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**Via Electronic Mail** ([sufluft@nycourts.gov](mailto:sufluft@nycourts.gov))

June 3, 2022

The Honorable Martha L. Luft  
Hon. Alan D. Oshrin Supreme Court Building  
1 Court Street – Room A-362  
Riverhead, New York 11901

**Re: *Incorporated Village of Head of the Harbor et al. v. Town of Smithtown et al.*  
Supreme Court of the State of New York – County of Suffolk (Index No.  
608051/2022) (the “Article 78 Proceeding”)**

Dear Justice Luft:

We represent non-party Cameron Engineering & Associates, L.L.P. (“Cameron”).<sup>1</sup> We are writing to request a pre-motion conference prior to the filing of a motion to disqualify Ruskin Moscou Faltischek P.C. (“Ruskin”) from representing Plaintiffs in this Article 78 Proceeding.<sup>2</sup>

Cameron drafted the Environmental Impact Statement that is at the center of this dispute. It is evident from the pleadings filed to date that one of the primary assertions being raised by Plaintiffs is a critique of Cameron’s work product. One of the filed exhibits is a report from Schneider Engineering, PLLC providing seven pages of claimed critiques of Cameron’s July 2018 Traffic Impact Study. Doc. No. 14. Plaintiffs’ Verified Petition that Ruskin signed and filed refers to Cameron’s work as “seriously flawed.” Verified Petition, at ¶ 56.

Ruskin decided to represent Plaintiffs even though Ruskin is Cameron’s principal outside counsel and has been for the past thirty years. During that time, numerous partners and other

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<sup>1</sup> We also represent Defendants Gyrodyne, LLC and Gyrodyne Company of America, Inc. who intend to join in on the motion to disqualify.

<sup>2</sup> We appreciate that Your Honor’s part rules allow for pre-motion conferences for discovery motions. We note that courts have disqualified counsel under motions to protective orders under CPLR § 3103 as it pertains to discovery. While that is not the precise issue here, we believed it was prudent to raise this issue with Your Honor at the outset of this proceeding.

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attorneys at Ruskin have provided various litigation, general corporate and other legal services to Cameron. Directly related to this dispute, Ruskin partner Michael Faltischek visited the subject property with Cameron's founder to discuss alternative uses. Ruskin has also reviewed Cameron's work product for SEQRA compliance on other projects (the body of law Plaintiffs' allege was not complied with in this case).

As such, Ruskin cannot represent Plaintiffs who wish to attack its other client's work.<sup>3</sup> Rule 1.7(a) of New York's Rules of Professional Conduct ("Conflict of Interest: Current Clients") provides that "A lawyer shall not represent a client if a reasonable lawyer would conclude that . . . (1) the representation will involve the lawyer in representing differing interests." The term "differing interests" is defined as any interest that "will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be conflicting, inconsistent, diverse, or other interest." Rule 1.0(f).

New York courts have disqualified counsel in such circumstances. In *People v. Martynov*, 36 Misc. 3d 1213(A) at \*2 (Sup. Ct. Kings Cnty. 2012), the court found that a conflict of interest existed and disqualification was warranted when defense counsel previously represented (in an unrelated matter) a material witness in the case. The Court reasoned that "[t]he potential for disclosing confidences, for exhibiting disloyalty for disclosing confidences, for exhibiting disloyalty to a prior client and for creating the appearance of impropriety, are dramatically increased if defense counsel attacks the credibility of [the witness]." *Id.* (internal citations omitted). The court found a similar conflict in *People v. Taylor*, 70 Misc. 3d 1222(A) (Sup. Ct. Cty Ct. of Poughkeepsie, Dutchess Cnty. 2021) even though the material witness was a former client of the firm.

We have met and conferred with Ruskin and asked it to withdraw as counsel for Plaintiffs. Ruskin informed us it is unwilling to do so. We would respectfully request a pre-motion conference to address the issue. Thank you for Your Honor's attention to this matter.

Respectfully submitted,



Joseph L. Clasen

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<sup>3</sup> Of course, nothing herein is meant to suggest that any of the claimed critiques have merit or entitle Plaintiffs to any of the relief requested.

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cc: All counsel (via electronic mail).