

NEWS

From the County of San Bernardino
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Statement from the County of San Bernardino

Today the Board of Supervisors met and considered the request by the Attorney General that the County waive the attorney client privilege concerning the Colonies settlement. The Board wants to work with the Attorney General while making sure that it does not damage the County's legal position in other litigation.

The attorney client privilege is one of the cornerstones of American jurisprudence, and it should not be waived without careful consideration of the impact it could have on related matters in which the County is significantly invested.

The County is suing Caltrans, SANBAG and the City of Upland for indemnity stemming from the original Colonies litigation. Separately, the County is seeking coverage from its insurance carriers for the losses it has sustained. A waiver of the attorney client privilege related to the Colonies settlement might have significant implications in those related, but independent proceedings. These implications must be studied carefully.

Much of the information sought by the prosecutors is shielded by the mediation privilege, as well as by the attorney client privilege. Under California law both the Colonies and the County would have to agree to waive the mediation privilege in order for the information to be released. On March 18, 2010, the Colonies advised the County and the prosecutors that, at this time, it will not waive the mediation privilege. Therefore, the County could not waive the mediation privilege even if it were prepared to do so.

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Counsel for the County will meet and confer with the Attorney General in a good faith attempt to take the foregoing into account, and to discuss the position taken by Colonies which prevents the County from waiving the mediation privilege.

Thereafter, the Board will receive an update from its counsel, take everything into account, make an informed decision, and in due course announce its position on the request that it waive the attorney client privilege.