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July 27, 2015

Mr. Rick Faulkner
Coughlan Crowson LLP
P.O. Box 2665
Longview, Texas 75606

Re: Kilgore College / EPA Peer Audit Review Report

Mr. Faulkner:

I write in response to your July 15, 2015 “cease and desist” letter to Dean R. Kinney, Tommy Konczak, and Phil Patterson. While carefully crafted, that letter nonetheless comes dangerously close to actionable defamation. I have three witnesses who will testify that your letter misrepresents the communications between Mr. Kinney and Troy Bataille.

Specifically, Mr. Kinney never indicated that he was calling on behalf of Kilgore College, and at all times he made it clear that he was not affiliated with the college (other than his status as a retiree). According to your letter, however, Mr. Bataille “felt” that Mr. Kinney's “efforts were clearly an attempt to circumvent the attorney-client privilege.” I suppose Mr. Bataille can “feel” whatever he chooses, but a cease-and-desist letter should be based on facts, not feelings. As a private citizen, Mr. Kinney had every right to inquire about the EPA Peer Audit Review Report, particularly since his tax dollars paid for that report.

Although your letter claims that the report is protected by attorney-client privilege, in reality it is protected by the attorney work-product privilege. While the two concepts are similar, they are not the same. *See Stoffels v. SBC Commc'ns, Inc.*, 263 F.R.D. 406, 411-412 (W.D. Tex. 2009). Insofar as the report is attorney work product, it may be subject to disclosure during litigation, particularly to the extent that it contains factual information about asbestos on the Kilgore College campus. *See, generally, S.E.C. v. Brady*, 238 F.R.D. 429, 443 (N.D. Tex. 2006)(work-product privilege may be pierced).

Suffice it to say that litigation is on the near horizon, and the report may become public notwithstanding your client's wishes. Regardless, I must wonder why the college leadership is so hellbent on keeping the report under wraps. People with nothing to hide generally don't try to hide nothing, and if the investigators found no asbestos problems on the campus, I suspect the college would already be trumpeting that fact.

If you still believe that Mr. Kinney needs to cease and desist from something, please tell me exactly what that is. As things stand, I am not going to advise him to quit seeking information about the presence of asbestos on the Kilgore College campus. Perhaps the college and the public would be better served by cleaning up the asbestos problem rather than trying to intimidate those who ask questions about it.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

P.S. Please advise your client that general correspondence to Mr. Kinney should be sent to P.O. Box 18, Kilgore, Texas 75663-0018. Any further legal correspondence should be directed to me.

cc: Mr. Dean R. Kinney
Mr. Tommy Konczak
Mr. Phil Patterson
Mr. Richard Brack, Editor
Longview News-Journal
Mr. James Draper, Editor
Kilgore News Herald