

ATTORNEY-CLIENT SHADE MEETING

RE: Tri-Par Estates Park and Recreation District,
an independent special taxing district vs. Virginia Crary

CASE NO.: 2017-CA-003571-NC

DATE TAKEN: Thursday, December 3, 2020

TIME: Commencing at 10:00 a.m.

PLACE: Tri-Park Estates Park and
Recreation District
1616 Presidio Street
Sarasota, Florida 34234

APPEARANCES: Charles Koenig, Board Member
Daryle von Holdt, Board Member
Laurie Legler, Board Member
Ron Houchin, Board Member
Mike Neff, Board Member
Birdie Bollenbacher, Board Member
Dan Via, Board Member
Lee Morris, Park Manager
Carol Bryant, Office Staff

JAY DAIGNEAULT, ESQ.
JEREMY SIMON, ESQ.
Trask Daigneault, LLP
1001 S. Fort Harrison Ave., #210
Clearwater, Florida 33756

ANDREW COHEN, ESQ.
Persson, Cohen & Mooney, P.A.
6853 Energy Court
Lakewood Ranch, Florida 34240

DAVID BOYETTE, ESQ.
Adams and Reese, LLP
1515 Ringling Boulevard, #700
Sarasota, Florida 34236

Examination of the witness taken before:

Melissa England, CSR

1 MR. KOENIG: I'd like to call this special
2 board meeting to order.

3 Mike, can we have the invocation, please?

4 MR. NEFF: Yes. Let us pray.

5 (Prayer was said.)

6 MR. KOENIG: Pledge.

7 (Pledge of Allegiance was said.)

8 MR. KOENIG: Carol, can you do the roll call,
9 please?

10 MS. BRYANT: Yes. Charles Koenig?

11 MR. KOENIG: Here.

12 MS. BRYANT: Ron Houchin?

13 MR. HOUCHIN: Here.

14 MS. BRYANT: Mike Neff?

15 MR. NEFF: Here.

16 MS. BRYANT: Laurie Legler?

17 MS. LEGLER: Here.

18 MS. BRYANT: Birdie Bollenbacher?

19 MS. BOLLENBACHER: Here.

20 MS. BRYANT: Dan Via?

21 MR. VIA: Here.

22 MS. BRYANT: Daryle von Holdt?

23 MR. VON HOLDT: Here.

24 MS. BRYANT: Absent today are Toni Borman and
25 Cindy Little Koenig.

1 MR. KOENIG: Thank you, Carol.

2 We are going to move into a closed session for
3 the purpose of discussing strategy related to
4 litigation at this point.

5 Andy?

6 MR. COHEN: Thank you, Mr. Chair. The purpose
7 of the shade meeting will be to discuss, as you
8 said, strategy related to litigation expenditures as
9 well as potentially settlement negotiations. Any
10 formal decisions that the board may want to make
11 after that shade meeting will be made once we
12 retreat back into the regular session.

13 So I have a few announcements to make this
14 morning. And we'll go through our script a little
15 bit and then we'll keep moving forward. The first
16 is that myself as well as your special counsel need
17 advice concerning the litigation Tri-Par Estates
18 Park and Recreation District vs. Virginia Crary,
19 case number 2017-CA-003571-NC pending in the 12th
20 Judicial Circuit Court in and for Sarasota County,
21 Florida.

22 Specifically, we need to discuss those items I
23 just mentioned, which are settlement negotiations
24 and/or strategy related to litigation expenditures.
25 As I also said, any formal action will take place

1 once we are back in the regular meeting.

2 Just so everyone is aware, the entire session
3 shall be recorded by the court reporter sitting
4 right there. So the court reporter will record the
5 time of commencement and termination of the session,
6 all discussions and proceedings. So nothing is off
7 the record.

8 Everything will be recorded and then the
9 transcript will become a public record at the
10 conclusion of the litigation. The court reporter
11 will also record the names of all persons that are
12 present, the names of all persons that are speaking.
13 And as I said, there's no, quote, off the record.
14 This transcript will become public at the
15 termination of the litigation.

16 Reasonable notice of the time and date of both
17 the special meeting session and the closed session
18 and the persons attending has been published as
19 required by statutory law.

20 And so, Mr. Chairman, what we are going to need
21 to have you do is following through with getting a
22 motion to be in the shade. And then there's a
23 number of announcements that you will make with
24 regard to the people that will be attending and the
25 estimated length. And then we will retreat into

1 that shade session.

2 MR. KOENIG: Thank you, Andy.

3 Do I hear a motion to move this meeting into a
4 shade?

5 MR. HOUCHIN: Yes. Chuck, I make a motion that
6 we move this meeting into the shade.

7 MR. VON HOLDT: I'll second that.

8 MR. KOENIG: Thank you.

9 Carol, can you do a roll call, please?

10 MS. BRYANT: Yes. Trustee Houchin?

11 MR. HOUCHIN: Here.

12 MS. BRYANT: Trustee Borman? Not here.
13 Trustee Neff?

14 MR. NEFF: Aye.

15 MS. BRYANT: Trustee Legler?

16 MS. LEGLER: Aye.

17 MS. BRYANT: Trustee Bollenbacher?

18 MS. BOLLENBACHER: Aye.

19 MS. BRYANT: Trustee Via?

20 MR. VIA: Aye.

21 MS. BRYANT: Trustee von Holdt?

22 MR. VON HOLDT: Aye.

23 MR. KOENIG: Okay. The motion was made by Ron
24 Houchin and seconded by Mike. And the motion
25 carries.

1 MS. BRYANT: Daryle did the second.

2 MR. KOENIG: Daryle seconded it. I'm sorry.

3 And the motion carried.

4 Okay. In the commencement and estimated length
5 of closed session should be approximately two hours.
6 I will name the individuals who are attending the
7 closed session.

8 They are board members Charles Koenig, Ron
9 Houchin, Michael Neff, Laurie Legler, Birdie
10 Bollenbacher, Dan Via, and Daryle von Holdt. Also
11 present is Lee Morris, park manager. Representing
12 special counsel is Jay Daigneault.

13 MR. DAIGNEAULT: Okay. That's fine.

14 MR. KOENIG: Jeremy Simon, David Boyette as
15 special counsel, Andy Cohen as district counsel, and
16 our court reporter.

17 MR. HOUCHIN: I think you forgot Carol.

18 MR. COHEN: We need anyone that's not on that
19 list to please exit the room at this moment, which
20 appears to be Ms. Carol here.

21 MR. KOENIG: Make sure that the doors are
22 locked. We had to make sure the doors were all open
23 for a public meeting.

24 MR. MORRIS: All right.

25 MR. KOENIG: Okay. Just for clarification for

1 the board, David Boyette represents the Tri-Par --
2 Tri-Par in the lawsuit filed against Virginia Crary.
3 And Jay and his team are the attorneys hired by the
4 insurance company to defend us against the lawsuit
5 counterclaim brought by Mr. Crary -- Mrs. Crary.

6 Okay. At this point I believe that the -- is
7 that correct?

8 MR. DAIGNEAULT: (Nods head.)

9 MR. BOYETTE: That's correct.

10 MR. KOENIG: At this point I believe that there
11 are some questions that we as board members would
12 like to ask so we at one point or some point can
13 come to a conclusion on what we need to do to settle
14 this case, solve the case or whatever. Let's start
15 with --

16 MR. DAIGNEAULT: Mr. Chairman, may I interrupt
17 you for a moment?

18 MR. KOENIG: You sure can.

19 MR. DAIGNEAULT: It may be helpful if you
20 permit me to present briefly before we take
21 questions so that we can -- I have some information
22 for you that may be germane to your analysis of the
23 issues before you today and that may, in fact,
24 answer some of the questions for you before they
25 are, quote, unquote --

1 MR. KOENIG: Sure, go ahead, Jay.

2 MR. DAIGNEAULT: Would that be all right?

3 MR. KOENIG: Sure.

4 MR. DAIGNEAULT: I appreciate that. And as
5 Attorney Cohen mentioned at the outset, this board
6 is proscribed by statute to discuss only two items
7 in a shade meeting. The first is settlement
8 negotiations.

9 Settlement negotiations are not at issue today
10 because we have no settlement negotiations presently
11 underway. So that is not a subject for your
12 discussion and consideration today. The second
13 thing that you can consider in a closed session are
14 strategy sessions related to litigation
15 expenditures. And that is certainly at issue today.

16 During the course of the meeting today, if
17 there are questions or discussions that don't
18 directly relate to those type of litigation
19 expenditure questions, I may ask you to stop
20 speaking and I may, in fact, do so abruptly.

21 And the reason for that is -- I don't wish you
22 to receive that as rude or discourteous, but there
23 are a bevy of cases in Florida jurisprudence
24 discussing the surrender of the exemption if those
25 statutory topics are not rigidly adhered to. And I

1 don't wish for this board to lose the protections of
2 the statute that we are here proceeding under.

3 The other thing that I wish to note is -- not
4 to note, to emphasize is that the court reporter
5 sitting behind me is taking down everything that we
6 say.

7 I always advise boards in this context that the
8 exemption that you're operating under today is a
9 limited exemption because there are some exemptions
10 in this statute -- in the Florida Statutes
11 concerning sunshine where it's a full exemption,
12 meaning that no one is there taking notes about what
13 you're saying and what you say is never going to see
14 the sunlight.

15 That is not the case here today. The court
16 reporter is taking down what you say. So I urge you
17 to be very cautious and judicious in the things that
18 you say because I don't want them and I know that
19 you don't want them to wind up, number one, in the
20 hands of the party that we are opposing in this
21 litigation, but number two, on the front page of a
22 newspaper somewhere where it can cause embarrassment
23 or strife for the board and for the park as a whole.

24 So again, if Mr. Simon or myself or Mr. Cohen
25 stops you from discussing -- or Mr. Boyette stops

1 you from discussing these things, I don't wish you
2 to receive that as discourteous. I just want you to
3 enjoy the full protections of the statute, but
4 recognize that it's a limited exemption.

5 All right. With that, moving into the case
6 itself. As you know, the plaintiff has recently --
7 I call her a plaintiff, she's actually a
8 counter-plaintiff -- has recently amended her
9 counterclaim.

10 There was a hearing scheduled on a motion for
11 summary judgment that we had filed on the park's
12 behalf. It was originally scheduled for September.
13 Because of COVID, it was moved to November. And
14 then the day before the hearing, plaintiff's --
15 Mrs. Crary's counsel indicated that he wished to
16 amend his countercomplaint.

17 The countercomplaint obviously is that portion
18 of the lawsuit that has triggered your coverage
19 under your policy with the League of Cities
20 Municipal Insurance Trust. And that triggered my
21 law firm's retention, myself and Mr. Simon.

22 After consulting with Mr. Boyette, we agreed
23 that there was not a lot of utility in resisting the
24 amendment to the pleadings because amendments to
25 pleadings are, by a hundred and some-odd years of

1 history in Florida, liberally granted.

2 And there was no -- it would have cost you
3 money unnecessarily for us to resist the pleading
4 amendment. And so we -- we agreed to agree to it
5 right there and then in order to -- it's sort of a
6 good rule of litigation not to fight about things
7 that don't need to be fought about. And so that's
8 how you got to where you are today.

9 The amendment filed by Ms. Crary relies,
10 obviously, on the same facts that underlie the
11 counterclaim before: the revocation of her key fob
12 at various points in time, the hearing that
13 ultimately resulted in that -- in that, quote,
14 discipline, if you will. And so the fundamental
15 facts haven't changed, but the legal theories have
16 changed under which she's proceeding.

17 To bring you fully up to speed in the case, the
18 order allowing that amendment was just entered a
19 couple of days ago. Within this week. And so there
20 is presently a clock ticking in our response to it.

21 But the amended pleading invoked a due
22 process -- in part invoked a due process claim under
23 both the federal and state constitution. That
24 pleading marked the first time in the case that any
25 federal law had been implicated.

1 It is -- and Mr. Boyette and I have discussed
2 this at length. And one of the reasons -- not the
3 only reason -- that we are here today is because the
4 implication of that federal claim prompted me to
5 consider and, in fact, endorse removing the case to
6 federal court.

7 One of the questions I saw on the sheet that
8 was distributed was moving the case up to district
9 court. I receive that as moving the case over.
10 It's just a different court at the same trial level.
11 But Mr. Boyette and I, again, we've discussed that
12 at length.

13 We have 30 days from the invocation of that
14 federal law to remove the case, if that is
15 warranted. However, comma, as of yesterday, I spoke
16 to plaintiff's counsel after having spoke to
17 Mr. Boyette a couple of times on the phone.

18 And ultimately, there was discussion that
19 resulted in this: They didn't actually mean to
20 invoke the federal law. It was sort of done, if you
21 will, by mistake. And so at this juncture, there
22 does not appear to be a need or even a
23 jurisdictional basis to remove the case to federal
24 court.

25 I understand from Mr. Darville, the plaintiff's

1 attorney, that they are going to amend this pleading
2 again in order to remove the language that would
3 have prompted the removal to the federal court.

4 So I still wish to discuss that with you today
5 because, as you know, Mr. Darville is working the
6 matter to some degree with Ms. Crary's son, who is a
7 licensed attorney. Though he's not made a formal
8 appearance in the record, he still has significant
9 input, as does his client, into what actually
10 happens.

11 So it was indicated to me yesterday that they
12 will not be pursuing federal claims, but that has
13 not been a formal decision. That's not been made.
14 At present, the pleadings still contain a formal
15 claim.

16 And if he goes to his clients and says, you
17 know, we sort of accidentally pleaded a federal
18 claim, do you wish to keep it, the answer might be
19 yes. I think it's possible. It doesn't appear to
20 be likely at this point, but it is possible.

21 So I think it would be worthwhile for me today,
22 so we don't have to convene again and take up your
23 time on decisions that can be at least discussed
24 today, some direction given.

25 If it ultimately concludes that there is a

1 federal claim, I recommend to you that it be
2 removed. My primary reason for doing that is
3 because federal courts are a far better position to
4 adjudicate federal claims than are state courts.

5 Many state judges are familiar with federal
6 law. They're obviously familiar with federal law.
7 And it's not impermissible for them to resolve
8 federal claims. It has been my experience over the
9 years though that federal courts are simply better
10 at it.

11 There are a number of other benefits to filing
12 in federal court. They include the fact that the
13 case gets put on a very tight and adhered to time
14 schedule in terms of getting it resolved.

15 The courts don't -- federal courts don't like
16 to play around with cases. They like to -- and they
17 have rules that require them to be put on a formal
18 schedule that will result in a trial date at some
19 point. Typically within a year to 18 months of a
20 case like this. State courts don't have that
21 similar type of rigid scheduling system.

22 Your insurance policy, your coverage does not
23 exclude federal claims. You have coverage for those
24 type of claims no matter where it's litigated. So
25 it's not really at issue. There is some additional

1 cost in removing it because there is a filing fee
2 that you have to pay to get it in federal court, but
3 it's absorbed by the League of Cities policy in any
4 event.

5 So it won't cost you additional money and
6 there's no additional cost of moving with the
7 affirmative claim for relief into federal court if
8 that's ultimately warranted or ultimately decided
9 upon.

10 Mr. Boyette and I had a long discussion about
11 it yesterday. There are also compelling reasons not
12 to move to federal court. To some degree, it's a
13 strategic decision made by the attorneys. I think
14 we get better results in federal court.

15 You should also know that if a case goes to
16 federal court and it also has state claims appended
17 to it -- and this one does. Some of the claims here
18 arise out of state law. Most of them, in fact,
19 arise out of state law.

20 What a federal court can do and what federal
21 courts frequently take advantage is -- advantage of
22 is they're permitted to simply resolve the federal
23 claim and take the state claim, punt it if you will,
24 back to state court.

25 So moving it to federal court cannot resolve

1 the thing in total. It may. It's an entirely
2 optional process for a federal court to resolve all
3 of the case or only the part of a case that would
4 have given it original jurisdiction in the first
5 place.

6 The odds of that, I simply don't know. To some
7 degree, it depends on which judge gets the case, it
8 can ultimately go to federal court. Some judges are
9 reticent to exercise state law jurisdiction over
10 those type of claims, some judges do so freely. But
11 it's really something of a -- I don't have odds for
12 you on that. It really depends on who gets the
13 case.

14 It doesn't look at this juncture as if it's
15 going to federal court in any event, but I think it
16 would be worthwhile for you today to give me a
17 little direction in the event that that changes or
18 in the event that this is not -- the present
19 pleading is not amended in time.

20 I only have 30 days from the time the first
21 federal claim appears to move it to federal court.
22 That's our option. And if I lose that time, you
23 lose it forever. You don't get a second chance.

24 Once a federal claim appears in a case, whether
25 -- whether it appears at the outset of the case or

1 whether it appears, as it has in this case, three
2 years later, you get 30 days, period. And if you
3 don't remove under the 30 days, you're foreclosed
4 forever from doing it. And so there you go.

5 Dismissal. The amended complaint as drafted,
6 the countercomplaint as drafted is not a work of
7 art, to put it mildly. It's not a well-drafted
8 complaint. There are a couple of causes of action
9 where I think that they have alleged the
10 bare-minimum that they need to in order to -- in
11 order to survive a motion to dismiss.

12 If it's in federal court, I don't think it will
13 survive. But again, they're going to get a lot of
14 leeway to amend the complaint, multiple -- the
15 courts will put a stop to it at some point and say
16 if you don't get it right this time, you're not
17 going to be able to go forward. I don't think
18 they'll say that in this posture at the very first
19 get-go. Either court, either in state or federal
20 court.

21 But the amended counterclaim is subject to a
22 motion to dismiss. I'm going to work with Mr. Simon
23 and Mr. Boyette to determine if one is warranted.
24 There are good reasons to file a motion to dismiss.
25 Those good reasons are that it cleans up the

1 pleadings, it can narrow the issues for trial. In
2 some circumstances you can have a case fully
3 adjudicated on a motion to dismiss. I don't think
4 that will happen here, but it's possible.

5 The primary thing you can do is narrow -- first
6 of all, narrow the claims at issue and, number two,
7 get those claims -- the claims that are left over,
8 you can get them crystallized and you can get them a
9 little bit more clarity so you know when you go to
10 trial precisely what you're fighting over.

11 My experience is it makes a cleaner trial. It
12 makes a cleaner process to get to trial. And when
13 you go to trial, there's not all the -- all the
14 fighting about we're not sure what you mean there,
15 we don't know what this means, how do our defenses
16 play.

17 On the other hand, there's good reason not to
18 file a motion to dismiss. The motion to dismiss
19 means while it's pending you can't set the case for
20 trial because you have to have closed pleadings in
21 order to do that.

22 So a motion to dismiss is going to delay the
23 case. There's no doubt about that. I won't tell
24 you otherwise. I will tell you that from my
25 perspective, my object is to win always. I don't --

1 I don't necessarily -- I understand that you folks
2 have different concerns because you're dealing with
3 a budget. I'm not.

4 My object always is to prevail in the case, no
5 matter what road I take to get there. So the fact
6 that this case will be delayed by a procedural
7 mechanism is not of significant concern to me,
8 though I understand it will be of significant
9 concern to you. So I would like to hear your
10 thoughts on that.

11 Motion practice takes time. Motion practice
12 takes legal expense. You-all are not paying me,
13 you're paying Mr. Boyette. So the lion's share of
14 that would be borne by the League policy. That's
15 sort of where we are at this juncture.

16 I have not had any meaningful settlement
17 discussions with the plaintiff's counsel, although I
18 will share with you that in reviewing this case over
19 the last several weeks, it occurs to me, number
20 one -- and you-all are in a far better position to
21 opine on this than am I -- it seems -- and I'm not
22 hired to prosecute the affirmative suit. I don't
23 want to get too far into the weeds on that.

24 But I understand at least anecdotally that the
25 behavior sought to be corrected by the filing of the

1 injunctive suit has largely been curbed. I don't
2 know if that's so or not, but I understand it to be
3 at least partially true. I don't know.

4 So I think it may be argued -- if that is the
5 case, it will be argued that you have the relief
6 that you sought. I don't know if that's so or not.
7 This case then is being driven by the counterclaim.

8 Ms. Crary, her son appear to want, for lack of
9 a better term, a pound of flesh from the district
10 for the revocation of the key fobs over the various
11 year -- over the various times that's occurred and
12 for subjecting her to litigation.

13 That sounds to me like -- I don't know if
14 that's the best case to pour a whole bunch of money
15 into litigation. Perhaps a settlement can be had.
16 I don't know. I've not had meaningful conversations
17 with counsel that way, other than to say that we
18 appear to have -- we may have what we want if your
19 client has curbed her behavior and intends to keep
20 it curbed into the future so that we don't have to
21 go through this again.

22 And so perhaps that's a consideration that we
23 may need to have down the road when we're actually
24 having a settlement discussion. But just so you
25 know, I've not had -- I've not gone down that road

1 other than but a step or two.

2 So the plan at this point is to get another
3 amended pleading that's going to, allegedly at least
4 according to counsel, remove the federal claim for
5 relief. It will be an entirely state court claim.
6 And then we'll determine whether we should move to
7 dismiss it or simply close the pleadings by filing
8 an answer and affirmative defense and move to set it
9 for trial.

10 Mr. Boyette, again, he and I have had lengthy
11 conversations about the appropriate strategy in that
12 way. Trials at -- any trial -- I hate to be a
13 mealy-mouthed lawyer. I don't like it. I prefer to
14 give my clients the unvarnished truth.

15 But the fact of the matter is when you go to
16 trial in a case, I don't care how your case is, I
17 don't care who your client is, I don't care who your
18 lawyers are, your odds of winning are exactly
19 50 percent, period. That's the way I see it.

20 I realize that not every lawyer sees it that
21 way, but that's my -- I've lost cases I expected to
22 win. This is a case I would expect to win at trial,
23 but I can't foreclose the possibility of a loss.
24 I've also won cases I expected to lose at trial. I
25 think that's an experience of many, many lawyers.

1 This case, the amended countercomplaint as it's
2 presently postured, is positive. I don't think it
3 will change in that it doesn't presently seek a jury
4 trial. Jury trials are obviously problematic right
5 now because of COVID.

6 But jury trials are problematic in a number of
7 other ways as well. The most primary of which is
8 that you put six people in a box who have no idea of
9 what this case is. You guys have for three, four,
10 five years and they get two or three days to review
11 facts that are developed over a period of time.

12 And I'm not a gambler myself, but it's like
13 throwing the dice down the craps table. You're just
14 not going to -- you don't know what they're going to
15 decide. You don't know how they're going to view
16 the evidence. You don't know how they're going to
17 view the witnesses. You don't know how the judge is
18 going to run the trial in terms of jury
19 instructions. It can be difficult.

20 Bench trials are a little better. You know, I
21 would say significantly better. So here I think
22 we'll have a bench trial. I don't think anyone has
23 asked for a jury trial yet. The court system I
24 understand here is doing -- is doing bench trials so
25 that they can clear their dockets for when jury

1 trials are ultimately available.

2 MR. BOYETTE: Doing them on Zoom.

3 MR. DAIGNEAULT: So there have been trials by
4 Zoom. Bench trial is simply adjudicated by judge,
5 no jury. That's a good thing. I understand that
6 the judge assigned to this case, though I don't have
7 experience with her, is very good, but I think
8 that's true with most of the judges in the state of
9 Florida. I have -- I'm a dying breed of folks who
10 still has a fair amount of confidence in the system
11 to work as it should, even though it takes more time
12 than we think it should.

13 I continue to believe that the park Tri-Par
14 will prevail in this case, at least on the amended
15 counterclaim. Though candidly, we are not all the
16 way through the legal theories sought to be asserted
17 in the new counterclaim. With that, I hope that
18 that answers some of your questions in advance. I'm
19 happy to take any that you -- that you may have.

20 MR. MORRIS: Could I -- Mr. Chair, may I speak?
21 Lee Morris, park manager. Could -- Mr. Boyette,
22 could you maybe explain -- just lay out how this
23 started and kind of the steps as we -- to get us to
24 where we are now, to explain what you are -- what
25 you are representing the district on, what Jay,

1 Mr. --

2 MR. BOYETTE: Sure.

3 MR. MORRIS: You get my drift.

4 MR. BOYETTE: What really triggered the
5 litigation was a lengthy letter from Craig Crary
6 that was addressed I believe -- I believe it was
7 addressed to every single member of the board of
8 trustees at the time and also the park in which he
9 threatened to sue all the trustees and the park with
10 the list of allegations that Ms. Crary has been, you
11 know, discriminated against and bullied and all
12 these things that -- he has a long list. Extortion,
13 libel, slander, battery. You know, just everything
14 in the world.

15 And I had a meeting with I think the current --
16 I think he was a chairman at the time. And the park
17 wanted an answer as to whether it had the authority
18 to enforce its rules. The letter was threatening to
19 sue everyone and claiming that Ms. Crary's entitled
20 to lots of damages because the park was enforcing
21 its rule -- I always used the phrase in-house.

22 There's no question that the park has the legal
23 right to enforce its rules in a courtroom, which is
24 -- which is what the current lawsuit, the complaint
25 by the park seeks to do is enforce the rules by a

1 court order. You always have the right to do that.

2 But in-house, where the proceedings to do a
3 hearing, you're doing hearings in here and revoking
4 fobs and there was also a right to fine in the
5 documents. And he in his letter correctly
6 contended -- now we know, according to the Second
7 District Court of Appeal -- correctly contended that
8 the park did not have the legal right to do that.

9 So the park wanted to know was he right in
10 light of this threat. So we filed a one count
11 declaratory judgment action against Virginia Crary
12 seeking a ruling on whether the fining and
13 suspending provisions were legally valid.

14 We obtained a summary judgment in favor of the
15 park from Judge Mercurio. Some of you attended that
16 hearing. One or more of you may -- Ron attended
17 that hearing. He's nodding his head. Maybe more of
18 you attended that hearing. Mr. Crary appealed.
19 Second District Court of Appeal reversed.

20 While -- actually, while the appeal was
21 pending, so shortly after we got the ruling
22 disposing of the first lawsuit, which is this one
23 count dec action in favor of the park, we filed a
24 second action, which is the 2017 case that we are
25 here on today to enforce the rules of the park

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1 MR. BOYETTE: Ten days.

2 MR. MORRIS: Well, you can suspend for ten days
3 and then if there's a fine involved, if there's
4 non-payment of the fine after a certain amount of
5 time, then it becomes indefinite until the fine is
6 paid, I believe. But there's also a compliance
7 committee that has to vote on to verify or deny the
8 board of trustees or action.

9 MR. BOYETTE: Yes.

10 MR. MORRIS: So there's a stop gap in there.
11 So I think that's good. I just wanted to add one
12 more thing here, just so the trustees understand
13 where we are. So Mr. Boyette is handling Tri-Par in
14 the initial claims for that suit. In other words,
15 the fact that we then filed a lawsuit against
16 Virginia Crary to enforce whatever actions.
17 Mrs. Crary then filed a countersuit against Tri-Par
18 with six counts, I believe.

19 MR. DAIGNEAULT: Yes.

20 MR. MORRIS: Alleging harassment, different
21 things on those six counts.

22 MR. BOYETTE: There are currently 17 counts.

23 MR. MORRIS: I'm sorry, in the amended --

24 MR. BOYETTE: In the new one.

25 MR. MORRIS: In the amendment it went from 6 to

1 17.

2 MR. BOYETTE: Correct.

3 MR. DAIGNEAULT: Like gremlins, we should keep
4 pouring water on them.

5 MR. MORRIS: Yes. Don't pour water on them
6 after midnight. Okay. So Mr. Daigneault is the
7 attorney that was hired by FMIT, who is our
8 insurance company of record, to represent us in that
9 2017 counterclaim. And that's how -- it's the same
10 case. It's just different ends of the case. Good
11 way of putting it?

12 Okay. And the reason Mr. Cohen is here is just
13 because he's our district attorney and he's the
14 person we go to for advice on day-to-day issues that
15 pertain to the actual operation of the park. If
16 there's something going on with the lawsuit,
17 obviously we refer back to Jay and David for their
18 counsel.

19 So that is where we stand. Does everyone
20 understand the differences between the two? I just
21 want to make sure we -- I think you do. We've
22 talked about this mano a mano enough to go from
23 there.

24 All right. Can I open up the floor to the
25 trustees --

1 MS. LEGLER: I have two questions.

2 MR. MORRIS: -- to ask questions?

3 MS. LEGLER: On the 2017 claim, are any of the
4 charges -- I don't know if that's the correct
5 word -- prior to -- I mean, down -- you know, 2009,
6 2010, are they instances of those 17 claims that are
7 way long time ago? This happened in 2011, this
8 happened in 2012. Are they all current ones from
9 2017?

10 MR. BOYETTE: The pleading doesn't tell you.

11 MS. LEGLER: Okay.

12 MR. BOYETTE: It doesn't say on this date I was
13 pushed or yelled at or defamed or whatever it might
14 be. So you can't tell from the pleading. But when
15 you take depositions of -- which I have done -- of
16 Virginia and Craig Crary and you get into the
17 details, you go back 20 years.

18 MS. LEGLER: Yes. Okay. That's what I was
19 looking at. And is that important if it went to --

20 MR. BOYETTE: Yes.

21 MS. LEGLER: -- another level to say, well,
22 these things happened --

23 MR. BOYETTE: Yes.

24 MS. LEGLER: -- 20, 25 years ago and this has
25 been --

1 MR. BOYETTE: You bet. We will absolutely be
2 making a point of that. And I don't think the
3 judges want to hear about things that are --

4 MS. LEGLER: 20 or 25 years ago.

5 MR. BOYETTE: Or even 10 years ago.

6 MS. LEGLER: Okay. And then my other question
7 just right away was you said it went from state to
8 federal. So I'm thinking in my mind then we are
9 looking at, you know, discrimination specifically or
10 no?

11 MR. DAIGNEAULT: No. Just to be clear, it
12 hasn't gone from state to federal. That's -- you
13 need to have federal jurisdiction in order to remove
14 to federal court. You can't go there just because
15 you want to.

16 MS. LEGLER: Right. You were saying something
17 about something triggered --

18 MR. DAIGNEAULT: Have to have the basis to do
19 it. And this case has always been litigated on
20 state law and rounds up until we got this proposed
21 amended pleading, which invoked the United States
22 Constitution.

23 That's the first time it invoked any federal
24 law of any kind throughout the entire litigation.
25 And that's the trigger that would have permitted us

1 to put us in federal court -- put it in federal
2 court, if that remains the case. Doesn't look like
3 it's going to.

4 I'd also note parenthetically that -- I did
5 note in my opening that when you have an attorney
6 who wishes to amend his pleading on the eve of a
7 summary judgment hearing, that's an indication that
8 you're in pretty good shape. I hate to --

9 I don't know that we are going to win that
10 summary judgment hearing. I felt pretty good about
11 it. The fact of the matter is though the facts
12 haven't changed, the legal theory hasn't changed.
13 Our factual --

14 And David has been litigating for quite a
15 period of time before Jeremy and I got involved.
16 Has created a very, very strong record for the court
17 to review. We're going to -- and we've been
18 supplementing in the interim. But, you know, that
19 kind of procedural maneuver frankly is a little
20 desperate.

21 MR. BOYETTE: I will quickly respond to your
22 question that the allegation in the new pleading
23 that invokes the Florida and United States
24 Constitutions is that Ms. Crary is contending that
25 she's been deprived of life, liberty, and property

1 without due process of law.

2 MS. LEGLER: Got it. That's what I thought.

3 Thank you.

4 MR. KOENIG: And that claim then would bring it
5 to the federal court?

6 MS. LEGLER: Yes.

7 MR. KOENIG: He's using that as the reason?

8 MR. BOYETTE: Well, he pled it. Mr. Daigneault
9 is responding and saying, well, now that you've done
10 that, I can take you up to federal court if I want
11 to. It's optional. We don't have to. But he is
12 recommending that the park do that.

13 MS. LEGLER: So by the --

14 MR. BOYETTE: If they don't --

15 MS. LEGLER: -- whoever revoked her fob, we
16 deprived her of life, liberty, and the pursuit of
17 happiness.

18 MR. BOYETTE: And property.

19 MR. DAIGNEAULT: For purposes of full clarity,
20 you know, as I've been reviewing this, I've had a
21 couple cases in the past where people accidentally
22 assert federal claims. I know that sounds strange,
23 but it happens.

24 Mostly it happens by pro se complainants
25 representing themselves in court and they sort of

1 throw a bunch of words on paper and give it to a
2 court and then the lawyers are tasked with hashing
3 out what is actually meant by the complainant.

4 So as I was -- actually, I was discussing this
5 case with Jeremy yesterday and other -- one of my
6 other partners. And we said, jeez, you know, this
7 looks like -- though it was filed by an attorney, it
8 looks like a case where this might have been an
9 accident. It's worth a phone call anyway.

10 So I called him. He happened to be in the
11 office. He said, yeah, I didn't mean to do that.
12 I've not seen that before, but frankly this case --
13 number of issues I've not seen before. In terms
14 of -- if the federal claims stay in at its present
15 posture, one -- the first thing we'll need to figure
16 out is obviously legal, the due process claim.

17 If you make a due process claim under the
18 federal constitution, the first task is to determine
19 whether you're bringing a procedural due process
20 claim, meaning that you were deprived of notice and
21 an opportunity to be heard before you were deprived
22 of some cognizable federal right or whether it's a
23 substantive due process claim, meaning that you were
24 deprived of a fundamental right implicit in the
25 concept of liberty, regardless of the process used

1 to get you there.

2 So there's different types of claims. And even
3 as we were discussing yesterday, I didn't even know
4 what it is. The fact that this came by accident is
5 a bit disconcerting. But my impression from
6 yesterday's conversation, he intends to amend the
7 pleadings. We'll hold his feet to the fire to get
8 that done quickly because, as I said, we have 30
9 days from the first appearance of that to do that or
10 lose it forever.

11 MR. MORRIS: Mr. Chair, may I ask?

12 So Jay, forgive me for quoting Law & Order, but
13 are we able to force them to federal if that's the
14 will of the board of trustees?

15 MR. DAIGNEAULT: No.

16 MR. MORRIS: No?

17 MR. DAIGNEAULT: I mean, I can explicate it if
18 you like. You need to have -- the court -- the
19 federal court needs to have jurisdiction. Federal
20 courts are first and foremost called to resolve
21 questions of federal law.

22 In the absence of the federal law, the only way
23 I can put it in federal court is if we have
24 diversity of jurisdiction, meaning that we have a
25 plaintiff and defendant from different parts of the

1 country who don't share Florida citizenship and the
2 mounting controversy exceeded the threshold
3 statutory amount to put it in front of the court.
4 The short answer is no. In the absence of a federal
5 claim, I have no way to put it in front of the
6 court.

7 MR. BOYETTE: In other words, if he voluntarily
8 removes his allegation, the violation of the United
9 States Constitution, he can stop Jay from removing
10 it.

11 MR. MORRIS: So you open the door --

12 MR. DAIGNEAULT: Right, yes.

13 MR. KOENIG: So Jay, correct me if I'm wrong.
14 Now, I understood you to say that Wyndel,
15 Ms. Crary's attorney said that he made a mistake and
16 does not want to take it to federal court?

17 MR. DAIGNEAULT: That's correct.

18 MR. KOENIG: He's going to amend his amendment?

19 MR. DAIGNEAULT: He's going to need to if he
20 wishes to avoid going to federal court. He needs
21 to -- he needs to amend it and he needs to amend it
22 relatively quickly.

23 MR. KOENIG: Okay.

24 MR. DAIGNEAULT: As it's present -- as we sit
25 here today, I could take it today, put it in federal

1 court. We can do that and I'm prepared to do that
2 if -- I don't think that's wise for you to do that
3 right this very second in light of the conversation
4 I had yesterday.

5 Because what I had happen in the past is we
6 remove to federal and the pro se plaintiffs go,
7 oops, you know, my bad, I made that claim by
8 accident, I didn't mean to do that. And once they
9 do that, the court is then divested of jurisdiction.
10 It has no -- it has no choice but to kick it back to
11 state court.

12 So my advice to you -- and it's not really
13 advice, it's what we need to do -- is wait. We are
14 going to get him to amend his complaint and let him
15 know that if you don't do it, we are going to
16 federal court. And if he hasn't done it on day 29,
17 subject to our discussion today, I'm going to remove
18 to federal court.

19 MR. KOENIG: Okay. So the deadline that we
20 have right now, the way it stands, is 30 days; is
21 that correct?

22 MR. DAIGNEAULT: Yeah, it's 30 days. Actually,
23 Jeremy, we were discussing just before this meeting
24 began that this happened odd procedurally. Meaning
25 that he filed the amended complaint --

1 MR. BOYETTE: Before the order.

2 MR. DAIGNEAULT: -- before the order. It
3 wasn't handled well. But we don't know precisely
4 where the starting point of that 30 days is.

5 MS. LEGLER: That's what I was just going to
6 ask.

7 MR. DAIGNEAULT: We have some time either way.

8 MR. KOENIG: We don't want to get in a dilemma
9 where we're caught in between --

10 MR. DAIGNEAULT: I'll use the shorter time
11 frame.

12 MR. BOYETTE: Right.

13 MR. VON HOLDT: Mr. Chairman, we went from 6
14 counts to 17. I knew the 6 counts. Why weren't we
15 privy to that information with the 17? Because none
16 of the board -- I don't know anything about the 17
17 counts. This is the first I heard of it. How long
18 ago did this change?

19 MR. DAIGNEAULT: Officially it changed as of
20 Monday. That's one of the reasons --

21 MR. VON HOLDT: Changed last Monday?

22 MR. DAIGNEAULT: This Monday. Two days ago
23 when the order was entered.

24 MR. BOYETTE: What's the delay?

25 MR. DAIGNEAULT: Well, we work slow. I get

1 paid by the hour.

2 MR. VON HOLDT: No, I'm just curious. I didn't
3 know if this was done a month ago.

4 MR. DAIGNEAULT: My team is still reviewing all
5 of those 17 counts. I can tell you that I had a
6 conversation with Mr. Darville about -- several of
7 them, for example, are based on events. Apparently
8 Ms. Crary's key fob was suspended in 2012.

9 And I said, you know, while you're at it, while
10 you're taking out the federal claim, why don't you
11 take out the claims that are on their face barred by
12 the statute of limitations. That doesn't make any
13 sense.

14 Let's not fight -- if we have to fight about
15 things, let's fight about things that are valid and
16 legitimate. We are not going back to 2012. That's
17 not -- I mean, you know, I don't like to threaten
18 other lawyers with sanctions, but that's a
19 sanctionable -- that's sanctionable conduct in my
20 view. File --

21 MR. VON HOLDT: And another one of these things
22 that bothers me about this case is it's been amended
23 so many different times. And every time that the
24 paperwork changes, it has to go to our attorney.

25 And sometimes there's -- it's only one or two

1 words in that whole big statement. And our attorney
2 has to read the whole thing. Probably takes him an
3 hour, half an hour, whatever, and we get charged for
4 that. But it -- I just don't understand how you can
5 let this keep happening where he changes one thing
6 and make us go through a whole bunch of paperwork.

7 MR. DAIGNEAULT: I appreciate your question. I
8 don't even disagree with you. But your question
9 really speaks to systemic problems within the court
10 system versus things that are happening on this end
11 of the case.

12 Please bear in mind that whether we like it or
13 not, Ms. Crary has access to the judicial system the
14 same way that we do. And, you know, her lawyers are
15 utilizing the procedures available within that
16 system to prosecute her case.

17 Look, I don't love to have a late amendment
18 either. I think it's -- to me, this one was a
19 little bit desperate. I don't love it. But the
20 fact of the matter is the system doesn't prohibit
21 it.

22 And so what would -- understanding you had to
23 spend money for myself or Mr. Boyette to review the
24 new pleading, what would have happened had we
25 resisted the amendment is that you would have spent

1 about five hours with filing, you know, a motion to
2 resist the amended pleading, going to a court
3 hearing and reviewing an order that was ultimately
4 going to be granted anyways.

5 So I know that you spent money, but frankly,
6 Mr. Boyette saved you money by proceeding the way
7 that we did. I know it's not what you want to hear,
8 but that's --

9 MR. VON HOLDT: Sure doesn't look like it on
10 the paper.

11 MR. DAIGNEAULT: Agreed.

12 MR. BOYETTE: I just have a couple comments in
13 response to your questions. Mr. Daigneault is
14 correct, there's a lot of case law that gives
15 parties to lawsuits liberal rights to amend their
16 pleadings.

17 That's the law. We can't change -- the law is
18 the law. And it's very, very, very clear that the
19 courts are very liberal in letting people amend
20 their pleadings. Whether we like it or not, we have
21 to deal with it.

22 And then just to give you an idea what's in the
23 new complaint, counts 1 to 5 are all claims for
24 breach of fiduciary duty. And each of those counts
25 is basically contending that the park breached a

1 fiduciary duty to Ms. Crary by its in-house
2 enforcement procedures, by enforcing the rules.

3 And I'm sure what we are going to hear from
4 Craig Crary or I guess Mr. Darville on behalf of
5 Mr. Craig Crary is, I told you that you couldn't do
6 that and you just kept doing it anyhow.

7 And I expect the park's response will be, we
8 consulted with the park's attorney at the time,
9 Mr. Domber, who told us that it was valid and legal
10 and we followed proper legal advice. We went to
11 court. Judge Mercurio agreed that it was valid and
12 legal. We followed what Judge Mercurio ordered.

13 When the Second District Court of Appeal
14 disagreed, we immediately followed what the Second
15 District Court of Appeal said. And we -- and the
16 board and the park did nothing wrong.

17 And then counts 6 and 7 allege that the park
18 breached the declaration of covenants by not liening
19 her for weeds on her property. Basically, that
20 you've got the provision in the declaration that
21 says if somebody doesn't cut their grass, you can do
22 self-help cutting and then you can lien their
23 property.

24 They're saying you breached the declaration
25 because instead of liening me, you went and revoked

1 my fob. Kind of nutty, but that's what they've got.
2 And then the other one is that you breached the
3 declaration by not suing her for an injunction and
4 instead, you went and revoked her fob and you should
5 have -- I guess what they're saying, it's hard to
6 tell, but you should have sued her for an injunction
7 before you actually did.

8 Those are kind of strange. And then counts 8
9 to 12 are that you violated her due process rights
10 under the state and federal constitutions. And then
11 13 through 17 are nuisance, intentional infliction
12 of emotional distress, defamation, and slander. And
13 that's -- you've all seen, I'm sure, the litany of
14 the park is racist and the park is extortionists and
15 et cetera. So just to give you an idea.

16 MR. DAIGNEAULT: And please understand also
17 that the fact that there are more counts doesn't
18 mean that they are better counts than they were
19 before. Likely, if they were better counts, you
20 would have seen them by now.

21 MR. HOUCHIN: Mr. Chairman?

22 MR. KOENIG: Yes.

23 MR. HOUCHIN: Ron Houchin, seat 4. I've been
24 on the board longer than anybody here today. At
25 this point I feel that whatever is legally the best,

1 quickest, and least expensive is what I personally
2 want. I would assume that the other board members
3 do too. So it would be difficult for me to
4 recommend to you -- because I'm not an attorney, but
5 I do believe that we've had all of this nonsense and
6 legal expense that the park can stand.

7 At this point in time, I think we need the
8 legal -- or the people we pay and you also as the
9 insurance attorney to do what is most efficient and
10 most cost efficient, closure to this entire matter.
11 The legal fees are eating us alive.

12 MR. KOENIG: Jay, one quick question regarding
13 the case if it goes to federal court. Is there any
14 restrictions or limitations on the amount that the
15 insurance company would pay?

16 MR. DAIGNEAULT: No.

17 MR. KOENIG: There is no limit?

18 MR. DAIGNEAULT: No.

19 MR. KOENIG: Okay. Is there --

20 MR. DAIGNEAULT: It's not ethical for me to be
21 involved in your coverage, but there's no -- I've
22 not been advised that you have any kind of wasting
23 policy or anything like that, no. So I guess the
24 answer is no.

25 MR. KOENIG: The reason I ask that is if we go

1 there and we're halfway through a trial and let's
2 just say hypothetically that our limit was \$100,000
3 and we reached it, they're going to say to us, okay,
4 you're on your own now, you've reached the limit.

5 MR. DAIGNEAULT: No. The exposure for you
6 folks here from the League's perspective is if
7 you're ultimately hit with a verdict or judgment in
8 excess of your coverage limits. I don't know what
9 your coverage limits are, but I think Lee does.

10 Bear in mind, these -- the claims being brought
11 against you in the countercomplaint are, with the
12 exception of one -- and the one is a breach of
13 contract claim, which we believe to be entirely
14 without merit. So we think --

15 Nevertheless, the bulk of the claims against
16 you, 16 of the 17 or 15, however many there are,
17 they're a little misnumbered. The point is they're
18 tort claims. And you're a sovereign entity, right?
19 Under 768.28. So you have a limit of how much
20 you're going to pay.

21 Even if you go to trial and the jury or judge
22 hates all of you and hates me and hates everybody to
23 do with this case and you get -- you can get a
24 million-dollar judgment assessed against you in a
25 tort case and all you are going to pay through your

1 policy is 200.

2 And that 200 is inclusive of attorney's fees to
3 the other side. Okay? So I've been given no
4 direction to the contrary. And I would have been by
5 this point had it been at issue that we're dealing
6 with a wasting policy or you're dealing with
7 liability that potentially exceeds your coverage.

8 MR. KOENIG: Thank you.

9 David, I think that most of the depositions are
10 completed?

11 MR. BOYETTE: Correct.

12 MR. KOENIG: There wouldn't be any more
13 depositions that would be needed for anything at
14 this point?

15 MS. LEGLER: I've understood that they were all
16 done.

17 MR. BOYETTE: Well, we're --

18 MR. DAIGNEAULT: May I?

19 MR. BOYETTE: Mr. Daigneault and I have
20 recently discussed possibly redepositing Virginia
21 Crary to get her on the record regarding new
22 allegations that she's brought up. Not necessarily
23 required, but we both think it's a good idea.

24 MR. KOENIG: I'm just asking these questions so
25 the board will know what to expect down the road

1 regardless of what you guys -- or we decide to do.
2 Because these are some of the questions that we are
3 hearing, me as board chairman, is when are these
4 depositions going to cease and these large bills
5 come in. When does it stop? I'm just asking: Do
6 you think right now the only one possibly could be
7 Virginia, Mrs. Crary?

8 MR. BOYETTE: And it doesn't even have to be
9 her. What I would say is if I had a client sitting
10 in front of me who said our only concern is winning,
11 we don't care what it costs, we don't care how long
12 it takes, but we want you to win, I would tell you
13 I'd probably take five more depositions.

14 I do not have that client sitting in front of
15 me. I just heard Mr. Houchin and I'm of the
16 impression that there's probably a majority on the
17 board that share his sentiment -- I guess we'll find
18 out maybe before the end of the day -- that keeping
19 costs down and getting it resolved quick is a
20 primary objective.

21 And if that's the case, I could take zero
22 depositions as far as I'm concerned and go try the
23 case. But if we are going to take any more
24 depositions, it would be another one of Virginia
25 Crary. If. I don't feel it's necessary.

1 Now, Mr. Daigneault may say I want to go depose
2 her and I may just not attend if you want me to not
3 attend because you don't have to pay for him.
4 Insurance company pays for him. So he can go depose
5 her with no expense to you and you can instruct me
6 not to attend.

7 MR. DAIGNEAULT: That's sort of some of the --
8 I don't want to call it disconnect, but some of the
9 dissonance that I received today. So from my
10 perspective -- and I'm not speaking for David. And
11 he and I work very well together in this case since
12 we got in and I appreciate that.

13 You guys have been under the weight of this
14 case for a while. For reasons that are not entirely
15 clear to me and are not especially important, I
16 didn't get this case until November of '19. You
17 know, and it came to me with a fairly developed
18 record to some degree and it came to me with a
19 history -- a two-year-old history of litigation.

20 I don't know ultimately what the issue was in
21 terms of coverage or -- I don't know. I say that to
22 note that at least to me, this case is still
23 relatively new. I'll tell you what else I've
24 developed in the record. What else I've developed
25 in the record, when I think I have sufficient

1 evidence and more, is I need to win the case.

2 Now, I have that. I feel pretty confident that
3 our motion for summary judgment was going to be
4 granted. Same thing here. I got a plaintiff now
5 though that was deposed a while back, you know. And
6 it's good practice and I'm happy to take the
7 deposition.

8 And I don't want to intrude on your -- and
9 you-all have some concerns about coming out of
10 pocket for paying your attorney. This doesn't apply
11 to me because you're not paying me. So obviously
12 that applies to Mr. Boyette.

13 It's good practice on a case this old to take
14 updated deposition of the plaintiff. Fact of the
15 matter is things change. My recommendation to you,
16 because I know it's an issue you want to discuss, is
17 you honestly want up from under litigation. I get
18 it.

19 I think the best way -- when I discussed
20 settlement with this case early on with
21 Mr. Darville, it was we want like a half a million
22 dollars. And I'm going, what was that key fob made
23 of? You know. I don't really know. However, I do
24 think based on my conversation with him yesterday
25 that he does recognize at this juncture that he is

1 dealing with a sovereign entity and that ain't gonna
2 happen.

3 MR. BOYETTE: Jump in real quick. I had a
4 conversation with Craig Crary in June. And at that
5 time he said that he wanted 200,000, plus Darville's
6 attorney's fees. And he did not have a number for
7 Darville's attorney's fees at that point, but that's
8 what he's saying.

9 MR. DAIGNEAULT: And that's good information to
10 have because that's a reasonable beginning point
11 negotiation. I'm happy to provide him the case law
12 that says even if you take us to trial on this,
13 you're going to get 200 and your 200 is going to be
14 inclusive of those attorney's fees. That's case law
15 that's developed under 768.28 going back many years.

16 So that's the most and that's going to be
17 inclusive of attorney's fee. There is a point for
18 the plaintiffs in this case -- and I don't know -- I
19 don't know if they reached -- I don't know what
20 their metric is -- where they're going to meet a
21 point of diminishing returns because the 200 is a
22 fixed number.

23 MR. KOENIG: Go ahead, Ron.

24 MR. HOUCHIN: I didn't intend that we should --
25 that I'm saying we don't do what's correct. I mean,

1 if you -- if you need another deposition, that's not
2 an issue. I'm just -- all I'm indicating is that
3 Mrs. Crary and her son have been very litigious.
4 They have gotten awards from this park.

5 But at this point in time, I don't want to --
6 we have corrected, through the legislature and the
7 creation of a committee that oversees the board,
8 decisions on fines. So we have -- we have corrected
9 all of the issues that Craig brought up. Okay?

10 All I'm saying is, let's just get this done as
11 quickly as we can. That's all I'm saying,
12 gentlemen. I do not want to hinder you in any way,
13 shape, or form. Whatever you feel is the best.
14 That's what we're paying you for. Okay?

15 MS. LEGLER: I do have one question though.
16 Mr. Boyette, you had said that there were some new
17 recent allegations from Mrs. Crary. Is that what
18 you said, some recent stuff that's come up?

19 MR. BOYETTE: It's this new pleading, which --

20 MR. HOUCHIN: Amended claim. Nothing new.

21 MS. LEGLER: Okay. So if we came to some
22 agreement, settlement, whatever the term is you want
23 to use, going forward, next week they can just bring
24 up new stuff and we can do this all over again on
25 the same exact kind of charges that we are talking

1 about here right now.

2 If she gets a letter from the park manager,
3 which is generic, it's the same letter, goes to
4 everybody, you have a lot of weeds in your yard,
5 please clean it up, she could then go ahead and --

6 MR. BOYETTE: We could finish this case --

7 MS. LEGLER: And then tomorrow --

8 MR. BOYETTE: -- and then the next day she gets
9 a letter from the park manager and sues the park
10 again.

11 MS. LEGLER: Right. Is there any way that we
12 can avoid this kind of --

13 MR. KOENIG: Litigation.

14 MS. LEGLER: Yeah. I mean, you know,
15 continual, constant --

16 MR. VON HOLDT: Just sitting back and listening
17 here, we had a problem before and we'd send out
18 letters. We finally had Mr. Cohen send out a
19 letter. And lo and behold, the property got cleaned
20 up like it's never been cleaned up before.

21 So I -- you know, I don't know how they can
22 have any -- substantiate anything saying we are
23 picking on them when it wasn't cleaned up before.
24 And we finally went to Mr. Cohen and said, hey, how
25 would you like to be her neighbor and live with that

1 stuff next door? So Lee and Mr. Cohen got together
2 and wrote them a letter. And the property looks
3 fantastic on one of them.

4 MS. LEGLER: I guess if we settle this one with
5 all these 17 claims, how do we avoid in the future
6 these same claims coming up again and doing this all
7 over again? Because I know a lot of these claims
8 were things that I didn't even live here.

9 MR. MORRIS: May I answer that, Mr. Chair?

10 MR. KOENIG: Yes, go ahead.

11 MR. MORRIS: You cannot stop anybody in this
12 park from suing you after receiving a letter from
13 the park manager, Mr. Cohen, or even a door hanger
14 put on their -- that's just not the way the system
15 works.

16 However, since 2019, we certainly have been --
17 and I believe just before that too we have treated
18 everyone fairly and with respect and we have chosen
19 our battles. And it's unlikely -- and when we sent
20 a letter -- by the way, just so you know, it wasn't
21 Mr. Cohen and I, it was actually Mr. Boyette and I
22 that worked that letter together. Because it
23 affected that case. Mr. Cohen did see it.

24 But the point was, is that we make sure now we
25 have photographic evidence that's undisputable or

1 indisputable and, therefore, it could never -- you
2 know, if it goes to court, all we do is show the
3 pictures and say --

4 MR. BOYETTE: I would tack on -- I would tack
5 on to that answer that I agree with what Mr. Morris
6 just said and I would amend to it or tack on that if
7 you have a park resident who files a lawsuit that is
8 baseless or lacks merit and sues you, you may be
9 able to make a claim for attorney's fees against
10 said resident, which we have done against Ms. Crary
11 in the pending lawsuit.

12 And if you win that lawsuit, you may be able to
13 get a judgment against the resident to recoup the
14 attorney's fees the park incurred if they're
15 collectible. And I haven't -- I don't recall if
16 Ms. Crary's lots have mortgages on them, which would
17 certainly affect the extent to which she's
18 collectible. I don't know.

19 MR. HOUCHIN: It's our understanding that she
20 has turned her properties over to her children. I
21 don't know if that's correct or not.

22 MR. BOYETTE: I'd have to check on that. Last
23 I heard, she said that, but there was no deed
24 recorded.

25 MR. HOUCHIN: Okay.

1 MR. BOYETTE: My recall, she testified to that,
2 but then there's no deed recorded. And there is a
3 fraudulent transfer law in Florida, that if you're
4 being sued for -- like maybe the park is suing you
5 for its attorney's fees and you have assets and you
6 give them to your children for nothing, the park can
7 say no, no, no, no, that's an improper transfer,
8 that asset comes back.

9 Can't offer you any guarantees of any of that,
10 but I just wanted to mention that, yes, residents
11 can sue, but the park can dissuade folks from doing
12 that if they defeat said lawsuits and recover their
13 fees from said residents.

14 MR. HOUCHIN: I think the other issue here is
15 that, again, now the board of directors or board of
16 trustees, if we find or penalize in any way, shape,
17 or form, there is a check and balance with the nine
18 people. So we now would be totally legal doing
19 that.

20 MR. KOENIG: Let me just say, David and Jay, I
21 think that what Ron meant is he doesn't want to take
22 any tool away from you that you feel, both of yous,
23 that would jeopardize either case. Yes, we want it
24 over with, but if you come to us and you say,
25 look-it, this is what I think is the best interest

1 of both cases, to depose Mrs. Crary again, you got
2 to do it.

3 MR. HOUCHIN: Yeah.

4 MR. KOENIG: I mean, we are not going to after
5 18 years give up and abandon the ship.

6 MR. HOUCHIN: No.

7 MS. LEGLER: Yeah. I guess I was thinking
8 about, you know, if he comes back tomorrow with
9 something else --

10 MR. KOENIG: Right.

11 MS. LEGLER: -- basically the same allegations,
12 do we always have to jump? You know what I mean?
13 Do we always have to respond to those allegations?
14 If everything is we've got all our ducks in a row
15 and we have pictures and this, that, and the other,
16 do we always have to do that?

17 MR. KOENIG: I think that we are following the
18 law better with Andy and with Lee and the process
19 that we go through and with the legislation now in
20 place where we have the right to do it and we do it
21 properly. Let somebody take us to court because we
22 are doing it the right way.

23 MR. MORRIS: May I add, Mr. Chair, if -- the
24 difference is, is that we initiated this suit
25 against Ms. Crary. If we were to have someone come

1 after us, we have some coverage generally based
2 under our insurance company that is presently with
3 us, which is -- so there's -- there is some
4 indemnification there on our behalf, Laurie, if
5 that's the case. And it makes me sleep a lot better
6 at night.

7 MS. LEGLER: Yeah, because I think my main
8 concern --

9 MR. DAIGNEAULT: I'm going to interrupt you-all
10 real quick, if you don't mind. Yeah. We are
11 talking about things that may or may not happen in
12 the future in terms of other people being
13 disciplined again. So that could be construed as
14 being outside the bounds of our sunshine exemption.
15 So let's try to focus our discussion on the lawsuit
16 at hand.

17 MR. MORRIS: Mr. Chair, may I say one other
18 thing or ask one other thing? Mr. Boyette, I'm
19 assuming that because -- because the payment to
20 Mr. Daigneault is included in the insurance
21 company's coverage, are we -- besides the
22 depositions -- and I'm trying to put this the best
23 way I can.

24 I'm assuming that our -- our exposure through
25 your office is somewhat diminished as in the past --

1 from the past of going through all the motions, that
2 we are getting to that point where we are -- we may
3 not see a bill every month, that kind of thing, or
4 just when there's an action in the court or when you
5 have to actually go to court would be the only time
6 we are going to see hours charged, except of course
7 when I call you and ask for your advice.

8 MR. BOYETTE: That is a fair statement. And I
9 should mention that in the suit that the park filed
10 against Ms. Crary, the park has made a claim against
11 her for its attorney's fees and court costs.

12 Ms. Crary has also included in her pleadings a claim
13 for her attorney's fees and court costs in defending
14 the park's claim.

15 Which in my mind is the most important aspect
16 of the case that I'm handling because I don't want
17 the park to get hit with a judgment for their fees
18 and costs. We really need to win our case to stop,
19 you know, them from making a claim for fees and
20 costs against the park.

21 When it started, it was about getting her to be
22 a nice citizen, you know, to play nicely with
23 others. And it seems from what I'm hearing that
24 things are much better. Not perfect, but much, much
25 better.

1 MR. KOENIG: I think I have to agree with that.
2 She has --

3 MR. BOYETTE: I'm not here so I wouldn't know,
4 but that's what I hear.

5 MR. KOENIG: She has behaved better than in the
6 past. It's not perfect, but it's better.

7 MR. VON HOLDT: I have one other question. I
8 was number 1 on 6 counts. And I've never been
9 deposed. Did they throw my count out?

10 MR. BOYETTE: I thought you were deposed.

11 MR. VON HOLDT: I've never been deposed.

12 MR. BOYETTE: I know you testified in court.

13 MS. LEGLER: No, that was for the other case.

14 MR. DAIGNEAULT: You have a deposition
15 transcript in our record.

16 MR. BOYETTE: They could ask for your
17 deposition.

18 MR. DAIGNEAULT: Please bear in mind --

19 MR. VON HOLDT: I think once they looked at the
20 films and stuff, I think they decided not to.

21 MR. DAIGNEAULT: Jeremy is checking on that
22 now, but I'm relatively sure you have a deposition
23 transcript in the record.

24 MR. KOENIG: I think you were, Daryle.

25 MR. BOYETTE: I think you were.

1 MR. DAIGNEAULT: October 17th of 2018.

2 MR. VON HOLDT: Not on that particular thing.

3 MR. BOYETTE: No, it was on the car issue.

4 MS. LEGLER: Yes.

5 MR. VON HOLDT: Yeah. The car issue, that was
6 a different thing, but not on --

7 MS. LEGLER: This one.

8 MR. VON HOLDT: -- that I pushed her. That one
9 I have not been deposed on and --

10 MR. DAIGNEAULT: Bear in mind, we don't --
11 we're certainly not going to encourage opposing
12 counsel to take the deposition of our own clients.
13 Presumably, you know, we know what our clients are
14 going to say. So if they choose not to take your
15 deposition, bully for us.

16 MR. BOYETTE: If you were a little older, I
17 might think about it.

18 MR. VON HOLDT: I've been in a deposition
19 before and I was thrown out in a half an hour. So I
20 do know how a deposition goes. But I just -- I
21 think the reason they did that is because they seen
22 that that wasn't true on the film, so -- okay.
23 Whatever. I was just curious on my part.

24 MR. DAIGNEAULT: I think that -- I may be
25 misreading it, but I think your fundamental question

1 is how do we get the entire thing, without making
2 distinctions between the affirmative claim for
3 relief and the -- how do we get the whole thing
4 wrapped, get this thing -- put a bow on it and be
5 done with it for once and for all.

6 I think probably at this juncture there is --
7 it's a good thing always in a case to be exploring
8 settlement. This case, the way that it's presently
9 postured is, in my view, one that were a couple of
10 other circumstances different, probably would
11 already be settled.

12 I think that one of the things that probably is
13 hampering settlement -- two things are hampering
14 settlement at this point. Money. Both parties have
15 now, because this thing has been going on so long,
16 have put a whole ton of money into attorney's fees.
17 So if you walk away from it, you're putting
18 yourself -- you might be putting yourself in a bad
19 spot.

20 The second thing that I think might be
21 hampering settlement, if we get down that road, is
22 emotion. Cases are by their nature emotional for
23 both parties to some degree. This case has the
24 added element of Ms. Crary's son being involved.

25 And my impression from working with him on this

1 case a little bit and having him attend certain
2 events and depositions and the like is that he is a
3 little charged up over the case. That can hamper
4 settlement.

5 But I think it's worthwhile at this juncture to
6 explore settlement on a global basis of all these
7 claims, which may take the form of, you know, a
8 settlement sum through the policy to the Crarys and
9 in exchange for some type of promise for continued
10 good behavior. Now, bear in mind, there are
11 limitations on that, both temporal and practical,
12 right? So -- but it's possible to do that.

13 MR. COHEN: Jay, you're -- I didn't mean to
14 interrupt. Has there been any mediation sessions to
15 date in any of the litigation?

16 MR. DAIGNEAULT: None that I've been involved
17 in.

18 MR. KOENIG: Not in this case. David, went
19 through litigation [sic] with him once, but that was
20 for the other case.

21 MR. BOYETTE: Yeah, we mediated --

22 MR. KOENIG: The '17 case.

23 MR. BOYETTE: We did have a mediation in the
24 other case.

25 MR. KOENIG: Correct.

1 MR. BOYETTE: It did not settle.

2 MR. DAIGNEAULT: So a lot of courts, before
3 they'll even go to trial in a case, are going to
4 force you to mediate. If we go to federal court,
5 that's not negotiable, that's required. I think
6 it's required in the 12th Circuit, David.

7 MR. BOYETTE: It's part of the standard form
8 trial order. But if both parties stipulate it away,
9 usually -- most of our local judges will allow you
10 to waive it. Some of them don't though. Once in a
11 while they'll say, no, you're mediating. But once
12 you notice it for trial, it's automatically in the
13 order. And you have to get permission to take it
14 out.

15 MS. LEGLER: Has Mr. Crary given you a specific
16 sum, money amount that he --

17 MR. BOYETTE: In June he told me 200,000, plus
18 Darville's fees. And prior to that Jay had heard a
19 figure that was higher. I forget what it was.

20 MS. LEGLER: And those are his terms currently
21 now for settlement?

22 MR. BOYETTE: I haven't heard anything since
23 June.

24 MR. DAIGNEAULT: When I first got involved in
25 the case, because the case has been litigated so

1 long, I figured it was -- and having reviewed the
2 record, I figured there was some potential for
3 settlement. I had talked to Mr. Morris and there
4 was -- you know, we knew that you-all were under the
5 pressure of the litigation costs.

6 So I did explore settlement briefly with him
7 and the number was -- it was just not practical. So
8 I related it over to the insurer who said, yeah,
9 that's not going to work. But the number that I got
10 yesterday was, you know, at least a recognition that
11 I received yesterday that there are some limitations
12 on their ultimate recovery, was important.

13 So it looks like at least a possibility. How
14 likely it is, I don't know, but at least there's
15 some possibility that everyone is going to be
16 reasonable at this juncture.

17 And that's one of the things that we can do
18 is -- bear in mind, you don't need a mediation to
19 settle the case. You settle the case through phone
20 calls, through the attorneys, which is done
21 frequently.

22 Sometimes the -- bear in mind, mediators cost
23 money. In this case, that would be borne through
24 the League policy. But, you know, good practical
25 solutions to cases don't need to come from

1 mediators, but they frequently do.

2 MS. LEGLER: So you're saying that maybe it
3 would just be to cover the cost of Mr. Darville's --
4 the attorney fees?

5 MR. BOYETTE: To settle the case?

6 MS. LEGLER: Yes.

7 MR. COHEN: No.

8 MR. BOYETTE: My experience with Mr. Crary is
9 it's very difficult to settle anything with him.
10 You probably have all experienced that.

11 MS. LEGLER: That's what I was hoping, is that
12 we could --

13 MR. DAIGNEAULT: That's the emotional component
14 I was talking about. You know, as I -- I would have
15 a very, very -- my parents are both deceased, but I
16 would have a very hard time representing my parents
17 in an objective manner. It's hard to do.

18 And I know he's not an attorney of record, but
19 he's clearly very involved in the case and to some
20 degree driving some of these decisions being made by
21 the other side. It complicates things for sure.

22 MR. KOENIG: The only thing that I remember
23 regarding deposition -- I'm sorry, mediation is,
24 David, when you and I were in mediation with him and
25 he had a figure. And part of the negotiation was

1 attorney fees, that he had a 200-and-some-page
2 invoice, correct? Remember?

3 MR. BOYETTE: Sure.

4 MR. KOENIG: And that amount was \$180,000. And
5 then we hired an attorney to analyze that bill.

6 MR. BOYETTE: Well, I analyzed it and I spoon
7 fed it to the expert witness I was going to use.

8 MR. KOENIG: You're the one that suggested that
9 we hire that person.

10 MR. BOYETTE: Yes, after I --

11 MR. KOENIG: And settling for a hell of a lot
12 less.

13 MR. BOYETTE: 62.

14 MS. LEGLER: 62,000.

15 MR. KOENIG: Right. So I think the negotiation
16 possibly is an option, but we better have something
17 that we can have in the back of our hand because
18 otherwise, I don't think he's going to back down.

19 All right. Does anybody else have any other
20 questions?

21 MR. BOYETTE: I have a comment. A couple
22 comments. One is I am completely in favor of the
23 case being settled with payment from the insurance
24 company. I think that would be good for the park
25 because I know you want this case over.

1 I have certainly experienced folks in the past
2 where their insurance company writes a check to the
3 opposing party in litigation and they're grossly
4 offended because the plaintiff didn't deserve a
5 penny and I can't believe they're paying that
6 such-and-such.

7 You probably experienced that or known somebody
8 that's experienced that. But I know the park wants
9 this case over. So if the insurance will settle it,
10 I'm all for that. Completely, 100 percent. And
11 that's really up to your insurance company and how
12 much they're willing to put on the table.

13 So if it settles, great. If it doesn't and it
14 has to be litigated, I -- I want to talk -- I want
15 to comment on the future of this case if we don't
16 settle. One of the things I heard Jay say was any
17 case at trial is a 50/50.

18 I would say I tried probably 70 or 80 cases
19 over the past 30-plus years and I agree with Jay
20 completely. I have -- I can count two or three
21 times where I walked out of the trial and said, what
22 the heck just happened? That happens sometimes.

23 And in hindsight I get a little insight, maybe
24 I get a clue of what happened, but sometimes they
25 don't go the way you want. But my experience has

1 also been that in a pretty good percentage of time I
2 have a pretty good idea of how it's going to shake
3 out and usually it does.

4 So I don't feel like it's -- I mean, I guess
5 it's kind of metaphysical to say whether it's a
6 50/50 or not, but I would say in this case I'm
7 intimately familiar with her allegations and I feel
8 the park is in a strong position on the merits of
9 the case.

10 And even if she were to win on the merits, they
11 have a very difficult time articulating damages.
12 And it is hard to -- how do you put a number on I
13 couldn't use the pool for a couple years? How do
14 you put 200 -- how do you equate that to \$200 or
15 \$50? I mean, that's a problem for them.

16 So I -- I don't see the case -- well, let me --
17 I'm being careful to choose my words. The other
18 thing I wanted to comment on is I've heard from the
19 board let's -- I've heard the words do what's best
20 and do what's quickest. And those aren't -- those
21 can be inconsistent.

22 I agree, again, with Jay that the federal court
23 would be better for the park on the merits on these
24 federal issues. You are more likely to have a
25 federal court judge drop the hammer, is the phrase I

1 use, and put an end to something in the park's
2 favor.

3 And he's also right that they have strict --
4 more -- stricter timelines. State court is kind of
5 -- you get to decide how long your case takes. In
6 federal court, they take control, but in state court
7 you get to decide. And if you want to push your
8 case to trial quickly in state court, you can. In
9 Sarasota we can get trial dates in six months,
10 certainly under a year.

11 And, you know, I guess what I would say is if
12 you're looking for the best possible result, if the
13 federal -- if they go ahead and try to pursue a
14 federal claim, I would agree with Jay, federal court
15 is probably your best place on the merits to win.
16 It's not the quickest though and it's not the
17 cheapest.

18 But that's the insurance company's side of the
19 case. So I can kind of sit back and not bill you
20 while they fight it where they want to fight it.
21 And frankly, the insurance company is the one on the
22 hook for the counterclaim so they should control how
23 that's done, you know. I think it's really
24 appropriate for them to choose their form and fight
25 it as they want.

1 But I did want to comment on best versus
2 quickest and they are not necessarily the same
3 thing. I think the quickest, cheapest would be not
4 to go to federal court. Jay recommended we're
5 moving to federal court if that issue stays.

6 I would say if you want to let the insurance
7 company decide that and take the best possible route
8 to win on that claim, then let them do that. But if
9 you want the quickest, cheapest, I would say don't
10 go to federal court and just direct us to set the
11 case for trial as quickly as possible with no
12 further motion practice and stay in court. That's
13 quickest and cheapest.

14 You know, motion practice, motions to dismiss
15 complaints, motions for summary judgment, you can
16 many times win cases on those. But motions to
17 dismiss, it's pretty darn rare. They usually get to
18 amend umpteen times.

19 Motions for summary judgment, sometimes you win
20 them. And then sometimes you win them on summary
21 judgment, they go up to the 2nd DCA and they get
22 reversed and then you got to start again. My
23 experience over 30 years is quickest, cheapest, go
24 right to trial.

25 And it's kind of a function of who my client

1 is. When I have a client who says I want to win, I
2 have a lot of money, I don't care what it costs,
3 let's go win, I may file every motion I can think of
4 and I take them to federal court, come back to state
5 court, bury them in motions.

6 Plaintiffs can lose their vim and vigor with
7 time. And it's their job -- I mean, standard
8 defense strategy is delay and standard plaintiff
9 strategy is get the case to trial. Nothing good
10 happens at trial for a defendant. The longer the
11 offense doesn't score, the longer they can't put any
12 points on the board, the longer you keep them out of
13 the end zone. The only way they score is they get
14 to trial and get a judgment against you.

15 MR. KOENIG: David, let me ask you a question
16 though. If we do that and we take it to court and
17 we get a judgment and we win it, can he appeal it?

18 MR. BOYETTE: Sure. Either side --

19 MR. KOENIG: We're right back to where we
20 started.

21 MR. BOYETTE: Either side that loses can
22 appeal.

23 MR. KOENIG: We're right back -- it's really
24 not over with then.

25 MR. COHEN: Collection is always an issue too,

1 as David referred to before. Just because you have
2 a piece of paper doesn't mean you can collect --

3 MR. BOYETTE: And collecting is definitely a
4 big issue. Big issue. Yeah, because you can win
5 and get a judgment against her for fees, but if you
6 can't collect it, it's --

7 MS. LEGLER: Yeah. The last court hearing, I
8 was at that one a few years ago and the judge
9 overturned the ruling. Remember? And we walked
10 out. I was shocked.

11 MR. KOENIG: David was too. We were all amazed
12 that we lost.

13 MR. HOUCHIN: So the only real end to this is
14 in federal court?

15 MR. BOYETTE: No. No, no, no.

16 MR. KOENIG: He would have an appeal there
17 also?

18 MR. DAIGNEAULT: Yeah. An appeal from federal
19 court goes to a different court. It goes to the
20 11th Circuit Court of Appeal in Atlanta. But you
21 always -- every case, every single case comes with
22 appellate rights of some kind.

23 MR. BOYETTE: The fastest finish line to end
24 the current case is a trial. It may not be the best
25 way to get your -- you know, to win the case, but it

1 is the fastest way.

2 MR. COHEN: Or a settlement agreement.

3 MR. BOYETTE: Yes. Settlement is the best way.

4 MS. LEGLER: Right. I guess I'm a little -- I
5 thought Mr. Crary was going to be here today so that
6 maybe we could actually discuss --

7 MR. KOENIG: Oh, no, no. No, no. No, no.
8 This is for the board.

9 MS. LEGLER: Okay.

10 MR. VIA: But Jay, didn't you say in part of
11 your opening statement that if it went to federal
12 court, part of this would be heard by the federal
13 court and the rest would be dropped back down to
14 your state court?

15 MR. DAIGNEAULT: What I said, the courts have a
16 thing called supplemental jurisdiction or pending
17 jurisdiction where -- and it's entirely optional.
18 When a case is before a federal court that contains
19 both federal claims and state law claims, the courts
20 have to determine and adjudicate the federal law
21 claims, but the adjudication of the state law claims
22 is optional.

23 MR. VIA: And ours is a little bit of both.

24 MR. DAIGNEAULT: A little bit of both.

25 MR. BOYETTE: So they might decide the whole

1 thing or they might decide the federal claim and
2 then send the state stuff back to the state court.

3 MS. LEGLER: Right.

4 MR. MORRIS: Mr. Chair, I believe though that
5 Mr. Daigneault, Jay, has said that he is not
6 planning on going to federal court at this point in
7 time.

8 MR. DAIGNEAULT: At this juncture it's really
9 less a function of my plan than it is my
10 conversation with plaintiff indicating he's going to
11 remove the federal claim from the lawsuit, which I
12 wouldn't be able to go to federal court.

13 MR. MORRIS: So this may be a moot point is
14 what we're --

15 MR. DAIGNEAULT: That's precisely correct. The
16 only way that it stays salient is if the complaint
17 is not amended in time that I would need to remove
18 it based on that 30-day calendar.

19 MR. KOENIG: You won't let that happen.

20 MR. DAIGNEAULT: I'm not going to let that
21 happen. You know, frankly -- and even if I did,
22 Mr. Chairman, again, I continue to feel strongly
23 about the park's positions in the lawsuit. I think
24 we are in pretty good shape here on facts.

25 You know, when I say trial is 50/50, that's a

1 mathematical certainty. But I feel pretty good,
2 number one, about this case, about my firm's ability
3 and my ability to try the case before a jury or a
4 judge and I think we prevail.

5 What you-all are discussing, at the risk of
6 being inartful, in many respects doesn't concern me,
7 right? Because I'm here for the counterclaim. I
8 think we need to draw some finer distinctions
9 between the counterclaim and the affirmative claim
10 for relief.

11 The affirmative claim for relief is the one
12 that is, quote, costing you money because the
13 counterclaim isn't. You paid your premiums already,
14 right? So you have -- the insurance company has the
15 duty of good faith to you, which they are and always
16 have been.

17 In the many years that I worked for them and
18 with them, there have been -- there have never been
19 handcuffs, so to speak, put on me in the terms of
20 the way I litigate a case. That's always a very
21 comforting thing for a defense lawyer.

22 I've never been told that I can't take a
23 deposition or engage in discovery, set -- do the
24 things that need to get done to both prepare a case
25 for trial or, as the case may be, put in a good

1 posture for settlement.

2 I think the case is postured pretty well for a
3 global settlement now, but in terms of the
4 litigation expenditures that you're here to
5 strategize over, those are Mr. Boyette's fees and
6 not mine. You haven't received a bill for mine.

7 MR. KOENIG: Just to make sure, Jay, that you
8 are aware of the fact that this with Virginia Crary
9 and dealing with her has been ongoing for 18 years.

10 MR. DAIGNEAULT: I am -- I am aware. And I
11 mentioned earlier that I come to this kind of -- I'm
12 kind of the new guy in town.

13 MR. KOENIG: I just want to make sure you're
14 aware of -- that's why you may have the feeling
15 that, you know, why is this board so willing or
16 anxious to settle and get out of the attorney fee,
17 legal fees when we have a budget of a million
18 dollars and the legal fees are 100,000.

19 MR. DAIGNEAULT: Litigation fatigue and
20 litigation costs are valid concerns. I recognize
21 it. I'm just letting you know --

22 MR. KOENIG: I just want to make sure you know
23 where we are coming from, too.

24 MR. DAIGNEAULT: I'm relatively new to the case
25 and my instructions never change. My instruction is

1 to go if it's a good case in liability. One of the
2 potential problems -- it's just a thing you need to
3 consider with settlement -- is that when you settle
4 cases that are frivolous or insubstantial, you tend
5 to get more of them.

6 Now, I don't know what the risk of that
7 happening here at Tri-Par Estates is. I have no
8 idea. I've had very little exposure to you guys,
9 but it can happen sometimes.

10 I see it a lot in the personal injury field,
11 for example. I do a lot of personal injury defense
12 on -- you know, with car accidents and trip and
13 falls and premises liability for government
14 agencies. You know, you start settling those cases
15 and people tend to fall more, you know. It's the
16 way of the world. I wish it wasn't like that, but
17 it is.

18 MR. KOENIG: It is. It is.

19 MR. DAIGNEAULT: This case doesn't strike me as
20 that kind of case, the one that's going to be the
21 one that, you know, creates that impetus or that
22 motivation, but it might be.

23 The other part about it is it doesn't matter.
24 At some point in time under your policy if there's a
25 settlement determination made, whether it be through

1 a series of phone calls or be it mediation, bear in
2 mind that your policy puts that decision in the hand
3 of the insurer. They want your consent on it. They
4 want you to be behind it. They really do. But it's
5 not a requirement that they have that either.

6 And David is right, you know, I've had
7 sometimes where I go to clients and go, yeah, we
8 settled your case, we paid this guy X amount of
9 money. And the client is horrified and
10 understandably so. Sometimes I'm horrified, right?

11 You know, sometimes I'm the messenger. I had a
12 case last year that we paid and I was -- it was a
13 case I desperately wanted to try before a jury and
14 didn't get the chance to. Hey, that's the way the
15 cookie crumbles sometimes. It happens.

16 MR. KOENIG: So if we would go with you and we
17 would go to court, go to trial and win, then there
18 would still be David's portion?

19 MR. DAIGNEAULT: Well, the case would be tried
20 at one time.

21 MR. BOYETTE: The whole thing is tried
22 together.

23 MR. DAIGNEAULT: Everything gets tried together
24 at one time. This is all a single lawsuit, but you
25 got two elements of who's paying whom here.

1 MR. KOENIG: Okay. But if we would have a
2 settlement, okay, how much money is there from the
3 insurance company for a settlement; do you know?

4 MR. DAIGNEAULT: I have no idea.

5 MR. KOENIG: You have no idea. Is there any
6 way we would know --

7 MR. DAIGNEAULT: Yeah.

8 MR. KOENIG: -- how much is there?

9 MR. DAIGNEAULT: If we were to get to a
10 mediation, what would happen in terms of mediation
11 is this: I'll place a value on the case as a
12 lawyer, but I'm not the guy who writes the checks
13 and it ain't my money. So I'll tell the adjuster
14 and I'll tell probably Lee and he'll distribute to
15 you guys that we're going to go to mediation, here's
16 how I value the case.

17 I have generally to this point in this case
18 valued this case as one of what I call a nuisance
19 value. A nuisance value typically is litigation
20 costs. Because every case that's filed, it can be
21 entirely made up. And that happens all the time.
22 People make stuff up and they file it in court, but
23 it immediately has value because you have to pay
24 someone to go defend it. All right?

25 So this case to me has value. Whether it has

1 legal merit is a separate analysis from whether it
2 has legal -- whether it has settlement value. It
3 does have settlement value because someone is paying
4 us to litigate your case for you.

5 MR. KOENIG: Right.

6 MR. DAIGNEAULT: So sometimes cases are
7 evaluated, it's going to cost X number of dollars to
8 litigate to conclusion. So that's a settlement
9 value that I'll place on it and I'll pay that and
10 not a penny more.

11 Some of them say, well, this case could go
12 either way at trial. I could win this count and
13 lose that count, the damages in this count are
14 separate from the damages in that count. It's not
15 -- it's simply not science. It's part art and part
16 science.

17 So there would be a settlement recommendation
18 from me that you-all would be aware of in the
19 mediation setting. Would go to mediation. And the
20 adjuster may say, I agree with your recommendation
21 or I'm going to ignore the heck out of it.

22 That happened recently at mediation where the
23 adjuster paid, you know, more money that I thought
24 he was willing to. But, you know, that ultimately
25 would be their decision to make. Again, they want

1 your consent and they want you to be happy about it,
2 but not required.

3 MR. KOENIG: If we go that route with the
4 settlement, would it also include David's portion?

5 MR. DAIGNEAULT: Ideally. And I just want to
6 make clear when you say you go that route, that's
7 not --

8 MR. KOENIG: We go that route.

9 MR. DAIGNEAULT: Yeah, you go that route. But
10 any settlement is a dance that the other party must
11 participate in.

12 MR. KOENIG: Oh, sure.

13 MR. DAIGNEAULT: They got to agree to it. They
14 got to agree to the number. They got to agree to
15 the global settlement. They got to agree to all
16 things that we want. We have to agree to all things
17 they want.

18 Settlement -- and I'm sure David has heard this
19 many times is, you know, mediation is a process by
20 which your case settles, but nobody leaves happy,
21 right? Both parties leave a little bit unhappy.
22 Ideally you get a little bit of what you want and
23 you give up a little bit of that which you'd rather
24 not. That's the nature of settlement.

25 MS. LEGLER: I guess that was kind of to my --

1 I didn't phrase it correctly. Let's say we settled
2 and then tomorrow he makes new allegations or new
3 charges. Is there -- are attorneys ever sanctioned,
4 like these are frivolous, these are nonsense, you
5 cannot continue to do the same thing over and over
6 and over, costing money? Is there ever an end to
7 this? Is he ever told by somebody higher up you
8 cannot continue with this behavior?

9 MR. DAIGNEAULT: The bare answer to your
10 question is yes, I've seen it done, but the
11 practical answer is it's done rarely.

12 MR. BOYETTE: Very rarely.

13 MR. DAIGNEAULT: It's not -- Jeremy and I
14 actually discussed this on the way down here, your
15 question. You know, it is my opinion -- and it's
16 only Daigneault giving his opinion of things no one
17 cares about.

18 I think that the court system should take a
19 much harder line on those types of cases and those
20 types of attorneys because they're out there. They
21 are. We deal with them all the time. As a
22 practical matter though, the way the system works
23 today is that you can do it.

24 I have a case that is presently -- not really
25 mine, my partner's. It's like nine years old.

1 Every time -- and we've -- our client has won at
2 every turn, at every juncture, but we get new
3 lawsuits and new lawsuits and new lawsuits. I'll
4 tell you that the point at which a court is going to
5 order a litigant to stop is way out there.

6 MR. BOYETTE: Way out there.

7 MR. DAIGNEAULT: Way out there.

8 MS. LEGLER: I work with plenty of doctors who
9 there's lots of complaints and it would take an act
10 of God to have something happen.

11 MR. DAIGNEAULT: It's pretty close to that.
12 It's a very, very high bar to cross.

13 MR. KOENIG: Go ahead, Ron.

14 MR. HOUCHIN: Mr. Cohen, I'd like to ask your
15 opinion. You've been listening all morning. Both
16 of them have good arguments. What do you think the
17 park should do regarding this case?

18 MR. COHEN: I mean, that's a trick question for
19 me, of course, because yes, I've heard the
20 information very eloquently stated by all the
21 attorneys you have here this morning, but I have not
22 lived and breathed this litigation. So I don't know
23 the facts.

24 You know, I think that any time that you have
25 litigation, you obviously want to win, but you also

1 want to -- need to look at what it's costing you and
2 try and resolve it if you can. So I'm always in
3 favor, as I'm sure they are too, trying to resolve
4 the case if you can. The question is how do you get
5 there. They're just -- have lived it and breathed
6 it more than I have, like I said, to be able to tell
7 you the best way to get there.

8 If it hasn't been -- I don't want to step on
9 anybody's toes and they're controlling the case, but
10 if it hasn't been mediated yet, that may be a
11 potential step once you feel that they're at that
12 place. I think it's a goal to try and move towards.
13 Disagree with me if you do, but I'm guessing that
14 you probably agree that it is a goal to try to move
15 towards, just a question of when you can get there.

16 MR. BOYETTE: I'll follow up on that comment by
17 saying when I have a client that wants to settle a
18 case -- sometimes I have a client whose case is not
19 good and I am recommending that we need to settle
20 this case, you got a problem.

21 My typical strategy is to set the case for
22 trial. Just set it for trial. And the reason I do
23 that is because then the court orders mediation. So
24 I could pick up the phone and call opposing counsel
25 and say, we'd like to talk settlement and I just

1 rolled over and showed my soft underbelly and
2 basically said, how big a check would you like?

3 Or I could call them and say, we'd like to
4 mediate. Again, that sometimes is seen as a sign of
5 weakness. But if I file a notice for trial and push
6 for a trial date, then my opponent goes, uh-oh, they
7 want to go to trial, they must feel confident.

8 And the court in its standard order sends us to
9 mediation. I'm not the one showing a sign of
10 weakness. I'm coming from a position of strength,
11 but I bring them into a mediation. And that's
12 usually the best place to find out what their best
13 number is.

14 MR. MORRIS: Mr. Chair, may I speak?

15 MR. KOENIG: Go ahead, Lee.

16 MR. MORRIS: After hearing everything we've
17 heard today, I want to say this as the park manager.
18 And the way that I relate to the board of trustees
19 is that I realize this is very distasteful. I
20 realize this has gone on a lot longer than my tenure
21 here, a lot longer than Jay has had the case, a lot
22 longer than Andy has been our district
23 representation.

24 The thing that we have to remember is that we
25 have -- and we are only fighting one suit now

1 whereas we were fighting two in previous years. We
2 settled that first one. That's a big deal, getting
3 that out of the way.

4 So now we just have one. And with this one
5 suit we have the -- we are fortunate that we have
6 our insurance company paying Mr. Daigneault, who's a
7 very -- and Mr. Simon who obviously is very capable
8 and guided us well so far, paying their fees.

9 And all we are really responsible for is
10 Mr. Boyette's, which has been decidedly lower than
11 we've been paying in past. And I think we need to
12 look at -- and because the insurance attorney -- and
13 Jay, that's what I call you, by the way, the
14 insurance attorney, sorry.

15 MR. DAIGNEAULT: No offense.

16 MR. MORRIS: I'm sure you've been called worse.

17 MR. DAIGNEAULT: This morning.

18 MR. MORRIS: Anyways, and the fact that they
19 are going to be responsible for the cost if there is
20 a judgment in this case up to X amount of dollars is
21 important to Tri-Par. And I don't think we can lose
22 sight of that.

23 So I guess what I'm trying to say is that maybe
24 we need to stay the course a little while longer
25 with the recommendations from Mr. Daigneault and

1 Mr. Boyette. And we certainly also bounce them off
2 of Mr. Cohen just to make sure that we are still in
3 the straight and narrow to see how this plays out.

4 Are we going to get ourselves to mediation?
5 It's important to realize that if something happens,
6 that we are covered by this guy and the people that
7 are paying his fees. That's important because our
8 bills from Boyette are diminished and less. And
9 yes, it's distasteful to me because I'm the one that
10 has to live within the budget.

11 MS. LEGLER: Can we take a five-minute break
12 before we vote?

13 MR. MORRIS: There's no voting in this -- I'm
14 not even sure that we are going to be required to do
15 any -- make any votes today.

16 MR. COHEN: You're not required.

17 MR. MORRIS: We are not required to vote on
18 anything because --

19 MR. KOENIG: I would prefer we don't vote on it
20 today and digest what we have learned today.

21 MR. DAIGNEAULT: You've got nothing to vote on.

22 MR. MORRIS: You've got nothing to vote on, but
23 I guess I'm trying to say --

24 MR. COHEN: You can't make any votes in a shade
25 meeting. If you wanted to make a vote on anything,

1 it would be once we retreat back into --

2 MR. KOENIG: Yeah, we wouldn't vote in the
3 shade. No, we can't. But I don't think we should
4 even vote after the shade and we go back to a
5 regular special board meeting until we can digest
6 this a little bit more.

7 Because just meeting you guys here has been a
8 big help and what you informed us is also a big
9 help. I learned a lot more than what I did before.
10 I don't know about the rest of the board members,
11 but I think we should just talk about this as a
12 board, as a board again, and get our input as a
13 board before we decide.

14 MS. LEGLER: Well, I think we've learned a lot
15 absolutely.

16 MR. KOENIG: Absolutely.

17 MS. LEGLER: Never sat in a room with four
18 attorneys before, but on the flip side --

19 MR. COHEN: Lucky you.

20 MS. LEGLER: Yeah. What do we do now?

21 MR. MORRIS: Mr. Chair, may I say something?
22 The original -- yes, we've been trying to schedule
23 this meeting since February with our attorneys to
24 talk about this case. But what prompted the
25 necessity for this meeting was the fact that this

1 was possibly going up to the federal level.

2 I don't believe that's still the case anymore
3 because that looks like that's going to be amended.
4 So I'm not really sure there's anything to actually
5 vote on in this respect as far as we are not able to
6 solve this case.

7 We can't -- we cannot say to Mr. Boyette,
8 remove us from this case because then we are on the
9 hook for a lot of things and nor do we want to do
10 that because that would lose insurance
11 representation.

12 So what we are saying is that there may not be
13 anything to actually vote on at this point -- at
14 this point in time, even when we come out of closed
15 session. Everyone with me on that? Understand
16 where I'm coming from?

17 MR. KOENIG: Yeah.

18 MR. MORRIS: So if -- and nor do I as your park
19 manager, nor do I think we should make -- do any --
20 make any votes today obviously in the open session
21 either. I do agree with digesting it. And the only
22 thing that we could do is possibly come up with a
23 course of action.

24 I'm not really sure that we are driving the bus
25 in this case. And I want everyone to understand

1 that. You know, we're driven a lot by the insurance
2 attorney because they're the ones that are
3 indemnifying us.

4 MR. BOYETTE: Correct.

5 MR. MORRIS: And even if we told Mr. Daigneault
6 that we absolutely don't want to go up to federal
7 court, in reality, if he thought that was the best
8 way because he is indemnifying us, he could do that.

9 MR. KOENIG: It's his call.

10 MR. DAIGNEAULT: I'm glad you said that.

11 MR. MORRIS: Is that correct?

12 MR. DAIGNEAULT: It is. Look, you guys are my
13 client. I want you to be very comfortable in your
14 representation. On the other hand, the formula in
15 which a case is litigated and some of the manners in
16 which it's litigated, they are legal decisions that
17 I need to make in service to you.

18 I want your input. I appreciate the discussion
19 we've had this morning. It's been very helpful for
20 me. And I think I have a clear understanding of
21 your goals and desires, which is always, always a
22 good thing.

23 But Mr. Morris is correct. Ultimately if the
24 decision is made to go to federal court, I hear you,
25 I understand your positions on it, and I understand

1 Mr. Boyette's. And we will make the decision taking
2 all of those things into consideration.

3 But at some point in time because -- and this
4 is the thing that I tell my newer attorneys. If the
5 case goes bad, at the end of the day, people are
6 going to be pointing a lot of fingers at you. So
7 you need to be making those decisions.

8 I've always been comfortable doing that and
9 I'll be comfortable doing that for Tri-Par Estates
10 here. But you're correct, ultimately because I'll
11 be the one holding the bag at the end, the decisions
12 ultimately belong to myself and the insurer.

13 MR. MORRIS: Anything else?

14 MR. NEFF: Mr. Chairman?

15 MR. KOENIG: Oh, yes, Mike. I'm sorry.

16 MR. NEFF: I'm relatively new on the board. I
17 have experience of a little over a year. And this
18 is the first time that I've understood the
19 complexities of the case. And I thank you for that
20 information. And I just -- my personal feeling is
21 that we proceed. And it's okay.

22 MR. HOUCHIN: Mr. Chairman, I concur completely
23 with Mr. Neff and I believe we should proceed.

24 MR. KOENIG: Andy, do we have a right to ask
25 the board their decision like these two or can we

1 give an opinion?

2 MR. MORRIS: I think you've given your opinion.

3 MR. COHEN: You've given your opinion. Unless
4 they tell me otherwise, I think your trial counsel,
5 all of them have the direction that they need in
6 order to move forward, so --

7 MR. DAIGNEAULT: I agree with Mr. Cohen.
8 There's not really a decision for you to make. I
9 mean, you can motion that we win and we'd all agree
10 with that, but that's not really within your power.
11 So I don't think at this juncture there's a decision
12 actually to be made. But the discussion itself and
13 within the restriction of the statute has been
14 extremely helpful for me. I hope it's been helpful
15 for you.

16 Another thing I'd note while we're here and on
17 the record is that you-all are free to reach me if
18 you have questions about this case. Mr. Morris has
19 my contact information, including my cell phone
20 number, which I answer all the time. You're welcome
21 to call me any time if you want to discuss the case.

22 MR. COHEN: Individually.

23 MR. DAIGNEAULT: Individually, yes.

24 MR. KOENIG: We can't do it as a group.
25 Sunshine law.

1 MR. COHEN: Can't even have two of you.

2 MR. BOYETTE: I was going to mention, no
3 discussing this outside of --

4 MR. KOENIG: No, we know that.

5 MR. BOYETTE: -- a shade meeting.

6 MR. KOENIG: We know that. But it's been a
7 pleasure and very informative. And I think that
8 you've really informed us a lot more and we know a
9 lot more about the case. And I think we feel -- I
10 feel comfortable with all of you handling the case.
11 I certainly would vote to move forward too.

12 So is there any other questions? Should we
13 close and move in?

14 MR. COHEN: Yes. Then if the board is -- no
15 other questions and everybody is ready, then we can
16 return to open session. You can invite anybody out
17 there who wants to come in and we'll announce.

18 MR. KOENIG: Do we need to vote -- do we need
19 somebody to make a motion to close first or can we
20 just --

21 MR. COHEN: No, just return it to open session.
22 Unless you tell me something different, Jay.

23 MR. DAIGNEAULT: No, you don't need a motion
24 for that.

25 MR. MORRIS: Yes, let me see if anybody is out

1 there and I will bring Carol back in. We do have
2 one item --

3 MR. KOENIG: Can we take a five -- two-minute
4 break?

5 MR. VON HOLDT: We have to close this --

6 MS. LEGLER: No, we don't have to.

7 MR. COHEN: Let's go back into open session,
8 see if anyone is there. We'll announce the
9 termination of this and then you'll be free to do
10 whatever else you need to do in your open session.

11 MR. MORRIS: Mr. Cohen, there's no one
12 apparently here.

13 MR. COHEN: Okay. So we are back in open
14 session.

15 MR. MORRIS: Back in open session.

16 MR. COHEN: You just need to announce
17 termination of the closed --

18 MR. KOENIG: We have now terminated the shade
19 session and it's closed. Do I hear -- Carol's here.
20 Do I hear a motion to close the shade?

21 MR. COHEN: We don't need -- we don't even need
22 that. You're back in your regular meeting if you
23 would like to take a five-minute recess.

24 (Meeting was concluded at 11:52 a.m.)

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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA

COUNTY OF MANATEE

I, Melissa England, do hereby certify that I was authorized to and did stenographically report the attorney-client shade meeting and that the foregoing transcript, pages 1 through 93, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 11th day of December, 2020 at Manatee County, Florida.

Melissa England