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Via Electronic Mail

Planter's Row Homeowner's Association
c/o Community Management Partners, LLC

Re: Reopening of Pool

Dear Mr. Dowling:

You have asked me to provide an updated opinion as to the potential liability of Planter's Row Homeowner's Association reopening its community pool.

Since the date of my letter to May 29, 2020 the Department of Health and Environmental Control has issued new guidelines specifically for public swimming pools which, among other things, eliminated the reduced occupancy limit and modified the sanitizing requirements.

Based upon the new guidelines, if the association can insure that proper signs are posted that limit exposure by using social distancing, with examples, inform parents that they are responsible for insuring that the children stay at least 6 feet apart, eliminating guest privileges and removing any commonly used items then it is plausible that the pool could reopen without an unreasonable risk of liability.

Although the guidelines recommend and mandates sanitation of commonly used items, in my opinion, the best practice would be to sanitize only those fixed items such as doors, handrails, ladders, etc. upon the opening or closing of the pool each day and remove any other item such as tables, chairs or otherwise that would require sanitation.

Of course, as I indicated in my telephone conversation with you, even closely following and complying with all of the standards does not completely remove the risk of litigation. While it will certainly minimize and possibly prevent the probability of a lawsuit against the association, there can be no guarantee that one would not occur. In the event a suit does occur then we are often faced with the possibility that the cost of defending, even if you are ultimately successful in prevailing in the litigation, can be significant and prohibitive. If possible I would obtain an opinion from the association's liability insurance carrier as to whether the carrier would provide a defense to any litigation alleging through the association's negligence or delicts someone had been exposed to the covid virus.

I trust this is responsive to the question posed. Please do not hesitate to contact me should you have any questions or comments concerning the above.

Yours very truly,

Randall S. Hiller

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