

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
PASSAIC COUNTY
DOCKET NO. L-2951-16
A.D.# _____

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IN RE)
RINGWOOD ORDINANCE)
2016-01) TRANSCRIPT
FULL REMEDIATION) OF
OF SUPERFUND SITES) MOTION

Place: Passaic County Courthouse
77 Hamilton Street
Paterson, NJ 07505

Date: September 16, 2016

BEFORE:

HONORABLE ERNEST M. CAPOSELA, A.J.S.C.

TRANSCRIPT ORDERED BY:

JUSTIN D. SANTAGATA, ESQ. (Kaufman Semeraro & Leibman)

1 APPEARANCES:

2 MARK J. SEMERARO, ESQ.
3 JUSTIN D. SANTAGATA, ESQ.
4 (Kaufman Semeraro & Leibman)
Attorneys for Borough of Ringwood

5 JOSEPH F. LAGROTTERIA, ESQ.
6 DOROTHY MELLO LAGUZZA, ESQ.
7 (LeClair Ryan)
Attorneys for Ford Motor Company

8 RYAN BOLTON, Pro Se
9 LISA CHIANG, Pro Se
For the Petitioner, Ringwood Cares

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PROCEEDING

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Motion

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Judge's Decision

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1 COURT OFFICER: All rise.

2 THE COURT: All right. Thank you very much.
3 Please be seated. Please be seated. All right. So we
4 have a matter this afternoon. It's in IN RE RINGWOOD
5 ORDINANCE 2016-01, FULL REMEDIATION OF SUPERFUND SITES,
6 PAS-L-2951-16. Can I have the appearances of the
7 parties, please.

8 MR. SEMERARO: Good morning, Your Honor.
9 Mark Semeraro, S-e-m-e-r-a-r-o, and my associate,
10 Justin Santagata, on behalf of plaintiff, Borough of
11 Ringwood.

12 MR. LAGROTTERIA: Good afternoon, Your Honor.
13 Joe Lagrotteria and Dorothy Laguzza from LeClair Ryan
14 on behalf of Ford Motor Company.

15 THE COURT: Okay.

16 MR. BOLTON: Ryan Bolton and Lisa Chiang on
17 behalf of Ringwood Cares.

18 THE COURT: Are you attorneys?

19 MR. BOLTON: No.

20 THE COURT: Okay. That's okay. I just
21 wanted to know. All right. So I want to hear from the
22 petitioners first and, specifically, I want to hear
23 from you, your arguments in this order. I want you to
24 address the laches and estoppel argument first. That
25 seems to be the logical progression. So, petitioners,

1 if you would -- the -- the argument is, is that you're
2 out of time, that you've either sat back on your rights
3 and you're estopped from doing this. So I know you
4 address this in your -- I don't know if there's a date
5 on it because I got it by e-mail -- in your papers.
6 It's in there. So let me hear from you first on that.

7 MR. BOLTON: Is it all right with Your Honor
8 if we address prerogative writ at the same time, since
9 they seem tied?

10 THE COURT: I really want you to -- yes. You
11 can. But, I guess, the key here is before we get into
12 the merits and we get into anything else, the other
13 parties say that you're out of time, that you shouldn't
14 even -- it's too late, that there's no -- you had your
15 opportunity to be heard and that you didn't do that, so
16 that's what I want you to address.

17 MR. BOLTON: Sure. So we find that the
18 arguments around the equitable principles of laches and
19 estoppel are somehow -- that they think that this is
20 somehow applicable is entirely unfounded. Laches only
21 applies in cases where a party engages in an
22 inexcusable delay, which prejudices another party to a
23 given action with no plausible justification. This
24 clearly does not apply here, and Ford's reliance on
25 this reasoning is misplaced for two important reasons.

1 First, Ford and the petitioners were never
2 parties to any type of a contractor or any other kind
3 of relationship. The implication that Ford in any way
4 relied upon us to act or to do anything or the fact
5 that we in-acted is not explainable.

6 Second, the petitioners did not delay or
7 sleep on our rights, as they say. We properly
8 exercised our rights under the Faulkner Act in light of
9 the current status of the remedy selection, as well as
10 the long, complex, and ever-changing status of the
11 Superfund Site and the contamination being found there.
12 Ford's estoppel claims are similarly misplaced. This
13 principle of fair dealing requiring one party to rely
14 upon the other fails for the reasons above but then,
15 also, the actions that they have taken to date have
16 really been pursuant to their own self-interest of cost
17 containment as required in order to have the
18 contingency remedy put forth.

19 THE COURT: Let me hear from Mr. Lagrotteria.

20 MR. LAGROTTERIA: Thank you, Your Honor. The
21 laches argument is to some degrees all tied into the
22 prerogative writ issue and the estoppel issue. Since
23 2011, there have been a series of resolutions and
24 actions by the Borough, by the EPA, and by Ford in
25 moving towards building stepping stones, if you will,

1 for the capping remedy, ultimately approved by the
2 Borough in 2014.

3 The petitioners appeared at various council
4 meetings. They voiced their objections, but they did
5 nothing to pursue their legal rights and I believe, in
6 my view, it's overly -- it's overly technical to say,
7 well, there's not a contractual relationship there, so
8 laches can't apply.

9 Well, this is not exactly a typical type of
10 suit and the laches, estoppel, and the prerogative writ
11 issue all tie into the fact that these resolutions were
12 never challenged. They sat on their rights for five to
13 two years ago and did nothing.

14 Taken to the logical conclusion, a citizens'
15 group could let all this take place, the remediation
16 take place, and come in under the Faulkner Act five,
17 six, seven years later and say, do it all over. We
18 don't like this. We all understand the case law and
19 the principles and the hornbook law and the Faulkner
20 Act, and it has laudatory purposes, no question about
21 it.

22 But to have a series of many resolutions over
23 years take place and no legal action taken and now come
24 in after Ford has submitted its design to the EPA. The
25 EPA has approved the capping and recycling. The

1 Borough has gotten Highlands Preservation approvals and
2 taken all of its actions under its consent order with
3 the EPA and the EPA has relied on it. It just begs the
4 question, when does this -- when could this possibly
5 end? When can a party, a party, an individual, ever
6 enter into agreement with a municipality, have it all
7 done and then have a citizens' group come in under the
8 Faulkner Act and say, no, redo it, never mind, five,
9 six, seven, eight years later? It just can't work that
10 way, Judge.

11 Again, we all understand the laudatory
12 purpose of the Faulkner Act, but there's also, you have
13 to pursue your rights, laches, estoppel, and certainly
14 the 45-day rule on the prerogative writs has to also
15 apply here to each resolution passed from 2011 through
16 2015.

17 THE COURT: Mr. Semeraro on behalf of the
18 Borough?

19 MR. SEMERARO: Yes. Thank you, Your Honor.
20 Your Honor, the Borough respects the ability of
21 citizens to pursue their referendum rights and does not
22 maintain the position that would circumvent or erode
23 those rights, has great respect for that. However, in
24 this particular case, there were a number of
25 resolutions that would ultimately be violated or be

1 circumvented by virtue of this legislative enactment.

2 If this ordinance were to be placed on the
3 ballot and pass, it would require the Borough to break
4 agreements that authorizations have been passed
5 obligating them to enter into. Also, this dovetail
6 into why this referendum is invalid. It's invalid
7 because, pursuant to N.J.S.A. 19:3-6, it has to show
8 the true matter being voted upon.

9 In this particular case, to sit there and not
10 tell the people that you're voting to overturn
11 resolutions that were passed years ago is not being
12 honest with the people.

13 THE COURT: Maybe and what the consequences
14 would be --

15 MR. SEMERARO: And the consequences are --

16 THE COURT: -- on, say, a lawsuit and --

17 MR. SEMERARO: Exactly.

18 THE COURT: Right.

19 MR. SEMERARO: And, certainly, those are even
20 tenfold of what the significance of the first statement
21 is. But we feel that there are even far greater
22 reasons than -- albeit than these reasons and,
23 certainly, the 45-day prerogative writ statute of
24 limitations can't be circumvented. If it was, it would
25 actually be eroding authority vested into the council

1 by the Faulkner Act itself and as the BAUMAN (phonetic)
2 case had indicated, you can't be doing that. So we do
3 agree that the 45-day prerogative writ statute of
4 limitations would be violated by the passage of this
5 ordinance.

6 MR. BOLTON: So it seems to me that we're
7 confusing separate issues. We're not filing any suit
8 against a particular resolution or action. We're
9 putting forth separate legislation. And the suggestion
10 that for the past five years, we should have been
11 filing numerous, what I would argue would be frivolous
12 lawsuits against individual resolution doesn't really
13 make sense because, if you look at the substance of
14 those resolutions and the minutes of the meetings in
15 which they were passed, there's no content. All we
16 knew is that negotiations were happening and,
17 truthfully, as warranted by the EPA, such negotiations
18 are required.

19 THE COURT: So what's your -- what -- what is
20 it that you're actually -- are you not saying that the
21 Borough of Ringwood, when it passed ordinances or
22 resolutions on this site acted arbitrarily,
23 capriciously, without any evidence in the record. I
24 mean, isn't that --

25 MR. SEMERARO: Personally, I don't want to

1 suggest that it was capricious because I think that's
2 an overly negative connotation. I think that the issue
3 at hand is that, over the past number of years, through
4 various meetings, through the community action group
5 that's a part of the EPA, and the solicitation of input
6 during the development of the rot. So in my view,
7 nothing prior to the rot is even relevant in terms of
8 what we should have acted upon because it was all input
9 into that final document.

10 Our issue is that we thought that we were
11 doing the right thing by advocating with our
12 representatives to represent the community view and
13 they have failed to do so because they disagree with us
14 and our goal is to bind them to listen to the community
15 desire for the future land use and to do so not just
16 because, you know, we are the loudest group or there is
17 another loud group, but put it directly on the ballot
18 and have every residents' voice heard.

19 THE COURT: So what are you asking the
20 community? I'm -- make believe that I'm a citizen of
21 the Borough of Ringwood. What are you saying to me on
22 Election Day?

23 MR. SEMERARO: On election day, we are asking
24 the citizens of Ringwood to decide whether or not they
25 want the O'Connor disposal area consolidated and capped

1 with a recycling center put on it or, if they want the
2 area excavated permanently as per the EPA's --

3 THE COURT: Okay. Now, let me just stop you
4 there. Isn't that horse out of the barn already,
5 though? Isn't that stuff that they've already decided?

6 MR. BOLTON: It's absolutely not, Your Honor.
7 As indicated by the letter from Walter Mugden
8 (phonetic), it's very much still on the table and if
9 the Borough at any point in time had voluntarily
10 withdrawn its plans, we wouldn't be here today.

11 THE COURT: But that's to November -- I don't
12 know if I have it right here.

13 MR. BOLTON: Yes.

14 THE COURT: It's November 22nd, I think, they
15 have.

16 MR. BOLTON: Correct.

17 THE COURT: So --

18 MR. BOLTON: So there is still an opportunity
19 for the proposal to --

20 THE COURT: Well, but there's an opportunity
21 for the contractor -- for the agreement to be done,
22 too. It's not like that horse -- that's still a
23 contingency in the contract or the agreement.

24 MR. BOLTON: Right.

25 THE COURT: It's --

1 MR. BOLTON: It is and I think that -- I
2 mean, if we want to talk about the term sheets, --

3 THE COURT: Well, let's say after -- say it's
4 November -- now, let's say it's November 22nd and they
5 don't bill the recycling plant over the site or agree
6 or make substantial steps towards, the EPA says, you go
7 back to the default recommendation. So you win because
8 that's what, I think, you want, right?

9 MR. BOLTON: Correct.

10 THE COURT: But there's still a contract in
11 place with a condition like basic contract law.
12 There's things called conditions precedent, meaning
13 that before there's an actual contract, certain
14 conditions have to exist and then there's conditions
15 subsequent meaning that, yeah, there's a contract and
16 there's certain conditions that are -- that the parties
17 agree to, you know, during the course of the contract.
18 So we still have this issue.

19 Like, in other words, that -- that recycling
20 center, if the Borough sends people out there next week
21 to start construction or, I don't know, whatever steps
22 have to be taken, why -- why would I allow the voters
23 on November 8th, I guess it would be, to prevent that?
24 Like, in other words, that -- this contract is still
25 valid. How can I let the public invalidate a valid

1 contract that exists between these parties?

2 Now, after November 22nd, that's a different
3 ball game. You probably don't have to do anything. If
4 the EPA comes in and gets heavy handed and says, well,
5 that's it. I gave you a chance. Now, I want you to
6 take this stuff out of here, not cap it.

7 MR. BOLTON: I mean, truthfully, Your
8 Honor, --

9 THE COURT: Like the Faulkner Act doesn't
10 allow that, right? I mean, that Faulkner Act wouldn't
11 -- you know, initiative and referendum is not -- you
12 don't allow people to -- to -- you don't allow citizens
13 to vote to nullify a contract between two parties where
14 there was an offer, an acceptance and consideration,
15 which is the basic contract.

16 MR. BOLTON: I believe, based on my
17 understanding of it that to the same extent that the
18 council could pass a resolution to nullify it or back
19 out, along with whatever consequences that may bring,
20 it's also given to the hands of the citizens under the
21 Faulkner Act.

22 THE COURT: Well, would your -- would your
23 question then say, by -- please be advised that by
24 voting yes on this question, you will be exposing the
25 Borough to in excess of \$10 million in legal liability.

1 Would that be fair to put in the question?

2 MR. BOLTON: I think that, what we would want
3 to do with the question is avoid hypotheticals.

4 THE COURT: Listen, I'm going to tell you
5 something, that's not -- that's not a hypothetical. I
6 can't put the dollar amount, but you can put the word
7 substantial. I mean, I don't know if the -- what the
8 ultimate damages would be, but you wouldn't say to a --
9 you're not going to say to a voter, yes, we'll do this,
10 there's no consequences.

11 I mean, if you really wanted to say, which
12 could -- which could result in a substantial damage
13 award against the Borough and result in a substantial
14 increase in your property taxes to pay the award. I
15 mean, isn't that -- isn't that fair to tell the public?
16 Wouldn't that be like a fair disclosure and then say,
17 okay, vote for it if you want?

18 MR. BOLTON: To an extent, I think that
19 there's some confusion in the matter because the term
20 sheets have only recently come to light, particularly,
21 in -- to the extent of the detail contained within
22 them. So, for example, to say that the taxes will go
23 up extraordinarily, you know, is something that we
24 don't know based on the extent to which any insurance
25 coverage -- insurance policies would cover some of the

1 Borough's liability.

2 So if we were able to determine or put forth
3 an amount for a sum or a range that would seem
4 feasible, that would be fine. But --

5 THE COURT: I don't think -- Mr. Semeraro, I
6 don't think the Borough has insurance for breach of
7 contract.

8 MR. SEMERARO: No. As a matter of fact,
9 Judge, if I could weigh in on -- because I think that
10 you're touching upon some very valid concerns that the
11 Borough has. I think that that whole line of
12 questioning started with, well, what is your question
13 asking the folks on election day.

14 THE COURT: Right. That's correct.

15 MR. SEMERARO: And the one thing that we
16 could agree on that the question doesn't ask and it
17 most certainly should is should the Borough reach an
18 agreement it had entered into? Should the Borough
19 incur legal expenses associated with any action that
20 Ford institutes suing the Borough over that because,
21 clearly, I don't believe that there would be insurance
22 coverage for a breach of contract. I can't say it with
23 certainty but, certainly, my understanding of the
24 insurance provisions would lead to that conclusion. I
25 think that breaching this agreement would potentially

1 jeopardize insurance coverage in its entirety and,
2 therefore, that question has to be brought to the
3 public's attention.

4 You reference 10 million. This idea --

5 THE COURT: I mean, I just -- look, --

6 MR. SEMERARO: No. No. No. And I
7 understand that. It is at least \$28 million because
8 the cost difference between the capping, which has been
9 estimated to be \$5 million and the full excavation has
10 been estimated to be \$33 million, it doesn't -- the
11 question also doesn't sit there and say -- inform the
12 people, first off, that you have limited insurance
13 funds and should we be exhausting those insurance funds
14 to select the most expensive remedy available, so that
15 we have no insurance coverage to protect ourselves in
16 the future?

17 The question leaves out and actually infers
18 and is misleading, that Ford was the sole polluter
19 found responsible by the EPA. The EPA, for almost a
20 decade at this point, has found that Ringwood has been
21 a responsible party with respect to pollution. So you
22 can't sit there and misled the public into thinking
23 that you have the ability to successfully push all of
24 this 100 percent onto the shoulders of Ford because the
25 EPA has already identified us as a responsible party

1 and we do own two of three sites that are in question
2 here.

3 It's simply misleading, not to mention the
4 fact that it's compelling litigation to pursue nothing
5 less than a 100 percent remedy. It's divesting
6 unfairly and infinitely the governing body of
7 Ringwood's ability to even sell and, quite frankly, I
8 think that the Borough of Ringwood did an outstanding
9 job in negotiating a very favorable settlement term
10 with Ford because Ford is 85 percent responsible for
11 the cost associated with this.

12 I can't imagine how much better anybody would
13 realistically expect Ringwood to do, but I don't think
14 they could sit there and force the governing body to
15 pursue a 100 percent remedy and then have no mechanism
16 by which to even sit there and follow through. I mean,
17 who would be giving guidance to the attorneys through
18 the process?

19 THE COURT: Well, let me ask the petitioners
20 this question. Is -- I mean, this is an eleventh hour
21 effort on your organization's behalf and is it prompted
22 by information you received or you read about or you
23 researched yourself about the efficacy of the capping
24 and, now, all of a sudden, your group is saying, well,
25 wait a minute, you know, the capping is not a good

1 thing and so we need to stop that. We want the
2 removal. Is that basically it?

3 MR. BOLTON: Correct on a number of different
4 fronts. So I would say, from a changing information
5 standpoint, there was recent release of information
6 regarding the contamination of 1,4-Dioxane in the
7 groundwater, which was detected in reports but not
8 communicated to the public. We actually had to find
9 out about it through press coverage from The Record.

10 That also harkens back to when it was
11 actually found in the Borough's wells three years ago,
12 in 2013, I believe, and while we can beat around the
13 bush around levels of possible carcinogens and what is
14 or is not allowed, I would suggest that nobody would
15 voluntarily want any degree of any potential
16 contaminant in their water at all, particularly, one
17 where it's still identified as an emerging contaminant
18 and we don't really know what that does to somebody and
19 we don't really know what the safe levels of this are.

20 The second aspect of the question that you
21 raised, is regarding caps. Caps have a shelf life and
22 while we may all to some extent agree that by paving it
23 and putting a recycling center on top, that cap would
24 have a longer shelf life. However, there are ongoing
25 maintenance costs for both parties for the life of that

1 situation. It's not -- it's not leaving the town and,
2 as a resident, you also then still have this permanent
3 stigma of a cap town, which we may already have with
4 Peter's and Cannon's Mine. But from a property value
5 standpoint and the way that our town is perceived, it
6 is better for us to have -- you know, a community that
7 advocates and fights for as clean an environment as
8 possible and does as much to protect the Wanaque
9 Reservoir that's within our boundaries as possible.

10 You know, in looking through the term sheets
11 and, again, not thoroughly versed or very comfortable,
12 that there seems to be a very broad release of
13 liability on the part of Ford, which maybe that's
14 smart, maybe that's not but that goes, you know, in
15 perpetuity and, to some extent, I would suggest that if
16 the parties that were doing the negotiating came up
17 with this allocation of responsibility at 85 and 15
18 percent respectively, why would that liability be
19 contingent upon the costs involved? Irresponsibility
20 for the situation is irresponsibility for the
21 situation, and that should hold regardless of what
22 happens to the remedy selected or the cost thereof.

23 THE COURT: Mr. Semeraro, what -- if you
24 could address this issue that the petitioners made.
25 They say, all right, so if you put the cap on it and

1 these things have shelf lives, then what happens? Does
2 that -- does that -- or Ford, either one, whoever is in
3 a better position then.

4 MR. SEMERARO: I just don't think that that's
5 the issue that's rightfully before this Court.

6 THE COURT: No. I don't think it's the issue
7 that's before me but, you know, I mean, he's raising
8 it. I mean, I know what the legal issues are before
9 me, trust me.

10 MR. SEMERARO: Yes. Yes.

11 THE COURT: But, I mean, I want to also be
12 able to give everybody -- you know, it's a courtroom
13 and I want to give everybody -- let them express their
14 thoughts.

15 MR. SEMERARO: I -- I --

16 THE COURT: But, of course, I'm going to rule
17 based on the facts of the law.

18 MR. SEMERARO: I see that, Judge, and I
19 guess, just for preservation of the record, --

20 THE COURT: Right.

21 MR. SEMERARO: -- I don't believe that that
22 issue has any bearing on the definitive issues or the
23 responsive issues.

24 THE COURT: I -- I -- well, I agree. I agree
25 with you but, perhaps, because it's a --

1 MR. SEMERARO: And subject to that before the
2 counsel.

3 MR. LAGROTTERIA: Yes.

4 THE COURT: -- because it's a forum -- before
5 it's -- I agree with you.

6 MR. SEMERARO: Fair enough.

7 THE COURT: But because it's a forum, if we
8 can answer.

9 MR. SEMERARO: Absolutely.

10 MR. LAGROTTERIA: Surely, Your Honor. Two --
11 two points on the issue of the cap. First of all,
12 there's an ongoing obligation to monitor and make sure
13 the cap is still efficacy-- and the efficacy of it is
14 still in place. Moreover, CERCLA, the federal EPA
15 regs, require a five-year analysis or look back to make
16 sure that this cap is still working. So it's not like
17 this cap and the recycling center goes and Ford says,
18 goodbye, see you never. That's not what happens here.
19 There's ongoing monitor and maintenance, and there's a
20 five-year look back to see how it's performing.

21 So it's misleading to suggest that, again,
22 Ford would just have this cap put in and recycling --
23 build a recycling center and you never hear from Ford
24 again. That's not correct.

25 Secondly, as to the issue about the Dioxane

1 referred to, Exhibit D to our submission to Your Honor
2 of September 9th, 2016, has the EPA letter that says
3 that it's not seeking Dioxane as an issue and that it's
4 not a problem with human health and the environment.
5 So in my view, -- and, frankly, Judge, I think that was
6 kind of a pretext to bring all this to bear because of
7 the delays and responding to the various resolutions
8 that were passed and never appealed.

9 MR. BOLTON: Regarding the EPA's assertions,
10 you know, we hold the EPA in very high regard and we
11 acknowledge their authority in a lot of matters.
12 However, they're not infallible by any stretch of the
13 imagination and, truthfully, they're the same agency
14 that assured everyone that the air at ground zero was
15 fine.

16 So while, you know, we take their
17 representations that that's not the source of the
18 Dioxane and that the Dioxane presents no risk to us, we
19 are the ones who have to live with that, not them. And
20 while we're not saying that Ford is going anywhere
21 because, you know, we acknowledge that both parties --
22 and, again, both parties are on the hook for the cap in
23 perpetuity. If the life time maintenance costs of that
24 cap are to be borne 85 percent by Ford, that's
25 dependent upon the admittedly very long running

1 corporation existing in perpetuity like our
2 municipality. And as we've seen from the recent
3 economic times and I believe that Ford took some TARP
4 money, they're not necessarily going to be here
5 forever.

6 MR. LAGROTTERIA: No. They did not.

7 THE COURT: They didn't.

8 MR. LAGROTTERIA: They did not.

9 THE COURT: They didn't take any.

10 MR. SEMERARO: They did not.

11 MR. LAGROTTERIA: They were the one of the
12 three big car companies that did not take TARP money.

13 THE COURT: Well, I -- I --

14 MR. BOLTON: All right. Just a guess, but --

15 THE COURT: They did not -- they did not take
16 any of the bailout money. That, -- that, I know.

17 MR. BOLTON: Then I apologize for that.

18 THE COURT: I know for --

19 MR. BOLTON: And they are a very old
20 corporation, but we're now tying the future of our
21 municipality to a corporate entity existing in
22 perpetuity.

23 THE COURT: All right. Let me see. There
24 was something else I have. Oh, there was one last
25 point I wanted to talk about. Let me ask the

1 petitioners. Go to your -- the question that you
2 propose and just read it into the record. Read it.

3 MR. BOLTON: The question itself, not the
4 ordinance?

5 THE COURT: Yes. The question you propose to
6 put on the ballot.

7 MR. BOLTON: Shall the commitment of full
8 remediation of the O'Connor disposal area and the
9 contaminated water in Peter's Mine and -- sorry -- in
10 Peter's and Cannon Mine's ordinance duly submitted by
11 petition to the Borough of Ringwood, which includes,
12 among other provisions, requiring the Borough to (A)
13 comply with the selected remedy involving removal of
14 the bill for off-site disposal from the O'Connor
15 disposal area as set forth in the record of decision
16 issued June 30th, 2014, by the United States
17 Environmental Protection Agency, the EPA, and to
18 actively support the full remediation of the
19 contaminated water in the Peter's and Cannon Mines.

20 (B) Withdraw the request to the EPA seeking
21 permission to construct or permit or otherwise support
22 the construction of a new recycling center upon the
23 O'Connor disposal area and to work with the community
24 to find appropriate uses for this area. (C) Exhaust all
25 avenues in seeking an exemption to liability for the

1 contamination of the Superfund Site under the
2 Comprehensive Environmental Response Compensation and
3 Liability Act of 1980, CERCLA. (D) exhaust all avenues
4 to help ensure that Ford Motor Company, the polluter
5 solely responsible for the toxic material at the
6 Ringwood mines/landfill site is held fully responsible
7 under CERCLA for the remediation and clean up of the
8 Ringwood mine/landfill site.

9 (E) Pursue all available grant funding to
10 defray any portion of the cleanup costs for which the
11 Borough may be responsible and actively seek
12 maximization of the amount paid by the Borough's
13 insurance carriers in connection with such cleanup
14 costs. And (F) commit to keeping Borough residents
15 informed of the status of all the foregoing items.

16 THE COURT: All right. Now, what's your
17 reaction for that?

18 MR. BOLTON: I feel like an idiot for missing
19 the last two words being asked.

20 THE COURT: No. I don't think -- let me just
21 say this, neither one of you are idiots, far from it.
22 I mean, you're very good on your feet for not being an
23 attorney. I've had attorneys that are much less
24 eloquent than you are.

25 But here's the thing, I guess. So I'm -- I'm

1 the person that goes into the voting booth on November
2 8th and I see President and I don't know if there's
3 other Congressional seats up in the district, and then
4 I see this question. Is it -- is it reasonable to
5 expect that the average voter would even come close to
6 understand-- not you. Don't tell me you because you're
7 not the average voter, nor you or maybe some of the
8 other people that are in Cares, but the average voter.
9 Ernie Caposela who goes to work in the gas station
10 changing brakes and doing different things, and what do
11 I do when I see that? I --

12 MR. BOLTON: Having -- you know, under --
13 under the Faulkner Act, we're required to collect all
14 the signatures in person. So we had an opportunity to
15 meet with a broad cross-section of individuals, some
16 who have signed, some who did not. And having had them
17 review the question, I think that it is reasonable for
18 people to understand that yes means that it would be
19 passed and a no means that it would not be, and I have
20 to say that the people that we spoke to were in the
21 full spectrum, you know, from highly educated to
22 more --

23 THE COURT: But you're not going to be there
24 to explain it. You're not going to be in the booth
25 with them. There's a big difference between asking a

1 person to sign a petition. So, for example, I'm Ernie
2 Caposela and I'm sitting in the park in Ringwood and
3 you come up to me and say, sir, you know, I'm from
4 Ringwood Cares, would you sign this petition? And I
5 make the -- I respond by saying, well, what is it
6 about? I don't think you just say, here, read it and
7 then sign the petition. I would imagine that you do
8 some explanation, if I have a question. If I say,
9 well, what is it or if I say -- if I read it and I say,
10 I don't understand it, you're there, you can explain it
11 to me, and I can either decide to sign it or not to
12 sign it.

13 Let me change the facts on you. Now, I walk
14 into the voting booth. I pull the lever. The curtain
15 closes behind me. I've never spoken to anybody from
16 Ringwood Cares. I see this question. There's nobody
17 there to explain it to me. You're not there. Nobody
18 from Ringwood Cares is there to explain it to me. I
19 have to understand, what does this mean?

20 Isn't there a difference? I mean, you're
21 trying to say, well, you had 350 people sign a petition
22 because they said they understood the question, but
23 those were people who, obviously, your workers spoke to
24 or attended meetings where it was explained to them
25 that this is what we're going to do and there's a big

1 difference. What's the population of Ringwood, Mr.
2 Semeraro, roughly?

3 MR. SEMERARO: About 9,000, I believe -- 12
4 -- 12.

5 THE COURT: So there's 9,000. There's 8--
6 how much?

7 MR. SEMERARO: 12,000.

8 THE COURT: Oh, 12,000. So there's
9 approximately 11,650 people who Ringwood Cares has
10 never spoken to by way of a petition to get in on the
11 ballot. What about those folks?

12 MR. BOLTON: I mean, I would say that the
13 allegation for 'education doesn't change for an
14 individual citizen, whether it's an ordinance question
15 or a candidate. We're going to elect a new President,
16 and there's absolutely no information contained on the
17 voting booth about their platforms. The only thing
18 that's included is party affiliation.

19 I think that, as citizens, we are accustomed
20 to having to educate ourselves about the matters at
21 hand and, you know, we can't be forced to be
22 responsible.

23 THE COURT: But don't -- if you ask a
24 question on an -- on an initiative or referendum,
25 doesn't -- don't -- doesn't the voter have to

1 understand what the consequences are for voting for it
2 or not voting for it? Doesn't it have to have an
3 explanatory statement, if you do this, then or this
4 could result in? It's like -- you know, are you in
5 favor of a gas tax? Simple question, right? This
6 isn't like that. This is a very -- a very complicated,
7 complex -- because it's a complicated, complex issue.
8 I understand that.

9 MR. BOLTON: And I would say that, you know,
10 the question is likely to not be the first time that
11 someone is encountering it. There's a significant
12 amount of press coverage over the issue. We will be
13 active --

14 THE COURT: Yes. But we can't assume that,
15 though. We can't assume that, that people have read
16 about it in the paper and, therefore, they understand
17 it. It's a difficult question. I've read it a couple
18 times and I'm still, you know, struggling to determine
19 -- it's a binary answer, correct? Do we agree with
20 that?

21 MR. BOLTON: Right.

22 THE COURT: It's a binary answer. So how do
23 we give such a binary answer to such a complicated
24 question? Let me hear from Mr. Semeraro. Thank you,
25 sir.

1 MR. SEMERARO: That's a very important
2 question but, to me, the question that begs an answer
3 to even louder is, how do we get past the fact that
4 they didn't even explain to the people that signed the
5 petition nor did the petition question include the true
6 issue being voted upon? Because going back to what I
7 had spoken about earlier and then Your Honor had
8 alluded to it, it doesn't discuss the fact that there
9 was a settlement agreement, that this -- a vote of this
10 won't violate the settlement agreement, that it's going
11 to potentially expose the taxpayers of Ringwood to
12 countless millions of dollars in additional taxes.

13 It doesn't explain the true issue being voted
14 on, not even to the people that voted -- that signed
15 the petition and, because of that, it has to be invalid
16 on its face. It is invalid on its face.

17 In addition to these abundance of issues --
18 and we've briefed them, Judge. I don't want to belabor
19 the point. There are a whole host of additional
20 reasons why, as written, it's confusing: We had
21 delineated distinctions between what was represented in
22 the petition question and the ordinance itself.

23 There are other threshold questions that
24 knocked this petition out of the box at the very
25 beginning and that's because it's facially invalid.

1 This ordinance violates and is preempted by OPRA, by
2 the MLUL, and arguably, CERCLA as well.

3 So all these finer details, I understand -- I
4 certainly understand why they're important to the
5 petitioners and they're doing a fine job on arguing
6 their point.

7 THE COURT: They're doing an excellent job.

8 MR. SEMERARO: Yeah. They truly are. I
9 mean, they care. That's to be encouraged. And the
10 Borough does encourage participation and does hear
11 their concerns, but the Borough has to run a business
12 and the Borough ended up entering into an agreement
13 that was incredibly financially favorable and did not
14 compromise the safety and well being of its population.

15 In doing so, it passed a number of
16 resolutions that should have been challenged a long
17 time ago and have not. We are now significantly down
18 this road and we're faced with a referendum that, quite
19 frankly, is facially defective and can't go forward
20 just because of the fact that key components of it are
21 preempted by law.

22 It cannot be cured. The case law is
23 incredibly clear. You have the FINKEL case and the
24 JACKSON case. It is -- both those cases, Judge,
25 essentially say that the Court cannot alter any of the

1 language or sever any of the language because the
2 people that signed the petition were signing the
3 petition for the precise language contained in the
4 question. So you can't fix it. It is facially invalid
5 and, on top of that, if the Court wanted to, we could
6 go through all the analysis as to how it is misleading.

7 THE COURT: Yes.

8 MR. SEMERARO: Your Honor touched upon why
9 it's confusing and, clearly, it's outdated and one
10 issue on the outdated that I would just like to
11 emphasize just for the record is the fact that the
12 question asks or discusses the ROD but it doesn't
13 discuss the EDS, which was an amendment to it.

14 The EPA came in and said that they are
15 accepting the capping, but the question doesn't say
16 that. The question -- and it was intentional -- leads
17 the reader down a garden path saying, you know what,
18 you're not going to be protected. The EPA wanted full
19 excavation and don't let anything less than that happen
20 and that's untrue.

21 So for all of these reasons, Your Honor, it
22 is completely invalid and it should be -- it should be
23 enjoined --

24 THE COURT: Ford, anything else you want to
25 say?

1 MR. LAGROTTERIA: Your Honor, I have nothing
2 else unless --

3 THE COURT: All right. Petitioners, anything
4 else? You can say anything else you want within
5 reason.

6 MR. BOLTON: Yes. So in terms of the
7 preemption, you know, one of the things that they've
8 mentioned being superseded by the petition is OPRA and,
9 contrary to their assertions, the proposed ordinance
10 requires only information as to the status of the
11 Superfund Site to be disclosed to the public. It
12 doesn't specify that every document must be disclosed
13 regardless of its contents and it doesn't even require
14 the publication of actual documents as the Borough
15 contends. It just seeks disclosure of information and
16 leaves the Borough flexibility to determine how to
17 present such information.

18 It's important to note that we intentionally
19 included an exception for privileged information
20 furthering our argument that not every document was
21 intended to be disclosed. It's also clear that we're
22 not preempted in any way by the EPA because we're not
23 in any way trying to modify their remedies or usurping
24 their power whatsoever. In fact, we didn't reference
25 the EST simply because the rot is more complete. It's

1 not a matter of chronology. We were just trying to be
2 specific in what we were referring to.

3 The EPA has also made it clear that it will
4 become the final selective remedy in the event that the
5 Borough does not meet the requirements with respect to
6 the contingency remedy by the November 22nd deadline.
7 Asking for the implementation of the clearly preferred
8 and still available remedy is vastly different than
9 demanding the EPA change its remedy as they have
10 intended.

11 And, also, I just want to touch upon the
12 topic of severability and modification by the Court.
13 We know that it cannot be substantially changed nor are
14 we seeking that. But the severability clause was
15 included with the knowledge that individual parts might
16 have been challenged after it was enacted, and it seems
17 to be a standard part of municipal ordinances based
18 upon our research.

19 The Borough's own quote of ordinances
20 contains multiple severability clauses. However,
21 unlike in the cited cases, voters who signed this
22 ordinance did so with the understanding that any one
23 portion of this same ordinance could be struck down,
24 leaving the balance intact. So should for any reason
25 it find itself on the ballot in partial form and the

1 critical part that compelled that voter to sign it is
2 no longer present, they can withdraw their support via
3 their vote.

4 However, again, the intent was simply for the
5 integrity of the ordinance to remain in place after
6 enactment, should it suffer a successful challenge to
7 one or more of the sections.

8 THE COURT: Okay. Thank you, Mr. Bolton.
9 Anybody else? Anybody else?

10 MR. SEMERARO: Your Honor, I just want to
11 read in for the record the issue about OPRA and why we
12 feel that it is preemptive.

13 THE COURT: Sure. Sure.

14 MR. SEMERARO: The language in the ordinance
15 -- and I'm not going to read the entire paragraph, but
16 it does continue and say, and providing and publicizing
17 any information the Borough has in its file or at its
18 disposal that would assist in proving such liability,
19 limited only to the extent that such information is
20 properly classified as privileged.

21 OPRA, as we have briefed, has an abundance of
22 exceptions as to what constitutes a public record.

23 THE COURT: Correct.

24 MR. SEMERARO: I know that Your Honor is
25 familiar with OPRA, so I don't want to belabor the

1 point, but this would create a special OPRA that's
2 applicable just to Ringwood and when you analyze
3 preemption law, all the elements are present and it is,
4 in fact, preempted, regardless whether or not it does
5 discuss the fact that privileged documents be excluded
6 because there's a whole other -- whole list of other
7 documents that wouldn't be included in OPRA but would
8 be required to be produced by virtue of this ordinance.

9 THE COURT: Okay. Thank you. All right. So
10 the way I'm viewing this, quite honestly, is that
11 there's this agreement that exists between the Borough
12 of Ringwood and the Ford Motor Company with the
13 approval of the United States Environmental Protection
14 Agency, and that agreement is still in place. It has a
15 contingency in it from the standpoint of the
16 Environmental Protection Agency of November 22nd,
17 meaning that the Borough of Ringwood has until November
18 22nd to follow through and essentially build or make
19 substantial steps towards building a recycling center
20 over this capped area and that if it's not done by
21 November 22nd, then the EPA is -- their position is
22 going to be to resort to the initial proposal, which
23 was a removal proposal.

24 Now, the Borough of Ringwood says that the
25 difference between the two is about -- it looks like

1 it's about \$5 million, the removal versus the capping,
2 if I got that right. No?

3 MR. SEMERARO: No. It's 28.

4 THE COURT: It's 28? Well, it was 28 million
5 to remove it.

6 MR. SEMERARO: 33 to remove it, Your Honor, 5
7 capping, --

8 THE COURT: 33 to remove it?

9 MR. SEMERARO: -- (indiscernible) of 28.

10 THE COURT: And 5 for capping. Okay. So a
11 substantial cost to the Borough of Ringwood, if this
12 doesn't happen. So, you know, we start with that and
13 then Ford points out that, see, that's part of the
14 reason for these limitations on the rights to appeal
15 and the limitation on prerogative writ. So if the city
16 council enters an agreement and someone wants to
17 contest it, they have to do so in a timely manner
18 because, if that's not the case, then we're going to
19 have meaningless public contracts and we're going to
20 have problems with breach of contract, and it's my
21 opinion, quite honestly, that if the voters on November
22 8th were to vote that -- you know, in favor of this, it
23 would create a breach of contract for the Borough of
24 Ringwood that I believe would expose them to
25 substantial financial liability.

1 It would also -- from that -- from the
2 standpoint of the lawsuit and damages but then the cost
3 of that would, I think, have to be shouldered by the
4 taxpayers and the Borough. I'm not aware of any
5 insurance you buy for breach of contract. Nobody
6 writes policies for that. I mean, there are surety --
7 I shouldn't say that. There are surety bonds and
8 things like that but not in a situation like this.

9 So the Court takes that into consideration
10 and denies the petitioner's application but, also, the
11 question is not intelligible. It's complicated. The
12 average voter would not be able to understand this.
13 There's no explanatory statement with it. It's a
14 binary choice, a yes or a no answer. The question
15 itself seems to me to be compound. You know, the rules
16 of evidence teach us that, if you ask a compound
17 question in a courtroom and you ask for a yes or no
18 answer, you can't do that and it's not possible to do
19 that. So I think that also comes into play.

20 And, you know, without getting into any
21 detail, I think there is -- there is preemption
22 present, you know, under OPRA. So for all of those
23 reasons, I'm going to deny the petition and I can't --
24 I can't rewrite the question. That's not something
25 that the Courts do and I can't provide an explanatory

1 statement, just on that point. I wanted to add that.

2 So for those reasons, I'm going to deny the petition.

3 But, obviously, you know, look, the
4 petitioner is very eloquent in this and I understand,
5 you know, the history of this and how people feel about
6 their town and the don't want a stigma associated with
7 their town. I mean, look, quite honestly, with
8 organizations like yours, if anything, it's just the
9 opposite. It's just the opposite. I mean, some of us
10 live in towns where people just don't care. There's
11 probably a million terrible things going on in some of
12 these towns and they don't have watch dogs.

13 I mean, I would feel pretty good living in
14 Ringwood knowing that there's an organization that's,
15 you know, trying to keep government on their toes. So
16 -- Mr. Bolton, I'm just curious, what's your
17 profession?

18 MR. BOLTON: Marketing.

19 THE COURT: Well, lawyers are kind of --
20 lawyers are kind of -- but you're -- you're quite good.

21 MR. LAGROTTERIA: I agree.

22 THE COURT: Yes. And the papers are quite
23 good. So, Mr. Semeraro?

24 MR. SEMERARO: Yes, Your Honor. Could I just
25 have a clarification for the record? So we asked for

1 the Court to invalid the petition question, --

2 THE COURT: Right.

3 MR. SEMERARO: -- the Court to invalidate the
4 ordinance, and to enjoin the vote.

5 THE COURT: Right.

6 MR. SEMERARO: You granted all three,
7 correct?

8 THE COURT: Yes. I did. Yes.

9 MR. SEMERARO: Okay. Thank you.

10 THE COURT: All right. Now, the only thing
11 is, I've got Ford -- did you have --

12 MR. SEMERARO: They dismissed their --

13 THE COURT: Did you --

14 MR. LAGROTTERIA: Your Honor, we -- we -- we
15 have a stipulation withdrawn without prejudice.

16 THE COURT: Okay.

17 MR. LAGROTTERIA: The petitioners just signed
18 it.

19 THE COURT: All right.

20 MR. SEMERARO: We need a signature of the
21 Attorney Gen-- Deputy Attorney General, who was here at
22 the last hearing. He entered an appearance.

23 THE COURT: Oh, Mr. Stevens.

24 MR. SEMERARO: Yes.

25 THE COURT: Oh, you know what? He's in my

1 courtroom on a regular basis because we're in the midst
2 of a major trial out of Paterson. In fact, I asked him
3 if he was going to be here today and he said, no. Mr.
4 Al Stevens his name is.

5 MR. SEMERARO: That's right. Yes.

6 THE COURT: Yes.

7 MR. SEMERARO: We have it all signed
8 otherwise that will withdraw the --

9 THE COURT: He will be here first thing
10 Monday morning because we have a case with 240 -- if
11 you want to leave it.

12 MR. SEMERARO: Can I do that, Your Honor, if
13 you don't mind and then --

14 THE COURT: Yes. You can. I don't mind if
15 you leave it. He'll be here at nine on Monday morning
16 to continue the Paterson trial, and I'll give it to
17 him.

18 MR. SEMERARO: Okay.

19 THE COURT: He was going to be here. I
20 specifically asked him in that and he said, well, the
21 Attorney General is not taking a position, it wasn't --
22 he didn't feel it was necessary to be here.

23 MR. SEMERARO: Okay. I'll hand it to you
24 then.

25 THE COURT: All right. So you can give it to

1 my clerk.

2 MR. SEMERARO: Yes.

3 THE COURT: I'll hold onto it. Do you want
4 to submit an order?

5 MR. SEMERARO: May I approach, Your Honor,
6 or --

7 THE COURT: Did you give me an order?

8 MR. SEMERARO: Yes. Thank you.

9 THE COURT: Okay. We'll fish it out.

10 MR. SEMERARO: Thank you, Your Honor.

11 THE COURT: If you just want to wait, I'll
12 give you -- we'll get a copy of the order. I mean,
13 you --

14 MR. SEMERARO: Your Honor, we'll -- we'll --
15 we think that we submitted one. If we could just --
16 we'll wait for a confirmation. If not, we'll submit an
17 order.

18 THE COURT: I'll give it to my clerks, either
19 Christian or Emily. Look through here. I think I saw
20 it.

21 COURT CLERK: There is.

22 THE COURT: And I didn't pull it out and then
23 we'll staple it.

24 MR. SEMERARO: If there's not an order, then
25 we'll submit one. If not, we'll send one in.

1 THE COURT: Okay. Everything is here.
2 Everything is in this pile.

3 (Proceedings concluded)

4 CERTIFICATION

5
6 I, SHERRY M. BACHMANN, the assigned transcriber, do
7 hereby certify the foregoing transcript of
8 proceedings, time from 1:46 p.m. to 2:35 p.m., is
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12 proceedings as recorded.

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14

15 *Sherry Bachmann*

16

17 SHERRY M. BACHMANN AOC #454
18 G&L TRANSCRIPTION OF NJ

Date: September 26, 2016

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