

IN RE: PALMER TRINITY PRIVATE SCHOOL VS.
VILLAGE OF PALMETTO BAY

COPY

CASE NO: 08-28977 CA 30
10-34016 CA 20
LOWER TRIBUNAL NO: 10-259

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9705 Hibiscus Street
Palmetto Bay, Florida,
Wednesday, 6:35 p.m.,
September 19, 2012.

APPEARANCES:

Ron Williams, Village Manager
Eve Boutsis, Village Attorney
Shelley Stanczyk, Mayor
Howard Tendrich, Council Member
Brian Pariser, Vice Mayor
Joan Lindsay, Council Member
Patrick Fiore, Council Member

Also Present: Jeffrey Hochman, Esq.
Johnson & Anselmo Law Firm

1 MS. BOUTSIS: Good even everyone, it's
2 6:35. As the Village Attorney I have
3 requested that the Mayor and Village Council
4 meet in the defense of certain legal
5 actions. We have Palmer Trinity Private
6 School versus the Village of Palmetto Bay,
7 Circuit Court case Number 08-28977 CA 30,
8 Palmer Trinity versus Village of Palmetto
9 Bay, case number 10-34016 CA 20. And the
10 Third District Court of Appeals Case number
11 3D12-190 under the lower tribunal number
12 10-259.

13 I am seeking advise from the Village
14 Council regarding strategy or settlement.

15 It's now Wednesday, September 19th of
16 2012 and I will have everybody go around the
17 room and introduce themselves. Please
18 remember that a certified court reporter
19 shall record the time and termination of the
20 session and all the discussions and
21 proceedings that occur, the names of all
22 persons present and the names of all persons
23 speaking.

24 The transcript shall be made a part of
25 the public record upon the conclusion of the

1 litigation. And as we know, the court
2 reporter can only take down one person at a
3 time so let's try to make sure that one
4 person is only speaking at a time.

5 I am Eve Boutsis, the Village Attorney.

6 MS. STANCZYK: Shelley Stanczyk, Mayor
7 of Palmetto Bay.

8 MR. HOCHMAN: Jeff Hochman, special
9 counsel for the Village in this matter.

10 MR. TENDRICH: Howard Tendrich,
11 Councilman, Palmetto Bay District Two.

12 MR. FIORE: Patrick Fiore, Councilman,
13 District One.

14 MR. WILLIAM: Ron Williams, Village
15 Manager.

16 MR. PARISER: Brian Pariser, Vice
17 Mayor.

18 MS. LINDSAY: Joan Lindsay,
19 Councilwoman, District Three.

20 MS. BOUTSIS: Thank you everyone, as
21 you know one of the reasons that I had
22 particularly asked for this session today is
23 to talk about further details in what
24 settlement offer, if any, we would like to
25 present including any money on the table if

1 there were to be a settlement. That's one
2 of the requests that I have gotten from
3 Counsel for Palmer Trinity.

4 I have asked Mr. Hochman here as well,
5 because not only is he involved in the 2008
6 civil action, but he is our counsel through
7 the Legal Cities, and I have reached out to
8 Mr. Hochman of the Legal Cities.

9 As you may know, we basically have a
10 five million dollar policy with no
11 deductible and I wanted to know what if any
12 funds would be available towards settlement,
13 and perhaps I will let Mr. Hochman take over
14 that portion.

15 MR. HOCHMAN: Yes, there is a number of
16 pending cases right now. My office
17 represents you on the one case involving the
18 claim for damages right now. That involves
19 a claim, what they call a Jennings Act
20 Claim. It steps back to the effort to
21 obtain an approval back in 2008 to change
22 the zoning of the property, and that was
23 denied before the quasi tribunal, the quasi
24 judicial tribunal, it went up on various
25 levels and then got reversed.

1 The typical law on that should be that
2 the remedy is simply reconsideration and
3 that's what happened, there is a
4 reconsideration the zoning occurred.

5 The claim that we are handling
6 basically deals with whether that's the only
7 remedy available. The plaintiff's are
8 attempting to establish new law in the State
9 of Florida and are attempting to establish
10 an idea that there is also, in addition to
11 the remedy of reconsideration, the remedy of
12 the damages.

13 Right now there is no law that really
14 supports that. In fact, most of the law is
15 to the contrary.

16 Our motion to dismiss which was filed
17 in 2011 was just recently ruled upon by
18 Judge Lungert. He determined, I'll let you
19 know, so he denied our motion to dismiss, he
20 has invited us to continue with discovery
21 and then he will reconsider the issue on a
22 motion for summary judgment. That involves
23 more litigation, the deposition of more
24 people, more discovery.

25 So the Florida Legal Cities at this

1 point analyses the case as something that's
2 not likely to result in a proper claim for
3 damages, but they are still willing to
4 defend you every step of the way.

5 In addition to that there is other
6 issues, there is the public records request
7 claim, there is various tort claims,
8 although which are really besides the point.
9 Palmer Trinity what they really want is they
10 want to say that the delay caused is
11 stemming from the October 2008 zoning denial
12 is a proper source for damages in delay of
13 the development for the school and the
14 increase in their enrollment.

15 Florida Legal Cities says if you guys
16 want to settle the case with respect to
17 other issues, the non Florida Legal Cities
18 case, claims and issues and cases involving
19 injunctive relief and declaratory relief and
20 things like that, they will look at whatever
21 comes down and they will offer some money if
22 it seems reasonable, but they are not going
23 to be the lead in terms of trying to resolve
24 all claims because they are really covering
25 one claim, a couple of claims, but they

1 don't believe that those claims have a very
2 significant chance of success at this point.

3 MR. PARISER: The other case, they are
4 not seeking any damages, they are seeking
5 what?

6 MR. HOCHMAN: Declaratory relief.

7 MS. BOUTSIS: Constitutionality of our
8 procedures and whether, I believe whether
9 our process for a private schools is
10 different from public school and whether
11 that's constitutional as well.

12 MR. PARISER: If they win that, what
13 would the remedy be?

14 MR. HOCHMAN: The remedy would be that
15 your ordinance would be invalid, some of the
16 decisions that have been made in the past
17 could be invalidated as well.

18 The way they pled the case, and it's a
19 very long complicated complaint, it's not
20 exactly certain what remedy they want.

21 MR. PARISER: Is there an attorney's
22 fee award?

23 MR. HOCHMAN: For that kind of claim
24 under the constitutional there could
25 possibly be an award of attorney's fees

1 under 42 USC 1988. It's a fee shifter for
2 constitutional violation.

3 MS. BOUTSIS: Although they took out
4 the federal claims from the 2010 case.

5 MR. PARISER: That's not what we are
6 here on today?

7 MS. BOUTSIS: No, the 2008. They
8 originally started out with the claim for
9 Federal -- that could have been in federal
10 court, that's the first time you all met
11 Mr. Hochman. He took that, he said okay,
12 here is a federal claim here, this case is
13 for Federal Court, and Stan Price withdrew
14 that claim and it went back to State Court
15 and then the damages portion I guess was out
16 of the litigation and the League no longer
17 had Mr. Hochman representing us.

18 MR. PARISER: The one that you are not
19 here on, worse case scenario, if they were
20 to win what constitutional claim, any
21 attorney's fees that flow from that would
22 not be covered under our League policy?

23 MR. HOCHMAN: With respect to the case
24 that I am not here on, that has a fee
25 shifter that could affect the Village in the

1 event that the plaintiff's in that matter
2 prevail on their claim for declaratory
3 relief.

4 MR. PARISER: That's not covered under
5 our policy?

6 MR. HOCHMAN: I would have to defer to
7 coverage counsel. Again, I represent you in
8 a litigation. Generally speaking, insurance
9 policies like that would only provide a
10 benefit if the claim itself were covered and
11 then the ancillary part of the attorney fee
12 provision would also be covered. But if the
13 claim itself is not covered then the
14 potential fee award would not be.

15 In terms of how the particular coverage
16 agreement provides for that claim, I really
17 cannot provide you any information.

18 MS. STANCZYK: In terms of the
19 constitutionality, though, we are modeled on
20 the state law?

21 MS. BOUTSIS: For the Jennings claim
22 yes, we were modeled after the statute. On
23 the public school process versus the private
24 school process we were using Dade County
25 code.

1 MS. STANCZYK: SO if they want to
2 invalidate our constitutionality on what we
3 have modeled on State, would the State pitch
4 in since they are trying to overturn their
5 own law?

6 MS. BOUTSIS: Put it this way, we put
7 the Attorney General on notice and they have
8 not responded to us once.

9 MS. STANCZYK: It's a thought.

10 MS. BOUTSIS: It's an optional
11 provision, it says you can do this, you are
12 not required to do this.

13 The two things that I want to bring up
14 in relation to, if we are going to be
15 offering any money. My understanding of the
16 League is basically, if any funds would be
17 available it would probably be the cost of
18 the continuing litigation through summary
19 judgment, which could be about \$50,000 out
20 of the five million dollar policy.

21 If The Village itself from its reserves
22 or elsewhere would like to bring to the pot,
23 if we want to make a financial offer, and
24 that's sort of the guidance that I am
25 seeking.

1 In addition to that, I had a meeting
2 with Mr. Price, Ms. Meta, Mr. Kalbac,
3 Mr. Chao who is their property manager and
4 our zoning staff yesterday to go over the
5 enacted resolution relating to the site plan
6 and try to make sure that things go
7 smoothly, that they comply with the
8 resolution and the conditions.

9 MR. WILLIAMS: To start considering
10 permit applications because all of that had
11 been on hold as well.

12 MS. BOUTSIS: The reason that I am
13 raising that discussion today is that during
14 that meeting Mr. Price said, can you talk to
15 your Council about perhaps this being part
16 of the settlement. And let me hand out to
17 you one of the exhibits from the resolution
18 to explain what he is talking about.

19 MS. LINDSAY: This is very hard to
20 read.

21 MS. BOUTSIS: Sorry, this is the
22 version that I have.

23 This is Exhibit C to the resolution.
24 And this was the schedule that was attached
25 for the number of students per year. And

1 basically the idea was when we heard the
2 item as a zoning item for the site plan
3 approval, it was heard in May of 2010, the
4 concept was year one, 2010/2011, they can
5 increase by 20 students. This was the
6 exhibit that was adopted and approved by the
7 Council.

8 And I know that we modified the
9 resolution and I have the entire resolution
10 here. We basically said all dates shift
11 based on the new approval date of this year,
12 2012, and that meant that 2010/2011 became
13 2012/2013, if you follow, because two years
14 have lapsed.

15 Upon the advice of their counsel,
16 however, they believe that they are in
17 2012/2013 of an existing schedule, which
18 means that they would be entitled to
19 basically 60 more kids.

20 The reason that he is raising this now
21 is -- they don't have 60 more kids, I want
22 you to understand that. Under our theory
23 they will be entitled to 20 kids, they have
24 21 children, extra. So they are not in
25 compliance with what we understand this

1 schedule to be by one child.

2 MS. STANCZYK: You are saying how many
3 do they have?

4 MS. BOUTSIS: They have 21 extra kids.

5 MS. STANCZYK: What number is that?

6 MS. BOUTSIS: 61. And they are
7 supposed to be at 60.

8 There were some arguments made, but
9 ultimately Mr. Price and Ms. Meta said look,
10 we are not trying to be obstructionist, we
11 gave legal advice of what we understood to
12 our client and our client acted according to
13 our advice. We are not trying to flip our
14 noses at the Village or anything else, how
15 about you talk to your client about this
16 proposal. It doesn't have to say 2012/2013,
17 but perhaps to just let the one kid slide or
18 accept one of these other years and that
19 would also decrease your damages in any
20 claim in the civil suit, because you know
21 the element of their damages is that you
22 delayed them two years, so they wouldn't
23 have two years of children. But if we
24 accept that we are now at 2011/2012 under
25 this thing, or 2012/2013 which they don't

1 have the number of students for, then we can
2 negotiate that element of damages in the
3 civil action, it would no longer be a damage
4 because they would have that opportunity for
5 that number of children and they could not
6 claim it as damages.

7 So I told them that I certainly didn't
8 have that authority and that was not my
9 understanding of this document, but I would
10 present it to you because whether they think
11 their claim is strong or not it does limit
12 your exposure.

13 And if you wanted to go to what they
14 have here at 2011/2012, it's 680 that they
15 could technically have, but they only have
16 661 and it's already the school year so the
17 chances of them getting more kids is very
18 limited, but it limits your exposure to any
19 kind of threat of damages under that
20 portion, if you follow me. Or if you want
21 to give them where you think they are
22 2012/2013, the finances of the community are
23 not good enough that they can get that
24 number of kids.

25 So I was asked to talk to you about

1 that and they have ten days to appeal left
2 from our last decision, and if we don't come
3 to an agreement they will be appealing to
4 get a ruling on the one child. That's the
5 second item that I wanted to talk to you
6 about.

7 And it's open for discussion.

8 MR. PARISER: They want a waiver on one
9 child?

10 MS. STANCZYK: No, they want a
11 category.

12 MS. BOUTSIS: There are several
13 options. You can give them the waiver on
14 the one child. You can go to the year two
15 category and say it's, that meaning
16 2011/2012 category that we have reached that
17 level and that would put down their
18 theoretical ability to raise damages as to
19 those 40 kids.

20 MR. PARISER: That's if they are
21 entitled to damages?

22 MS. BOUTSIS: Theoretically.

23 They are saying you prohibited them for
24 two years from getting students. By
25 agreeing to this and coming to an agreement

1 with them on this that element of damages
2 would go away.

3 MR. PARISER: For the one kid?

4 MR. HOCHMAN: You are altering a
5 category, so they are topped out of their
6 category they have one extra, you are moving
7 the category and they have a lot of cushion
8 left in the next category and therefore
9 there would not be a dispute.

10 MR. PARISER: I see, basically they are
11 saying move this up to 2012/2013 ---

12 MS. BOUTSIS: Or 2011/2012, they are
13 willing to accept either one.

14 MR. PARISER: That's if there is a
15 settlement.

16 MR. HOCHMAN: I think what Eve is
17 saying is that's a separate and independent
18 component. So you could accommodate on this
19 request and not engage in a global
20 settlement of all claims.

21 MS. BOUTSIS: Thank you, that was very
22 well put.

23 Additionally, Sean Cleary who was in
24 the room also offered, there had been some
25 discussion during the public meeting that in

1 the middle of 2015/2016 had 100 kids and if
2 you wanted that disbursed more he would be
3 willing to work on that disbursement a
4 little more to make it 50 and then later add
5 each year a little bit.

6 MR. PARISER: I am assuming without any
7 new buildings they can accommodate what they
8 are asking?

9 MS. BOUTSIS: Yes. They told me they
10 can currently with their site as is
11 accommodate 700 children. But they only got
12 21 new out of all of their efforts.

13 MR. HOCHMAN: The economic reality of
14 the situation has limited their damages as a
15 natural occurrence in a way. Because one of
16 their claims in the lawsuit was that by
17 delaying their economic productivity it has
18 been adversely affected.

19 One of the counter arguments is going
20 to be, the reason that you didn't have all
21 of those students is because the students
22 didn't want to go to your school because
23 it's expensive and the economy is not doing
24 that well. And their numbers here show that
25 is true, if it had gone forward they

1 wouldn't be able to -- people, their school
2 with 60 more students they only have 21
3 right now.

4 MR. PARISER: Money wise that we have
5 been discussing, that's why we have
6 insurance, and what I am hearing from
7 Mr. Hochman and from his carrier on top is
8 they don't think that Palmer Trinity's claim
9 is a very viable claim?

10 MS. BOUTSIS: On the one action that
11 they are representing us on that's the
12 answer, yes.

13 MR. WILLIAMS: That's the reason they
14 are at 50,000.

15 MR. HOCHMAN: Just so you understand,
16 the primary arguments are that the Village
17 improperly categorized a private school as
18 compared to a public school and treated the
19 private school differently. The law as a
20 constitutional matter allows municipalities
21 to treat different applicants different if
22 there is a rational basis for doing so.

23 We believe, and I think most people
24 would believe that there is a rational basis
25 to treat a private school that's run like a

1 business differently than a public school
2 that's run like a public organization that
3 are subject to the Sunshine Laws, they are
4 subject to all different kinds of
5 regulations than a normal private
6 organization is.

7 As a result of that rational
8 distinction between a public organization
9 and private organization the Florida Legal
10 Cities that claim is not a very viable claim
11 as a matter of the federal and state law as
12 a violation of equal protection. That's one
13 of the claims they have.

14 Another claim that they have is that
15 there is a separate remedy, what they call
16 the Jennings claim, that once you improperly
17 deny a request for a land use regulation
18 modification, in that case it was a zoning
19 and later they asked you to increase a
20 number of enrollment slots. The question
21 is, if you get that wrong at the quasi
22 judicial level and you go on appeal and you
23 say, oh, you made a mistake go back and do
24 it again, is there a separate remedy of
25 damages. And right now there is no law to

1 support their position and Palmer Trinity is
2 taking the argument to the Court that we
3 should be entitled to this new remedy even
4 though there is no law to support us. On
5 this particular area of the law we like to
6 make law.

7 Because essentially those two issues,
8 the way that we have analyzed the case is,
9 we suggested that it does not look like they
10 have a very clear chance of succeeding, and
11 therefore we think that we should defend the
12 case.

13 Just because lawyers come together and
14 agree that it looks like their chances are
15 dim does not mean that the Village is not
16 exposed at all to any potential liability.

17 MR. PARISER: I understand that. I
18 mean, the carrier has been put on notice for
19 demand of the policy limits, and been put on
20 notice that we are claiming X million
21 dollars worth of damages over and above and
22 we are being told by the carrier counsel or
23 carrier that that doesn't have a big viable
24 possibility when I hear \$50,000 being
25 offered.

1 And I hear carrier counsel and carrier,
2 and if they know about the exposure and they
3 chose to offer something minimal, that's
4 carrier's decision.

5 MR. HOCHMAN: That's correct. But
6 remember that is with respect to the claims
7 that the carrier is exposed to which is
8 certain claims for damages. There are many
9 other things that are happening in the
10 pending litigation that do not involve just
11 those claims. There is issues about the
12 viability of your ordinances, there is also
13 a potential exposure to attorneys fees and
14 costs.

15 Yes, so the League has looked at it and
16 said with respect to the number of items
17 that are on our plate, they have analyzed it
18 a certain way. I think the reason Eve is
19 here is because the Village's plate is
20 bigger than the plate that's being analyzed
21 by the Florida Legal Cities, and what's
22 happened is the Plaintiff's have come to the
23 table and said, you want to try and resolve
24 and maybe we can work out a global deal.

25 And as far as the global deal, the

1 Florida Legal Cities has said, we are going
2 to have to pay attorneys fees to get to the
3 summary judgment portion of this case. If
4 the Village is concerned about, number one
5 resolving litigation, even frivolous
6 litigation, if you want to buy your piece
7 and move on and potentially have a
8 relationship with Palmer Trinity that is
9 looking forward rather than looking back,
10 the League is saying they will not get in
11 the way of that and they will participate in
12 it. But obviously if Palmer Trinity wants
13 to settle the case there has to be some sort
14 of meeting of the minds between Palmer
15 Trinity and the Village and the League would
16 participate once that meeting of the minds
17 occurs.

18 MS. BOUTSIS: And don't forget if the
19 claim covered by the League goes away and
20 the rest remain, they are still going to be
21 expenses for litigation thereafter for an
22 attorney, whether it's me or Jeff continuing
23 it without League coverage or whatever, you
24 are still going to have those expenses going
25 on.

1 Additionally, one of the reasons we
2 were talking about a settlement was trying
3 to get a global settlement not just on those
4 two cases but perhaps of the attorney's fees
5 motions and cost motions in the two appeals.

6 I guess this is a great day to have an
7 attorney/client session because I did
8 indicate to you all that there was a ruling
9 denied, a motion for attorney's fees at the
10 Third District which the rehearing was
11 granted, but there is still the pending
12 motion before the Eleventh Circuit as to
13 attorney's fees and costs before that Court.
14 And that case went on for a year and-a-half,
15 almost two years. So there is quite a bit
16 of attorney's fees and costs to the Village
17 that rests there. So you have those fees.

18 MR. PARISER: What I am having
19 difficulty understanding is what the League,
20 the carrier thinks their maximum exposure is
21 on whatever counts versus us.

22 I mean, I don't want to use Village
23 money until I know what the maximum exposure
24 is in my mind, what the carrier's exposure
25 is.

1 If we are talking theoretically
2 \$300,000 in attorney's fees that we may be
3 on the hook for, versus carrier coverage for
4 their damage claim for us I mean, to 13
5 million dollars, and they only want to pay
6 \$50,000, it's the tail wagging the dog.

7 I understand certain counts you believe
8 you are obligated to defend and I am hearing
9 that the claiming delayed damages -- are you
10 covering any of those counts where they are
11 claiming delayed damages for their
12 13-million dollar claim?

13 MR. HOCHMAN: The way it works is, with
14 respect to the lawsuit that I am hear on
15 there are covered claims and claims that are
16 not covered. I defend every claim.

17 MR. PARISER: That I understand, it's
18 intertwined. Push comes to shove, worse
19 case scenario, we lose everything, they hit
20 a home run, what's the exposure for our
21 insurance policy, is it part of the
22 13-million or just for attorney's fees?

23 In my mind if there is a possibility
24 that the insurance company is on the hook
25 for any part of that 13 million dollars or

1 whatever they are alleging, if there is
2 going to be settlement, I'd rather use
3 insurance money than Village money.

4 And I know that sometimes there is a
5 dual dynamic between carrier and client.

6 MR. HOCHMAN: Right, but there is
7 multiple counts pending. My point is that
8 it's possible that for example, my office
9 could prevail on behalf of the Village on
10 all of the damages claim, so you would win.
11 You would loose however, theoretically, on
12 some of the claims for non-damages claims.
13 The invalidation of your ordinance, a
14 theoretical claim for ---

15 MR. PARISER: But out-of-pocket.

16 MR. HOCHMAN: Another question would be
17 what could the Plaintiff's establish was the
18 attorney's fees and costs in connection with
19 prosecuting those prevailing claims.

20 MR. PARISER: Right, but out-of-pocket,
21 if you were great and you were terrific
22 what's our exposure out-of-pocket for the
23 remaining?

24 MR. HOCHMAN: It would be whatever
25 their attorney's fees and costs would be.

1 And for example, it would depend upon
2 what rate they are charging. I am sure they
3 will say they are charging between 300 and
4 \$600 an hour. There has been, as you know,
5 quite a bit of litigation. Our motion to
6 dismiss was filed in October of 2011. We
7 then had many depositions, we had lots of
8 discovery and the Judge did not enter an
9 order on that motion until August of 2012,
10 almost ten months later.

11 So I know that their attorney's fees
12 and costs are very high. And so in terms of
13 dollar exposure, quite frankly, I haven't
14 seen what their fee claim is, but I know
15 they are going to be claiming hundreds of
16 thousand dollars in fees.

17 MR. WILLIAMS: And Eve wrote a very
18 detailed letter to the League talking about
19 approximately \$200,000 to see if there might
20 be consideration in support of the \$200,000
21 level. I am told that that consideration
22 sort of rested in the \$50,000 range.

23 Is that accurate?

24 MR. HOCHMAN: Yes. Remember, the
25 lawsuit that we are defending right now is

1 still in the pleadings stage. So although
2 we filed a motion in 2011, Palmer Trinity
3 has requested a reconsideration of the
4 Court's order entered in August. So we have
5 not yet filed an answer and defenses in
6 response to the complaint. Usually that's
7 the very first two documents, the complaint
8 and answer that start the litigation.

9 MR. PARISER: So they have been
10 dragging it out and adding stuff and I
11 understand that.

12 MR. HOCHMAN: Correct. So in terms of
13 the dollar amount that's being offered, you
14 have to take into consideration where we are
15 in the lawsuit, what's been alleged so far
16 and what's probably a covered claim and a
17 calculation of what is the appropriate
18 strategy for defending a claim like this.
19 And Eve and I spoke with the Florida Legal
20 Cities and they said this is what we think
21 is appropriate at this point and we are
22 willing to participate if the Village feels
23 like they have some exposure, or if they
24 don't feel like they have exposure. But
25 nonetheless, lots of people settle lawsuits

1 that are totally frivolous and the reason
2 they settle those lawsuits that are totally
3 frivolous is because paying the lawyers is a
4 waste of money, and the idea of looking
5 ahead is sometimes better and more
6 productive than looking back.

7 MR. TENDRICH: Are you saying that if
8 we were to grant them the one extra student
9 and \$50,000 ---

10 MR. BOUTSIS: Forget about the one
11 extra student, that's a separate side deal.

12 MR. TENDRICH: Okay. And you are
13 saying a global settlement, that means that
14 everything is all put to bed?

15 MR. HOCHMAN: Yes. Including there is
16 a public records claim in this lawsuit which
17 is not a covered claim. The work involved
18 in that particular claim, for example, is
19 thousands of documents associated with the
20 2008 quai si judicial hearing.

21 Is it possible that there is a document
22 that didn't get disclosed? At this point it
23 does not look like that occurred, but
24 certainly when you deal with that volume of
25 documents over that period of time it's

1 possible they can prevail.

2 MR. TENDRICH: And also the time of an
3 attorney looking over those documents would
4 add up to quite a few dollars.

5 MR. HOCHMAN: Of course. Then the
6 issue then comes down to -- really the
7 political decision in some ways, what do you
8 want to do with Palmer Trinity, do you want
9 to try and pivot from the relationship that
10 you have with them now to a different
11 relationship or do you not want to make that
12 decision.

13 MR. TENDRICH: Personally I would like
14 to have a settlement so that we can go back
15 to being the way it was and try to be
16 friends and relaxed and more congenial. And
17 I feel that personally if we could settle
18 for \$50,000 and it's a global settlement,
19 the way that I understand a global
20 settlement, I think it's a no-brainer.

21 MR. HOCHMAN: The next question would
22 be, let's say it wasn't \$50,000, let's say
23 Palmer Trinity said, we will settle but it
24 will be five hundred thousand, or two
25 hundred thousand.

1 Is there a number that you would feel
2 comfortable with in terms of something above
3 \$50,000 but below 12-million which is an
4 appropriate number?

5 And that's what I am trying to get a
6 consensus for. And it may be the answer is
7 no, I am willing to allow the Florida Legal
8 Cities to put up some money and in my
9 judgment the Village should pay zero more,
10 we'll accommodate Palmer Trinity on this
11 paperwork issue the number of students but
12 that's your comfort level.

13 Our job here is not to vote, and your
14 job here is not to stick to a position, it's
15 simply for me to get a consensus so if there
16 is going to be some sort of continuation
17 dialogue with Palmer Trinity I can say to
18 them, give me an actual settlement demand
19 and I'll bring it back for either approval
20 or rejection or counter-offer. And I need
21 to as a theoretical matter a highlight to
22 them, what's a figure that may actually
23 result in a settlement rather than a
24 non-starter figure.

25 MR. TENDRICH: They did not tell you

1 they would take X number of dollars?

2 MR. BOUTSIS: The conversations have
3 been with me not with Mr. Hochman in the
4 past few months.

5 MR. WILLIAMS: Eve and I have an
6 appointment scheduled to meet with them.

7 MR. BOUTSIS: I will tell you that
8 Kalbac was of the position, he is the
9 chairman of the board of Palmer Trinity,
10 this is his position, we, Palmer Trinity,
11 have always been the ones presenting offers,
12 I am tired of it, I want a real offer on the
13 table and I am looking for some money. In
14 particular because they have this Sean
15 Cleary doing the 2008 litigation against us
16 and Mr. Hochman and he needs to be made
17 whole.

18 So I don't know what making him whole
19 is. It was implied it was a couple hundred
20 thousand, but what range of couple hundred
21 thousand, is it one hundred, is it two
22 hundred, is it eight hundred, I don't know
23 that answer.

24 MR. WILLIAMS: Is there a number that
25 Eve and I when we meet with these guys that

1 we are able to talk in the range of that we
2 are able to present that you all would feel
3 comfortable with?

4 Just to go talk to them, from Eve's
5 last conversation with them, unless we are
6 able to come to say we are going to offer X,
7 Y, Z plus some funds, we are not going to
8 make ---

9 MR. STANSCYK: I want to ask a
10 question. Back when all of this started,
11 back in 2006 and the application came
12 forward and there was discussions going on,
13 I remember looking at the enrollment figures
14 and the enrollment figures always exceeded
15 six hundred. Now my point in bringing that
16 up is, is that at one point I think I
17 guessed they were making an extra two
18 million a year on a six hundred number that
19 they were supposed to maintain.

20 MR. WILLIAMS: What was the source of
21 the numbers?

22 MR. BOUTSIS: She is accurate on the
23 numbers. The sticking point there was an
24 extra number of students. Mr. Sean Murphy
25 stated that at the rezoning hearing during

1 the public forum, he said we have certain
2 number of students.

3 MS. STANCZYK: 2008 is when the
4 application started.

5 MS. BOUTSIS: In 2008 during the
6 rezoning the statement was made.

7 MR. WILLIAMS: Okay.

8 MS. BOUTSIS: There has been a point of
9 disagreement I think amongst a certain part
10 of the community and even certain council
11 members, but there was a decision made and
12 it was our planning director at the time
13 that accepted the 643 number as the six
14 hundred number. It was based on a
15 calculation of daily attendance, people
16 traveling abroad, that there were physically
17 present 600. Right or wrong, that was the
18 decision, I can't go back and change that.

19 MS. STANCZYK: That's not what my point
20 is. My point is that when we talk about
21 loss revenue and the revenue that they have
22 made, that the chart that we are looking at
23 really steps backward further.

24 So in other words, in 2009 you have
25 640, but it was really 643, and you step

1 back because it was in 2008 that they knew
2 it was 640.

3 When you start talking about losses and
4 the fact that they are projecting their
5 losses, you are at a couple million dollar
6 difference per year.

7 MS. BOUTSIS: I am not following
8 because this is what you all accepted as
9 part of the Exhibit per year.

10 MR. PARISER: I think you are saying
11 they are already at the number of students
12 they are up to 650.

13 MS. STANCZYK: My point is that the
14 losses and the revenue are different, and I
15 don't know if that acknowledgment helps us
16 at all in terms of the fact that the Village
17 went along with their estimated daily
18 attendance in a congenial way.

19 In other words, it wasn't something
20 that they had a right to and nobody ever
21 defined anything, but they got it. And that
22 was like an administrative change to what
23 most people would accept as what attendance
24 means, it's not what it means in the future.

25 MS. BOUTSIS: We have certainly

1 corrected the code and the resolution
2 reflects how to define it.

3 MS. STANCZYK: What I am saying is,
4 they got that pass from the Village in the
5 past. And I think when you start to talk
6 about millions of dollars, it added up in my
7 head to about two million dollars a year.

8 MR. TENDRICH: How much do you figure
9 their tuition is?

10 MS. BOUTSIS: Right now it's 25,000.

11 MR. TENDRICH: 25 thousand times 20
12 students is one million dollars, not two
13 million.

14 MS. STANCZYK: Maybe the total of two
15 years.

16 MR. HOCHMAN: Remember, you have to net
17 out the profit.

18 MR. TENDRICH: It's just like you sell
19 a piece of jewelry for \$100, it does not
20 mean that's what you are making.

21 MS. STANCZYK: You are right, except
22 for the fact that they are talking about
23 loss revenue they are not talking about loss
24 profit. And their lost revenue was not the
25 same loss that one might think and that's my

1 only point.

2 MS. HOCHMAN: I think that if a
3 proposed settlement figure is in the million
4 dollar range, I don't think there is going
5 to be a consensus by this group today that
6 we are comfortable with that figure.

7 So what I understand your analysis, if
8 we are at that figure any way it's kind of
9 irrelevant.

10 The real issue is, is there some figure
11 in my opinion below a million dollars that's
12 enough of an incentive for Palmer Trinity to
13 say, we also want to turn around and stop
14 litigating, we want to concentrate our
15 efforts in running our business which is to
16 educate kids and get tuition and annual
17 givings from their parents. And they also,
18 as a theoretical matter, find it to be
19 inconvenient and counter productive to pay
20 attorneys to write letters and seek
21 documents and pay money and they would
22 theoretically again want to stop.

23 And the question then is, is there a
24 figure north of 50,000 and south of a
25 million that this group could come and say,

1 we also agree that maybe litigating and
2 eliminating risk and eliminating essentially
3 a tangent of what you normally do as a body,
4 there is a dollar figure for that. The
5 answer may be no, but tell me the answer is
6 no or tell me the answer is this number and
7 we'll come to it.

8 MR. TENDRICH: You are saying \$50,000
9 is the most that the insurance company will
10 pay?

11 MR. HOCHMAN: In my discussion with the
12 carrier today indicates that at this point
13 in the litigation, given all of the
14 considerations that have been made so far,
15 they are willing to participate in a global
16 settlement and the number that they said
17 which was in their mind reasonable, again
18 because they are looking at it ahead in
19 paying attorney's fees to get to a summary
20 judgment motion.

21 MR. TENDRICH: I have felt for many
22 years that this should be settled and we
23 should be friends and be nice, whatever you
24 want to call it. And I know that they have
25 done things that people haven't liked and I

1 haven't liked them either but we gave them
2 the right to do that. So I personally think
3 that I think somewhere between a hundred and
4 \$150,000 and I really think that the
5 insurance company would come up above the
6 50, I could be wrong.

7 I feel that if they didn't it would be
8 worth it for me and for the Village to give
9 another \$100,000 if we settle for 150 and
10 have it clear and have it over with. That's
11 my personal opinion.

12 MR. WILLIAMS: Your number would be one
13 hundred thousand? On the village side?

14 MR. PARISER: This case should be
15 settled, but I don't know if Palmer has
16 stars in their eyes and they want millions
17 of dollars. I personally think our carrier
18 has more exposure than \$50,000 and I would
19 want to use as much carrier money than
20 Village money.

21 If they were to take \$50,000 and they
22 want to get up to the level of 660 students
23 or 680, whatever, it would be settled in a
24 heartbeat, I don't think that they are going
25 to do that.

1 I mean, \$50,000 they may hang up the
2 phone, but for us to say 50 and 150, even if
3 it's 150, I in my own mind have hesitation
4 why the carrier, that's what you have
5 insurance, only pays 50 and we pay one
6 hundred thousand, quite candidly.

7 MR. WILLIAMS: I think Mr. Hochman
8 speaks much better on this issue than I, but
9 I think his point is the number of issues
10 that he's got.

11 MR. PARISER: I understand. If you go
12 back to them and say \$50,000, they will
13 probably say, we are asking for mediation
14 13-million, well come down to 12-million,
15 nine hundred and fifty.

16 MR. HOCHMAN: I think that Palmer
17 Trinity realizes they want to settle the
18 case, you would like to settle the case, I
19 think.

20 I think that Palmer Trinity recognizes
21 that a 12-million dollar demand is not going
22 to settle the case. So they have an
23 incentive to get down to a number which they
24 think is realistic.

25 Then comes, what is that figure, what

1 is realistic in Palmer Trinity's mind and
2 what is palatable to the Village.

3 MR. PARISER: Palatable to me is how
4 much Village money versus how much insurance
5 money. Quite frankly, if I have the
6 insurance purse to play with and it wasn't
7 coming out of Village coffers ---

8 MR. HOCHMAN: Let's say the Florida
9 Municipal Insurance Trust, that's where the
10 pot of money is, they said they will match
11 you dollar for dollar. Theoretical matter.
12 What would the Village then in terms of your
13 view would the Village pay appropriately,
14 what's the entire dollar amount?

15 MR. PARISER: Personally at this point
16 in time if they would throw in 50, we throw
17 in 50, a global settlement. They get up to
18 their 2013 level of kids, I'd settle in a
19 heartbeat.

20 MR. WILLIAMS: You are saying 50,000.

21 MR. HOCHMAN: You are saying in a
22 heartbeat.

23 MS. STANCZYK: 2013 is 700.

24 MR. PARISER: They have lost two years,
25 they are up to 2012.

1 MR. BOUTSIS: They would go for a lower
2 number, don't misunderstand me, they would
3 go for a lower number.

4 The argument for going all the way to
5 2012/2013 is that element of damages in the
6 pending litigation if there were ----

7 MR. PARISER: The number of kids was
8 our bargaining chip, it means a lot to them.
9 But money wise, you throw in 50, we throw in
10 50, they get X number of students up to this
11 level, done. I take it in a heartbeat.

12 MR. HOCHMAN: You say in a heartbeat
13 which that suggests that would be an easy
14 way to settle the case.

15 The next question is, what would give
16 your heart problems, but at the same time
17 not cause you to have a heart attack?

18 MR. PARISER: I have to hear what they
19 have to say, I am not bargaining against
20 myself.

21 MR. HOCHMAN: The purpose of this, are
22 you willing to go up to the one hundred
23 thousand dollar figure that was just
24 suggested?

25 MR. PARISER: If that's within the

1 range of possibility, yes, but ---

2 MS. STANCZYK: Is that matching dollar
3 for dollar?

4 MR. PARISER: I would consider that to
5 get out of something like this, yes. I
6 don't think they are going to come close to
7 150.

8 MS. STANCZYK: The extra kids are worth
9 millions ultimately. So the reality is once
10 everything gets back on track for them
11 ultimately they will recover more.

12 MR. PARISER: The kids are worth money
13 to them, sure.

14 MR. WILLIAMS: Now remember they have
15 -- there is a schedule, but they have the
16 1,150 kids it's just scheduled different.

17 MS. STANCZYK: But with the schedule
18 change they start recovering sooner.

19 MR. WILLIAMS: So are you saying that
20 Eve and I can tell them that our Council is
21 willing to go to \$50,000 in addition to
22 potentially 50, is that where we are?

23 MR. TENDRICH: I think one hundred
24 thousand.

25 MR. PARISER: He is not offering one

1 hundred.

2 MR. WILLIAMS: Let's try and make some
3 progress. The insurance company says
4 \$50,000. If you are not going past what
5 they are going even though ---

6 MR. PARISER: If they match us dollar
7 for dollar ---

8 MR. WILLIAMS: Your number is 50,000,
9 total of one hundred thousand?

10 MR. PARISER: Plus you can play with
11 the number of kids.

12 MS. STANCZYK: What impact would the
13 Legal Cities and the insurance pot have if
14 we were to continue litigating and they
15 overturn the state law? Will that domino?

16 MR. HOCHMAN: The state law is not part
17 of the case. They are attacking your
18 ordinance and your application of the
19 ordinance, so that's why I believe the State
20 of Florida is not engaged in this
21 litigation, they are not a target of
22 litigation. The Village is the only target
23 in the litigation.

24 And there is other claims associated,
25 but in terms of this meeting the State, and

1 what's interesting about this Jennings idea
2 is that Jennings was a case which was
3 decided by the Third District Court of
4 Appeals. After the case was determined
5 there was a State statute that came out
6 addressing the issues in Jennings.

7 One of the arguments is that the
8 Jennings case is of no longer validity
9 because the statute superceded the case.
10 The Judge recognizes that's an issue that he
11 had to determine the case but he has not
12 done it yet and he wants to wait for summary
13 judgement to make a decision on that bigger
14 issue of what the impact is on the State
15 statute on the Jennings decision and how
16 that impact may affect the liability of the
17 Village if at all in this case. It's a
18 complicated issue.

19 MS. BOUTSIS: And not every city and
20 county does enact a Jennings type of rule,
21 it's not required as far as the disclosures
22 and everything else.

23 For example, the county just doesn't
24 allow anybody to contact the County
25 Commission for the planning and zoning

1 matter, they have all of their staff and
2 they block it off, they do not allow anybody
3 to talk to them. They don't do disclosures
4 or anything else they just go forward. So
5 there are different ways of handling it.

6 So at this point, and I would like to
7 know if we could do it separately as far as
8 the number of students or do you require it
9 jointly? The reason that I ask is that
10 because we are eight days away from the
11 appeal period and they have already let me
12 know that they will appeal based upon our
13 application of this saying we are arbitrary,
14 capricious and whatever else over one child.

15 MR. PARISER: Well, I am talking a
16 global settlement so that includes anything.
17 They needed some more time to think and you
18 stipulated and extended the appellate time.

19 MR. FIORE: We need a global
20 comprehensive settlement that ends
21 everything.

22 MR. HOCHMAN: Not necessarily, you
23 could decide to show ability to negotiate on
24 the number of students right now and then as
25 a theoretical matter you can then decide to

1 resolve the entire case and continue to
2 address student population issues at a
3 subsequent time.

4 So I think there is two separate things
5 going on here. Number one, is there a
6 willingness to deal with their request right
7 now, which is can they get an accomodation
8 on the number of students.

9 MS. BOUTSIS: Whether it's changing the
10 formula or the one child.

11 MR. HOCHMAN: Number two would be, do
12 you want to make sure to increase your
13 bargaining position that there is a linkage
14 between the number of students and a global
15 settlement.

16 And number three, if there is, do you
17 want to put a number on the table.

18 MR. WILLIAMS: What is that number?

19 MR. PARISER: I want a global. I say
20 linkage. I say 50, 50 from us and see what
21 they come back with. I certainly want to
22 hear a number from them and see where they
23 are coming from. I don't think that
24 \$100,000 is going to do it personally, but I
25 don't want to say tell them a number and

1 give us the students, that shows bad faith
2 on their part.

3 MS. STANCZYK: I think we are in a
4 stronger position only with students.

5 MR. LINDSAY: I wonder if what we
6 should do since the number of students is
7 important, if instead of looking at
8 2012/2013, if we would consider an offer
9 accelerating the number of students to the
10 2014/2015 year to make up for what they are
11 claiming.

12 MR. PARISER: Accelerating the
13 students.

14 MS. LINDSAY: That's our only advantage
15 here.

16 MS. BOUTSIS: So allow them 740?

17 MS. LINDSAY: Right. I would stipulate
18 that they have to have facilities and we are
19 not talking about bringing in the trailers
20 like they did in the past. And I am still a
21 little befuddled about how they can have
22 capacity for 700 students when they told us
23 at 640 they needed the trailers to have 640
24 students. I don't understand that
25 disconnect.

1 I think to put this behind us that that
2 would be something that might be interesting
3 to them.

4 MR. WILLIAMS: Maybe \$100,000 plus some
5 flexibility on the student numbers.

6 MS. LINDSAY: Now as the Mayor pointed
7 out, if they have 40 extra students at
8 25,000, roughly brings them a million
9 dollars in revenue, so by accelerating this
10 we are giving them that additional revenue.

11 MR. WILLIAMS: I think it's a great
12 offer, I think it shows flexibility. We
13 don't know if they want them. Two, if they
14 can accommodate them, and thirdly whether or
15 not they consider that future revenue stream
16 compensation.

17 I am trying to find something that we
18 can put together, whether it's \$100,000 plus
19 flexibility on students, something so that
20 we have a conversation ---

21 MR. TENDRICH: I think it's a very good
22 suggestion by Councilwoman Lindsay.

23 MS. LINDSAY: I think that I would also
24 go so far as to say as an offer in good
25 faith that we'll give them the one student

1 and then we'd like to talk about the global
2 settlement, and it needs to be global.

3 MS. BOUTSIS: The giving of the one
4 student is the stopgap measure so that we
5 don't have another appeal.

6 MS. STANCZYK: Not only that, one of
7 their major complaints or claims is the loss
8 of revenue based on students, and if they
9 are getting speeded up to where they would
10 have been or far surpassed to what they are
11 today, doesn't that eliminate that?

12 MR. WILLIAMS: I think that's the
13 Councilwoman's point, the offer is out
14 there, whether they can accommodate it, in
15 other words they could have more students
16 now, right, but they have now only put 21.
17 So I mean, they have got to gear back up
18 their ability to attract and enroll
19 additional students. But I think our good
20 faith effort to offer that flexibility I
21 think is really positive towards some money,
22 and I agree with the Vice Mayor I don't
23 think it solves it but it gets a dialogue
24 and that's the log jam we have to get passed
25 here.

1 MS. STANCZYK: There is one other
2 thing. They have a schedule that tells them
3 the priority of work that needs to be done.

4 MS. BOUTSIS: That's what we were
5 meeting on.

6 MS. STANCZYK: Do we have an expedited
7 permitting process? For instance, I think
8 their first thing is their buffer and
9 landscaping.

10 MS. BOUTSIS: The answer is they were
11 waiting for us on this issue and once I get
12 this one issue on the one student resolved
13 even if it's just an accommodation of one
14 student versus change the schedule and using
15 that for the global, then we have already
16 started typing out all of the different
17 lists of everything to do, 18 months to
18 remove the trailers, two years they have --
19 well, they are trying to move in now because
20 they have already ordered the landscaping
21 permit it's expired. We have not let them
22 pull the permit because we wanted that
23 meeting.

24 We have had the meeting, and in reality
25 it comes down to this one student for them

1 on whether they are going to continue with
2 it and move forward or they have to appeal.

3 MS. STANCZYK: So my question on the
4 permitting process.

5 MS. BOUTSIS: The permitting process,
6 Mr. Silver is aware and they are expediting.

7 MS. STANCZYK: Include that in the
8 offer.

9 MR. HOCHMAN: This session ties into
10 the recent decision by the Third DCA to deny
11 them the fee application.

12 If you were going to give them the
13 extra student without the need to appeal, as
14 a theoretical matter you have saved them
15 another ten to 20 to \$30,000 in attorney's
16 fees, so you can go back to them and say, we
17 are going to save you a savings of and put
18 that on the ledger. There is a cash value
19 of whatever that number turns out to be and
20 we are going to give you the extra student.
21 And on top of that we are going to give you
22 expedited revenue source, so the entire
23 package has a value of, however you want to
24 do that and say that's the offer.

25 So you put a dollar figure on the offer

1 where the dollar figure has a value with a
2 cash component in it.

3 MS. BOUTSIS: So you can use Stan
4 Price's statement to the paper that the last
5 appeal cost \$300,000, this appeal would cost
6 you \$300,000.

7 MS. LINDSAY: That sounds good.

8 MR. HOCHMAN: And if you win it you get
9 your one student but you still have to pay
10 your attorneys fees because you are unlikely
11 to get a fee award and that has a value,
12 plus the cash component, plus again the
13 accelerated revenue stream based upon a
14 future accomodation on the schedule.

15 MR. WILLIAMS: I think this is all
16 great ideas. I think it get the
17 conversation going towards this good idea,
18 the Mayor's and clearly all of these.

19 MR. HOCHMAN: The next question is, any
20 more money that you want to offer besides
21 the 50?

22 MR. TENDRICH: 50 and 50 would match
23 the insurance, it's one hundred.

24 MS. BOUTSIS: Yes.

25 MR. TENDRICH: I figured I was saying

1 one hundred and then the insurance company
2 and then they have two hundred. One hundred
3 from the insurance company and one hundred
4 from us.

5 MR. WILLIAMS: The insurance is going
6 to 50. They decided.

7 MR. TENDRICH: I understand that they
8 have decided.

9 MR. HOCHMAN: I am going to be the
10 Devil's advocate. You offered 50 and the
11 entire package and they came back and said
12 not one hundred but we'll take two hundred,
13 would you be willing to go \$150 out of the
14 Village's pocket?

15 MR. TENDRICH: I would, I want this
16 settled. I think with the offer that we are
17 making with the expedited things with our
18 planning and building department, increasing
19 their students, I think they would be very
20 happy to take the hundred.

21 MR. STANCZYK: Expediting permitting is
22 going to save them a lot of money.

23 MR. HOCHMAN: Any other thoughts on
24 this? And again, this is now a theoretical
25 number on the total global cash component of

1 150 from the Village and 50 from the carrier
2 for a total of two hundred.

3 MR. PARISER: A two hundred thousand
4 dollar figure on a matching basis, quite
5 frankly, no offense, the League's carrier is
6 getting out cheap.

7 MR. HOCHMAN: Anyone else?

8 MR. FIORE: Fine with me. They don't
9 want to pay attorney's fees and either do
10 we. Every month it costs us 20, \$30,000 if
11 we keep appealing. We are using taxpayer
12 money up as it goes, so I agree with
13 Mr. Tendrich and offer them and let's go.

14 MR. WILLIAMS: Offer what?

15 MR. FIORE: 150. Or one hundred plus
16 50.

17 MR. TENDRICH: I think if you tell the
18 insurance carrier that the Village is
19 willing to match you dollar for dollar, I
20 mean, like Brian just said, the insurance
21 company, the carrier is getting away cheap
22 even if it's only \$100,000. And I would say
23 if we put up one hundred and have the
24 insurance put up one hundred.

25 MS. STANCZYK: I think that the

1 adjuster has spoken.

2 MS. BOUTSIS: It sounds like we don't
3 have a consensus beyond the 50/50.

4 MS. LINDSAY: I think that we have a
5 very good starting point here and I don't
6 think that we should give away more than we
7 need to.

8 I said that I think that we have a very
9 respectful offer with this accelerating the
10 number of students and accommodating the
11 request for the one additional and giving
12 them some cash and we are making this in
13 good faith.

14 I think we should get a response from
15 them before we up the anti.

16 MR. WILLIAMS: I think it's a good
17 start.

18 MS. STANCZYK: I think we do have to
19 assign a dollar amount to this.

20 MR. PARISER: The dollar amount is one
21 hundred thousand.

22 MS. STANCZYK: I mean a dollar amount
23 to all of the offers that we have made.
24 Each of these things will impact their claim
25 in the future.

1 MR. PARISER: I mean, this is not a one
2 shot deal, they are going to go to them and
3 say that and somebody will come back, and/or
4 Eve will come back to us and see what their
5 response is. And if their response is in
6 never never land, millions and millions of
7 dollars ---

8 MR. HOCHMAN: There is a couple of ways
9 of handling this. Eve and I trying to
10 handle this and trying to get you to give us
11 the boundary so we don't have to come back
12 five or six times.

13 Your response to that, which is
14 certainly reasonable is, we are not going to
15 give you a boundary, we are going to give
16 you what we think right now and we'll
17 negotiate and when you want to come back
18 we'll give you our next response, which is
19 perfectly fine, which it explains why I have
20 been asking each one of you in playing some
21 devil's advocacy here about, how about this,
22 and how about that and that's why I have
23 done that, just so as an attorney I can know
24 the boundary. And you are perfectly being
25 reasonable by saying I am not going to give

1 you another boundary right now.

2 MS. LINDSAY: And one thing that I
3 think we are at a slight disadvantage at
4 here is that we haven't taken the time to
5 actually calculate the value of the offer
6 that we have put together.

7 I would be happy to do that, but we
8 haven't done it and I think that's an
9 important consideration.

10 MR. PARISER: That's what will happen.
11 \$200,000 in the end if that can settle it I
12 would strongly consider that, but I just
13 think that these people have different
14 views.

15 MS. STANCZYK I understand what your
16 thoughts are, but I think they are focussing
17 on making Mr. Cleary whole.

18 MR. PARISER: That's their problem.

19 MR. STANCZYK: I understand, but he
20 wanted a pit bull and do his job in a fine
21 way but that was costly I don't know what
22 being whole to someone who works on a
23 contingency really means. He did volunteer
24 to take the risk.

25 MR. PARISER: The Third DCA says they

1 are entitled for whomever worked on that
2 appeal to any fees.

3 MR. BOUTSIS: Remember Sean Cleary is
4 not involved in these appeals it's Stanley
5 Price and Eileen Meta.

6 MR. PARISER: They have that economic
7 consideration and they owe their attorney's
8 regardless I would think.

9 MS. BOUTSIS: I am going to end this
10 because I think we are 40 minutes late for
11 our town meeting.

12 Thank you everyone. Just so we are
13 clear on the record, the only consensus
14 right now that I am officially giving is the
15 ones that we don't have the appeal and then
16 we do the package together of everything
17 else. Okay. It sounds like I have a
18 consensus.

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(Whereupon, the deposition was
concluded at 7:40

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CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,
Notary Public in and for the State of Florida at
Large, do hereby certify that I reported the
Attorney/Client Session in the above-styled cause;
and that the foregoing pages, numbered 1 to 59
inclusive, constitute a true and correct
transcription of my shorthand report of the
Attorney/Client Session.

I further certify that I am not an
attorney or counsel of any of the parties, nor a
relative or employee of any attorney or counsel
connected with the action, nor financially
interested in the action.

WITNESS my hand and official seal in
the City of Miami, County of Miami-Dade, State of
Florida, the _____ day of October, 2011.



Adriadna Gonzalez

Adriadna Gonzalez
Court Reporter
Commission # EE041583
Expires Nov. 29, 2014