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December 28, 2007

VIA ELECTRONIC MAIL

Michael M. Buchman, Esq.

Re: Lucker v. Bayside Cemetery, No. 07-CV-3823 (RJD) (JMA)

Dear Mr. Buchman:

I write as counsel to Congregation Shaare Zedek and Bayside Cemetery in response to your letter of December 21, 2007. As I explained in our conversation on December 19, we understood Judge Dearie to have stayed all proceedings in the above-referenced matter, including discovery, until a further conference on March 28, 2008, to allow the parties an opportunity to explore constructive, forward-looking solutions for Bayside Cemetery. As we have previously informed you, should our motion to dismiss this action be denied, the Congregation will provide relevant documents in accordance with the Federal Rules of Civil Procedure, as required by law, but we agree with Judge Dearie that the most appropriate focus for our collaborative efforts at this point is the future, not the past.

In the spirit of the Court's request, however, we are happy to provide an update on our "action plan" for Bayside Cemetery. As you know, the Congregation has been working for several years to establish a stable, long-term solution for Bayside Cemetery, in cooperation with several leading New York Jewish communal organizations. The community passed an important milestone in that effort several months ago with the creation of the Community Association for Jewish At-Risk Cemeteries (CAJAC), an independent not-for-profit organization that will raise funds from the broader Jewish and philanthropic community for the ongoing management and care of Bayside Cemetery, as well as other similarly-situated at-risk cemeteries in the future. While we do not represent CAJAC, we understand that it has been initially unsuccessful in hiring an executive director to coordinate its development efforts, with its first two finalists each

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declining the offer of employment due to concern about the negative effects of your clients' lawsuit, and in particular the discouraging effect the lawsuit is likely to have on fundraising.

This litigation has had similarly unfortunate consequences for the Congregation's shorter-term plans for Bayside. In addition to the need for an endowment for its long-term maintenance, it is obvious that there is substantial physical work to be done at Bayside to restore it to an appropriate, respectful condition, work that the Congregation and Bayside have been unable to fund on their own. Through the good offices of the Jewish Community Relations Council and the New York State Attorney General's Office, the Congregation has obtained a number of estimates of the cost of such a cleanup, including one from an experienced operator of Jewish cemeteries in the New York area, and UJA-Federation of New York has authorized a grant to the Congregation specifically to fund the effort. Contrary to the implication of the Complaint, that grant has not yet been disbursed, since it was subject to several conditions that have only recently been satisfied or are being impeded by this lawsuit. In addition, the individual that had previously provided the lowest cost estimate — including the donation of substantial amounts of labor at discounted rates — has indicated an unwillingness to proceed with the project during the pendency of this lawsuit, out of a concern that he and his organization may be called as a witness or otherwise become entangled in this dispute. We are currently investigating alternatives for the cleanup, although there can be no guarantee that they will be any more willing to become involved while the lawsuit is pending, or that they will be as willing to donate labor, materials, or equipment.

The two principal prongs of the Congregation's plan for Bayside, therefore, are each being stymied by this litigation. Given your clients' stated desire to help with Bayside's restoration, we would suggest that the most useful thing you could do in the short-term would be to cooperate with us so that we can assure both prospective contractors for the cleanup work, as well as prospective employees of and donors to CAJAC, that you do not intend to involve them as parties or witnesses in this litigation. If you are willing to provide such assurances, please let me know, and I would be happy to arrange conversations with the relevant individuals.

Of course, to the extent you or your clients have other constructive proposals for how you can help Bayside, we would be happy to hear them as well. The Congregation is confident, however, that with the obstacle of this lawsuit removed, the Jewish community will soon be able to make substantial progress towards ensuring that Bayside is once again a testament to the commitment of Congregation Shaare Zedek and the larger Jewish community to *kavod ha-meit*.

Sincerely,

  
Stephen M. Axinn (AS)