

Eron Berg

From: Will W. Honea
Sent: Wednesday, August 13, 2008 12:45 PM
To: Eron Berg; 'Tom Moser'; 'Robert Carmichael'
Subject: RE: Janicki/City of Sedro Woolley/Deluxe/Skagit County

ER 408 SETTLEMENT COMMUNICATION PERTAINS TO SETTLEMENT DISCUSSIONS

Eron,

I am writing this email with the intention that you will share it with your Mayor and City Council tonight, as well as Mr. Tierney.

These latest threats from Deluxe appear to be a continuation of Deluxe's pattern and practice of sending lengthy diatribes (full of meritless litigation threats, unsupported by any legal authority) mere hours before a key decision by elected officials. This was done previously with respect to the moratorium, the Governance Board agreement, and the Governance Board's decision on the CSWMP. As before, we believe Deluxe's statements are incorrect and meritless. Our track record in court beating Deluxe on these threats speaks for itself.

Mr. Serka's arguments are incorrect, as set forth in our August 7, 2008 memorandum to Tom Moser concerning the City's potential liability, which you have. The City is entitled to change an administrative decision so long as it is not done on an arbitrary and capricious basis. Mr. Serka's argument that our settlement proposal is a "conspiracy" is utterly ridiculous. The judicial system encourages settlement, and Serka's theory is that parties can have liability for proposing settlements has no basis in the law. The question is whether the settlement would be arbitrary and capricious. It would not. The complete absence of any legal authority whatsoever in Serka's latest letter should be a clue as to the meritlessness of his theories.

We also received a letter from Serka's partner Jeff Fairchild last night claiming that the proposed settlement violates the County-Deluxe June 26, 2008 settlement agreement. This is utterly meritless as well. In the County-Deluxe settlement, the County expressly reserved the right to challenge the location of the proposed Deluxe facility. See Settlement Paragraph 10. Deluxe agreed to this provision because Deluxe assumed it Deluxe would prevail on its motion to dismiss, which Judge Castleberry instead denied. Deluxe's amount to little more than buyer's remorse. We are preparing a response to this letter, and will have it to you by 5 p.m. today for your consideration this evening.

If Deluxe challenges the proposed City / Janicki / County settlement as a violation of the June 26, 2008 settlement agreement, the County will aggressively seek damages and attorney fees against Deluxe, because their argument is totally unsupported by the Agreement. I would also encourage you to contemplate that people threaten to sue municipalities all the time; the more important analysis is whether they will prevail on the merits.

Since we have won every single court proceeding thus far against Deluxe, I would submit that the County's views should carry somewhat more weight in the City's analysis.

The bottom line here is that the City needs to make a choice whether it wants to be **(1)** on the side of the County, the other cities, and the citizens of this community in pursuing a coordinated solid waste plan; or **(2)** on the side of an out-of-town garbage company that routinely threatens litigation to gain inappropriate financial advantage. (And if anyone thinks that Deluxe's litigation threats against the City as a means of getting its way will end here, they are most probably mistaken. Negotiating with terrorism perhaps provides a useful analogy.)

Eron, there are no hard feelings about what has happened thus far. Everyone makes mistakes; I've personally made some in other contexts that were much bigger. But it's time to correct course and turn the page on this. With that in mind, we are hoping that the City will join the County, and we can move forward in partnership on solid waste issues. If Deluxe sues the County or the City (which seems inevitable in some context given their track record), then we at least will be standing together in solidarity as a community, with a single, coherent plan for moving our solid waste system forward into the next decade.

Please make the right choice here.

Best Regards,

Will Honea
Chief Civil Deputy
Skagit County Prosecuting Attorney

From: Eron Berg
Sent: Wednesday, August 13, 2008 12:16 PM
To: 'Tom Moser'; 'Robert Carmichael'; Will W. Honea
Subject: FW: Janicki/City of Sedro Woolley/Deluxe/Skagit County

From: Sharron Carter [mailto:scarter@adelstein.com] **On Behalf Of** Phil Serka
Sent: Wednesday, August 13, 2008 11:59 AM
To: Eron Berg
Cc: Phil Serka; Sharron Carter; Jeff Fairchild; rdslarry@mac.com; steven.snell@gmail.com
Subject: Janicki/City of Sedro Woolley/Deluxe/Skagit County

Dear Mr. Berg –

I have attached letter from Philip A. Serka to this email. Please open attachment. Thank you.

Sharron Carter
Legal Assistant to Philip A. Serka
Adelstein, Sharpe & Serka LLP
400 N. Commercial Street
P. O. Box 5158
Bellingham, WA 98227-5158
Phone: (360) 671-6565 ext. 111
Fax: (360) 647-8148
e-mail: scarter@adelstein.com