

Eron Berg

From: Will W. Honea
Sent: Tuesday, August 12, 2008 12:52 PM
To: Eron Berg
Subject: RE: proposed settlement

**ER 408 PROTECTED COMMUNICATION
PERTAINS TO SETTLEMENT DISCUSSIONS**

Eron,

I left you a voicemail this morning, but thought I would follow up with an email. I spoke with the Board and the County Administrator about your proposal, and the County is not going to be able to agree to this.

What you are requesting is that the County pay any and all defense costs incurred in defending against Deluxe, and in addition promise pay any and all liability to Deluxe of any nature that might result, ever. This is problematic for a number of reasons, the main two of which are:

1. This would violate the County's insurance coverage. It would also remove any incentive for the City of Sedro-Woolley to actively participate in its own defense, because the County would be responsible for doing all the defending, and the County would be 100% liable for paying any liability. While the County will mount a vigorous defense against any challenge to the settlement, it is important that Sedro-Woolley is properly motivated to proactively assist in that effort. That incentive would go away if the County accepted defense and indemnity obligations as you propose below.
2. The County assuming defense and indemnity obligations would be particularly problematic under the facts since City staff seems to have relied on information from Deluxe and its consultant, Skagit Surveyors and Engineers, in reaching various determinations about the Deluxe proposal that is inconsistent with the law. Skagit Surveyors would seem to have potential liability to Deluxe as a result, and the owner of that consulting firm is a Sedro-Woolley City Councilman who has been heavily involved in solid waste issues both on behalf of the City and his client. This is simply not a situation in which it makes sense for the County to assume a blanket defense and indemnity obligation.

That being said, our inability to indemnify and defend the City is not necessary to the City proceeding with the settlement. First, as discussed in our memoranda, we believe the City has little to no damages exposure to Deluxe, for the reason that accepting the proposed settlement would not be arbitrary and capricious. Second, the standards for vitiating the settlement would be largely the same as obtaining damages (i.e., arbitrary and capricious), and thus the County's and the City's interests would be aligned in any event, i.e., a robust and successful defense of the settlement (if challenged) would have the likely effect of eliminating any City damages liability as well.

Best Regards,

Will Honea
Chief Civil Deputy
Skagit County Prosecuting Attorney

From: Eron Berg
Sent: Monday, August 11, 2008 3:41 PM
To: Will W. Honea
Subject: proposed settlement

8/21/2008

Will,

The County has offered to intervene and help defend the City in the event the City gets sued as a result of the proposed settlement. Is the County willing to defend, indemnify and hold harmless the City from that potential lawsuit?

Thanks,

Eron

Eron M. Berg

City Supervisor/City Attorney

City of Sedro-Woolley

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