge clearly indicated—they acted "ultra vires" in violation of the bylaws, AOI and provisions of individual deeds. The plaintiff, if forced to proceed, believes the merits will easily support a validation of the judge's initial statement.

The board's clearly misguided and inappropriate actions wasted members' time, personal money, and emotional capital and needlessly ran up the financial burden that club members now have to assuage. Because the plaintiff had no other recourse to protect the pool but to assert legal action, the Current Board concurs that the plaintiff has a right to compensation amounting to \$20,000 of his legal fees, and in return plaintiff agrees to dismiss further actions against the Past and Current Boards to collect fees and further disrupt this community and escalate its legal expenses. If that is not agreed to, plaintiff is prepared to seek production and argue the merits.

1. While the Past Board (i.e., of 2012 & 2013) may have not fully understood the legal requirements of the governing documents, they were fully aware of the requirements imposed upon them by the unanimously approved member motion of October 27, 2012, and were reminded of that on numerous occasions.

2. The Past Board with clear intent, instead of fully complying with the three tasks of said motion, usurped those tasks from the joint committees, as evidenced in the following actions and exhibits.

a) Exhibit A: Thwarted full committee (12 members) participation by short notices without attempting to see how any called meeting might allow participation. Hence, never more the 4 of 12 members attended any meeting. And the chair and the Board largely usurped task 1 from the hands of the weakly attended meeting participants, and ignored objections and calls for ensuring more meetings with greater participation.

b) Exhibit B: Committee chair failed to honor committee involvement in funding options (task 2), insisting it was not committee responsibility and therefore turned it over to whoever from the Pool Committee to request involvement in funding options. Those requests were tendered but ignored and stymied.

c) Exhibit C: The Board denied remaining members of the Cathy Harrison-disbanded pool committee from working with the board in preparing the ballot, even though those remaining members attempted to ensure that task (#3) was fulfilled. As a result of those efforts, the board instead hastily sent out a ballot that excluded discussion with all board members.

3. Exhibit D: The board ignored a request and justification by five club members to conduct a pool ballot do-over that would be consistent with the October motion, refused to meet with them, and disregarded a warning that failure to do so would result in legal action against ACBC.

4. Exhibit E: The board prepared and sent out an assessment that attempted to ignore the ACBC bylaws requirement of 30 days to pay for an assessment, instead demanding payment within 2 weeks. The plaintiff caught that and forced the board to extend the payment period to 30 days.

**Bob Wilbur**

**From:** "Kurt S. Blankenship" <kblankenship@bluewilliams.com>  
**Date:** Monday, February 10, 2014 10:59 AM  
**To:** "Bob Wilbur" <bbwilbur@broadstripe.net>  
**Subject:** RE: Process

Bob: I completely understand and agree with the strategy of trying to hold down Skinner's costs. And I understand the concept of trying to work it out between the plaintiffs and the Board directly, but I have some concerns that I'd like to discuss with the Board's attorney and get his input on same. I'm optimistic that at the end of the day we might all be able to get there, but I also think it will be a multi-step process. Let me talk to the Board's attorney first and either Ed or I or both will get back to you.

**From:** Bob Wilbur [mailto:bbwilbur@broadstripe.net]  
**Sent:** Monday, February 10, 2014 11:03 AM  
**To:** Kurt S. Blankenship  
**Subject:** Re: Process

Hi Kurt,

We did discuss and Skinner was okay with Dustin on or off as plaintiff, either way with recusal as a board member, and I thought we left it with Dustin withdrawing but not sure Skinner effected as yet or not or whether Dustin has changed his mind. Other than that, Skinner has done nothing on the case that I know of since Dustin and I talked with him on Jan 28 because we haven't instructed him to do anything, primarily because we have been struggling to come up with a strategy forward.

That is, we ran into opposition from Gwyn on dismissing the exboard folks and that has remained a question that was kind of tabled while we argued back and forth on whether to have Skinner send out Gwyn's production requests. Meanwhile all my focus went into developing those two documents you and the board received for consideration. We had hoped to first find concurrence with the board on those docs and then present them to Skinner for his review and editing/revision as needed, who I guess he would do so with Nye.

As of today, I am unsure how to proceed because we have little money left to pay for Skinner to strategize and negotiate resolution, which is why we opted to try the do-it-yourself.

So, I am a bit frustrated. I understand Ed's desire to keep this as straightforward and above-board as possible to keep the skeptics from calling foul, but I had hoped the process above would work because it seemed to be the best shot we had at bringing to a quick and affordable resolution. In fact, it may be the only option.

Although I don't recall talking with you about your having a conversation with Skinner, I surely am not opposed to that, but not sure I understand whether that would be the best use of our very limited funds. Open to more on that, or any suggestions at this point.

Thanks,  
Bob

**From:** Kurt S. Blankenship  
**Sent:** Monday, February 10, 2014 6:40 AM  
**To:** Bob Wilbur ; Ed Delahanty  
**Cc:** Dustin Frederick  
**Subject:** RE: Process

Skinner is correct, but what I was suggesting was something different. I wanted permission from you guys to talk to Skinner directly myself to try and better understand the elements of your proposal. Of course, I would ask the Board's attorney to agree as well.

Also, as I recall, Bob, you were going to discuss with Skinner and Dustin my suggestions of Dustin withdrawing as a plaintiff and also dismissing all individual defendants leaving the Board as the only defendant.

Thanks.

**Kurt S. Blankenship**  
Partner

**BLUE WILLIAMS. L.L.P.**  
ATTORNEYS & COUNSELORS AT LAW

3421 North Causeway Blvd., Suite 900  
Metairie, Louisiana 70002

Direct: (504) 830-4935

Fax: (504) 849-3028

[kblankenship@bluewilliams.com](mailto:kblankenship@bluewilliams.com)

[Download vCard](#)

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**From:** Bob Wilbur [<mailto:bbwilbur@broadstripe.net>]  
**Sent:** Sunday, February 09, 2014 10:39 AM  
**To:** Ed Delahanty  
**Cc:** Kurt S. Blankenship; Dustin Frederick  
**Subject:** Process

Hi Ed,  
Good job running the meeting yesterday and good to see all members being friendly and

2/17/2015

**Bob Wilbur**

**From:** "Carol Del" <caroldchina5@yahoo.com>  
**Date:** Monday, February 17, 2014 9:57 AM  
**To:** "Gwyn Staton" <gwynstaton1@msn.com>  
**Cc:** "Bob Wilbur" <bbwilbur@broadstripe.net>; "Ed Delahanty" <whshed@live.com>; "Kurt S. Blankenship" <kblankenship@bluewilliams.com>; "Elsa Palmer" <suzy Palmer1@me.com>; "chris hendrickson" <hendrickcj@gmail.com>; "Fred Salmon" <pheffy@aol.com>  
**Subject:** Re: Judgment

Just a few utterly non-legal comments. Despite what you and I might like there are two incorrect statements in your e-mail.

1) "The parties were going to agree..." There was no discussion between the parties until this Saturday and there was no agreement with anyone. Just proposals - one from Bob W and a response from Kurt B and Ed D and the Board's attorney.

2) "The Board was going to tell its attorney ..." My understanding was that nothing was discussed outside of executive session. So what do we know?

On Sunday, February 16, 2014 1:13 PM, Gwyn Staton <gwynstaton1@msn.com> wrote:  
Apparently there is more confusion. There is a stay in place. We have a preliminary injunction.

The point is the parties were going to agree to a declaratory judgment and permanent injunction (a settlement) to resolve this case. The Board was going to tell its attorney to work it out with the plaintiffs.

Please please call me/Bob if there are any questions re the proposed judgment or modifications you would like to add.

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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From: bbwilbur@frontier.com  
To: kblankenship@bluewilliams.com; whshed@live.com; suzy Palmer1@me.com  
CC: caroldchina5@yahoo.com; dustin@local519.org; gwynstaton1@msn.com  
Subject: Basic premise misunderstood?  
Date: Sat, 15 Feb 2014 17:31:15 -0800

Hi Kurt,

Just talked with Ed and it appears (?) the basic premise underlying plaintiff's proposal (the two docs attached) was not understood. We were not suggesting that the judge would arrive at the conclusion, but rather that **plaintiff and defendant** (current board), after examining all the governing documents and Judge Hancock's TRO, **agree** on both the concurrence and declaratory documents and thereby petition the judge to effect. In essence we would be asking the judge to sign-off. That is, the judge says., "Okay, if the two parties agree, and it looks in order, so be it and signed.

We do believe, and AOIs and the deeds and the related documents of 1969/1970 stipulate that the pool be maintained and that failures to do so by prior boards and to enforce collection of fees, are errors of the past that require correction today. We do **not** think the bylaws, as subservient to the AOI and deeds, etc., can be modified to demolish the pool. And because maintenance is required by the AOI, it follows that assessments for maintenance are not vote-able, whereas, yes, enhancements would be.

The focus on the inept bylaws, without their proper attention and deference to the AOI and deeds, etc., is what has taken the Club to this point and caused such tremendous problems, and we cannot let this opportunity slip away. If we simply go back to a re-do of the Oct 2012 motion, all our efforts to fix the problems of the past go back into the cauldron, and the clarity offered by the judge is wasted. What we need to do is fix the problem which has basically been allowing a broken tail – the bylaws – to wag the dog.

What we proposed for the judge's declaratory is not inconsistent with the current bylaws and is consistent with the AOI and deeds, etc. I am not in the least interested, having invested this much energy, to simply have a rerun of 2012 as the product. That would just reopen all of us to the same old battles. So no, if it comes to that, I would not support more community disruption and discord and would have to back out entirely.

Thanks and hope this helps move this effort forward rather than backward,  
Bob

2/17/2015

**Bob Wilbur**

**From:** "Ed Delahanty" <whshed@live.com>  
**Date:** Monday, February 17, 2014 9:56 AM  
**To:** "Gwyn Staton" <gwynstaton1@msn.com>; "Kurt S. Blankenship" <kblankenship@bluewilliams.com>; "Suzy Palmer" <suzyalmer1@me.com>; "Fred Salmon" <pheffy@aol.com>; "chris hendrickson" <hendrickcj@gmail.com>  
**Cc:** <bbwilbur@broadstripe.net>  
**Subject:** RE: Judgment

Gwyn,

After reading the draft declaratory statement sent on Feb. 13, Kurt & I had concerns. On Feb. 15, we discussed the draft declaratory with our attorney on who also had concerns. I apparently didn't do a very good job of explaining those concerns and alternative approaches suggested by our attorney when I spoke to Bob Wilbur on Saturday. Kurt will contact him early this week to further the discussion.

Please let the Board deal with this in a carefully considered manner that ultimately provides the greatest benefit to the ACBC community.

Kind Regards,  
Ed.

**From:** gwynstaton1@msn.com  
**To:** kblankenship@bluewilliams.com; whshed@live.com; suzyalmer1@me.com; pheffy@aol.com; hendrickcj@gmail.com  
**CC:** bbwilbur@broadstripe.net  
**Subject:** Judgment  
**Date:** Sun, 16 Feb 2014 13:13:32 -0800

Apparently there is more confusion. There is a stay in place. We have a preliminary injunction. The point is the parties were going to agree to a declaratory judgment and permanent injunction (a settlement) to resolve this case. The Board was going to tell its attorney to work it out with the plaintiffs. Please please call me/Bob if there are any questions re the proposed judgment or modifications you would like to add.

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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**Bob Wilbur**

**From:** "Ed Delahanty" <whshed@live.com>  
**Date:** Wednesday, June 25, 2014 10:22 PM  
**To:** <bbwilbur@broadstripe.net>; "Kurt S. Blankenship" <kblankenship@bluewilliams.com>; "Suzy Palmer" <suzyalmer1@me.com>; "chris hendrickson" <hendrickcj@gmail.com>; "Steven E Morrow" <stevem@broadstripe.net>; "Fred Salmon" <pheffy@aol.com>; "Dustin Frederick" <dustin@local519.org>  
**Subject:** RE: A request/your thoughts?

Bob,

Thanks for understanding the situation the current Board is in. Plan B is the best option for the Board and ACBC's membership.

**From:** bbwilbur@broadstripe.net  
**To:** kblankenship@bluewilliams.com; whshed@live.com; suzypalmer1@me.com; -hendrickcj@gmail.com; stevem@broadstripe.net; pheffy@aol.com; dustin@local519.org  
**Subject:** Re: A request/your thoughts?  
**Date:** Wed, 25 Jun 2014 09:03:08 -0700

**Morning Kurt,**

Okay, and that of course is a paramount concern that must be avoided.

So scratch plan A and on with plan B. I will send Chris S an email explaining that. And will also let him know what my expectations/hopes are, and that if possible we should shoot for July 7 for a draft of the judgment. If they can meet that, and if it is wise and useful to meet to iron out whatever, then presumably you would be available for another week or so after that. Ed, unless you want, I'm on board with plan B and we need not chat this afternoon, but can if you want.

As long as all are assembled here, I had a thought yesterday that, given the extremely hyped up rhetoric over opening the pool this summer without ADA feasibility, and Dan Jones organizing a lawsuit, that perhaps it would be wise to not open the pool after all and let the emotions settle down so that when the declaratory does come out, it doesn't become the bomb dropped in the burning fire. And secondarily the turd could be slipped into their pocket – that there was so much acrimony created the board decided not to further enflame discord and will opt to not open this year. *The downside:* the "victory" might embolden them to set their sights on new targets of glory. Anyway, just some thoughts for the seven of you to ponder on.

Tallyho...Bob

**From:** Kurt S. Blankenship  
**Sent:** Wednesday, June 25, 2014 8:21 AM  
**To:** Bob Wilbur ; Ed Delahanty ; Suzy Palmer ; chris hendrickson ; Steven E Morrow ; Fred Salmon ; Dustin Frederick  
**Subject:** RE: A request/your thoughts?

Bob: I hear you but I agree with Ed that the Board needs to be careful with this. At the end of the day, we want to be able to say that the Board relied on and acted on advice from the Board's attorney in bringing the litigation to a conclusion. We don't want to create any opportunity for the Critics to either reopen the litigation or file a new suit against the current Board. I'm sure you can understand our concerns. There's no question in my mind that we have the same goals as you. That being said, we will do everything possible to minimize the costs and time involved.

I will arrive on the Island the night of July 2<sup>nd</sup> and be staying until the 16<sup>th</sup>, so I'm available during that time frame to meet and discuss, or by telephone before.

Thanks.

**From:** Bob Wilbur [mailto:bbwilbur@broadstripe.net]  
**Sent:** Wednesday, June 25, 2014 10:09 AM  
**To:** Ed Delahanty; Kurt S. Blankenship; Suzy Palmer; chris hendrickson; Steven E Morrow; Fred Salmon; Dustin Frederick  
**Subject:** Re: A request/your thoughts?

Hi Ed,  
To flesh out a bit more my thinking in last night's email, dumbed-down by jet noise, was that rather than have our attorneys tell us what we want, it makes better sense to me to draft a declaratory that tells them what we would like to see in the way of a judgment and then have them figure out what will and won't fly, what we have missed, and how best to present it.

And I am reasonably sure the approach Chris Nye suggested would take more time, maybe considerably more, given their busy schedules and back and forth drafts of this and that and do-overs, nixes, etc. And time is money, and I have to try as best I can to hold down the now considerable costs for those who helped sponsor this effort.

So in a nutshell, while I respect both attorneys, I am concerned about delay and money with the approach you outlined, but let's do talk later today after I hear from Chris Skinner.

Cheers,  
Bob

**From:** [Ed Delahanty](#)  
**Sent:** Tuesday, June 24, 2014 10:05 PM  
**To:** [bbwilbur@broadstripe.net](mailto:bbwilbur@broadstripe.net) ; [Kurt S. Blankenship](#) ; [Suzy Palmer](#) ; [chris hendrickson](#) ; [Steven E Morrow](#) ; [Fred Salmon](#) ; [Dustin Frederick](#)  
**Subject:** RE: A request/your thoughts?

Hi Bob,

I like the positive tone of your message to the "pool advocates". Hopefully we're nearing resolution of this issue to the satisfaction of all but a few.

I spent some time talking with Chris Nye today and came to the conclusion that it is probably best for the current Board to give the two attorneys a little more time to talk things over. It may result in a quick resolution that in effect turns the TRO into a permanent order based on Judge Hancock's findings of fact and conclusions of law as stated in his ruling of December 30, 2013. Based on the advice from Chris Nye, I'd like to hold off on meeting with you for the moment. I realize that Chris Skinner won't be available until early next week, but feel it's worth the short wait to give the attorneys a chance to see if they can come up with a resolution that minimizes grounds for any future law suit based on the outcome of the current one.

If this doesn't make sense to you, please call so we can discuss further.

Kind Regards,  
Ed.

---

From: [bbwilbur@broadstripe.net](mailto:bbwilbur@broadstripe.net)

To: [kblankenship@bluewilliams.com](mailto:kblankenship@bluewilliams.com); [whshed@live.com](mailto:whshed@live.com); [suzypalmer1@me.com](mailto:suzypalmer1@me.com); [Hendrickcj@gmail.com](mailto:Hendrickcj@gmail.com); [stevem@broadstripe.net](mailto:stevem@broadstripe.net); [pheffy@aol.com](mailto:pheffy@aol.com); [dustin@local519.org](mailto:dustin@local519.org)

Subject: Re: A request/your thoughts?

Date: Tue, 24 Jun 2014 07:42:15 -0700

Thanks Kurt. FYI I sent the following out to about 40 of our pool advocates group last night (excluding Board supporters). Just want you all to know they have been updated.

+

Pool supporters,

It has been a long time and I apologize, but I have held off until now thinking things since Thanksgiving would have proceeded at a much faster pace than they have. That they have not has been highly frustrating to me. Let's place that on councils' fanny for lack of a better doormat.

But the skinny, in spite of the constant rants on Next Door, is this. No, the lawsuit is not over, as Dan Jones has claimed. Rather, the individual defendants (all the members of the prior board) have been un-sued – i.e., released so they no longer have any sway or influence on the future of the lawsuit. That leaves the Board (collectively, not individuals) as the remaining defendant.

I am hoping to negotiate a settlement of the lawsuit with the Board that will enshrine and expand on the TRO regarding the future of the pool and correct the misconceptions about how ACBC is to be governed by its governing documents. More on that will follow as developments provide clarity.

Meanwhile, we have just shy of \$7000 in the bank, largely thanks to each of you and a \$10,000 check from the ACBC insurance. I can and will provide a full accounting separately. I hope our balance is sufficient but if a negotiated settlement producing a declaratory judgment fails, all of us will need to decide if we are up to supporting going into trial mode. Please do not respond on that, but just keep it in your question box.

If any of you have questions, do feel free to phone (360-678-4850) or email.

Thanks again to each and all,

Bob

**From:** Kurt S. Blankenship  
**Sent:** Tuesday, June 24, 2014 6:29 AM  
**To:** Bob Wilbur ; Ed Delahanty ; Suzy Palmer ; Chris Hendrickson ; Steve Morrow ; Fred Salmon ; Dustin Frederick  
**Subject:** RE: A request/your thoughts?

I agree and would volunteer to be one of the Board participants, albeit by phone.

**Kurt S. Blankenship**

Partner

**BLUE WILLIAMS, L.L.P.**

ATTORNEYS & COUNSELORS AT LAW

3421 North Causeway Blvd., Suite 900  
Metairie, Louisiana 70002

Direct: (504) 830-4935

Fax: (504) 849-3028

[kblankenship@bluewilliams.com](mailto:kblankenship@bluewilliams.com)

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**From:** Bob Wilbur [<mailto:bbwilbur@broadtripe.net>]  
**Sent:** Monday, June 23, 2014 7:55 PM  
**To:** Ed Delahanty; Suzy Palmer; Chris Hendrickson; Steve Morrow; Fred Salmon; Dustin Frederick; Kurt S. Blankenship  
**Subject:** A request/your thoughts?

All,

I am increasingly concerned about the misinformation re the TRO and the now-frenzied dialog on ND about the lawsuit. Even the pool supporters are starting to get confused.

My attorney is out until June 30 and I leave June 30 for about a week, and I know Ed and Carol will be gone sometime in July, meaning schedules aren't too good.

So, I suggest we have a work session this week aimed at developing a mutually acceptable draft declaratory judgment to run past our respective attorneys, and then after tweaking and in full concurrence, to Hancock. Without concurrence I fear it is going to be very difficult to develop a robust solution to this quagmire.

I suggest a non-quorum of three Board members and I meet this week to see if we can put something viable together. The membership, if you think wise (and I do), should be informed via ND and/or the web site (probably just after the work

2/17/2015

session), with something along the following explanation:

- 1) The long delays due to attorney schedules and legal issues has prompted serious misinformation and the expansion of erroneous conclusions, the latest being that the lawsuit is over when in fact it is now down to one defendant (the current board) and the one plaintiff (i.e., moi).
- 2) Because this lawsuit has been delayed for far too long and given the judge has determined the plaintiff is likely to persevere in a trial, the Board has agreed to meet and work with the plaintiff to develop settlement conclusions consistent with Judge Hancock's findings of fact in the TRO and to then settle the lawsuit without additional strife, burdensome legal costs, and increased insurance rates.

I am really tiring of this, as I'm sure you are. It is time to put it to bed. That is, can't we get a leg up and get this thing moving across our attorneys' respective desks now, versus down the road sometime.

Cheers,

Bob

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2/17/2015

**Bob Wilbur**

**From:** "Gwyn Staton" <gwynstaton1@msn.com>  
**Date:** Tuesday, November 18, 2014 8:16 PM  
**To:** "Bob Wilbur" <bbwilbur@broadstripe.net>  
**Subject:** RE: Lawsuit alternative

you are well reasoned. The problem is no one else is as much as you and no one wants to work too much any more.

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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**From:** bbwilbur@broadstripe.net  
**To:** dustin@local519.org; gwynstaton1@msn.com; caroldchina5@yahoo.com  
**CC:** wilbur\_brenda@yahoo.com  
**Subject:** Lawsuit alternative  
**Date:** Tue, 18 Nov 2014 08:23:06 -0800

All,

I am having to consider other ways to resolve our situation based on the growing reality that we may be unable to raise enough money to continue. We had two donors at \$5000, one at \$4000, a fourth at \$2000 and a \$10,000 insurance payment, or \$26,000 of the costs to date (roughly \$33,000). And when we pay the bill for this November we will have a balance right around zero I suspect. I don't believe the big contributors are there any more. So, I am not too optimistic about raising a sufficient amount to continue forward.

So, before we spend a lot of time looking at dismantling the Corliss declarations, we should at least consider the alternative. The TRO was basically done to stop what we

believed was an illegal tactic and the judge basically agreed. So it is unlikely that we have to worry about decommissioning the pool in that manner again, at least for some time.

That in mind, instead of looking to the judge to fix our problems, we (the BOD and the members) do it ourselves. That is, retool the bylaws and maybe the AOI so to remove ambiguity and to clearly explain the rules. Who needs the judge?

Some bylaws changes needed to comply with the AOI and/or laws could be done without member approval vote, maybe even those to comply with the TRO. Others would have to be approved by the membership.

To give the opposition little time to organize, we would perhaps need to do this quickly and with as little profile as possible and then get the changes out for a vote within the minimum time frame allowed. That would likely need a few of us to do a lot of preliminary work and then come to the bylaws committee with that ready to go where we could fast-track it through and to the BOD with as little kerfuffle as possible.

Or alternatively, maybe with both sides represented by a few reasonable folks on the bylaws committee, they could develop revisions both sides would agree to sponsor and support. That would be the better way to be sure.

If we were able to get this done expeditiously, like in December, we might be able to hold onto the lawsuit with little added expense, just in case we need/want it.

**Bob Wilbur**

**From:** "Bob Wilbur" <bbwilbur@broadstripe.net>  
**Date:** Friday, November 21, 2014 10:05 PM  
**To:** "Gwyn Staton" <gwynstaton1@msn.com>  
**Cc:** "Dustin Frederick" <dustin@local519.org>  
**Subject:** Re: Wilbur v. ACBC,

No, I think the point is that the *take no position* board decision (hello Nye or de-nye) put the judge in the position of being the 3rd party in a dispute instead of the man listening and weighing the facts objectively and deciding which of two arguments sides held the most water. Why should he side one way or other since only one side was presented and the other side tried to stick the turd in his pocket. I say smart judge—not too smart Nye and board.

My take.

**From:** [Gwyn Staton](#)  
**Sent:** Friday, November 21, 2014 9:55 PM  
**To:** [Bob Wilbur](#)  
**Subject:** RE: Wilbur v. ACBC,

judge would have been fine had this been concluded a year ago!

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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**From:** bbwilbur@broadstripe.net  
**To:** gwynstaton1@msn.com  
**Subject:** Re: Wilbur v. ACBC,  
**Date:** Fri, 21 Nov 2014 21:41:58 -0800

The strategy of "no one disagree" was Ed's and Kurt's with a Nye rubber stamp good housekeeping seal all over it. So I suggest strategy came from all sides and went it went – the comfort zone. Problem is the comfort zone was not where the judge was comfortable. So I suggest the derailment was all of the



From: Dustin Frederick  
Sent: Thursday, January 16, 2014 10:10 AM  
To: 'Bob Wilbur'  
Subject: RE: Going forward with new Board

yes

From: Bob Wilbur [mailto:bbwilbur@broadstripe.net]  
Sent: Thursday, January 16, 2014 7:58 AM  
To: Carol Del; Dustin Frederick  
Subject: Re: Going forward with new Board

I am drafting and will send out for your review. Probably best, to avoid any tie-in with the

Board, if just I send?

Bob

From: Carol Del  
Sent: Wednesday, January 15, 2014 8:51 PM  
To: Dustin Frederick ; Bob Wilbur  
Subject: Re: Going forward with new Board

Good suggestion, good timing. Ed's plan was to start with the e-mail list of all the members at the meeting last week, put something on Nextdoor, and a blurb with the dues mailing.

He's still working on website, Treasurer, Agent-of -Record and broken valves today. Dustin, any suggestions on appointing an Agent?

Thanks

C

On Wednesday, January 15, 2014 7:39 PM, Dustin Frederick <dustin@local519.org> wrote: Bob and Carol—I think we should send out an email to all our pool supporters asking them to consider volunteering to be on the committees. If we follow the Judge's ruling —we are going to need to reconstitute the committees and get them to expeditiously comply with the October 2012 motion and make a proposal to the board. In other words we need to follow the process we argued for. Fortunately we will have a board that will favorably consider the committee suggestions.

From: Bob Wilbur [mailto:bbwilbur@broadstripe.net]  
Sent: Wednesday, January 15, 2014 6:18 PM  
To: Dustin Frederick; Carol Del  
Subject: Re: Going forward with new Board

Hi Carol,  
First, I don't think either of us are after heads (well maybe one or two – just kidding :).

So, yes, we want to settle, but we unfortunately cannot get any compensation unless we convince Chis Nye and Vasu that we are going full bore ahead to trial. That will be a bluff with Skinner saying we will be taking depositions and seeking all kinds of production, but the threat of the insurance having to pay additional legal fees in the process may be enough for them to agree to pay part of our legal fees and settle as the cheaper alternative.

In other words, we rattle a loud sword and hope the insurance takes it seriously enough to pay & settle. If they see through the bluff, and call us on it, well, then we would have to either forget getting any \$\$ back and settle, or decide to play hardball, though right now that does not seem to be reasonable, and would likely just settle and kiss the \$\$ away. Probably easier on Ed if he not know that now?

On a personal level, I don't care much about the \$\$ but I do care for some who dug deep to help out. If we get the \$\$ back Brenda and I will donate our part to the pool rehab.

Hang in their kiddo...Bob

From: Dustin Frederick  
Sent: Wednesday, January 15, 2014 1:17 PM  
To: Carol Del ; Bob Wilbur  
Subject: RE: Going forward with new Board

Carol—thank you for the information. I agree with the result outlined in red. The difficulty may be how to get the insurance company to pay our costs—it may take some negotiations strategy to incite them to do it. But—I totally agree with the goal outlined in red—i.e. final ruling that the pool must stay and our costs paid.

Dustin

From: Carol Del [mailto:caroldchina5@yahoo.com]  
Sent: Wednesday, January 15, 2014 12:55 PM  
To: Bob Wilbur; Dustin Frederick  
Subject: Going forward with new Board

Ed and Suzy met with their attorney, Chris Nye, by phone yesterday to discuss status of old and new members of the Board. Apparently, Chris will be in touch with Skinner and Vasu. The hope is that a final declaratory judgement can be made to settle the issue of the Board's responsibility to keep and maintain the pool. They would like to see the individual's who are no longer on the Board dropped from the suit, without further ado, cost, or threat of legal action in order to begin re-focusing on the work ahead.

Nate and I personally think that a settlement comprised of dropping the old guard from the suit, getting a final ruling from Hancock and financial settlement of our costs from the insurance company would be great. Time needs to be given right now though for the process of the transition of records from Karen Shaak to the new Secretary (Dustin). We need to get it arranged and check to see that all the pertinent, required information is there. I know Ed is not up for an unnecessary fight for unnecessary materials. He does not think there is anyone on the new board who has any personal issue with the former Board members. I am not willing to put in any funds to "go after" individuals, much as I may dislike their tactics. They are out. Lets do a good job of it and prove that most of this community can work together.

From: Gwyn Staton <gwynstaton1@msn.com>  
Sent: Friday, January 31, 2014 4:41 PM  
To: Bob Wilbur; Dustin Frederick; Carol Del  
Subject: RE: Your thoughts  
Attachments: Proposed Order.docx

order need to correct bobs font and massage some of the order, but please add bullets to incorporate  
Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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From: bbwilbur@broadstripe.net  
To: dustin@local519.org; gwynstaton1@msn.com; caroldchina5@yahoo.com  
Subject: Your thoughts  
Date: Thu, 30 Jan 2014 17:24:33 -0800

So, I'm not sure how (if) to build this into the settlement/declaratory statement, but we need something that links the pool more strongly with the AOI because, unlike the bylaws that at least now can be modified with a simple majority, the AOI requires a 2/3 majority. And although the original deeds can be very strong, they have over time been seemingly winnowed to not address the pool, albeit perhaps we should check into this further. But anyway here is a discussion draft of some language I hope would work.

Article V, number 1 of the Articles of Incorporation indicate that the purpose of Admirals Cove Beach Club is to "construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefit of the members." The club's pool is the centerpiece of the athletic and recreational facilities and the only athletic facility of appeal to and practical use by all ages, from the very young to aging seniors, and as such promotes families and community members the opportunity to share recreation and social intercourse, as provided in Article V number 2. The sole significance of the swimming pool is further reinforced by the original deeds, which speak directly of the pool, stating that ACBC "will own and maintain certain beach rights, recreational areas, swimming pool, and other tracts." It is noteworthy that no other recreational facility is specifically mentioned.

The pool, being specifically identified within the deeds and absent any other prominent recreational and athletic component as provided in Article V number 1 of the AOI, it can only be disposed of per Article V number 5, with an understanding that such action would require replacement with a similar or more valued facility as approved by the membership vote of two-thirds, as consistent with Article VII. Therefore, as the major recreational and athletic facility and only one of consequence, the pool must be maintained as required by the AOI Article

V, numbers 1 and 2, and consistent with number 8, which assigns the Club with the specific power to "levy assessment against owners of property in the Admirals Cove development and/or members of this Club on a pro rata basis for the maintenance and upkeep of this corporation's properties and enforce collection of the same." The various boards of directors over the years have varied in their fulfillment of pool maintenance needs. Because maintenance shortfalls only transfer the financial pro rata shares to future years and additively magnify that burden, it is important that the Boards stay current with maintenance requirements. The least painful way to do that is via an adequate dues structure that includes funding reserves, but when such funding mechanisms fall short, then the Board must make up for the maintenance shortfall via assessment as needed to provide for adequate maintenance (as opposed to enhancements beyond maintenance, which would require an assessment vote).

That's my best shot at this. Maybe what would follow would be some sort of summary of the TRO that would remain pertinent, and perhaps the TRO could be an addendum of some sort???

Your turns...Bob

From: Dustin Frederick  
Sent: Wednesday, February 05, 2014 9:45 PM  
To: Gwyn Staton; Bob Wilbur  
Cc: Carol Del; Nate Palmer  
Subject: RE: attys fees

All—I think you all know me well enough that I work had to find the middle round and reach a compromise whenever possible. In this instance I agree with Gwyn regarding the claim for attorney's fees and whatever strategy gives us the most leverage to get the most returned. If that means we do not dismiss them—then I vote not to dismiss them.

The intransigence and arrogance of those five people has caused all of the pool supporters tremendous expense in time , money and emotional capital. As the Judge clearly stated—they acted in violation of the bylaws, AOI and provisions of individual deeds.

As you all know I have been willing to donate money to renovate the pool—and I would be willing to donate any recovered attorney's fees—so it is not about the actual money—it is about the fact that it had to be spent/aka wasted to enforce our rights and it was because of the concerted action of those five board members.

I'm not mean spirited—so I'm not suggesting the money needs to come from the individual board members—but we should make the claim to induce the insurance company to pay. The insurance company paid 20,000 in the Roger Close settlement BTW.

I have tried to play nice for over five years and in return they tried to railroad the demolition of the pool. I have no confidence that they will change and try to work together going forward. Therefore— I'm not really worried about the healing process—because I don't believe there will be one.

Nonetheless—going forward I intend to be kind , considerate, respectful and courteous in my interactions with the five former board members and other ACBC members who don't support the mandates of the AOI and bylaws.

Notwithstanding the previous sentence—I think we should press every advantage and get the best possible settlement we can—including reimbursement of attorney's fees.

Dustin

I

From: Gwyn Staton [mailto:gwynstaton1@msn.com]  
Sent: Wednesday, February 05, 2014 7:12 PM  
To: Bob Wilbur  
Cc: Carol Del; Nate Palmer; Dustin Frederick  
Subject: attys fees

The plaintiffs owe an obligation to the contributors to get what they are legally entitled to in

recovery as promised from the beginning, so you can't just dismiss the claim for fees. It costs nothing to ask. We then see what the insurance company will do and go from there. If they say we'll pay half, then the plaintiffs' obligation is to seek the contributor's input then as to how much to push for how much more in cost. I can advise all on the likelihood of success and the costs versus benefit analysis. To go to trial will cost much more than 20,000 so it behooves the defendants to pay, and keeping the individual defendants in there helps to get that accomplished so they do not have to pay any judgment. I feel strongly enough about this to intervene in the case to make sure it is done correctly.

Gwyn Staton  
7506 34th Ave NW  
Seattle, Wa. 98117  
206-784-6044

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From: bbwilbur@broadstripe.net  
To: gwynstaton1@msn.com  
CC: caroldchina5@yahoo.com; NatePalmer36@gmail.com; dustin@local519.org  
Subject: Re: Enhance versus maintain and repair  
Date: Wed, 5 Feb 2014 17:26:58 -0800  
Gwyn, I appreciate you enthusiastic concerns and dedication to this.

As I see it past changes in the bylaws are not needed or relevant because if we get the declaratory as drafted approved by board and judge, it is a whole new ball game with a new set of rules from above. Hence we make whatever changes are apropos to the judge's order, regardless of whatever the past sets of bylaws said or now say.

But FYI I've attached the changes that Dan effected, and \$4000 was actually in the prior bylaws. So yes, if we get the declaratory, as drafted, from the judge that 4k would be a required fix, and the plain and simple reason we are changing the bylaws is so they comport with the order.

And I still don't see how more documents, missing (hence gone into the ethereal) or not, is going to help us other than to pull on the exboard's chain and keep the brouhaha enflamed and dangerous. So it follows I see no advantage to not releasing the ex-board unless there are other credible reasons you have not yet advanced.

We need to wrap this up quickly please,  
Bob

From: Gwyn Staton

Sent: Wednesday, February 05, 2014 4:06 PM

To: Bob Wilbur

Cc: Dustin Frederick ; Carol Del ; Gwyn Staton ; natepalmer36@gmail.com ; Fred Salmon ; chris

hendrickson ; Kurt S. Blankenship ; whshed@live.com ; Elsa Palmer

Subject: Enhance versus maintain and repair

It has always been my position (supported by our governing documents, and Dustin and Carol

will attest I have said this all along for the past 4 years), we are required to maintain our

facilities. The Bylaws said "unusual" expenses required a vote and approval.

Maintenance and

repair is NOT unusual. Nonetheless, the prior board changed that Bylaw so it needs to return to

the prior language or we need to draft some clearer language because maintenance and repair

have always been required. Somewhere along the line, the Dan and "cheap" faction decided all

expenses over \$4000 must be community approved even though that is NOT what the Bylaws stated. This permitted them to thwart repairs and upgrades to our community

facilities. This is

incorrect and thwarts the ability of the Board to function and discharge its fiduciary duties to

maintain our community assets. The judge recognized this in his ruling (vindication finally).

It is critical again to get the docs requested from the past Board, particularly the expenses and

documents that have somehow "gone missing", and the thoughts and reasons and work-ups for

the Bylaw changes because when we need to change the Bylaws back and/or undo their mistaken and misrepresented changes (such as this one and the two Board members on each

committee), we will need the documents they possess and the notes and reports of the committees, and Board members (Karen) etc, to demonstrate their mistakes and why we are

yet again changing the Bylaws. This is critical to have moving forward to eliminate the errors

and misrepresentations and the poor drafting in the future. Thus we cannot dismiss the old

Board until this is done. Plain and simple. To do otherwise is shortsighted and will damage the

community and our ability to move forward and fix what must be fixed.

Call me if you have questions please.

Gwyn Staton

7506 34th Ave NW

Seattle, Wa. 98117

206-784-6044

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# EXHIBIT 5



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**From:** Ed Delahanty <whshed@live.com>  
**Sent:** Monday, February 01, 2016 6:09 PM  
**To:** Dennis Egan; Steve Morrow ACBC; Kurt S. Blankenship; Greg Behan; Michael Tenore; Suzy Palmer  
**Subject:** RE: Good Standing Status

Hi All,

My thoughts below in **bold**.

If we're going to send a post card we need to do it quickly I'd say by Wednesday or forget about it and proceed with sending the ballots out to those in good standing at a time shortly after Wednesday that the majority of us agree on.

Ed.

---

To: stevem@broadstripe.net; kblankenship@bluewilliams.com; whshed@live.com; gnbehan@gmail.com; michaeltenore1@gmail.com; suzypalmer1@me.com  
From: dennis\_egan@hotmail.com  
Subject: RE: Good Standing Status  
Date: Mon, 1 Feb 2016 14:04:38 -0800

I believe getting the maximum number members to vote on any ballot is a good goal. Had the ballot for the assessment gone out prior to the 2016 dues becoming due, we would have achieved that goal. As discussed at last Thursday's meeting, delaying the assessment vote going out later than this Friday will, if passed, cause the start date of construction to be moved to the spring of 2017. **Not if we send a post card out this week - the earlier the better - setting Feb 15 as the last day dues can be paid or a plan agreed to for members to be GS for the Pool Assessment ballot. We should be able to get the ballot out by Feb 19 which means the meeting to announce the results - 30 days later - would be at our Board meeting on March 19. Assessment billing could go out immediately after if approved with first payments due in April. We should have enough to start in September since contractors won't get paid in full until completion of job. The only hold up would be if too many choose other than one time or six month plans.** That may cause the costs to increase due to inflation. If my numbers are correct, we now have 375 in good standing, 222 not in good standing, 80 of those not in good standing will not likely become current any time soon. So how long do we give the remaining 142? **As above until Feb 15.** I agree that is a big number, but we have told the membership that we intend to go out for a vote in early Feb and if passed and enough monies collected, will start construction in Sept 2016.

Sent from [Mail](#) for Windows 10

**From:** [Steve Morrow](#)  
**Sent:** Monday, February 1, 2016 9:59 AM  
**To:** ['Kurt S. Blankenship'](#); ['Dennis Egan'](#); ['Ed Delahanty'](#); ['Greg Behan'](#); [michaeltenore1@gmail.com](#); ['Suzy Palmer'](#)  
**Subject:** RE: Good Standing Status

I believe my statistics were misread.

**We have over 60% in good standing.** (the 40% were not in good standing).

Another 12 members(2%) paid since my last email and payments continue to trickle in.

It took most of the year last year for us to get to the high percentage paid up.

If we send out postcards, **how long do we wait** before sending out our ballots?

We could also send out Feb 1 statements to all who are not in good standing.

If we make a note on the statement about their not being able to vote unless in good standing, we probably need to wait 30 days to allow time for payments before sending the ballot. The statements wouldn't go out until the end of the week, so the ballot would be delayed into early march and the six month collection period prior to starting the project would be pushed into November.

Steve Morrow  
206.718.0887 cellphone  
360.678.8765 home

---

**From:** Kurt S. Blankenship [mailto:kblankenship@bluewilliams.com]  
**Sent:** Monday, February 01, 2016 7:31 AM  
**To:** Dennis Egan; Ed Delahanty; Greg Behan; michaeltenore1@gmail.com; Steve Morrow; Suzy Palmer  
**Subject:** FW: Good Standing Status

I agree with the idea of sending out the postcards. I'm puzzled and concerned about the drastic drop of in dues payments from last year to this. I haven't noticed any chatter on ND about it. Any thoughts about what's going on? Obviously, a participation rate of only 40% decreases the amount we can readily raise for the pool without a laborious process of filing more claims in small claims court.

## **Kurt S. Blankenship**

**Partner**

**BLUE WILLIAMS. L.L.P.**  
ATTORNEYS & COUNSELORS AT LAW

3421 North Causeway Blvd., Suite 900  
Metairie, Louisiana 70002

Direct: (504) 830-4935

Fax: (504) 849-3028

[kblankenship@bluewilliams.com](mailto:kblankenship@bluewilliams.com)

[Download vCard](#)

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**From:** Ed Delahanty [mailto:whshed@live.com]  
**Sent:** Sunday, January 31, 2016 7:24 PM  
**To:** Steve Morrow ACBC; Dennis Egan; Greg Behan; Kurt S. Blankenship; Michael Tenore; Suzy Palmer  
**Subject:** RE: Good Standing Status

Hi All,

For our assessment ballot to be truly meaningful I feel we need to have more than 40% of our members able to vote.

I feel we need to send a reminder out to all Not in Good Standing (NGS) encouraging them to pay up - remembering that we had around 75% paid up for 2015 - with many paying well after the due date.

I recommend we send a post card out to all NGS explaining that an assessment ballot for the pool

refurbishment is coming soon.

My draft:

Dear ACBC Member:

This is just a reminder if you're not current in your ACBC accounts.

A ballot for work to bring our Club's pool to current standards will be coming out soon.

Our Bylaws require members to be current in their accounts be in good standing to be eligible to vote.

Out of consideration for those who've yet to take care of their ACBC dues payments,

the final due date has been extended from January 25 to February 15th.

Member responses received later than that will not be in good standing for the pool assessment ballot.

Please bring your dues current or make arrangements for a payment plan so you will be eligible to vote on the pool assessment.

We're looking forward to your participation in the balloting!

Thanks,

Your ACBC Board

I started out a bit firmer but had second thoughts and made the note kinder and gentler.

Let me know what you think.

Ed.

---

From: [stevem@broadstripe.net](mailto:stevem@broadstripe.net)

To: [dennis\\_egan@hotmail.com](mailto:dennis_egan@hotmail.com); [whshed@live.com](mailto:whshed@live.com); [gnbehan@gmail.com](mailto:gnbehan@gmail.com); [kblankenship@bluewilliams.com](mailto:kblankenship@bluewilliams.com); [michaeltenore1@gmail.com](mailto:michaeltenore1@gmail.com); [suzypalmer1@me.com](mailto:suzypalmer1@me.com)

Subject: Good Standing Status

Date: Fri, 29 Jan 2016 18:40:47 -0800

As of today (yesterday's mail pickup), here is a close count of where we stand:

Grand Total Owed to ACBC	85,181.65
Lots	697
Non-Perc	100
Owners	597
Good Standing	351
Not Good Standing	234
Payment Plan??	12

I see a couple typos in the data that may affect the count by 1 or 2, but this is close. So if we go out with a ballot now, 363 ballots would be required. Nearly 40% of our members are not in good standing and would be unable to vote.

We'll keep accepting payments until time to print the labels for the ballots.

Steve Morrow

206.718.0887 cellphone

360.678.8765 home

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