

## MEMORANDUM

TO: Lawyering Skills I students  
FROM: Professor David E. Sorkin  
DATE: February 27, 2006  
RE: Apex Valley Association

We are advising the Apex Valley Association. The association's members are residents of the Apex Valley neighborhood in Springdale, Illinois. In 2003 Misset Ventures LLC sought approval to construct an outdoor amphitheater in Springdale, on property adjacent to Apex Valley. Residents of Apex Valley and nearby neighborhoods expressed concerns about noise and traffic at a series of public hearings. The developers assured residents that the amphitheater would be used only during the summer months, that rock concerts would be held only on weekend nights, and that all performers would be contractually required to conclude performances before 11:00 in the evening.

The New Sense Center opened in June 2004, although few big-name acts performed in its first season. In the summer of 2005, however, the amphitheater drew sellout crowds for several shows, including concerts by Jimmy Buffett and U2. The Jimmy Buffett concert took place on June 18, 2005, and lasted until after 11:30 pm. On June 20 a delegation from the Apex Valley Association met with Dee Fenning, the managing director of the amphitheater and a principal of Misset Ventures. Fenning apologized for the late concert and assured the association that Misset would take steps to ensure that future concerts ended earlier. She gave them a copy of the company's standard contract rider:

Because the Center is located in a residential area, Artist agrees that the performance (including all encores) will end no later than 11:00 p.m.

On July 9, U2 performed at the New Sense Center. The concert lasted until 11:50, and residents again complained to Fenning. She told them that she was aware of the problem and would attempt to make sure that performers were aware of the time restriction in the future.

The association is exploring various strategies for addressing the problem of late concerts at the New Sense Center. One possible strategy would be to file suit against performers who breach the contract rider that requires performances to end by 11:00. Please investigate the viability of this theory and draft a memorandum setting forth your analysis. (You need not be concerned with potential remedies, nor with the standing of the association to bring suit on behalf of its members; focus on whether the neighbors can sue as third-party beneficiaries of the contract.)