

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 08-04641

JOHNSON GOLF MANAGEMENT, INC.,

Plaintiff,

v.

CALM GOLF, INC. and CHARLES LANZETTA,

Defendants,

and

TOWN OF DUXBURY, and NORTH HILL

ADVISORY COMMITTEE, consisting of

MICHAEL DOOLIN, CHAIRMAN,

SCOTT WHITCOMB,

ROBERT M. MUSTARD, JR., MICHAEL

MARLBOROUGH, ANTHONY FLOREANO,

MICHAEL T. RUFO, THOMAS K. GARRITY,

RICHARD MANNING, W. JAMES FORD,

and GORDON CUSHING (EX OFFICIO),

Defendants/Third-Party Plaintiffs,

v.

ROBERT S. TROY,

Third-Party Defendant.

PILGRIM GOLF, LLC,

Intervenor.

**DEFENDANT TOWN OF DUXBURY'S  
THIRD-PARTY COMPLAINT AGAINST ROBERT S. TROY**

1. Defendant/Third-Party Plaintiff Town of Duxbury (the "Town") brings this third-party complaint against Third-Party Defendant Robert S. Troy ("Troy") for contribution for and indemnification against any liability that the Town may incur to Plaintiff Johnson Golf Management, Inc. ("Johnson Golf") in this action and for other damages.

## **JURISDICTION**

2. This Court has jurisdiction to hear this claim under G.L. c. 212, §4 and to permit impleader of the third-party under Mass. R. Civ. P. 14(a).

## **PARTIES**

3. The Town is a body politic duly incorporated under the laws of Massachusetts with a business address at 878 Tremont Street, Duxbury, MA 02332-4499.

4. Troy is an attorney practicing at Troy Wall Associates, 90 Route 6A, Sandwich, MA 02563-1866. At all relevant times, Troy served as Town Counsel to the Town, and he represented the Town in this action until May 2012.

## **PLAINTIFF'S CLAIMS AGAINST THE TOWN**

5. In its Amended Complaint, Johnson Golf claims that the Town improperly failed to award it a contract to manage a public golf course known as North Hill Country Club ("North Hill") in violation of G.L. c. 30B and G.L. c. 93A. More specifically:

a. In September 2008, Johnson Golf, the manager of North Hill under a previous contract, submitted a proposal in response to a request for proposals by the Town under G.L. c. 30B to manage North Hill for a five-year term 2009-2013 ("RFP I"). It alleges that it submitted the highest price proposal of the eligible, qualified proposers and should have been awarded the contract. It alleges that the Town violated G. L. c. 30B in rejecting all proposals received in response to RFP I, including Johnson Golf's.

b. In January 2009, Johnson Golf submitted another proposal in response to a second request for proposals by the Town for North Hill ("RFP II"). It alleges that it again submitted the highest price proposal of the eligible, qualified proposers and should have been

awarded the contract. It alleges that the Town violated G. L. c. 30B in awarding the contract to Defendant CALM Golf.

### **FACTS**

6. Troy served as counsel to the Town throughout the entire bidding process for North Hill. He advised and directed Town officials' actions throughout that process.

7. In 2008, at the outset of the bidding process, Richard MacDonald, Duxbury Town Manager and chief bidding officer, instructed Troy to oversee the bidding process for North Hill to ensure that it was conducted in strict compliance with all applicable laws and regulations.

8. Troy reviewed drafts of RFP I that were compiled by Gordon Cushing, the Town's Recreation Director, and recommended amendments. One of the amendments that he drafted and recommended, providing that "comparable business enterprises" would be eligible bidders along with companies that had managed golf courses, has been a focus of Johnson Golf's claims that RFPs I and II violated G.L. c. 30B and evidence that the Town violated G.L. c. 93A.

9. In October 2008, the Town received five proposals in response to RFP I, including ones from Johnson Golf and CALM Golf. It appointed three evaluators to evaluate the non-price parts of those proposals.

10. In November 2008, Town officials reviewed the evaluations and noted that two of the evaluators had not completed their non-price evaluations properly. Mr. MacDonald sought Troy's advice on that issue.

11. Troy told Mr. MacDonald that he had been advised by the Inspector General's office that the Town should reject all the proposals and start over. Based on Troy's advice, MacDonald rejected those proposals and instituted a new process to issue RFP II.

12. In December 2008, Johnson Golf brought this action.



13. The Town continually sought and obtained legal advice from Troy regarding the handling of Johnson Golf's claims.

14. In January 2009, the Town received proposals in response to RFP II, including ones from Johnson Golf and CALM Golf. It appointed three new evaluators to evaluate the non-price parts of those proposals. Mr. MacDonald instructed Troy to review the proposals and evaluations and to recommend the entity that should be awarded the contract.

15. According to Troy's billing records, he reviewed those proposals and evaluations. He then advised Mr. MacDonald that the Town should award the North Hill contract to CALM Golf. On or about January 15, 2009, Mr. MacDonald did so.

16. In January 2009, Johnson Golf filed an Amended Complaint and a request for injunctive relief, alleging that the award to CALM Golf violated G.L. c. 30B.

17. In February 2009, the Middlesex Superior Court granted Johnson Golf's motion for a preliminary injunction to enjoin the award of the contract to CALM Golf. It found that Johnson Golf was unlikely to succeed on its claims regarding the rejection of all proposals (RFP I), but likely to succeed on its claims regarding the award to CALM Golf (RFP II).

18. However, Troy repeatedly advised the Town that those Johnson Golf's claims had little or no merit. For example, on October 4, 2010, he insisted to the Board of Selectmen that the Court had found that Johnson Golf had little likelihood of success on any of its claims. On that same date, he told the Board that the RFP had been entirely drafted by a consultant hired by the Town. In fact, no consultant contributed to the RFP.

19. On multiple occasions, Troy made inaccurate statements regarding the facts of the bidding process for RFP I and II to the Middlesex Superior Court in his arguments for the Town.

20. Troy's conduct of the bidding processes for North Hill, advice to the Town regarding those processes and this case, and inaccurate statements regarding the facts and merits of this case have exposed the Town to liability to Johnson Golf that it would not otherwise have.

21. The Town relied on Troy's advice in its actions and decisions alleged by Johnson Golf to violate G.L. c. 30B and G.L. c. 93A concerning North Hill, including its rejection of the first round of proposals and its selection and subsequent cancellation of CALM Golf as the manager of North Hill.

22. If the Town is found liable in this lawsuit, such liability was caused by Troy.

23. As counsel for the Town during all relevant times and events, Troy was negligent and committed legal malpractice by failing to meet the applicable standard of reasonable care owed to his client.

## **CAUSES OF ACTION**

### **COUNT I – CONTRIBUTION**

24. The Town realleges the allegations in Paragraphs 1-23.

25. Pursuant to G. L. c. 231B, if the Town is found liable to Johnson Golf, which liability it expressly denies, then Troy is jointly liable and the defendants are entitled to contribution from him for any and all damages awarded to Johnson Golf.

### **COUNT II – INDEMNITY**

26. The Town realleges the allegations in Paragraphs 1-23.

27. Pursuant to common law indemnity principles, if the Town is found liable to Johnson Golf, which liability it expressly denies, then Troy is required to indemnify the Town for any damages awarded against it. Troy is further required to pay all costs and fees expended by the Town in defending this action.

### **COUNT III – MALPRACTICE (LEGAL FEES)**

28. The Town realleges the allegations in Paragraphs 1-23.

29. At the outset of this case, Troy advised the Town that he should defend the case at the Town's expense, and never advised the Town to tender the claims to the Massachusetts Interlocal Insurance Association ("MIIA"), the Town's insurer.

30. In December 2010, Troy finally advised the Town to tender this action to MIIA and the Town did so.

31. By letter dated December 28, 2010, MIIA agreed to defend the Town in this case subject to a reservation of rights. In January of 2011, MIIA offered to retain Troy as defense counsel and to pay his fees. Troy advised the Town to decline that offer, have MIIA pay other defense counsel, and continue paying him for his services in the case.

32. Troy spent substantial effort defending the Town during the two years before Johnson Golf's claims were tendered to MIIA, and the Town has paid him tens of thousands of dollars for those services. MIIA has declined to reimburse the Town for those pre-tender defense costs based on provisions of the Town's insurance policy.

33. During the course of the litigation, Troy consistently advised the Town that the claims brought by Johnson Golf had little or no merit, and advised against any settlement efforts.

34. As a result of Troy's advice, the Town has expended substantial legal fees and costs and the Town's position in this litigation has been compromised.

WHEREFORE, the Town demands judgment against Troy for damages and costs that may be adjudged against it in favor of Johnson Golf and for its other damages, together with interest, attorneys' fees and costs.



## JURY DEMAND

The Town demands a trial by jury on all counts.

By its attorneys,



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Dated: July 13, 2012

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the Attorney of Record for each other party by first class mail on July 13, 2012.

BY: 