

City Admin

From: Public Works
Sent: Tuesday, July 14, 2015 6:49 AM
To: City Admin
Subject: FW: Flushable Wipes Litigation
Attachments: Wadena Talking Points Memo.pdf

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Dan Kovar
Public Works Director
City of Wadena

From: Steven Nyhus [mailto:swnyhus@flaherty-hood.com]
Sent: Monday, July 13, 2015 5:05 PM
To: Public Works
Cc: Jason Kilene (JKilene@gustafsongluek.com); Garrett Blanchfield (G.Blanchfield@rwblawfirm.com)
Subject: Flushable Wipes Litigation

Good afternoon Dan,

Per your request, attached please find some points that you can use in your discussion with the City Council. Please let me know if you have any questions or if there is other information we can provide.

Thank you.

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MEMORANDUM

Attorney-Client Privileged and Confidential

To: Dan Kovar, Public Works Director, City of Wadena
From: Jason S. Kilene, Gustafson Gluek PLLC
CC: Garrett D. Blanchfield, Reinhardt, Wendorf & Blanchfield
Christopher M. Hood and Steven W. Nyhus, Flaherty & Hood, P.A.
Date: July 13, 2015
Re: Summary of Flushable Wipes Litigation

The following summary points are being provided at the City's request, to assist the City's consideration whether to participate in the above-referenced action as a class representative.

- A. A complaint was filed in U.S. District Court for the District of Minnesota on April 23, 2015 by the City of Wyoming, Minnesota, individually and as a putative class action on behalf of all those similarly situated.
- B. Defendants named in this lawsuit are Proctor & Gamble Company; Kimberly-Clark Corporation; Nice-Pak Products, Inc.; Professional Disposables International, Inc.; Tufco Technologies Inc.; and Rockline Industries. The Defendants are known to design, distribute, market and advertise cleansing wipe products as "flushable."
- C. The City of Wyoming alleges that, contrary to the Defendants' marketing claims, these wipes are not in fact "flushable" and travel through sewage collection and treatment systems, causing clogs, equipment damage, and other negative effects.
- D. The complaint filed by the City of Wyoming requests the following relief:
 - 1) an order certifying the action as a class action;
 - 2) a declaration that the Defendants' flushable wipes do not degrade and are not sewer safe;
 - 3) an order directing Defendants to cease further advertising, sale, and distribution of said "flushable wipes";
 - 4) an order directing Defendants to establish a fund to compensate class members for costs associated with ongoing cleanup and removal of flushable wipes from sewer systems;
 - 5) allowable monetary damages; and

6) attorneys' fees and costs.

- E. Gustafson Gluek PLLC approached Flaherty & Hood, P.A. for information as to whether other Minnesota cities may have been similarly affected by "flushable" wipes.
- F. Flaherty & Hood, P.A. sent an e-mail inquiry on May 20, 2015 to municipal clients with whom the firm has a pre-existing relationship, asking to be contacted by any cities that might be interested in participating as a class representative.
- G. The City of Wadena expressed interest and an initial telephone conference call was held on June 22, 2015.
- H. As a "class representative," the City would be pursuing both its own claims and the claims of other cities and entities that expended additional resources in response to clogs or other sewer or wastewater treatment system issues caused by "flushable" wipes.
- I. As a Plaintiff and class representative, the City would have an obligation to understand the general nature of the claims, to follow the progress of the case, and to have a commitment to its prosecution. Counsel will advise the City from time to time of the status of the litigation, and are always available to answer questions.
- J. It is likely that the Defendants will submit discovery requests to the Plaintiff class representatives. When this occurs, City staff will be required to cooperate with counsel in locating and producing copies of the City's documents, and a representative designated by the City may have to appear for a deposition. Counsel will assist throughout each step of this process to make it as convenient for the City as reasonably possible.
- K. This class action is a "contingency fee" matter, which means that attorneys' fees for counsel's services in this matter are wholly dependent upon obtaining a recovery. Any attorneys' fees will be paid solely from any such recovery, and the City will not have a separate obligation to pay attorneys' fees apart from a recovery. If a recovery is obtained for a plaintiff class, any attorneys' fees paid from the amount recovered, as well as any expenses reimbursed, must be approved by the Court.
- L. Counsel will advance from time-to-time the necessary expenses of the litigation, some of which may be borne by other plaintiffs' counsel. The City will not be billed for or required individually to reimburse counsel for such expenses. If a class wide recovery is obtained, counsel may seek reimbursement of expenses from the recovery.
- M. This matter will be handled primarily by the firms of Gustafson Gluek PLLC and Reinhardt, Wendorf & Blanchfield. Flaherty & Hood, P.A. is assisting in this matter only in the limited role of client contact and coordination. Representation of the City in the matter and prosecution of the claim, however, will be the sole responsibility of Gustafson Gluek PLLC.

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N. If the City is interested in proceeding as a class representative, Gustafson Gluck PLLC will send a retainer letter for the City to sign. The signature of such retainer letter will formally commence the representation.

Any questions regarding the foregoing may be directed to Steve Nyhus at 651-225-8840, or by e-mail to swnyhus@flaherty-hood.com.