

**LAYSER & FREIWALD, P.C.**

ATTORNEYS AT LAW

Aaron J. Freiwald

July 13, 2010

***Via Telefax and Regular Mail***

Terry Counley  
President, McCullom Lake Village  
4811 W. Orchard Drive  
McHenry, IL 60050

**Re: University of Illinois, Chicago**

Dear Mr. Counley:

It is my understanding that the McHenry County Board of Health met yesterday with representatives from the School of Public Health at the University of Illinois, Chicago (UIC). Apparently, UIC is offering to hold some sort of meeting for the Village on issues relating to the Rohm and Haas brain cancer cluster litigation.

Over the last many months, I have tried to stay out of the way of the County's occasional dabbling in this matter. It does seem to me that if the County really wants to do something to help reassure residents that their drinking water today is safe, then perhaps the County should simply come in and test all the wells. Indeed, that's what could have and should have been done some time ago.

For now, I want to address the idea of UIC coming in and making a presentation to residents in the Village. The UIC representative, Salvatore Cali, apparently told members of the County Health Board that UIC could be impartial. I strongly disagree that UIC is impartial.

The UIC has had direct involvement in this case. There have been contacts with the lawyers for Rohm and Haas and with Dr. Darrell Bigner, an expert witness who did significant work for Rohm and Haas. As a result of improper contacts between UIC and the Dr. Bigner, the Court sanctioned Rohm and Haas by disqualifying Dr. Bigner.

Frankly, I believe UIC continues to misbehave by failing to disclose to you and the County these connections. The summary below is entirely supported by documents and testimony in the record of our case.

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Early on in this litigation, we consulted with Dr. Faith Davis, an epidemiologist at the UIC School of Public Health. Dr. Davis is not just another member of the department at UIC. She is a professor of epidemiology and the senior associate dean of the school and director of graduate studies. In any case, Dr. Davis agreed to meet with me and to consult on a non-testifying basis. We corresponded with her, met with her at her office in Chicago, shared confidential information about our case, and reached an agreement for her to serve as a consultant.

At a meeting with Dr. Davis in Chicago, we discussed the fact that Dr. Bigner, a brain pathologist at Duke University, had been hired by Rohm and Haas and was going to testify that vinyl chloride doesn't cause brain cancer. She chuckled, told us that was curious and provided us with some power point slides from a recent academic conference she and Dr. Bigner had attended. The slides, which referenced Dr. Bigner's own research, identified animal studies that contradicted the opinion Rohm and Haas was paying Dr. Bigner to provide in this case. Dr. Davis understood that Dr. Bigner was going to be deposed as a witness in the case and that I planned to confront him with these power point slides.

A few months later, at his deposition at Duke, I did show the slides to Dr. Bigner. He seemed surprised – and a bit perturbed – that I had the power point slides. Later in the deposition, I asked him whether he knew Dr. Davis and he said they worked together on some research projects. In fact, he noted, he and Dr. Davis would be together on a conference call the very next day.

The day after the conference call, we received a note from Dr. Davis informing us that she was too busy after all and could no longer serve as a consultant to us in this litigation.

We didn't fully understand why Dr. Davis had gone so cold on us until some months later. Through document discovery in the case, I obtained a copy of an email Dr. Davis had sent to Dr. Bigner. The email was dated just a couple of days after Dr. Davis had notified me that she was withdrawing her services as a consulting expert. In the email, addressed to "Dear Darrell," Dr. Davis wrote: "I do apologize for any embarrassment this may be causing you. I emailed them last week that I will not continue to assist them. Faye." ("Faye" is Dr. Davis' nickname.)

Based on this note, it was clear enough to us that Dr. Bigner had "got to" Dr. Davis. We filed a Motion for Sanctions and asked the Court to disqualify Dr. Bigner as an expert. Rohm and Haas filed a response and attached two affidavits. One, not surprisingly, was from

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Dr. Bigner, stating that he had done nothing improper. The second affidavit was from Dr. Davis. In her affidavit, which had been provided to the lawyers for Rohm and Haas without my knowledge, Dr. Davis said she had withdrawn as a consultant indeed because she was busy and not because she had been intimidated by Dr. Bigner.

We asked for permission to take Dr. Bigner's deposition (again) and Dr. Davis' deposition, in light of the affidavits they had provided to the chemical company attorneys. The Court agreed.

Here are the key points we learned:

- After Dr. Bigner's deposition on July 24, 2007, one of the Defendants' attorneys spoke with Dr. Bigner about the power point slides that I had showed him earlier in the day and asked Dr. Bigner "to get to the bottom of it." The next day, Dr. Bigner spoke with Dr. Davis and confirmed that she was the one who had provided us the power point slides.
- Dr. Bigner is the principal investigator in a major National Cancer Institute research project, called SPORE (Specialized Program of Research Excellence.) The SPORE program involves millions of dollars in research funds. As the principal investigator, Dr. Bigner has the authority to bring in other researchers from other institutions to assist in the project and to share the research dollars. Dr. Bigner had tapped Dr. Davis and UIC to assist in the SPORE work. As principal investigator, Dr. Bigner testified that he controlled UIC's budget in connection with this work and that he had the authority to influence the dismissing of Dr. Davis and UIC, if he decided to do so.
- On July 31, 2007, four days after Dr. Davis terminated her consulting arrangement with us, Dr. Bigner sent her an email – an email that Rohm and Haas had failed to disclose to us previously and that was only turned over the night before Dr. Bigner's second deposition – in which Dr. Bigner demanded that she turn over to him any and all documents she had give to us. This contradicts Dr. Bigner's sworn affidavit provided to Rohm and Haas' attorneys in which he stated that Dr. Davis had sent him copies of the power point slides "unsolicited."

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- Just a few hours later, Dr. Davis responded to Dr. Bigner with the note referenced earlier.
- Two weeks after we filed the Motion for Sanctions, a Rohm and Haas attorney in Philadelphia sent an email to Dr. Davis asking her to assist Rohm and Haas by providing an affidavit. In the note, the company lawyer asked Dr. Davis to call, but not to respond in writing. A lawyer for Rohm and Haas finally identified and turned over a copy of this email about one-half hour into Dr. Davis' deposition.
- At her deposition on August 18, 2008, Dr. Davis confirmed that she had spoken with a Rohm and Haas attorney, that she had disclosed her prior relationship as a consultant to us, that she had agreed to provide an affidavit and that the Rohm and Haas attorney had helped her write the affidavit.
- For his services to Rohm and Haas, Dr. Bigner charged \$1,000 per hour. Up through 2008, Dr. Bigner had billed Defendants almost half a million dollars.

Based on the above facts, we argued to the Court that Dr. Bigner had engaged in improper contact with Dr. Davis. It was not material that Dr. Davis had ended her professional relationship with us. Even as a former expert, Dr. Davis had received confidential communications from us and that should have rendered her off-limits to any discussion from either the lawyers for the company or any experts hired by the company. Dr. Bigner has testified frequently for chemical companies in the past; he certainly was familiar enough with these ethical rules. We also argued that it was improper for the company's attorneys to have contact with Dr. Davis about this case.

On October 21, 2008, the Honorable Sandra Mazer Moss granted our Motion for Sanctions and disqualified Dr. Bigner from serving as an expert witness in this litigation. After the Judge ruled, Rohm and Haas filed for reconsideration and that motion was denied. Also after the Judge ruled, Dr. Bigner hired a lawyer to challenge his disqualification. Those efforts were also rejected.

In light of the above background, I do not believe it would be appropriate for representatives of UIC to make any presentation to the residents of McCullom Lake. I mean no disrespect to Mr. Cali or any of the members of his staff, but UIC simply cannot be seen as impartial. The connection between UIC and Dr. Bigner, between Rohm and Haas and Dr.

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Bigner, between Dr. Davis and all of them, including the chemical company attorneys, and so on, is undeniable, even if UIC did not think to disclose to you and to the County Health Board.

As you may have read, the Illinois State Cancer Registry is getting ready to sign off on our expert's brain cancer cluster review, using state cancer registry data. We are the only ones who have undertaken such a study. Rohm and Haas has not. And neither has the County, the State or anyone else.

Frankly, I do not see the need for the UIC to make "presentations" to residents in the Village. On what could such presentations possibly be based? This brings back to mind the first Town Hall meeting organized by the County, back in 2006. At that meeting, members of the Health Department, including the County's former epidemiologist, falsely reassured residents based on old cancer data and groundwater reports provided by Rohm and Haas. Indeed, though it was never disclosed to residents at the meeting, Rohm and Haas managers met with Mr. McNulty and his staff before that meeting to review what was going to be said. Bringing in UIC at this point and against the background summarized above, would be just another misstep, in my view.

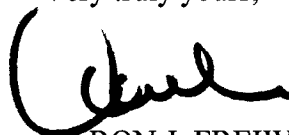
The Motion for Sanctions I discuss in this letter, as well as Rohm and Haas' response and the Court's Order are posted on our website at:

[www.layserfreiwald.com/cases.html?mode=detailSummary&caseID=3](http://www.layserfreiwald.com/cases.html?mode=detailSummary&caseID=3).

I am going to add a copy of this letter to the place where we have these documents in case you or anyone from the Village wishes to see the background.

If you have any questions, of course, you know you can call me and I would be pleased to speak with you.

Very truly yours,



AARON J. FREIWALD

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