

## Final Litigation Update

March 15, 2024

On March 14, 2024 the Lawyer representing Harry Neel and Mike Jenkins filed a “**Praecipe to Dismiss**” their lawsuit against the SVDC/Lake Stonycreek and Dan Dively. **This is a voluntary termination of a lawsuit** , under Sec 229 of the Pennsylvania Rules of Civil Procedure.

I’ve heard over the past month that the Plaintiffs and others are spreading the word in the community that they won their lawsuit. Nothing could be further from the facts. The claim demands a response to the Community. Let me set the record straight.

Plaintiffs’ counsel approached our Legal Counsel and our D&O insurance carrier, Cincinnati Insurance Company [Cinci], in late November of last year, asking to once again enter into Settlement discussions. They withdrew all the demands set forth in their original 2019 Complaint and Amended Complaint. But they did ask that we stipulate [admit] that they were “justified” in bringing the lawsuit in 2019. **We declined.**

1. Over the past 4 years, there have been three attempts to settle the lawsuit “The Three Amigos” brought against the SVDC on April 17th 2019. Just shy of 5 years ago!
2. A. There was an attempt by Judge Rullo at Mediation in the Summer / Fall of 2021.  
B. Then in Feb of 2023 the Plaintiffs’ attorney approached Cincinnati [Cinci] about reopening settlement discussions, which included a demand for \$200,000, to cover their legal fees from 2019-2022;  
C. The recent talks which started around Thanksgiving [11/27] 2023 **when the Plaintiffs again approached Cinci** seeking to “settle the matter out of Court.”
3. The 2021 mediation failed because Cinci wanted the SVDC to contribute \$42,000 to a \$72,000 settlement demand; when SVDC had purchased a D&O policy with \$1,000,000 of coverage.
4. In 2023 when Cinci heard the demand for \$200,000 in legal fees they told plaintiffs there was nothing to talk about.
5. This past November, when Plaintiff’s Attorney again approached Cinci about a Settlement, Cinci made it clear that the \$50,000 number, they had floated a year earlier, was more than half way to any Settlement they would ever consider.
6. Plaintiffs dropped their demand to \$100,000 in late November 2023; after several weeks of talks Cinci offered each Plaintiff \$30,000; which Plaintiffs accepted in early January 2024.
7. Unlike the 2021 Mediation **the SVDC was not being asked to contribute one cent to the settlement or make any other concessions!**

8. Cinci told us, in December of 2023 that they had made a “Business Decision” to try to limit their “financial exposure” by making a “**nuisance settlement**” [Cinci’s words] offer of \$30,000 to each of the plaintiffs.
9. Under our 2019 D&O policy Cinci had a duty to defend the SVDC and its Directors; and the SVDC had a duty to assist in that defense and agree to a reasonable resolution of the suit.
10. Additionally, **SVDC was subject to the “Hammer Clause” found in all D&O policies** that doesn’t allow an insured to oppose/block a “reasonable” [as judged by the disinterested “reasonable man” looking at the facts] settlement without penalty . The penalties would include making it the responsibility of SVDC to pay defense costs going forward and full responsibility to pay any judgment the court might order over and above the total negotiated settlement amount. Our Counsel estimated that continuing the Lawsuit through [1] a Summary Judgment hearing, [2] an Appeal to the Superior Court of Pennsylvania and [3] a trial on the merits could have resulted in future legal expenses of well over an additional \$200,000.
11. More than 90% of civil litigation gets settled/resolved outside of the Courtroom. Having been involved in corporate governance and litigation for 40 years.... I can’t fault Cinci’s business decision.
12. A majority of the Board recognized the need to resolve this matter now for the good of the Community. It’s ironic; in that Mike Jenkins stated at the June 2020 Board meeting, after his election to the Board that May, of that year; “Now that I’m on the Board the Lawsuit will be [resolved] in 90 days” That was 44 months, or over 1300 days ago.
13. Last year the SVDC and Dively had both filed motions for Summary Judgment asking the Judge to dismiss the lawsuit without a trial as the relief the Plaintiffs were seeking in their Complaint was contrary to Pennsylvania Statutes governing the operations of a Pennsylvania Non-profit Co-operative Corporation. [Title 15 of Pennsylvania Consolidated Statutes]
14. While granting Summary Judgment is an uncommon action taken by the Courts; in all probability the SVDC would have gotten a Summary Judgment in its favor as a matter of law. But it’s never 100%, and with Judge Geary’s retirement we would have had a new Judge assigned to the case; which was a wild card in trying to predict future actions by the Court.
15. I’ve heard the argument that the community won’t understand a Settlement with money to the Plaintiffs involved. Does one believe it’s any more likely that most lot owners would understand a Summary Judgment dismissal of the action based on fine points of State law and Statute?
16. Even if we got the Summary Judgment, it could have been appealed by the Plaintiffs; an appeal which would be heard by a higher court, in a year or so.

17. If overturned by the Superior Court. That Court would return the matter to the Trial Court; and the lawsuit would then go to trial; maybe 2 or 3 years from now!
18. For Cinci to make a decision to pay the Plaintiffs, \$30,000 each, is not an unreasonable business decision on their part. In 2021 they were agreeable to a demand by the Plaintiffs of \$72,000. Continuing this trial would have cost Cinci an additional \$200,000 or more.
19. I've heard that some current, and former, Board members as well as some community members feel that the Plaintiffs should be "Punished" for bringing a lawsuit asking for the Court to take actions, that they should have known with a few hours of research, was beyond the power of any court to grant. Plaintiffs counsel knew the SVDC was a Co-operative Corporation in 2019. [as stated in Paragraph 6 of their April 15<sup>th</sup> 2019 Complaint].
20. Changing how the SVDC [1] conducts its votes, [2] defining what is, and how Conflicts of Interest are handled, [3] members access to Corporate records and [4] member information requests, are all set forth in Title 15 of Pa.'s Consolidated Statutes and Roberts Rules.
21. The Board and the Courts never had the power to agree to, or order changes to, the Bylaws as demanded by the Plaintiffs. Only a vote by you, the Members, can change the Bylaws.
22. Shares held by lot owners in 2018/19 did not give "members" any voting rights, in a Pennsylvania Non-Profit Co-operative Corporation like the SVDC. Votes taken from the SVDC's "reorganization" in 2005 through 2017 were done correctly. The 2018 vote for the Board of Directors by shares was contrary to Section 7111 of Title 15 of the Pennsylvania Consolidated Statutes.
23. How discovery is to be conducted is all laid out in Pennsylvania's Rules of Civil Procedure.
24. Based on the \$200,000 demand for past legal fees in February of 2023 and the additional activity over the last 12 months including two days of court hearings, we estimate that the Plaintiffs have run up close to \$300,000 in legal fees and expenses over the past 5 years. It's my understanding that Cinci payments are going straight to their lawyers.
25. Even with the \$30,000 to each plaintiff this misadventure has cost the Plaintiffs \$200,000 or more; which in my book is punishment. As stated by Judge Geary; It's been "an expensive train ride [to nowhere]" for the Plaintiffs.

The Plaintiffs finally realized they could not prevail on the merits; as the facts were against them and the law was against them. In an effort to save face; they came to Cinci seeking a "settlement", which we agreed to on Cinci's and SVDC's terms. Plaintiffs have filed a **"...final and unconditional dismissal of the ...lawsuit against all [defendants] with prejudice ."**

For the \$30,000, "nuisance settlements" paid by Cinci, the SVDC and Mr. Dively got, *stripping away the legalese; quoting from the Settlement Agreement; an* **"...unconditional and final dismissal of the lawsuit by the Plaintiffs with prejudice.** [Which means their claims cannot be reasserted]. **And a general release from "any causes of action...which [Jenkins and Neel] had, now [have], or may ever have from the**

**beginning of the world to the end of time.... related to [ any and all matters associated with] the Lawsuit..."** In the form of an contract enforceable by the SVDC ; the Settlement Agreement.

Further, **"This [Settlement] Agreement will in no event be considered, evidence of, or an admission ..... [to] any liability or wrongdoing [by Dively or The SVDC] regarding any matter."**

**Neal and Jenkin's "Peacipe to Discontinue with Prejudice" filed with the Court on March\_\_ 2024, simply reads; "Kindly mark the [ 2019 Civil Action against the SVDC and Dively] as settled and discontinued with prejudice as to all Defendants [The SVDC and Dively]."**

Everyone needs to understand, we have been, and would be moving forward, in a **Court of Law, NOT a Court of Justice**. The Judge's opinion, on Summary Judgment or a trial, would not have said that the SVDC was right and the Plaintiffs were wrong. A Summary Judgment dismissal or Trial Court's ruling would most likely have been on the very narrow grounds that the Court could not grant the Plaintiffs any of the relief they were seeking because to do so would go against several sections of Pennsylvania's codified and case law.

My and our legal counsel's advice was and is..... **TAKE this as a WIN for the SVDC**. Accept what amounts to an **Unconditional Surrender by the Plaintiffs**, with their **voluntary withdrawal** of the Lawsuit. **IT IS AS MUCH A WIN, if not more so, for the SVDC and Dively as any SUMMARY JUDGMENT we could have gotten. Unconditional Surrender by their voluntary withdrawal of the lawsuit vs. a dismissal of the action on some technical points of law and statute after another year or more in the Court[s].**

**Plaintiffs by Settling have waived their rights to appeal.**

The most "justice" the SVDC or Dively would ever see is what we've already gotten from Judge Geary in 2022 when from the Bench he stated IIRC; **"You [the SVDC] just need to find a way to get along with those Gadflies".**

Judge Geary didn't call for the SVDC to concede to any of Plaintiff's demands or to make any changes to our operations or Bylaws. This "Settlement" gives no concessions to any of the Plaintiffs 2019 demands or the additional demands made during the 2021 Mediation with Judge Rullo; or during Settlement talks.

**Geary then turned to the Plaintiffs and stated, I paraphrase, "Gentlemen you are riding a very expensive train; on tracks going nowhere!"** Almost two years later that prediction has proven to be 100% true.

Even with the distraction of having to defend the SVDC against the Lawsuit.

Today we can look back over the past five years and say that our Lake Stonycreek waters have been tested by professionals and are clean; the fish population is healthy; the weeds are under control and no longer interfere with lake activities; the dam is sound, maintained and inspected ; the lot owners decision to codify "One Lot; One Vote " in our Bylaws was correct and is the only lawful way members of a Pennsylvania Co-operative Corporation can vote.

The litigation process confirmed that SVDC's governance and Board actions have been proper and in accordance with the law. Dan Dively did not self-deal with the SVDC. In fact, Plaintiff's discovery proved that Dan has selflessly volunteered his time and equipment to Lake Stonycreek far more than he was compensated for work performed.

I hope that this settlement will allow us all to put this matter behind us for the good of the SVDC and the Community as a whole. The days are getting longer and soon we will all be enjoying activities at the Lake.

Brad A Meneilly Esq.

President SVDC