

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON

IN RE THE MATTER OF:            )  
  ) NO. 05-2-01083-9  
THE PORT OF TAHUYA DISSOLUTION, )  
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VERBATIM REPORT OF PROCEEDINGS

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BE IT REMEMBERED that on the 14<sup>th</sup> day of June, 2006, Mason County Cause No. 05-2-01083-9 came on for presentation of an order before the Honorable Toni A. Sheldon, Judge of the Superior Court sitting at the Mason County Courthouse, in the City of Shelton, County of Mason; and the parties being represented by their respective attorneys as follows:

SUSAN R. SAMPSON, Attorney at Law, Susan R. Sampson, Inc. PS, 1400 Talbot Road S., Suite 400, Renton, Washington 98055-4282, appearing on behalf of Brad Carey;

ROBERT I. GOODSTEIN and RALPH U. KLOSE, Attorneys at Law, Robert I. Goodstein Law Group, PLLC, 1001 Pacific Avenue, Suite 400, Tacoma, Washington 98402-4440, appearing on behalf of the Jim Christen and Brad Smith, Petitioners.

Court convened with all parties  
present on Wednesday, June 14, 2006 at  
8:48 a.m.

THE COURT: Please be seated. Good morning.

MR. GOODSTEIN: Morning, your Honor.

MS. SAMPSON: Morning.

THE COURT: The Court calls on for hearing at this time the matter regarding the Port of Tahuya, 05-2-01083-9. The Court did have an opportunity to read the information that was provided by each Commissioner, now former Commissioner I suppose. And also there was a response of Commissioner Carey to the lists of the other Commissioners.

The Court began looking at, but did not fully read pleadings with regard to a motion for partial reconsideration. And from what I understood is that there was a request to reconsider some oral comments essentially made by the Court. And since we don't have an order at this point from that hearing, it's not properly before the Court to hear a motion for reconsideration. So although it may have been noted for today, would not be heard today.

MS. SAMPSON: Thank you, your Honor.

THE COURT: With regard to the business that we do have at hand today, I had asked that each of the Commissioners provide a list of tasks that have been completed and what is left to be done, and other information regarding the winding up of the affairs of the Port. And the Court also asked for suggestions on the next step to be taken to resolve the unfinished business. And I will take any additional comments on those matters at this time.

MR. GOODSTEIN: Good morning, your Honor. I'm Robert Goodstein, counsel for the Port of Tahuya in this matter -- or the ex Port of Tahuya in this matter. Depending on the Court's wishes, I want to address a couple of things that the — that I believe the Court was considering at the last hearing, which is the issue of whether a special master is necessary or not to go forward.

I believe that the Court, as well as the citizens of the Port District would be best served by the most judicially economical method of disposing of these claims. As

the Court has read through the pleadings of — or the statements of the — all three Commissioners, I believe, there is at least concurrence on several things, which is that many of these claims that have been asserted should be denied. That is the position, I believe, universally of -- of the Commissioners as it relates to most of the claims.

My view of this, having worked with the Port for several months is that most of these claims, with the exceptions perhaps of the claims brought by Mr. Carey in his individual capacity are capable of being dispatched rather rapidly with — with brief evidentiary hearings. There is not really, I don't believe, any facts that are in dispute as it relates to these claims. The question is whether the claims are justly brought or not for legal determination. So I suspect most of the claims, except for the claims of Mr. Carey, can be dispatched in the course of an afternoon or two of hearings.

And that would lead me to conclude that perhaps the Court, from an economy basis, and the citizens are not necessarily well served by the appointment of a special master in that regard, given the simplicity and straight forwardness of the claims, save for Mr. Carey's.

So I'd just offer that to the Court by way of — of -- of my own opinion, having reviewed some of these claims themselves. As I say, most of them relate to whether people should be paid for having hired lawyers to appear here on their own behalf, or in the alternative, for having hired lawyers in the case of ex-commissioners Olsen and Gilbert, to defend themselves against actions brought by the residents group against them personally on an indemnity theory.

So although I understand and appreciate, and have great concern for the Court's time in this matter, I don't know that a special master necessarily advances the cause in this particular instance. And I'd just offer that as a comment to the

Court.

The other thing, of course, that I believe needs to be resolved is Goodstein Law Group's further participation in this matter now that the Port has entered — or will enter an order dissolving the Port. And I'm prepared to address that, if the Court wants to hear that at -- at your convenience.

THE COURT: Go ahead.

MR. GOODSTEIN: We are prepared, Judge, to continue on representing the interests of the Port in this matter, if the Court wishes, and pursuant to Court direction. With regard to the notion that I believe appears in Mr. Carey's pleadings that there may be some conflict of interest, we are unable to discern the nature of the conflict of interest that may occur. There is some representation that somehow or another I may become a material witness in the matter that Carey has brought forward. I don't believe that to be the status.

The basis of Mr. Carey's notion that we are witnesses is with regard to any advice we may have given to the Commission with regard to responding to public information requests. We have been very consistent in open meetings in front of numerous witnesses with the position that I don't believe is contested by any of the Commissioners, which is that we have always advised that the Port needs to respond appropriately to public information requests.

The other thing we have been very consistent on, and the Court in fact has ordered in its previous order in May is that because of the nature of Mr. Carey's status, which is he was a Commissioner with some responsibility for records, and he at the same time had offered that he was going to bring legal actions against the Port, that his access to those records be with a witness present, which is exactly what the Court ordered on May 24<sup>th</sup>. And I believe that is consistent throughout. There are many witnesses who can testify to that. And on that basis, I don't believe

that we particularly are material witnesses.

On the other hand, if the Court feels like this exercise will be better served by having a new party brought in, we're happy to step down and complete this exercise.

THE COURT: All right, thank you. Counsel.

MS. SAMPSON: May it please the Court. My name is Susan Sampson representing Brad Carey this morning.

I concur with Mr. Goodstein that the remaining work of the Port should require, with one exception, brief evidentiary hearing. But there are some additional administrative tasks, for example, persons who have claims should probably be given notice. Somebody has to do that; opportunity to be heard. Somebody has to do that.

The parties have concurred that the Port should attempt to retrieve some unpaid insurance premiums when the policy was canceled; a relatively minor matter, but more administrative than judicial in nature.

There should be letters sent to such entities as the former attorneys for the Port and the insurance company to procure documents that belong to the Port to create a complete set to complete the transfer of records to the Archivist. Again, administrative rather than judicial in nature.

And yet brainstorming, we come up with a little bit of shortage as to who might be an appropriate person to do those tasks. If Mr. Goodstein's firm has a paralegal assistant or administrator on staff who could do those sorts of things, then that might well be a good idea. We do, however, oppose Mr. Goodstein's role in responding on behalf of the Port to the claim of Brad Carey and the citizens group of which he is a member in the disclosure lawsuit because of the communications that have occurred with Mr. Goodstein and

Mr. Carey before Mr. Carey was a Port Commissioner and during his tenure as a

Port Commissioner both in open hearing and outside of hearing as a witness to advising the Port that the documents needed to be disclosed as a witness to the withholding of those documents from Mr. Carey. And so we do not think that Mr. Goodstein should pursue the defense of that lawsuit because he does appear to be a witness. But of course, that's an ethical call for him to make.

THE COURT: Mr. Goodstein.

MR. GOODSTEIN: Again, your Honor, I -- I don't disagree with much of what Ms. Sampson has represented. There is the question of somebody needing to represent essentially the Port's interest going forward. That, to me, is a different matter than the matter that I was addressing, which is whether the Court would need the assistance of a special master. My understanding of the appointment of a special master is that somebody who would act essentially in the role of considering evidence and drawing conclusions and having those conclusions ultimately subject to being approved by -- by the Court. I don't believe that exercise is necessary because of the nature of the claims, except for Mr. Carey's claim.

At this point I have no further comment with regard to the -- to the references made about Mr. Carey's lawsuit and my participation in that other than what I have represented. So if the Court wishes to consider that as a separate issue, I think the Court can do that if it wants to.

THE COURT: Were the Port, or any port operating and a claim came in --

MR. GOODSTEIN: Yes.

THE COURT: -- it would be considered and it would either be approved and paid or rejected. Then if a claim is rejected, then the claimant would have an opportunity to file a lawsuit --

MR. GOODSTEIN: Correct.

THE COURT: -- and have a court determine their claim. Were we to take your, I think agreed route, then essentially we would eliminate part of that process. We would be bringing the claimant in before the Court to be able to present their information without having to file a lawsuit, it sounds like.

MR. GOODSTEIN: That is correct, your Honor. In fact my understanding of the order that was entered by Judge Sawyer on the 9<sup>th</sup> was that we were to publish a claims notice period. And that claims notice period actually had a bar date in it for consideration of those claims. So it is a slightly different process in that regard.

The only one who's actually filed — well, there are two parties who filed lawsuits — actually three I suppose. One is ex-Commissioner Olsen, who is in the courtroom today; ex-Commissioner Gilbert, who are represented by Blair Burroughs. They brought a legal action in this court. But in subsequent hearing, agreed to have it considered as a claim and consolidated their legal action with this dissolution proceeding. So they are content to proceed with this as a claim. And I believe we can produce that order for you if you wish. It's signed by Judge Sawyer indicating that they will have an evidentiary presentation opportunity in the claims period.

THE COURT: All right.

MR. GOODSTEIN: The other suit, of course, is Mr. Carey's.

THE COURT: All right. Anything further then on these two issues?

MS. SAMPSON: No, your Honor.

THE COURT: Well the Court will consider the process that needs to be put in place for resolving the balance of the claims and complete the winding up

of the Port, and will issue a letter opinion to provide for a method of doing that.

Do we have a proposed order today from the hearing last time?

MR. GOODSTEIN: We do, your Honor. And in anticipation of whether the Court was going to consider the motion for reconsideration, we didn't think it would be successful to attempt to negotiate an order. So we have prepared an order. I also have a verbatim transcript of your ruling from the hearing on May 24<sup>th</sup>, and I don't know if we have an extra copy for counsel? I think we do, and I'll give you one in just a second. Let me just tender this up with the transcript, your Honor.

And I believe we did our best to incorporate directly your comments into — or your oral ruling into that order.

THE COURT: And Ms. Sampson, had you seen this proposed order ahead of time?

MS. SAMPSON: No, your Honor.

MR. GOODSTEIN: I don't believe she has.

THE COURT: All right. Well I will step down for a few minutes so you get an opportunity to review that. And then I'll come back and see whether we can reach an agreement on language. If we cannot reach an agreement on language, we'll set it over one week for presentation, since you're just getting it today.

MS. SAMPSON: Thank you.

THE COURT: We will be in recess for five minutes.  
Court adjourns for a brief recess.

RECESS/COURT RECONVENES

Court reconvenes on the same date and the following is heard in the presence of all parties:

THE COURT: Please be seated. Mr. Goodstein.

MR. GOODSTEIN: Your Honor, during the recess counsel for Mr. Carey and I have been able to review the order. And we are in agreement in that so said.

I would note for the Court's attention that we left a line for the signature of Kenneth Ahlf who at one point had appeared as the attorney for Jean Gall and a — and a group of citizens. Jean Gall is here, and as are some citizens. Mr. Ahlf has since sent a letter indicating he is not actually participating in the case at this time. So we don't have a signature for Mr. Ahlf. But otherwise we are in agreement.

THE COURT: All right. I need to make a couple of changes.

MR. GOODSTEIN: Okay.

THE COURT: First of all with respect to page 2, line 14, where it indicates the Clerk of the Mason County Superior Court. I would need language inserted after Court on line 14 as follows: in an interest bearing account for the benefit of the Port of Tahuya under tax ID number, and then you need to fill in the number. Otherwise the clerk just holds it with all of the other money that she holds. This will hold it in a special account which will accrue interest.

And the second one is to add part of the order, a new paragraph which would be 2.10 at the bottom of the order language to the effect — I had some language here, but I'm certainly willing to adjust that. I wrote it out quickly. For any unresolved claims against the Port, the original notice of claim shall be filed herein.

I know that I have Mr. Goodstein's pleading that outlines 14 or so claims. I can't remember what the number was, but I'm not sure I have actually the original document. And that would be appropriate now to file with the Court.

Thirdly I did not have a chance to read the whole transcript of the verbatim report of proceedings. So what I would like to do is put this on for presentation next Monday on the civil calendar so I'll have an opportunity to read that. I understand it's agreed language, but I still want to go back and read it. Are counsel available at 1:30 on Monday, the 19<sup>th</sup>?

MS. SAMPSON: Yes, your Honor.

MR. GOODSTEIN: Mr. Klose or I will be available.

THE COURT: All right.

MS. SAMPSON: Your Honor, as long as we're here today, may I ask one — or I'll direct it to the Court and that is that no person delete or destroy any documents of the Port pending final wind up of its affairs. In particular we are concerned about Port documents contained on the hard drives of privately owned computers.

THE COURT: Well let me inquire. My recollection is I signed an order that required all documents to be provided to the State Archivist. And so I'm not sure what documents you're talking about. Were they not provided to the Archivist?

MS. SAMPSON: Mr. Carey has done his documents. I have no information whether the other two Commissioners have.

THE COURT: Would we not be talking about documents that were in the possession of the Port as opposed to documents that may be —

MR. GOODSTEIN: Your Honor, if I understand the issue —

THE COURT: — electronic information that may be on a hard drive as opposed to a document that may be in the Port's possession.

MR. GOODSTEIN: Yes, your Honor. As I understand it, the

documents that are in the Court's — I'm sorry, the Port's possession have been delivered to the Archivist, save one box that Mr. Christen had that was delivered to my office sealed, which will be delivered to the Archivist now that it has been received by our office.

But the issue, I believe, that is being raised is an issue that has been part of the controversy of the Port of Tahuya for some time which is it is believed by Mr. Carey that that ex-commissioners and current commissioners may have documents on their individual personal computers which he believes to be Port documents. And my understanding of the law in general is there are circumstances -- and pursuant to the Attorney General's guidance which he recently issued -- there are circumstances under which personal computers may have records of an agency. For example, and the example that's given in the Attorney General's guidance — which as I say was published in the law two months — is the example of an employee who takes work home and works on it. And under the guidance of the Attorney General, those documents would be considered to be documents of the agency.

Whether these individuals have Port documents as that term would be defined on their person computers has been an open question. Most of the individual ex-commissioners and Commissioner Christen take the position that they don't have Port documents on their personal computers. I don't know that to be a fact or not. I'm just representing to the Court that it has been part of an on-going dialogue by Mr. Carey and — and — and the other commissioners on that issue. So that I believe is the issue that's being raised to the Court now.

THE COURT: And I would appreciate being able to see the Attorney General's opinion. That would be helpful to the Court. It's not your motion

today, or your oral request is not properly noted. The Court hasn't had an opportunity to look at the law in that area. So I will either, with the agreement of counsel, set it over to next Monday, and that would be a short set. There wouldn't be the full five working days. Or counsel can note it up with a proper amount of notice. And I guess that's a question to Mr. Goodstein, if you are willing to have a shortened period of notice so that the matter could be heard next Monday.

MR. GOODSTEIN: Your Honor, I'm prepared to proceed at any time the Court wishes.

THE COURT: All right, so we'll put that on. If you'll file a written motion and serve it. But we will put it on for next Monday, the 19<sup>th</sup> as well, 1:30.

MS. SAMPSON: Thank you, your Honor.

THE COURT: Any other side matters?

MR. GOODSTEIN: Your Honor, two things. Number one, I -- I do have with me today a copy of Chapter 44-14 of the Washington Administrative Code which includes the — must by my electric personality, your Honor — that incorporates the Attorney General guidance.

Just by way of informing the Court, there were some changes made in the Public Records Act in the legislative session before last. One of those changes was a requirement that the Attorney General promulgate guidance and rules under the Public Disclosure Act. The Attorney General went through a rule writing and guidance process that included several public sessions and produced a final draft of these rules. And they're codified as Chapter 44-14 of the Washington Administrative Code. I don't have an extra copy, but if the Court wishes to make a set, we can do that now or I can mail it to the Court at the Court's convenience.

THE COURT: But you indicate they're codified in the WACs? I can just pull them?

MR. GOODSTEIN: Yes, under 44-14.

THE COURT: I can just pull them off the internet.

MR. GOODSTEIN: Yes. Or you can go to the Attorney General's website and they're prominently posted on the website as well.

THE COURT: All right, thank you.

MR. GOODSTEIN: The only other question I would have, just by way of clarification by the Court, your Honor, is I assume for the time being I am still authorized to represent the Port of Tahuya going forward in this exercise?

THE COURT: Until there's a further court order.

MR. GOODSTEIN: All right. Thank you, your Honor.

THE COURT: Any other additional matters,  
Ms. Sampson?

MS. SAMPSON: No, your Honor.

THE COURT: We are in recess.

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CERTIFICATE OF COURT APPROVED TRANSCRIBER

STATE OF WASHINGTON )  
                                  : ss.  
COUNTY OF MASON    )

I, SHERI K. ESCALANTE, Notary Public and Court Approved Transcriber for the Superior Court of the State of Washington in and for the County of Mason, do hereby certify as follows:

THAT the foregoing REPORT OF PROCEEDINGS, numbered from Page One through and including Page Seventeen, is a true and correct transcript of the hearing heard on 14 June 2006 **In the Matter of: The Port of Tahuya Dissolution**, Mason County Cause No. 05-2-01083-9 before the Honorable Toni A. Sheldon, Judge, of the Superior Court of Mason County, sitting at the Mason County Courthouse, Shelton, Washington, on the date hereinbefore mentioned.

DATED at Allyn, Washington this \_\_\_\_\_ day of June, 2006.

\_\_\_\_\_  
SHERI K. ESCALANTE  
Notary Public and Court  
Approved Transcriber