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Our File Nos.: W525/ C22168/ C22169/ C22170

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION

SOMERSET COUNTY:

DOCKET NOS.:

Township of Warren: SOM-L-904-15

Borough of Watchung: SOM-L-902-15

Borough of Rocky Hill: SOM-L-901-15

HUNTERDON COUNTY:

DOCKET NO.:

Borough of Frenchtown: HNT-L-309-15

IN RE:	:	<i>Civil Actions</i>
THE TOWNSHIP OF WARREN	:	
THE BOROUGH OF WATCHUNG	:	<u>MOUNT LAUREL</u>
THE BOROUGH OF ROCKY HILL	:	
THE BOROUGH OF FRENCHTOWN	:	<b>CERTIFICATION OF STEVEN A. KUNZMAN</b>
COMPLIANCE WITH THIRD ROUND	:	<b>IN SUPPORT OF MOTION FOR AN</b>
<u>MOUNT LAUREL AFFORDABLE</u>	:	<b>EXTENSION OF THE IMMUNITY PERIOD</b>
HOUSING OBLIGATION	:	<b>TO ALLOW FOR THE SUBMISSION OF</b>
	:	<b>THE REPORT OF THE JOINT MUNICIPAL</b>
	:	<b>EXPERT</b>

Steven A. Kunzman, Esq., of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and a partner with DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C.
2. I have been entrusted with the handling of these matters and am fully familiar with the facts of the same.

3. In this certification I address the dilemma faced by the approximately 230 municipalities (“Municipalities”) that are signatories to the Municipal Shared Services Defense Agreement (“MSSDA”) and the basis for the motion to extend the immunity period provided in prior orders as to the Movants, Township of Warren, Borough of Watchung, Borough of Rocky Hill and Borough of Frenchtown (“Movants”).

4. The Municipalities, including Movants, initially joined together for a common interest in litigation for the retention of Dr. Robert Burchell of Rutgers University as a common expert to develop an approach to fair share allocation.

5. Due to Dr. Burchell’s prior work for the State of New Jersey and COAH, it took approximately two and one half months from the issuance of Mount Laurel IV to develop the MMSDA and to secure Dr. Burchell’s services. The Movants rely upon the paragraphs 2-14 and exhibits A and B of the Certification of Jonathan E. Drill, Esq. submitted in support of similar motions filed on behalf of Hunterdon County municipalities, the Townships of Alexandria, Clinton and Union, the Boroughs of Glen Gardner and Milford, and the Warren County Township of Greenwich<sup>1</sup> to inform the Court of the details of the events leading to the need for additional time to obtain an expert report that are not otherwise addressed herein.

6. As the Court is aware, municipalities must follow certain statutory processes and protocols to take any actions. This effort to retain Dr. Burchell was undertaken with great diligence; the net result was expected to provide efficiency to these proceedings by having one primary witness on this issue for the municipalities in the fifteen vicinages.

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<sup>1</sup> Since it is anticipated that the motions filed by Mr. Drill will be considered at the same time as the present motions, in the interest of efficiency and to reduce the paper burdens on the Court, we have not attached the referenced certification. We would be happy to submit Mr. Drill’s certification to the Court or any interested party upon request for same.

7. Unfortunately, on or about July 27, 2015, prior to the completion of the initial draft of his report, Dr. Burchell suffered a stroke which precluded him from continuing to serve as an expert in these matters.

8. On August 26, 2105 Mr. Surenian, Edward Buzak, Esq., and I met with Dr. Burchell and Dr. Burchell's colleague, Dr. David Listokin. It was readily apparent that Dr. Burchell is not physically or cognitively able to withstand the rigors of depositions and trial testimony. It also appeared that the finalization of the report was in jeopardy due to Dr. Burchell's limitations as well as the inability of the municipalities to present Dr. Burchell to the Court to testify as to the final report. We also learned at the meeting that Dr. Listokin was not involved in the preparation of the report or the underlying analysis, but was solely involved in an administrative capacity after Dr. Burchell fell ill.

9. We requested that Rutgers University identify a replacement for Dr. Burchell in accordance with the terms of the agreement between the MSSDA and Rutgers. Rutgers was unable to do so and, therefore, terminated the agreement. In order to avoid any further delay, we immediately commenced efforts to secure an alternative expert. To that end, and in accordance with the MSSDA, we convened a meeting of attorneys for the MSSDA members on the afternoon of September 10 to evaluate the alternatives for moving forward. It was agreed that the members would attempt to retain Econsult Solutions Inc. as a new expert.

10. This action required confirmation from the each of governing bodies involved. It appears that most if not all of the members will agree to retain Econsult, and accordingly an agreement with Econsult is being finalized.

11. The New Jersey League of Municipalities ("NJLM") has already retained Econsult in these actions, and the Movants intend to rely upon that report. That report, however, was only

to provide a critique of the report prepared by Dr. David Kinsey for FSHC, it does not provide an opinion on the fundamental fair share allocation issues, which was the purpose of the report to be obtained from Dr. Burchell. Econsult, therefore, needs sufficient time to obtain and analyze the available data and develop its opinions on the pertinent issues.

12. It is understood that this will delay the progress of these matters. We were prepared to meet the deadlines for submission of Dr. Burchell's report that were set forth in the numerous orders issued by the various courts which corresponded to the expectations of the MSSDA members. Unfortunately, we have been met with a circumstance that is beyond anyone's control. As much as we would prefer to be able to follow the plan that had been laid out, fairness to the process and to the citizens of New Jersey warrants that additional time be provided.

13. This is a complex problem that should only be resolved through a thoughtful and methodical approach that follows applicable rules of procedure and due process, and gives due consideration to the efforts of the municipalities to comply.

14. We request that the Court take this unfortunate delay into consideration in the case management schedule, which would require an extension of the period of immunity that has been provided to the municipalities to allow the alternative expert to prepare a report new report.

15. The Movants are in the process of developing a submission to the Court to demonstrate their good faith efforts towards development of plans, despite the lack of a fair share number at this time. It is anticipated that this will be provided in advance of the end of the current temporary immunity period.

16. As set forth in the letter brief submitted with this motion, it is respectfully submitted that the Court should extend the immunity period for the Township to accommodate this unfortunate and unexpected delay.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DiFRANCESCO, BATEMAN, KUNZMAN,  
DAVIS & LEHRER, P.C.  
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Borough of Rocky Hill and Borough of Frenchtown

By:   
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Steven A. Kunzman

Dated: October 5, 2015