

JUN 04 2014

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PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

2014 JUN 3 PM 12 18

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY, JUNE LITTLE
DEPUTY

Daniel K. O'Connell & Valery A. O'Connell)
& on behalf of themselves as members of)
Glastonbury Landowners Association.) Cause No. DV-12-114

Plaintiff(s),)

v.)

**CLAIM & MOTION REQUEST
TO INDEMNIFY PLAINTIFF**

Glastonbury Landowners Association, Inc.)
Board of Directors)

Defendant(s))

Plaintiffs-Daniel and Valery O'Connell, hereby submit this "Claim & Motion Request To Indemnify Plaintiff." Plaintiff-Daniel O'Connell "is or was a Director" and this civil petition was NOT an "action by or in the right of the Association," and was recently discovered the GLA's authority (under GLA Bylaw VI(O) and §35-2-447, MCA. requires them and their insurance carrier to indemnify the Plaintiff-Daniel O'Connell as a GLA Director. The attached affidavit is included if fully set forth herein as factual evidence in support of this claim and motion.

Factual Brief

Page 10 of GLA "Reply" Exhibit B called GLA "Bylaw 0. Authority to Indemnify. The Association shall indemnify, to the full extent permitted by the Montana Nonprofit Corporation Act, any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association or in which such person is adjudged liable for receiving improper personal benefit) by reason of the fact that he is or was a Director, officer, fiduciary, agent or Member of the Association."

On or about June 11, 2011 and again on August 1, 2011, the Plaintiff(s) and GLA Director-Daniel O'Connell (and his wife) filed a civil petition and amended petition against the

Glastonbury Landowners Association & its board members. The affidavit is factual evidence that Plaintiff “is or was a Director” and that this same civil petition was NOT an “action by or in the right of the Association.” **GLA Bylaw VI(O.)** (above) therefore requires the GLA Association to indemnify Director-Daniel O’Connell, whom “is or was a Director” of the Association. Shown by affidavit the GLA Association are Defendants in this civil action factually showing this action was NOT an “action by or in the right of the Association.” Therefore, as required by GLA Bylaw VI(O), the “Association shall indemnify, to the full extent permitted by the Montana Nonprofit Corporation Act, any person who was or is a party ... to any pending or completed action, suit or proceeding ... by reason of the fact that he is or was a Director...” including Director-Daniel O’Connell.

Any other justifiable reasons to refuse to indemnify this Director are under the authority of §35-2-447, MCA. (as follows):

35-2-447. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual:

(a) engaged in good faith conduct;

(b) reasonably believed:

(i) in the case of conduct in the individual's official capacity with the corporation, that the conduct was in its best interests; and

(ii) in all other cases, that the conduct was at least not opposed to its best interests; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding that charges improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Attached affidavit is factual evidence that there is no restriction nor justifiable reason given by the GLA to refuse to indemnify Director (plaintiff) Daniel O'Connell. There was no reason given and the affidavit factually refutes any possible reason that may be given to deny indemnification because, "Director (Plaintiff) Daniel O'Connell filed such action not the GLA; which action was against the GLA Association and Corporation; and he acted in good faith; and reasonably believes in the case of conduct in the individual's official capacity with the corporation, that the conduct was in its best interests; and in all other cases, that the conduct was at least not opposed to its best interests; and for which actions there was no misconduct, nor law violation, nor improper personal benefit to the director."

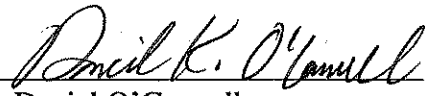
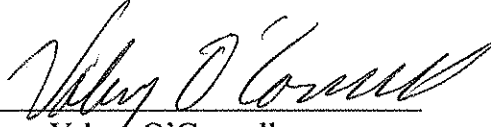
This also serves as official claim & notification given to the GLA Association and its insurance carrier (called United States Liability Insurance Group: Agent PayneWest Insurance at 2925 Palmer, Suite B, Missoula, MT.) to indemnify current or former Director-Daniel O'Connell immediately. To not so indemnify him will constitute a legal claim against such responsible parties.

The affidavit shows GLA President-Alyssa Allen notified Plaintiff that such insurance carrier policy is current but set to expire on June 11, 2014; and was recently discovered by Plaintiffs of these law requirements to indemnify him, for which this motion was delayed until now. Indemnification of this civil action for good cause is timely requested and allowed by law and necessary for Daniel O'Connell to be indemnified to seek legal representation of his civil action for oral deposition and requested trial.

Conclusion

For this above reasons under law, Plaintiffs respectfully request this court issue Orders requiring responsible parties to indemnify Daniel O'Connell to the full extent such laws allow.

DATED this 3rd day of June, 2014.

Signed  Signed: 
Daniel O'Connell Valery O'Connell

Certificate of Service

We, Daniel & Val O'Connell, swear that a true and correct copy of forgoing document(s) were sent to the following parties via certified mail on this same day to:

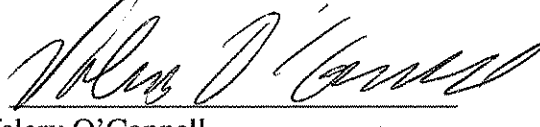
United States Liability Insurance (U.S.L.I.)Group:
Agent PayneWest Insurance
2925 Palmer, Suite B,
Missoula, MT. 59808-1658

Alanah Griffith
26 E. Mendenhall
Bozeman, Mt. 59715

Hon. Judge David Cybulski
573 Shippe Canyon Rd.
Plentywood, Mt. 59254

U.S.L.I. Insurance Agent & GLA attorney
Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

By 
Daniel O'Connell

By: 
Valery O'Connell