

STATE OF WISCONSIN

CIRCUIT COURT
Branch 2

JEFFERSON COUNTY

DAVID J. WOLF,

Plaintiff,

v.

ARLAND CLEAN FUELS, LLC,

Defendant.

JEFFERSON CO CIRCUIT COURT

FILED

MAY 30 2013

____ O'CLOCK ____ M.
CARLA J. ROBINSON, Clerk

Case No. 12-CV-906

**AFFIDAVIT OF TRAVIS JAMES WEST IN SUPPORT OF PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANT'S MOTION TO VACATE JUDGMENT**

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Travis James West, being first duly sworn, on oath, deposes and states:

1. I am an attorney duly licensed to practice law in the State of Wisconsin. I am one of the attorneys representing Plaintiff David J. Wolf in the above-captioned action, and I make this Affidavit in support of Plaintiff's Brief in Opposition to Defendant's Motion to Vacate Judgment.

2. Plaintiff retained ATG LegalServe of 1 South Wacker Drive, 24th Floor, Chicago, Cook County, Illinois 60606 to affect service of process upon Defendant at its principle place of business located at 630 Davis Street, Suite 300, Evanston, Cook County, Illinois 60201.

3. On January 10, 2013, Mr. Eric Decator called me and informed me that he was the general counsel for Defendant Arland Clean Fuels, LLC ("Arland"). He requested an indefinite extension of Arland's time to answer the complaint. Plaintiff declined. Mr. Decator then requested a 90 day extension. Based upon my client's prior history of dealing with Arland, this request was declined as well. Ultimately, I agreed to provide Arland a 30 day extension until February 11, 2013, to file a responsive pleading.

4. At no time did I or my client agree to withhold filing a motion for default if a settlement offer was provided prior to February 11, 2013. In order to be clear that there was no misunderstanding in this respect – and aware of Arland’s past bad faith negotiations with my client (which is, after all, what the underlying merits of this case are all about) – I made sure to confirm in writing that the agreed upon extension related to Arland’s deadline for filing a responsive pleading. Accordingly, Mr. Decator and I exchanged emails in which each of them asserted as much. Attached hereto as Exhibit A is a true and correct copy of the email thread, dated January 10, 2013, between Mr. Decator and me.

5. Attached hereto as Exhibit B is a true and correct copy of an email time-date stamped Monday, February 11, 2013, 3:29 pm, conveying Arland’s settlement offer to my office.

6. Attached hereto as Exhibit C is a true and correct copy of correspondence to Arland, dated February 15, 2013.

7. On February 15, 2013, Mr. Decator called me and demanded that my client withdraw his motion for default. In support of his demand, Mr. Decator asserted that my client had agreed to forebear filing for default if a settlement offer was extended prior to February 11, 2013. I pointed out that this was not true, and subsequently re-forwarded the email exchange confirming the agreement for an extension that was reached on January 10, 2013. Attached hereto as Exhibit D is a true and correct copy of my email to Mr. Decator on February 15, 2013. Mr. Decator then asked for another extension, stating that he believed that Arland could obtain funding to pay the entire amount owed if it could have an additional 60 days to close a transaction that would permit it to obtain a loan underwritten by the Bureau of Indian Affairs. The request was declined, largely because my client believed that the requested extension was unreasonable in light of the reasons cited in the letter of February 15, 2013 (see Exhibit C). I informed Mr. Decator that my client would only consider withdrawal of the motion if Arland could provide a reasonable settlement proposal prior to entry of the judgment. I also cautioned that although, depending upon the county, Wisconsin courts will

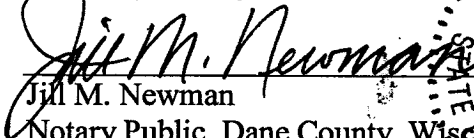
generally refrain from acting upon a motion for five to ten days after it is filed, neither I nor my client had any control over when the Jefferson County Circuit Court would consider the motion for default. Notwithstanding this caution, I informed Mr. Decator neither I nor my client would take any action to ask the Court to withhold action upon the motion.

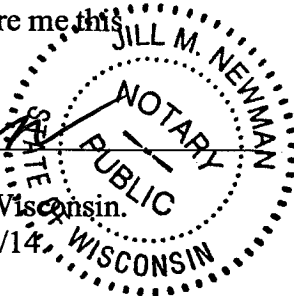
8. Despite its professed concerns, Arland never provided any further response or settlement offer after February 15, 2013.

Dated this 28th day of May, 2013.


Travis James West

Subscribed and sworn to before me this
28th day of May, 2013.


Jill M. Newman
Notary Public, Dane County, Wisconsin.
My Commission expires 11/30/14.



Jill Newman

From: Travis West
Sent: Thursday, January 10, 2013 10:26 AM
To: Eric R Decator
Cc: Karen Hussli
Subject: RE: Wolf v. Arland Clean Fuels, LLC

Eric,

This email will confirm that we agree to extend your deadline to file a responsive pleading to February 11, 2013. We look forward to receiving your client's settlement offer.

Travis

Travis James West
Solheim Billing & Grimmer, S.C.
One South Pinckney Street, Suite 301
P.O. Box 1644
Madison, WI 53701-1644

Telephone: (608) 561-1779
Facsimile: (608) 282-1218
www.sbgclaw.com

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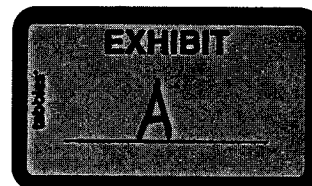
Pursuant to Circular 230 promulgated by the Internal Revenue Service, if this email, or any attachment hereto, contains advice concerning any federal tax issue or submission, please be advised that it was not intended or written to be used, and that it cannot be used, for the purpose of avoiding federal tax penalties unless otherwise expressly indicated. This e-mail is intended only for the use of the addressee named herein and may contain legally privileged and confidential information. If you are not the intended recipient of this message, you are hereby notified that any dissemination, distribution, or copying of this message is strictly prohibited. If you have received this message in error, please immediately notify us by reply e-mail or telephone (608-282-1200), delete the original message, and destroy any copies of it. We will reimburse any reasonable costs you incur in notifying us or deleting and/or destroying the message.

From: Eric R Decator [<mailto:edecator@arlandcorp.com>]
Sent: Thursday, January 10, 2013 10:19 AM
To: Travis West
Subject: Wolf v. Arland Clean Fuels, LLC

Travis:

Thank you for taking the time to speak with me this morning. As we agreed, you will grant us an extension until February 11, 2013 to answer or file a responsive pleading to your Complaint in the above-referenced action. We intend to send you a written settlement offer prior to February 11, 2013.

Eric R. Decator
General Counsel and Director of Corporate Development
Arland Energy Systems, LLC
630 Davis Street, Suite 300
Evanston, Illinois 60201
(847) 868-8580



(847) 284-1996 (cell)
edecator@arlandcorp.com

Jill Newman

From: Eric R Decator [edecator@arlandcorp.com]
Sent: Monday, February 11, 2013 3:29 PM
To: Travis West
Subject: RE: Wolf v. Arland Clean Fuels, LLC
Attachments: Wolf Settlement Offer02112013_0000.pdf

Travis:

Here is our settlement offer. Please let me know if you have any comments or questions regarding it.

Eric R. Decator
General Counsel and Director of Corporate Development
Arland Energy Systems, LLC
630 Davis Street, Suite 300
Evanston, Illinois 60201
(847) 868-8580
(847) 284-1996 (cell)
edecator@arlandcorp.com

From: Travis West [<mailto:twest@sbglaw.com>]
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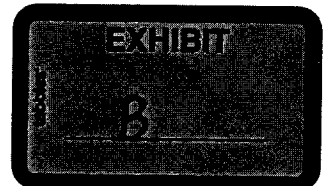
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Travis James West
Solheim Billing & Grimmer, S.C.
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P.O. Box 1644
Madison, WI 53701-1644

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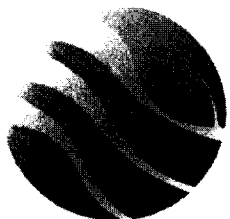
Pursuant to Circular 230 promulgated by the Internal Revenue Service, if this email, or any attachment hereto, contains advice concerning any federal tax issue or submission, please be advised that it was not intended or written to be used, and that it cannot be used, for the purpose of avoiding federal tax penalties unless otherwise expressly indicated. This e-mail is intended only for the use of the addressee named herein and may contain legally privileged and confidential information. If you are not the intended recipient of this message, you are hereby notified that any dissemination, distribution, or copying of this message is strictly prohibited. If you have received this message in error, please immediately notify us by reply e-mail or telephone (608-282-1200), delete the original message, and destroy any copies of it. We will reimburse any reasonable costs you incur in notifying us or deleting and/or destroying the message.

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Evanston, Illinois 60201
(847) 868-8580
(847) 284-1996 (cell)
edecator@arlandcorp.com



Arland Clean Fuels

Comprehensive Renewable Solutions

February 11, 2013

Travis James West
Solheim Billing & Grimmer, S.C.
One South Pinckney Street, Suite 301
P.O. Box 1644
Madison, WI 53701-1644

Re: *David J. Wolf v. Arland Clean Fuels, LLC*, Circuit Court of Jefferson County,
Wisconsin, Case No. 12CV906

Dear Travis:

As we agreed, here is our offer to settle the above-referenced lawsuit, as well as an additional dispute between ESTR, Inc. ("ESTR"), an affiliate of Arland Clean Fuels, LLC ("ACF") and JRW, which we understand is owned by your client. As a full settlement, ACF will pay (a) to your client, \$250,000 plus ten percent (10%) interest thereon from March 12, 2012 until paid, and (b) to JRW, the sum of \$13,606.98. Such amounts will be paid according to the following schedule:

- \$5,000 upon execution of a settlement agreement;
- \$15,000 on or before April 15, 2013;
- \$25,000 on or before June 15, 2013; and
- The remainder on or before August 15, 2013.

Upon receipt of the first \$5,000 payment, you will cause the lawsuit to be dismissed. Upon receipt of a cumulative amount of \$20,000, JRW will release to ESTR the bailer belonging to ESTR which it is holding and will, at a mutually agreeable time, assist ESTR in loading such bailer onto a truck so that ESTR can transport it to one of its locations.

If this offer is acceptable to your client, please let me know and I will draft the settlement agreement.

Sincerely yours,

Eric R. Decator
General Counsel and Director of Corporate Development

Jill Newman

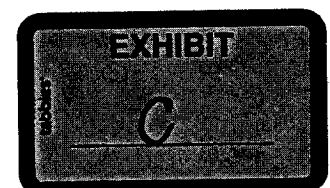
From: Karen Hussli
Sent: Friday, February 15, 2013 4:33 PM
To: 'edecator@arlandcorp.com'
Cc: Travis West; Joel Bardsley
Subject: Wolf v. Arland Clean Fuels
Attachments: 02-15-13 ltr to E. Decator re settlement offer (00559985).pdf; 02-15-13 ltr to Clerk filing Default Judgment docs (00559986).pdf

Attached please find a letter from Travis West.

Karen M. Hussli

Secretary to Stephen J. Nording, James I. Statz & Travis J. West
Solheim Billing & Grimmer, S.C.
One S. Pinckney Street, Suite 301
P.O. Box 1644
Madison, WI 53701-1644
(608) 282-1227 (Direct)
(608) 282-1218 (Fax)
(608) 282-1200 (Main)

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Law Firm

Solheim Billing & Grimmer, S.C.

Telephone (608) 282-1200

Facsimile (608) 282-1218

www.sbgllaw.com

Direct Line: (608) 561-1779

E-Mail: twest@sbglaw.com

February 15, 2013

**CONFIDENTIAL SETTLEMENT INFORMATION
INADMISSIBLE PURSUANT TO WIS. STAT. § 904.08 AND FRE 408**

Via Email (edecator@arlandcorp.com)

Mr. Eric R. Decator
General Counsel and Director of Corporate Development
Arland Clean Fuels, LLC
630 Davis Street
Evanston, IL 60201

Re: *David J. Wolf v. Arland Clean Fuels, LLC*
Jefferson County Case No. 12-CV-906
Our File: 38000.001

Dear Mr. Decator:

I am in receipt of your letter dated February 11, 2013, which sets forth a settlement proposal by Arland Clean Fuels, LLC ("Arland") pursuant to which it hopes to resolve the above referenced litigation. The proposal is unacceptable to my client, and is therefore rejected.

Arland's settlement proposal inappropriately conflates two separate and distinct sets of claims for which your client is liable. The first set of claims relate to amounts owed to Mr. Wolf pursuant to the Royalty Agreement executed on or about March 12, 2012. Such claims are the subject of the above referenced litigation. Mr. Wolf would be inclined to settle these claims for payment of \$250,000 plus interest as suggested in the proposal; however, the repayment schedule proposed by Arland is untenable. Given Arland's failure to make timely payments in the past, my client has no confidence that it will be willing or able to make timely payments in the future. The perceived risk to my client is heightened further, of course, by Arland's proposal that more than eighty percent (80%) of the amount owed be paid in a single balloon payment scheduled to occur seven months from now. Simply put, the level of risk is unacceptably high.

I am sure that you can appreciate our disappointment and surprise at the settlement offer. This is particularly true given that on January 10, 2013, I also informed you that my

Jennifer L. Amundsen • Joel B. Bardsley • David B. Billing
Laura E. Callan • Kim Grimmer • Lauren K. Lofton • Stephen J. Nording
Thomas P. Solheim • James I. Statz • Travis J. West

U.S. Bank Plaza, Suite 301
One South Pinckney Street
Post Office Box 1644
Madison, Wisconsin 53701-1644

Solheim Billing & Grimmer, S.C.

Mr. Eric R. Decator

February 15, 2013

Page 2

client would require sworn financial statements supporting Arland's claim of financial distress. Such statements were neither provided with your correspondence or even mentioned therein. Further, I informed you that my client is not particularly comfortable with financing Arland's obligations. He is not a bank, and would prefer that Arland sought financing elsewhere. However, to the extent that such financing was unattainable, I informed you that my client would almost certainly require some affirmative security or collateral for any settlement that would require payment over time. We had discussed providing a security interest in the baler previously provided by Arland, or in the poly that Arland is currently warehousing in Michigan. I further suggested that another way to address this issue might be for Arland to provide a guarantor. None of these issues are addressed in your settlement proposal either. The failure to do so only serves to further undermine my client's confidence that Arland is acting in good faith.

The second set of claims relate to amounts owed by Arland not to Mr. Wolf, but rather to JWR, Inc. ("JWR"). The claims are not subject to the above referenced litigation; however, JWR expressly reserves the right to file suit or take any other steps necessary to recover such funds in the future if deemed appropriate. Further complicating your settlement offer is the fact that Arland appears to be inappropriately trying to draw ESTR, Inc. ("ESTR") into this dispute. JWR has no relationship with ESTR and the baler described in your correspondence was provided to JWR by Arland. That Arland may have acquired the baler from ESTR initially is not JWR's concern. Further, JWR has no desire to become involved in any dispute that may have arisen from any such transaction between ESTR and Arland.

Notwithstanding the above, JWR is willing to engage in negotiations to resolve its dispute with Arland that are separate and distinct from the issues related to Mr. Wolf's claims. My understanding is that the current accounts receivable owed to JWR by Arland well exceeds \$25,000. In addition to this, Arland accrues storage fees for each month that the baler remains with JWR at a cost of \$475 per month. To resolve this dispute, JWR would be willing to accept payment of \$20,000 and in doing so would agree to waive all storage fees accrued to date and such fees that will accrue prior to the time that Arland or its appointed agent retrieves the baler. Following payment, Arland or its appointed agent may load the baler for transportation from JWR's facility at a time to be mutually agreed upon by the parties. Arland must provide at least 48 hours notice of its desire to load the baler, and the load time must occur between the hours of 7:00 am and 3:00 pm, CST. This offer will remain open until March 1, 2013, and is rescinded automatically if not accepted by close of business on that date. Obviously, such rescission shall mean that JWR's offer to waive any interest and fees due and owing will likewise no longer be open.

As stated above, Arland's offer as it relates to the above referenced litigation is rejected. Given how far apart the parties are at this time we do not believe that a counteroffer would be productive at this time, and thus none is offered. Accordingly, my client intends to

Solheim Billing & Grimmer, S.C.

Mr. Eric R. Decator

February 15, 2013

Page 3

proceed with the litigation. Per our agreement of January 10, 2013, your client's deadline to file a responsive pleading was extended to February 11, 2013. As no responsive pleading was filed, my client has filed a motion for default. Wisconsin Rules of Civil Procedure do not require service of pleadings upon any party failing to file a responsive pleading; however, as a courtesy I am enclosing a copy of the motion and supporting documents with this correspondence. Mr. Wolf remains open to reasonable settlement negotiations, and presumably will continue to remain open to such negotiations even after judgment is entered. Accordingly, we invite your client to reconsider its previous settlement proposal if it would likewise desire to reach an amicable resolution to this matter.

Please feel free to call or write if you have any questions or concerns.

Sincerely,

SOLHEIM BILLING & GRIMMER, S.C.

By


Travis James West

TJW:kmh
Enclosures

cc: Mr. David J. Wolf (w/encs. – Via email)
JWR, Inc. (w/encs. – Via email)
Joel B. Bardsley, Esq. (w/encs. – Via email)

Jill Newman

From: Travis West
Sent: Friday, February 15, 2013 4:46 PM
To: Eric R Decator
Cc: Karen Hussli
Subject: RE: Wolf v. Arland Clean Fuels, LLC

Eric,

Please see below.

Travis

Travis James West
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(608) 561-1779

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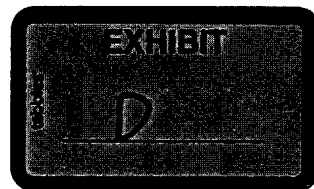
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