

**Commonwealth of Massachusetts
Supreme Judicial Court in and for Suffolk County**

The TOWN OF LITTLETON, MASSACHUSETTS, acting by
and through its BOARD OF WATER COMMISSIONERS,
Plaintiff,

v.

The TOWN OF CONCORD, MASSACHUSETTS,
Defendant.

No. SJ-2018-0572



**COMPLAINT FOR ASSESSMENT OF STATUTORY WATER DAMAGES
UNDER STAT. 1884, C. 201 AND RELATED DECLARATORY RELIEF**

1. Nagog Pond is a freshwater, natural Great Pond lying along the boundary between the Towns of Littleton and Acton. Littleton has historically not needed to use Nagog Pond for its water supply needs. Although Littleton is authorized to use Nagog Pond for such a purpose and has the right to do so pursuant to Stat. 1884, c.201 and Stat. 1911, c.617, it has, until recently been able to supply its inhabitants with water from other sources.

2. During the period that it has been unneeded by Littleton (or Acton), Nagog Pond has historically served as a water supply to the Town of Concord. In 1884, Concord successfully secured from the General Court a legislative right to take and hold Nagog Pond's waters, associated water rights, and other land or property for Concord's use in meeting its water supply needs. Stat. 1884, c.201 (the "1884 Act"). Concord eventually took the waters of Nagog Pond in its entirety in 1909 and has, for over a century, been the beneficiary of that water supply. That right, however, was limited and inferior to a reserved right left with Littleton: At any point in the future, Littleton

could take and hold Nagog Pond's waters—including waters held by Concord—and its inhabitants would be "first supplied" over Concord's. Stat.1884, c.201, §10.

3. In times of increasing water scarcity and a growing population, Littleton now needs to identify and develop new water supplies and intends to take and hold at least a part of Nagog Pond's waters toward that purpose. Concord, meanwhile, has developed alternative water supply sources over the last century.¹ It now also has emergency water capacity available to it from neighboring Acton and Bedford (the latter connected to the Massachusetts Water Resources Authority) in times of true need.²

4. Knowing that it will need to exercise its rights under the 1884 Act to secure water from Nagog Pond, Littleton has attempted to negotiate a fair and equitable process for doing so with Concord, including reimbursement to Concord of an appropriate sum of "water damages." Concord, after participating in a handful of negotiation sessions, has declined to participate further.

5. Accordingly, Littleton, acting by and through its Board of Water Commissioners, files this petition as the General Court commanded in 1884. See Stat. 1884, c.201, §10 (requiring application to the Supreme Judicial Court for ascertaining water damages related to Littleton's or Acton's taking of waters from Nagog Pond already taken by Concord). By this action, Littleton seeks to resolve its dispute with Concord over its imminent taking of Nagog Pond's waters. Count I of this petition requests the appointment of three commissioners, under Stat. 1884, c.201, §10, to ascertain a just and proportionate sum of "water damages" Littleton will be obligated to pay Concord for its intended lawful taking and holding of waters from Nagog Pond. Littleton further asks, in Count II, that this Court declare, pursuant to *M.G.L. c.231A*,

¹ <http://www.concordnet.org/363/Water-Supply>

² *Id.*; also <http://www.mwra.com/02org/html/locallist.htm>

the scope and extent of the term “water damages” as used in the 1884 Act and to instruct the three-commissioner panel consistent with that declaration.

PARTIES

6. The Town of Littleton, Massachusetts is a municipal corporation duly organized under the laws of the Commonwealth. Littleton Town Hall – its principal place of business – is at 37 Shattuck Street, in Littleton.

7. The Littleton Board of Water Commissioners is a five-member elected board whose authority derives from Stat. 1911, c.617 (the “1911 Act”). The Board’s principal place of business is 39 Ayer Road, in Littleton.

8. The Town of Concord, Massachusetts is a municipal corporation duly organized under the laws of the Commonwealth. Concord Town Hall – its principal place of business – is at 22 Monument Square, in Concord.

JURISDICTION AND VENUE

9. This Court has subject matter over this action in accordance with *M.G.L.* c.214, §§1, 2, and 8, and Stat. 1884, c.201.

10. This Court has personal jurisdiction over Concord under *M.G.L.* c.223A, §2.

11. Venue is proper in this Court under Stat. 1884, c.201.

FACTS

A. Overview of Nagog Pond.

12. Nagog Pond is a kettle hole lake situated in both Littleton and Acton.³ The actual boundary line between the two Towns runs approximately through the center of the Pond.

13. Nagog Pond is and has long been recognized as a natural Great Pond.

14. As with any other supply of water, Nagog Pond can only provide sustainable water supply to certain limits. Those limits can be expressed through its “firm yield” and “safe yield.”

15. In 2011, the U.S. Geological Service (“USGS”) determined that the “firm yield” of Nagog Pond—defined in the report as the maximum yield that can be delivered from a system without a failure, even during a severe drought—is 0.86 million gallons per day (MGD).

16. According to the most recent (2017) Annual Statistical Report filed by Concord with the Massachusetts Department of Environmental Protection, Bureau of Water Resources, Drinking Water Program, the “safe yield” of Nagog Pond is 1.23 MGD. *M.G.L. c. 21G, §2* defines “safe yield” as “the maximum dependable withdrawal that can be made continuously from a water source including ground or surface water during a period of years in which the probable driest period or period of greatest water deficiency is likely to occur; provided however, that such dependability is relative and is a function of storage and drought probability.”

³ A kettle hole lake is a shallow, sediment filled body of water.

B. Concord's Request to the General Court to Use Nagog Pond as a Water Supply Source unless and until its Waters Were Needed by Littleton or Acton.

17. In the late 1800s, neither Littleton nor Acton used Nagog Pond as a source of water for either Town's respective inhabitants.

18. During this time, Concord had taken and was using the waters of Sandy Pond in Lincoln as a source of water for use by its inhabitants, among other sources. See St.1872, c.188 (authorizing Concord to "take and hold the waters of Sandy Pond" for purposes enumerated in statute).

19. After a severe, multi-year drought,⁴ Concord petitioned the General Court to allow it access to the waters of Nagog Pond, outside of its town borders, as an additional source of water supply.

20. The General Court obliged. On April 30, 1884, it approved "An Act To authorize the Town of Concord to increase its Water Supply." A copy of the 1884 Act is appended to this Complaint as Exhibit 1.

21. Through the 1884 Act, the General Court conferred a qualified authorization and right to Concord to take and use the waters of Nagog Pond, subject and secondary to any need by Littleton or Acton to take and use the same waters in the future. The 1884 Act set forth a framework of rights and obligations to implement that Legislative intent.

22. Section 1 authorized Concord—subject to certain other authorization requirements in later sections—to "supply itself and its inhabitants and other persons, towns and corporations on the line of its water works with pure water" for specific, statutorily-enumerated purposes. St. 1884, c.201, §1.

⁴ U.S. Geological Survey Water-Supply Paper 2375 National Water Summary 1988-89-Floods and Droughts: Massachusetts (available at <https://md.water.usgs.gov/publications/wsp-2375/ma/>).

23. Sections 2 and 3 authorized Concord to “take and hold the waters of Nagog Pond” and provided corresponding authority to “take and hold by purchase or otherwise all necessary lands for raising, holding, diverting, and purifying such waters” and on those lands to “erect...proper dams, reservoirs, buildings, fixtures and other structures, and make excavations and embankments, and procure and operate machinery” for water supply purposes. Stat. 1884, c.201, §§2-3. At its option, Concord could either take all of Nagog Pond’s waters (*id.* §2) or only “a part of said waters” (*id.* §3). In the case of taking a water or water right, Concord was required to pay those proportioned damages only when “the water [was] actually withdrawn or diverted...” *Id.*

24. Section 10 reserved primary rights to Nagog Pond’s waters to the two Towns within which it is located: Littleton and Acton. See Stat. 1884, c.201, §10. That section states explicitly that none of the Act’s provisions “shall prevent” the Towns of Littleton and Acton “from taking the waters of Nagog Pond whenever said towns or either of them may require the same for similar purposes...” *Id.* The Act then goes on to subjugate Concord’s water supply rights to those of Littleton and Acton, commanding that “if from any reason the supply of water in said pond shall not be more than sufficient for the needs of the inhabitants of the towns of Acton and Littleton, then the needs of the inhabitants of said towns shall be first supplied.” *Id.*

25. Section 10 of the 1884 Act also anticipates that either or both of Littleton’s or Acton’s exercise of their superior rights to Nagog Pond’s waters might mean taking and holding waters previously taken and held by Concord. In such a circumstance, Littleton or Acton would be obligated to pay “water damages” to Concord for whatever “water rights” the Town took from Concord. Stat. 1884, c.201, §10. The General Court explicitly limited those “water damages” to only damages in a just and proportionate amount of whatever Concord had previously paid to “any persons or corporations for the taking of water rights from [Nagog Pond] or the outlet

thereof....” *Id.* The General Court declined to require the payment of any additional “water damages” or “damages” in any other form to Concord should Littleton or Acton, or both, choose to exercise their superior water supply rights.

26. Finally, Section 10 contemplates the possibility of a dispute over the “ascertain[ment]” of “water damages” owed to Concord. Stat. 1884, c.201, §10. Thus, the General Court said that “water damages” are to be “ascertained, if the parties fail to agree, by three commissioners to be appointed upon the application of either party by the supreme judicial court....” *Id.*

27. At its Annual Town Meeting the year following enactment of the 1884 Act, Concord voted to accept the Act’s provisions as the Act required. See Stat. 1884, c.201, §12.

C. Concord’s Taking and Holding of All of Nagog Pond’s Waters for Its Own Use in the Early 1900s.

28. It would not be until another quarter century passed, before Concord found the need to exercise its qualified right to take and hold Nagog Pond’s waters under the 1884 Act.

29. After a “[s]eries of dry years alternating with wet ones,” the Concord Water and Sewer Commissioners recommended in Concord’s Town Report that the Town “procure an additional supply [of water] from another source.” Seventh Annual Report of the Water and Sewer Commissioners, Concord Town Report, pp. 126-28 (for the year ending Jan. 31, 1909), appended to this complaint as Exhibit 2.

30. By vote taken pursuant to Article 14 of the 1909 Concord Annual Town Meeting, the Concord Water and Sewer Commission was authorized to “take and hold the waters of Nagog Pond...and also to take and hold by purchase or otherwise all necessary land, water rights, rights of water and easement for raising, holding, diverting, purifying, and preserving such waters.”

31. On July 28, 1909, Concord recorded an Instrument of Taking in the Middlesex County Registry of Deeds, book 3457, Page 221-237. A copy of the original cursive instrument and a transcription of the original are appended to this Complaint as Exhibits 3 and 4.

32. The Instrument of Taking purports to take: (i) all of the waters of Nagog Pond; (ii) the waters that flow into and from the Pond; (iii) the land under the Pond up to the overflow level of the dam at its outlet; and (iv) the littoral rights otherwise accruing to the owner of the adjacent properties thereby taken.

33. The July 28, 1909 Instrument of Taking and various other taking instruments recorded since that date, purport to take other property interests pursuant to the authority conferred by the 1884 Act.

34. On information and belief, none of the payments made in compensation for such takings constitute “water damages” within the meaning of Section 10 of the 1884 Act.

D. The General Court’s Enactment of the *Water Management Act to Create a Statewide Framework for Registering, Licensing, and Coordinating Water Withdrawals*

35. In the early 1980s, the General Court increasingly became aware that “the continued adequacy of the Commonwealth’s water supplies [could] no longer be taken for granted.”⁵ Thus, the General Court established a Special Commission to examine issues related to water scarcity and to report on those issues, including making recommendations. *Id.*

⁵ Report of the Special Comm’n Established (Under Chapter 13 of the Resolves of 1977 and Most Recently Revived and Continued by Chapter 9 of the Resolves of 1982) to Make an Investigation and Study Relative to Determining the Adequacy of the Water Supply of the Commonwealth (“Senate Report No. 1826”), Senate No. 1826 (Jan. 27, 1983).

36. In making its resulting report to the General Court in 1982, the Special Commission observed, among other items, that “In order to protect existing [water] users, a management framework which will enable water allocation in the future must be developed.”⁶ The Special Commission retained special legal counsel who provided a recommended framework and proposed implementing legislation.⁷ Special legal counsel’s accompanying report described the then-proposed *Water Management Act* as necessary to “establish a mechanism for authorizing new withdrawals of both ground and surface water in excess of a threshold volume....”⁸ That mechanism, according to special legal counsel, was the “minimum level of allocation regulation consistent with its management objectives.”⁹

37. The General Court acted in accord with these recommendations. On December 18, 1985, the General Court enacted “An Act Relative to the Establishment of a Massachusetts Water Management Act” to create a Statewide mechanism for allocating and managing water withdrawals pursuant to existing and future water rights. See Stat. 1985, c.592.

38. Under the *Water Management Act* (WMA), *M.G.L. c.21G*, all water withdrawals in excess of 100,000 gallons per day are reported to the Commonwealth. Withdrawals in excess of that “threshold amount” that existed prior to the Act, if registered no later than January 1, 1988, are now grandfathered from State infringement so long as the withdrawing entity continues to maintain its registration. *Stat. 1985, c.592, §5.* All non-registered withdrawals beyond that threshold amount

⁶ Senate Report No. 1826, p. 4.

⁷ *Id.*

⁸ *Id.* at 50.

⁹ *Id.*

now require a State-issued permit, in addition, of course, to some property or other legal right to withdraw the water in question. *M.G.L. c.21G, §7.*

39. Through this registration/permit overlay, the Commonwealth now manages the allocation of water withdrawals among those with water withdrawal rights and interests to ensure that, as a collective whole, those withdrawals do not endanger the future existence or replenishment of the Commonwealth's water supply. Nowhere in its text does the WMA assign, change, or otherwise alter property rights related to water withdrawals. Rather, as the "minimum level of allocation regulation consistent with its management objectives" (Senate Report No. 1826, p. 50), the WMA creates a State-level registration and permit framework that applies to and regulates then-existing and all future property rights to withdraw water.

40. In August 1987, Concord filed a Registration Statement pursuant to section 5 of the WMA, establishing its withdrawal of a total of 2.1 million gallons per day (MGD) from 10 withdrawal points, one of which was Nagog Pond. The Registration Statement does not specify what portion of the 2.1 MGD was being withdrawn from Nagog Pond.

41. Concord's Registration Statement was renewed on December 31, 1997 and December 31, 2007. Pursuant to the *Permit Extension Act*, Chapter 240 of the Acts of 2010, § 173 (extended by Chapter 238 of the Acts of 2012, §§74-75), Concord's Registration Statement is currently expected to expire on December 31, 2021 but may be renewed prior to that date.

42. On information and belief, Concord's average daily withdrawals from Nagog Pond since 2010 have never exceeded 0.13 MGD in any single year. Withdrawals have occurred in 100 or fewer days in each year since 2010, and the maximum withdrawal on any single day during that period was 0.84 MGD.

E. Littleton's Comprehensive Water Supply Planning for Its Increasing, Future Town Needs

43. Like many Massachusetts communities, Littleton has seen significant population growth in recent decades. That growth has come, unsurprisingly, with an increased demand for water, for use by the Town's residents and businesses.

44. The Littleton Water Department—responsible for supplying and distributing water within the Town's boundaries—currently operates a public water supply distribution system. That system serves 2,989 residential customers and 498 commercial customers.

45. Littleton currently withdraws water from six groundwater wells:

- Whitcomb TWF #3, DEP Source ID 2158000-01G
- Whitcomb GPW #1, DEP Source ID 2158000-02G
- Spectacle Pond Well, DEP Source ID 2158000-04G
- Replacement Well 2.1, DEP Source ID 2158000-05G
- Replacement Well 2.2, DEP Source ID 2158000-06G
- Replacement Well 2.3, DEP Source ID 215000-07G

Each of these wells is the subject of a permit issued by the Department of Environmental Protection (DEP), which sets the maximum volume of water that can be pumped therefrom on a single day.

46. The combined maximum volume of water that can be pumped from Littleton's six groundwater wells is 2.21 MGD.

47. Littleton does not currently utilize any water from Nagog Pond in its public water supply system.

48. Approximately 60% of Littleton's authorized withdrawals are the subject of a WMA Registration Statement filed with the Department of Environmental Protection (DEP) on or before January 1, 1988 and subsequently renewed on July 1, 1997 and August 8, 2007. The average daily volume of water withdrawals registered

by Littleton is 0.834 MGD. Littleton's Registration Statement is currently expected to expire on December 31, 2021 but may be renewed prior to that date.

49. Withdrawals in excess of Littleton's registered water volumes are currently also made from Littleton's water supply wells for which Littleton holds a WMA permit issued in March 1997 by DEP. The average daily volume of water withdrawals for which Littleton holds a DEP permit is 0.63 MGD.

50. Combining the Town's registered and permit water withdrawal volumes, Littleton is authorized to withdraw an average daily volume of 1.464 MGD from its public water supply wells.

51. Since 2010, Littleton's average daily withdrawals for its public water supply in any single year have been as high as 1.23 MGD. Littleton's maximum withdrawal on any single day during that period was 2.12 MGD.

52. As a practical matter, Littleton's six groundwater wells must be pumped at or near their maximum authorized capacity during periods of peak demand. If any of the wells is undergoing maintenance or repair during a peak-demand period, Littleton currently would not have adequate pumping capacity to meet that demand.

53. Anticipating increased, future demands on its water supply, Littleton retained Tighe & Bond—expert engineering consultants—to conduct a Water System Capacity Analysis.

54. That resulting analysis, delivered on July 31, 2017 and appended to this complaint as Exhibit 5, describes Littleton as "facing the extremely challenging situation of meeting rapidly increasing customer demands while balancing the feasibility, schedule, and costs of water system upgrades and keeping rates reasonable." In addition to recommendations such as optimizing Littleton's existing water supply system, Tighe & Bond concluded that "to meet future water demands, additional withdrawals at existing well facilities or permitting of withdrawals at new facilities will be necessary."

55. Tighe & Bond projects that, in order to meet the expected demand of its residential and business customers, the Littleton Water Department would need to accommodate an increase in its daily peak withdrawal volume by 0.33 MGD by the year 2040. Tighe & Bond projects that the maximum daily demand in Littleton in 2040 will be 2.54 million gallons.

56. Consistent with this need for future water supply sources, Littleton is now actively engaged in planning for its future and is pursuing several additional sources of future water supply.

57. One such source is Nagog Pond.

58. Because of its projected future need, Littleton intends to exercise its right under the 1884 Act to withdraw water from Nagog Pond.

59. Littleton is authorized to take waters from Nagog Pond under both the 1884 Act and Stat. 1911, c.617 (the "1911 Act") that authorized Littleton to supply itself with water, including through the taking and holding of waters and water rights "within the limits of the town." A copy of the 1911 act is appended to this complaint as Exhibit 6.

60. Upon completion of the procedures set forth in the 1884 Act, Littleton will be entitled to take from Nagog Pond the full amount of water that is necessary for the needs of its residents and businesses.

61. Based on Littleton's current and projected peak demand for water, and upon completion of the procedures set forth in the 1884 Act, and subsequent WMA permitting, Littleton's anticipated maximum daily withdrawals from Nagog Pond by 2040 would prevent Concord from making withdrawals from the pond consistent with its historical peak withdrawal volumes without exceeding the Pond's firm yield.

F. Littleton's Attempt to Negotiate Cooperatively with Concord to Determine "Water Damages" Owed to Concord for Littleton's Taking of Waters from Nagog Pond

62. On February 20, 2018, Littleton—acting through its Water Department—gave Concord notice of its intent to exercise the full extent of its rights to withdraw water from Nagog Pond. A copy of that notice is appended to this complaint as Exhibit 7.

63. In that notice, Littleton offered to negotiate appropriate water damages to be paid to Concord as the result of its exercise of its withdrawal rights. Littleton stated that, in the event that an agreement on the amount owed could not be reached by August 1, 2018, it would commence the process specified in section 10 of the 1884 Act by filing an application in this Court.

64. Concord ignored that notice. On April 17, 2018, the Littleton Water Department wrote to Concord concerning the latter's failure to respond and stating Littleton's intent to file a petition for water damages in this Court on May 1, if Concord had no interest in responding to Littleton.

65. Concord thereafter responded and negotiations between the parties were conducted at meetings held on June 6, July 24 and November 7, 2018. At the final meeting, Concord's representatives informed Littleton that they were willing to discuss only a single issue: Littleton's pending application before DEP for a potential new well, which Littleton believes to be hydrologically unconnected with Nagog Pond.

66. The very next day, November 8, 2018, without any advance notice or warning to Littleton, and without any further offer of negotiation, Concord filed a complaint before the Land Court requesting a declaration that the 1884 had been impliedly repealed in its entirety by the enactment of the *Water Management Act*. (No. 18 MISC 000596.) A copy of that Complaint is appended to this Complaint as Exhibit 8.

**COUNT I: ASSESSMENT OF WATER DAMAGES
UNDER STAT. 1884, C. 201, §10**

67. The allegations set forth in paragraph 1 through 66 are incorporated by reference as if set forth in their entirety in this paragraph.

68. Littleton is authorized to take and hold the waters of Nagog Pond and associated water rights under Stat. 1884, c.201 and Stat. 1911, c.617 for its own use as a water supply.

69. Littleton's right and authorization to take and hold the waters of Nagog Pond and associated water rights is independent of and superior to Concord's right and authorization to take and hold the waters of Nagog Pond.

70. If Littleton's right and authorization come into conflict with Concord's rights and authorization to take and hold the waters of Nagog Pond, then Littleton's needs are to be supplied before Concord's.

71. Littleton presently intends to exercise its duly authorized right to take and hold part or all of Nagog Pond's waters and associated water rights to supply its inhabitants projected, future water needs.

72. Littleton has attempted in good faith to negotiate the water damages that would be owed to Concord for such a taking. Concord has rejected Littleton's overtures and further negotiations would be fruitless.

73. Under the 1884 Act, where the parties fail to agree on water damages, this Court is to appoint a panel of three commissioners to ascertain the amount of water damages payable to Concord.

74. Under the 1884 Act, Littleton is obligated to pay only for "water damages" and not any broader form of damages Concord may have paid to any person or entity related to its use of Nagog Pond.

75. “Water damages” are limited to only damages paid by Concord to “any persons or corporations for the taking of water rights from [Nagog Pond] or the outlet thereof,” Stat. 1884, c.201, §10.

76. On information and belief, Concord has never paid any sums to any person or corporation for the taking of “water rights” from Nagog Pond itself or from its outlet. See Stat. 1884, c. 201, § 10.

77. On information and belief, Littleton does not owe Concord any sum for water damages for the taking, in whole or in part, of the waters of Nagog Pond. A three Commissioner panel appointed by this Court should therefore decline to issue any award of “water damages” to Concord.

COUNT II: DECLARATORY RELIEF – SCOPE OF “WATER DAMAGES” SUBJECT TO COMPUTATION BY COMMISSIONERS

78. The allegations set forth in paragraph 1 through 77 are incorporated by reference as if set forth in this paragraph.

79. Pursuant to *M.G.L. c.231A*, §§1 and 2, this Court is authorized to determine the rights, duties, status or other legal relations of the parties under the laws of the Commonwealth.

80. Littleton has the previously-identified right and authorization under the 1884 Act and the 1911 Act to take the waters of Nagog Pond, as described in this Complaint.

81. Littleton intends to exercise that right.

82. As previously described, Littleton has attempted to negotiate with Concord concerning the amount of “water damages” that is obligated to pay upon exercise of that right, to no avail.

83. An actual controversy exists between Concord and Littleton because the two Towns disagree concerning the meaning and scope of the term “water damages” as included in the 1884 Act.

84. Any three-commissioner panel responsible for ascertaining water damages will require, in the performance of its duties, instruction on the meaning and scope of the term “water damages.”

85. A declaration by this Court defining the legal meaning and scope of “water damages,” as that term is used in the 1884 Act, is necessary to the final assessment of damages payable by Littleton to Concord for the former’s exercise of its right to take the waters of Nagog Pond.

PRAYER FOR RELIEF

WHEREFORE, the Town of Littleton respectfully asks this Court to enter judgment:

- A. In favor of the Town of Littleton on all Counts of this Complaint;
- B. Appointing a panel of three commissioners to ascertain the just and proportionate amount of water damages that should be reimbursed by Littleton as a condition of its exercise of its rights under the 1884 Act.
- C. Declaring that the term “water damages,” as used in Chapter 201 of the Acts of 1884 is limited to only those sums Concord has paid for the taking, purchase, or conveyance of “water rights from [Nagog Pond] or its outlet” and instructing the panel of commissioners concerning the same.
- D. Awarding the Town of Littleton other and further relief as the Court deems to be just, equitable, and proper.

Respectfully submitted,

THE TOWN OF LITTLETON MASSACHUSETTS,
acting by and through its BOARD OF WATER
COMMISSIONERS,

By its attorneys,



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