

BE IT REMEMBERED, that on March 10, 2015, the above-named and numbered cause came on regularly for hearing before the HONORABLE GEORGE N. BOWDEN sitting as judge in the above-entitled court, at the Snohomish County Courthouse, in the City of Everett, County of Snohomish, State of Washington;

The plaintiff appeared through his attorneys, David Day and Thomas Seguine;

The Defendant City of Burlington appeared through its attorneys, Jill Smith and Leif Johnson.

WHEREUPON, the following proceedings were had to-wit:

**Jill Smith** City of Burlington attorney Excerpt;

***“As to the remainder of the Response, the City has never denied that there were documents in existence, buried in archives of public records, which discuss the historical presence of asbestos-related material on Burlington Hill. A jury may find that the City is charged with "record notice" of those facts; or not.”***

BE IT REMEMBERED, that on October 29, 2015, the above-named and numbered cause came on regularly for hearing before the HONORABLE GEORGE N. BOWDEN sitting as judge in the above-entitled court, at the Snohomish County Courthouse, in the City of Everett, County of Snohomish, State of Washington;

The plaintiff appeared through his attorneys, David Day and Thomas Seguine;

The Defendant City of Burlington appeared through its attorneys, Jill Smith and Leif Johnson.

WHEREUPON, the following proceedings were had to-wit:

**Jill Smith** City of Burlington attorney Excerpt;

***“And...dives right into construction in that asbestos laden zone. The City has witnesses and photos that they didn't take any precautions regarding asbestos. No one wore a mask. No one is up there in a respirator. It's going to be an issue in the...case.”***

10/29/2014

**DECLARATION OF JILL SMITH IN SUPPORT OF CITY'S RESPONSE TO MOTION FOR PRETRIAL INJUNCTION; EXCERPTS OF ATTORNEY JILL SMITH "DOWNPLAYING," THE PRESENTS OF THE NOA ON BURLINGTON HILL "CHERRY PICKING" AND PLAYING "WORD GAMES," AND CONTRADICTING FEDERAL AGENT EPA ANDY SMITH E-MAILS, FEDERAL AGENTS LORRAINE EDMOND, EPA GEOLOGIST, AND JULIE WROBLE EPA TOXICOLOGIST, DRAFT AND FINAL REPORT, REGARDING THEIR CONCLUSION WITH THE RISK AND UNCERTAINTIES ASSOCIATED WITH THE NOA ON BURLINGTON HILL; EXCERPTS AS FOLLOWS:**

**JILL SMITH:** Before the EPA issued its final draft, it had actually prepared a draft report, containing much more significant "recommendations." In fact, in the margins, the EPA employee who edited the draft suggested removing the recommendations, stating, "We should talk about these." They will "freak people out." Ultimately, the EPA removed those recommendations from its final report, and made only a recommendation to limit disturbance in the area of Location 1-not near plaintiff's home.

**JILL SMITH:** Another example of the EPA's non-panicked level of response is contained in an email between the lead EPA engineer, Cpt. Andy Smith, and plaintiff's attorney. In it, the EPA said, "a few days ago we got final results from our EPA lab which show actinolite in some of the samples. This does not mean there is any cause for alarm."

**JILL SMITH:** During 2013 and 2014, the EPA nonetheless conducted a series of collaborative meetings, EPA hosted **(only (1) meeting ever held)** to decide on the appropriate level of response. It included a large number of specialists in public health and safety.

**JILL SMITH:** Ultimately, the EPA concluded its involvement in Burlington Hill without taking any further action, and *deferred* to the more local, state-based agencies. In its "wrap-Up" report, dated April 23, 2014, it stated, "EPA has determined that the Burlington Hill site is not a good candidate for removal action due to the **CERCLA NOA** limitations.