

DOCKET NO.: X06-CV-03-0183606S

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NEW ENGLAND ESTATES, LLC., :

PLAINTIFF, : STATE OF CONNECTICUT

-VS- : JUDICIAL DISTRICT OF WATERBURY

TOWN OF BRANFORD, ET AL., : AUGUST 28, 2007

DEFENDANTS :

* * * * * * X

A.M. SESSION

B E F O R E:

THE HONORABLE WILLIAM T. CREMINS, JUDGE

A P P E A R A N C E S:

JAMES W. BERGENN, ESQUIRE
TIMOTHY S. HOLLISTER, ESQUIRE
ATTORNEYS FOR THE PLAINTIFF

STEVEN R. HUMPHREY, ESQUIRE
BRIAN R. SMITH, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS,
THOMAS SANTA BARBARA AND FRANK PERROTTI, JR.

KERRY CALLAHAN, ESQUIRE
DANIEL CANAVAN, ESQUIRE
DAVID MONZ, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS,
TOWN OF BRANFORD

JACQUELINE SAGLIANO, JOCELYNE GREGUOLI
COURT MONITORS

1 (Whereupon, the following is an excerpt of the
2 proceedings.)

3 THE COURT: For the record, this is the matter of
4 New England Estates versus Town of Branford, et al.
5 The docket number is CV-3-183606. If I could ask
6 counsel present to please note your appearances for
7 the record.

8 MR. CANAVAN: Good morning. Dan Canavan for the
9 Town of Branford.

10 MR. CALLAHAN: Kerry Callahan also for the Town
11 of Branford.

12 MR. HOLLISTER: Tim Hollister, New England
13 Estates.

14 MR. HUMPHREY: Steve Humphrey for Thomas Santa
15 Barbara and Frank Perrotti.

16 MR. BERGENN: And James Bergenn and Chris Mattei
17 for New England Estates.

18 THE COURT: Okay. Thank you.

19 Counsel, please have a -- Sorry. Please have a
20 seat. There are just a few matters I want to deal
21 with before we get started. There was a request filed
22 dated August 27, 2007 from New England Estates asking
23 for permission to submit more than the number of
24 requests to charge as set forth in Practice Book
25 Section 16-23. That's denied. So 15 is the limit as
26 set forth in that Practice Book section.

27 I now want to deal with the question of the

1 testimony insofar as it relates to primarily the RTM
2 members and I have received briefs from counsel
3 related to this particular question and the Court
4 rules as follows: In the Court's opinion, the issue
5 presented is whether the standard to be applied is a
6 subjective standard as the defendant argues where the
7 individual intentions of the members of the RTM is
8 relevant or an objective standard as the defendants
9 argue where the information received by the RTM
10 members is relevant but not their individual
11 contention -- not their own individual intentions.

12 In Harlow versus Fitzgerald, 457 U.S. at page
13 800, the U.S. Supreme Court eliminated the application
14 of a subjective test in analyzing government actions
15 that involved constitutional rights. The Court stated
16 as follows: "Reliance on the objective reasonableness
17 of an official's conduct as measured by clearly
18 established law is the standard." The key then -- The
19 Court's reading of the Harlow case is that the
20 standard to be applied in these matters is an
21 objective standard. In Harlow, the Court eliminated
22 -- in the Court's opinion reading Harlow -- eliminated
23 the -- the conflict of a subjective standard.

24 Further, in Owen versus City of Independence, 445
25 U.S. at page 622, the Court held as follows:
26 "Municipality has no immunity from liability under 42
27 U.S. Code, 1983, flowing from its constitutional

1 violations and may not assert the good faith of its
2 officers as a defense to that liability."

3 So based primarily on those two cases -- again,
4 the Harlow case and the Owens case -- I agree with the
5 defendants that the subjective opinions of the RTM
6 members is not the standard that this Court needs to
7 apply so far as the 1983 claim relates to the
8 constitutional questions here.

9 Any questions?

10 MR. HUMPHREY: Your Honor says you agree with the
11 defendants. I believe that was meant to be agree with
12 the plaintiffs.

13 THE COURT: I'm sorry. With the plaintiffs. I
14 apologize. Thank you.

15 And those, I think, are the cases that set the
16 standard.

17 Attorney Hollister?

18 MR. HOLLISTER: Diff -- Different matter, Your
19 Honor, the jury charges.

20 THE COURT: Okay. Any questions on the
21 subjective versus objective determination?

22 MR. BERGENN: The only thing I would mention,
23 Your Honor, is that the three RTM members will be
24 taking the stand, are here. They've heard that ruling
25 and that I would just ask that counsel for the Town
26 explain the implications of that so we don't have any
27 outbursts that are not responsive to the question that

