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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

TIM WALES, )  
)  
)  
Plaintiff, ) CASE NO. 19-CV-1351  
)  
vs. )  
)  
CITY OF SARATOGA SPRINGS, et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

**TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HON. MAE A. D'AGOSTINO  
THURSDAY, AUGUST 11, 2022  
ALBANY, NEW YORK**

**FOR THE PLAINTIFF:**  
O'CONNELL & ARONOWITZ, P.C.  
By: KEVIN LAUILLIARD, ESQ.  
54 State Street, 9th Floor  
Albany, New York 12207

**FOR THE DEFENDANTS:**  
FITZGERALD MORRIS BAKER FIRTH PC  
By: JOHN D. ASPLAND, JR., ESQ.  
16 Pearl Street, PO Box 2017  
Glens Falls, New York 12801

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1 (Teleconference, 12:30 p.m.)

2 THE COURT: The record will reflect that I'm having a  
3 telephone conference on the case of Wales versus City of  
4 Saratoga Springs. The only individuals that have standing to  
5 participate in this conference as far as the Court is concerned  
6 are Mr. Laurilliard and Mr. Aspland. I understand that the  
7 mayor is on the phone, but I'm only going to be hearing from  
8 Mr. Laurilliard and Mr. Aspland.

9 Mr. Aspland, what in the world is going on here? I  
10 was advised that the case was settled. I marked it off the  
11 calendar, and what's the situation?

12 MR. ASPLAND: The situation, Judge, is that the case  
13 is settled. The settlement check was forwarded to plaintiff  
14 directly by Travelers on June 24. I imagine Kevin's negotiated  
15 the instrument at this point and distributed the funds, and  
16 that's the current state.

17 THE COURT: Mr. Laurilliard, can you share or shed any  
18 light?

19 MR. LAURILLIARD: Yes. I agree with Mr. Aspland. I  
20 thought this was over and done. I closed my file. I archived  
21 it. I put it away. I negotiated the check based on the  
22 settlement documents. I have negotiated it and passed the  
23 proceeds onto my client.

24 THE COURT: I have a stipulation of discontinuance on  
25 the merits. The moneys have been received. I'm not really sure

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1 what the Court is supposed to do at this point in time.

2 Mr. Aspland, did you have authority to settle this  
3 case on behalf of the City of Saratoga Springs when you did  
4 enter into the settlement and sign the closing papers?

5 MR. ASPLAND: Yes, Your Honor. It's not a consent  
6 policy with Travelers. So Travelers agreed to pay the money and  
7 executed the documents that we always execute, and that was the  
8 process.

9 THE COURT: Okay. So you're telling me that in the  
10 contract of insurance between the City of Saratoga Springs  
11 and -- I'm sorry. What insurance company was it?

12 MR. ASPLAND: Travelers Insurance, Judge.

13 THE COURT: Travelers. There was no need for the City  
14 of Saratoga Springs to consent. Was there any deductible?

15 MR. ASPLAND: So it's my understanding -- I don't have  
16 the complete copy of the policy. I was given that information  
17 by the claims representative at Travelers, but there is a  
18 deductible. I believe it's \$25,000. The deductible, as I  
19 understand it, was invoiced to the city, as has been the normal  
20 course of practice. I assume the city is going to pay the  
21 deductible upon receipt, and that's between the city and  
22 Travelers pursuant to the contract of insurance.

23 THE COURT: You were breaking up there. There's  
24 background noise with somebody. So somebody really needs to go  
25 into a different room or to mute their phone.

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1           Mr. Aspland, I had asked you was there a deductible,  
2 and you said yes, but I couldn't pick up on anything else that  
3 you said after that.

4           MR. ASPLAND: Sure, Your Honor. So my understanding  
5 is that there was a \$25,000 deductible under the employment  
6 practice policy, that typically what would happen is Travelers  
7 would pay the full amount to settle the case for the plaintiff  
8 when they choose to do so. Then how the process works is that  
9 the insured client, here the city, gets an invoice from  
10 Travelers for the deductible, and that the deductible is then  
11 paid in the normal course of business.

12           THE COURT: Okay. It just seems to me that the  
13 recourse for the city -- and I know, Mr. Kim, you're an  
14 attorney, and I know I told you that you wouldn't be able to  
15 participate, but I'll just make the observation for the city  
16 attorney's benefit that it would seem to me that the recourse  
17 would be a matter between the city and the insurance company at  
18 this point. If the city feels that a contract has been  
19 breached, perhaps a state court action for breach of contract is  
20 in order.

21           But what I'm hearing from counsel of record is that  
22 the insurance company had full authority to settle the case  
23 without the consent of the city. I'm pretty sure you disagree  
24 with that. You have permission to speak. Correct, Mr. Kim?

25           MR. KIM: No, actually, Your Honor. We don't disagree

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1 with that. We wanted to make sure that the Court understood how  
2 this settlement was reached, and then basically because we are a  
3 public entity and are accountable to taxpayers, we need to find  
4 out additional facts about potentially canceling. That's why we  
5 asked for this. We do not disagree, the interpretation of the  
6 policy.

7           What we wanted to call attention to the Court was that  
8 this settlement discussion was conducted by a representative of  
9 the city council that basically has an extreme conflict of  
10 interest when he conducted this. He presented himself as far as  
11 we know to this Court in front of Judge Magistrate Stewart as a  
12 representative of the city. He also, if you open up the  
13 complaint, is the key witness for the plaintiff.

14           So then he spent about two to three months based on  
15 email records that we have, again don't have a full picture,  
16 basically negotiating on behalf -- well, purporting to negotiate  
17 on behalf of the city council and the City of Saratoga Springs,  
18 while having this clear conflict of interest where he was  
19 essentially a witness. Basically the plaintiff doesn't have a  
20 complaint about the city council member Dillon Moran. Just  
21 reading the complaint, the first page of the complaint, you can  
22 see that.

23           THE COURT: Go ahead. You can finish.

24           MR. KIM: So Your Honor, we are looking to get  
25 additional information to basically fulfill our obligation to

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1 the public to explain to them why we're paying out a \$25,000  
2 deductible beyond just the contract and also find out, determine  
3 if there is any other actions that we have to take.

4 Very importantly, this city council member has stated  
5 on the record several times that the magistrate ordered him to  
6 be at this hearing. We cannot find any evidence of that, but  
7 that is certainly something that we want to understand because  
8 as I said, legally his conflict of interest was apparent by even  
9 the most cursory reading of the complaint, and understanding  
10 what his position was at the time that the settlement  
11 discussions happened in the spring of 2022.

12 THE COURT: The thing is that I have no personal  
13 information as to what went on at a settlement conference. Of  
14 course, any judge would always require someone with settlement  
15 authority to attend the conference.

16 But honestly, there isn't anything that I can do at  
17 this point to solve your issue, Mr. Kim. This seems to be like  
18 an internal issue between you, the Travelers, and Mr. Aspland.  
19 It's not my role as a federal judge at this point to try to get  
20 you information, but more importantly, I don't have any  
21 information. All I know is I was advised that the case was  
22 settled, I marked it settled, and now I hear that the moneys  
23 have been disbursed.

24 So I would just say that in terms of your situation as  
25 mayor of Saratoga Springs and what you're going to tell the

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1 public, that's something that will have to be worked out between  
2 you and your attorney of record, Mr. Aspland, and take it from  
3 there. I am not in a position, nor is it my role to gather  
4 information for you. And as I said, even if I could, I don't  
5 have any information. I got a letter that I got a stipulation  
6 of discontinuance signed by the attorneys of record. The case  
7 is settled. Moneys have been disbursed. So I can't give you  
8 whatever relief you seem to be looking for.

9 MR. ASPLAND: Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Laurilliard and  
11 Mr. Aspland, for calling in. Thank you, Mr. Kim. Have a good  
12 day.

13 (The matter adjourned at 12:40 p.m.)

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CERTIFICATION OF OFFICIAL REPORTER

I, JACQUELINE STROFFOLINO, RPR, CRR, Official Court Reporter, in and for the United States District Court for the Northern District of New York, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of August, 2022.

**/s/ JACQUELINE STROFFOLINO**

JACQUELINE STROFFOLINO, RPR, CRR

FEDERAL OFFICIAL COURT REPORTER