

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Indra Winqest  
Interim District General Manager

**SUBJECT:** Review, discuss and possibly take action on a settlement offer received by the Incline Village General Improvement District from Mr. Aaron L. Katz as submitted by his attorney Richard H. Cornell with an expiration date of June 2, 2020

**DATE:** May 22, 2020

---

On May 20, 2020, the District was provided with a settlement offer submitted to Mr. Beko by Mr. Katz' attorney Mr. Richard Cornell. This settlement offer is attached hereto and consists of two (2) pages.

The Board of Trustees has three possible options:

- 1) Reject the proposed settlement offer.
- 2) Accept the proposed settlement offer.
- 3) Prepare a counter settlement offer.

Staff is recommending that the Board of Trustees have a discussion about this offer and make a motion as they deem appropriate. The District's response is due by June 2, 2020.

**RICHARD F. CORNELL, P.C.**  
**150 Ridge Street, Second Floor**  
**Reno, Nevada 89501**  
**(775) 329-1141**  
**e-mail: richardcornell1553@gmail.com**

May 13, 2020

Thomas P. Beko, Esq.  
Erickson, Thorpe & Swainston, Ltd.  
99 West Arroyo Street  
Reno, Nevada 89509

Re: Katz v. IVGID, Settlement Offer

Dear Mr. Beko:

Thank you for your recent correspondence.

Mr. Katz and I have reviewed it carefully.

First, we insist that this actual letter be communicated, word for word, to the Board of Trustees of IVGID, so that there can be no mistake or misinterpretation of what we are saying.

We do not agree to settle by doing a mutual walk away. Above and beyond the \$240,000.00 plus that you obtained via money judgment and IVGID collected, we do not see any realistic possibility of further liability, whether per NRAP 38 or per NRCP 68. As for NRS 18.010(2)(b), we believe the law is clear that you cannot lawfully seek a judgment for attorney's fees incurred on appeal from the district court.

In ordinary civil litigation, this juncture might be seen as "crazy" to seek a rebate of any portion of the attorney's fees obtained and collected. But on the same hand, it might be seen as "crazy" that the party who collected attorney's fees would be seeking a settlement as to further attorney's fees. This, however, is not ordinary civil litigation.

It seems to us that what's at stake is the reputation of the integrity of IVGID in connection with this award of attorney's fees. We realize that you obtained the award from Judge Flanagan, and the Nevada Supreme Court affirmed. However, the Nevada Supreme Court simply did not discuss the items that we now discuss here, on some kind of pretense that they didn't understand our positions – even with the Petition for Rehearing that they summarily denied. So that there is no mistake, if there is anything less than clear in the balance of this letter, please advise and we will clarify:

1. Attorney's fees incurred by the NPAIP Pool:

IVGID did not incur \$103,196.00 of attorney's fees in this action. Rather, "the Pool" paid that

Page 2 of 2  
Re: Katz v. IVGID  
May 13, 2020

to the attorneys in question. Yet, you did not make it clear to Judge Flanagan that “the Pool” had subrogation rights and IVGID was acting merely as a collection agent for the “the Pool.” As we established in the Request to Take Judicial Notice, nothing in the basic contract between NPAIP and its insureds requires or even authorizes the insured to seek reimbursement of attorney’s fees on its behalf. And even if that were otherwise, we believe the period of limitation for NPAIP to seek reimbursement of those fees has long since passed. We believe this amount should be rebated to Mr. Katz.

2. Attorney’s fees incurred by Scott Brooke:

If you were to produce an entirely unredacted memo of Mr. Brooke’s billings, our position might change. But otherwise, IVGID’s payment to Mr. Brooke of \$45,071.00 strikes us as a sunk cost, meaning either it is money that would have been paid to the late Mr. Brooke regardless of what he did, or it represents billings that at best indirectly impacted the litigation. Mr. Brooke did not appear in any way shape or form as co-counsel of record in the Katz litigation. At this juncture it is not at all clear to us what Mr. Brooke did in connection with that litigation. And even if he did anything, it is not at all clear to us why the matters he engaged in could not have been handled by paralegals or investigators at a much cheaper cost. In fact, we think a large part of Mr. Brooke’s fees had to do with the dispute between IVGID and “the Pool,” when “the Pool” withdrew from defending the Katz litigation. But Mr. Katz had nothing to do with “the Pool’s” decision in that regard. Again, we believe this amount properly should be rebated to Mr. Katz.

3. Costs and Interest:

IVGID did not incur \$813,00 of filing fees that could not be recovered directly from the Second Judicial District Court Clerk. Further, \$203.00 in costs claimed with a private investigator to “gauge the views of targeted Incline Village residents” was not a cost of litigation the district actually incurred. Finally, the interest which is accrued on the money Mr. Katz advanced is not a cost that district actually incurred.

Accordingly, Mr. Katz’s settlement offer was and is to have reimbursement of the above-amounts for the above reasons, with IVGID to retain the balance. If IVGID agrees, Mr. Katz will not file the petition for writ of certiorari to the United States Supreme Court that otherwise is due June 2, 2020.

Very truly yours,

Richard Cornell

cc: Aaron L. Katz  
RFC/ko