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FROM: Bill Simpich and Tess Tsadik

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

Re: IMPORTANT letter about Willits toxic tort cases

Dear Plaintiffs in Avila and Arlich cases:

We write to you as co-counsel in these cases, the original attorneys who first prosecuted the toxic tort issue and brought in the Masry, Engstrom, and Girardi law firms. Although these other firms, far more well-funded than we are, came in to take the lead in prosecuting this lawsuit, we have remained co-counsel and we remain interested and concerned about your welfare, since all of you continue to be our clients.

We understand from the Masry, Engstrom, and Girardi law firms (ME&G) that there is an approximately \$13.5 million settlement on the table. We do not want to disturb a valid settlement negotiated on your behalf by these other firms. It was ME&G's job to do the negotiation, and we do not have sufficient facts to second-guess them. However, we are concerned that no plaintiff in these cases should be put in the position of either agreeing to a settlement or being forced to accept a settlement without being fully informed of everything he or she has the right to know about that settlement and its effect on each of you.

We have heard from some of you that you do not understand the settlement, the division of the settlement, or the reasons for it, and that you want these things explained to you. Unfortunately, we do not have this information. We have asked the ME&G firms to provide you further information, but they apparently feel that you have enough to go on now. For instance, we have the most recent newsletter, dated last Friday, February 24, and there is a great deal of information we believe it should contain that it does not.

It has been difficult for us to have the information we'd like before writing you this letter – information that the ME&G firms have not clarified to us. So to be sure of our perspective that we have a duty to provide you more information than you have, we independently (and at our own expense) contacted a noted legal ethics professor to give us expert advice. He has confirmed that we have a duty to each of you to provide you information to which you are entitled. Again, we are not saying that the proposed settlement is a poor one, and we are not recommending anything one way or the other. Instead, we are contacting you ourselves, without ME&G, because we believe it is our responsibility to fully inform you.

That is the purpose of this letter. We encourage you to read and consider this letter carefully before you decide to do anything. We will try again to work with ME&G to answer your questions and concerns and those we raise here, and we will come up to Willits to you – as many times as necessary – to talk about what choices you have about what to do. We hope that ME&G will join us.

In addition to the pure settlement amounts, here are our other main concerns:

First, even though these cases are “mass tort” cases that involve many hundreds of plaintiffs, it is not a “class action.” You start out with the same rights and status as if you were individual plaintiffs in a personal injury case. As in any case in which there is more than one plaintiff, there may be conflicts of interest among you. You have a right to have these conflicts of interest explained as clearly as your lawyers can do it.

Here, the conflicts of interest include the different degrees of damages you have suffered, the fact that some of you have been dismissed because of statute of limitations issues, and – to the extent plaintiffs’ recoveries are grouped in various categories – that you may not all fit neatly into the category chosen for you. Before joint clients should agree to a settlement, they are entitled to be informed of the conflicts of interest and the reasonably foreseeable consequences of those conflicts. This has not yet been done. We are willing, however, to undertake to do exactly that.

Second, an issue that relates to the possible conflicts of interest is that the ME&G firms are proposing – presumably because that is what the defendants are offering – a lump sum, or “aggregate,” settlement. This will mean that you will not know from the settlement what your recovery will be, nor will you control what you get. The newsletter prepared by ME&G says that they will have a retired judge determine how much you will receive, and that if you object, you can appeal to the same judge but you have to bear the costs of that appeal.

Ordinarily, however, lawyers are not allowed to accept aggregate settlements for their clients, precisely because this creates conflicts of interest among them. They are also not ordinarily allowed to make the decision to settle the case without your specific approval. The ME&G firms apparently believe that they can do both of these things because their fee contract with you says that you gave them the ability to settle for you “on a global basis” and submit any objection you have to a binding decision from a retired judge. But we – and our ethics expert – believe that the fee contract clearly goes way beyond what the law allows the lawyers to do: get your specific authorization to settle, and only accept a lump sum when all clients give informed consent. In other words, we believe that you still each have the right to say “yea” or “nay” to settlement. Again, while we are not suggesting that this settlement be turned down, we are saying that this is something for which you should get more information, so you can give your informed approval (or not). Again, we are prepared to ensure that you get the information and have the opportunity to which you’re entitled.

Third, the proposed settlement documents we have seen do not state what the lawyers’ fees are (including our own), and also do not state the amount of costs. While your fee agreement with the ME&G firms says that fees are to be taken from the gross recovery, the fee agreement doesn’t explain what that means: that the costs of suit come off of the clients’ side alone, so that the lawyers’ fees are larger – 40% of the grand total, without the lawyers having to deduct 40% of the costs. This means your recovery will be less than if the lawyers’ fees came from the net, after costs are deducted from the total.

It is not wrong for lawyers to take their fees from the grand total gross, but they may do so only where they explain that this will cost you, the clients, money in recovery, and you thereafter agree. None of the lawyers, including ourselves, can get a

percentage of the gross amount without your informed consent, which has not yet adequately been given.

Fourth and finally, we have a concern for ourselves as well. We directed this multiple-plaintiff case for more than eighteen months after the filing of suit. The ME&G firms agreed in writing that since we had discovered this case, found the first plaintiffs, and had directed the lawsuit, we would be entitled to 20% of the fees (11% for Tess Tsadik, 9% for Bill Simpich), though it was understood that ME&G would take over from us and have the responsibility to take it from there. Now ME&G want to go back on that written agreement. This is something, however, that is subject to your approval. Therefore, we may ask you to agree to our receiving these percentages, rather than the ones ME&G now want to force on us.

We believe strongly that nothing should be forced on anyone, and that all clients should be treated with the dignity individual clients deserve, including being provided full information before consenting to settlements, and maintaining control of their cases rather than being told they have given up that right. We repeat that we are not recommending that the proposed settlement negotiated by the ME&G firms should be disapproved by any of you. However, we believe it is very important that before you agree, you know what your rights are. We have raised the biggest issues here. We understand there may be nuances – twists and turns based on individual situations. We will try to be ready to answer all of them.

One final point: ME&G have come up with one way of dividing up the amount offered by the defendants. It is a method that gives these law firms more control over your decisions and your recovery than they are entitled to, particularly without your informed consent. But there are other ways to properly approve this recovery, which can and should be explored.

We will arrange to be at the Willits Senior Center (1501 Baechtel Road) on Saturday, March 4 at noon and we will ask all the other law firms to come up as well. We look forward to seeing you then.