

## **Lawsuit Update:**

### ***Third Mutual Re-files Elder Abuse Complaint Against PCM***

**By Mary Robertson**

In its complaint against PCM, past-General Manager Milt Johns and PCM Financial Officer Janet Price, one of the six allegations Third Mutual made was that the three defendants committed elder abuse by using residents' funds for an employee incentive plan bonus program.

The defendants PCM and Price filed a demurrer to have the elder abuse allegation dismissed on the grounds that Third Mutual had no standing in the courts to represent residents on elder abuse charges. The judge upheld the defendants' position and dismissed the elder abuse allegation but allowed Third the opportunity to reintroduce the charge by meeting the legal basis needed for the filing.

#### **Third's New Complaint of Elder Abuse**

On October 12, 2010, Third Mutual did re-file its elder abuse complaint. On November 12, the defendants PCM and Price filed another demurrer (an objection) to this complaint. Milt Johns, who recently received service of the original complaint, is not a party to PCM/Price's response to Third's allegations.

A hearing has been scheduled for January 13, 2011, to allow the court to rule on the PCM/Price demurrer. The hearing will be in Courtroom 8 at the Orange County Superior Court Central Justice Center in Santa Ana.

The judge, in his dismissal of the elder abuse allegation, stated that Third's claim did not involve enforcement of its governing documents nor damage to property, which are the types of claims where HOAs normally have standing to represent their members. However, the judge gave leave to Third to re-file its claim by amending it to have individual elders make claims of elder abuse.

Third, in its re-filing, is not including individual elders as plaintiffs on the allegation of elder abuse. Instead, Third is using the enforcement of its governing documents as the basis for it having standing (the right) to represent the elders in Third Mutual on the charges of elder abuse against PCM/Price. The governing documents are Third's CC&Rs, Bylaws and Management Agreements with PCM.

PCM/Price's demurrer response states that there is nothing in the CC&Rs or Bylaws that grants Third standing to pursue a claim of elder abuse on behalf of individuals who are not members of Third Mutual. PCM states the CC&Rs and Bylaws are binding only on members (i.e. manor owners) in Third Mutual. PCM and Janet Price are not homeowners subject to these documents.

PCM/Price also claim using the Management Agreements does not meet the elder abuse standing test because claims that PCM/Price have not met the conditions of the Management Agreements is a contract issue, not a tort (wrong against an individual) issue. They state California courts have routinely rejected attempts to allow contract issues to become tort issues. (Note: Third already has a breach of contract charge in its complaint.)

#### **Update on PCM/Price Sanction Request**

On October 28, the judge denied PCM/Price's motion to sanction Third Mutual and have Third's complaint dismissed. In his decision, Judge Nakamura stated the "motion is essentially a premature motion for summary judgment, for which triable issues of material fact exist as to the date plaintiff actually discovered...the facts constituting the fraud or mistake." [CA Code of Civil Procedure Section 338(d)]

#### **GRF, Mutual 50 Decline Joining Lawsuit**

On November 17, both GRF and Mutual 50 issued statements that, after an extensive investigation, they have decided no further action on the PCM employee incentive plan is warranted. They will not be joining Third Mutual in its lawsuit. Both statements can be read on the Laguna Woods Village website, [www.lagunawoodsvillage.com](http://www.lagunawoodsvillage.com).

#### **United Mutual Investigating Incentive Plan**

United Mutual is doing its separate investigation of the incentive plan in response to Third Mutual's litigation and expects to have the results later this month.