

Singer, Alan (OIC)

From: Singer, Alan (OIC)
Sent: Wednesday, March 19, 2014 7:57 AM
To: Cairns, Kelly (OIC)
Cc: 'jmcphoe@workwith.com'; Parker, Tim; Anderson, Jason; 'Williams, Christine'; Gellermann, AnnaLisa (OIC); Mark, Eric (OIC)
Subject: RE: In re Scarborough and Wolf - OIC No. 13-0084
Attachments: 3-18-14 Declaration Eric Mark.pdf

FILED

2014 MAR 19 A 8:00

OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER

Hi Kelly,

Attached is a declaration from Eric Mark, the original of which will be filed separately this morning. I ask for Judge Petersen's permission to please consider it in reference to the pending motion to quash.

Mr. Mark's declaration is offered solely to rebut and respond to the new information Mr. Scarborough first disclosed in his reply brief – the declaration testimony of Brian Kreger. Normally, such new information and new arguments are inappropriate, should not be included in a reply brief, and should not be considered. See, e.g., *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("An issue raised and argued for the first time in a reply brief is too late to warrant consideration.") But here, even if Mr. Scarborough's new information is considered, in the interest of fostering "full disclosure of all relevant facts" and affording "all parties the opportunity" to "submit rebuttal evidence," RCW 34.05.449(2), it would be important, fair, and consistent with the Administrative Procedures Act to also consider Mr. Mark's testimony.

Please let me know if you have any questions. Thanks,

Alan

Alan Michael Singer

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From: Williams, Christine [<mailto:Williams@carneylaw.com>]
Sent: Tuesday, March 11, 2014 12:23 PM
To: Cairns, Kelly (OIC)
Cc: Singer, Alan (OIC); 'jmcphoe@workwith.com'; Parker, Tim; Anderson, Jason
Subject: RE: In re Scarborough and Wolf - OIC No. 13-0084

Judge Petersen and Ms. Cairns –

Just a few minutes ago I sent Respondent Scarborough's Reply in Support of Motion to Quash. We have corrected a reference in Footnote 11 and attach a new version of the Reply. That correction is the only change. Please discard the earlier version.

If you have any questions, please contact me. Thank you.

CARNEY
BADLEY
SPELLMAN

Christine Williams, Legal Assistant to Timothy J. Parker
206-607-4185 Direct | 206-622-8020 Main
Address | Website
williams@carneylaw.com

This e-mail contains confidential, privileged information intended only for the addressee. Do not read, copy, or disseminate it unless you are the addressee. If you are not the addressee, please permanently delete it without printing and call me immediately at (206) 622-8020

From: Williams, Christine
Sent: Tuesday, March 11, 2014 12:07 PM
To: kellyc@oic.wa.gov
Cc: 'Singer, Alan (OIC)'; 'jmcphoe@workwith.com'; Parker, Tim; Anderson, Jason
Subject: In re Scarborough and Wolf - OIC No. 13-0084

Judge Petersen and Ms. Cairns –

Attached are (1) Respondent Scarborough's Reply in Support of Motion to Quash and (2) Declaration of Brian F. Kreger. Originals of these documents will be delivered to you by messenger.

CARNEY
BADLEY
SPELLMAN

Christine Williams, Legal Assistant to Timothy J. Parker
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2014 MAR 19 A 8:00

In re the Matter of:

**EDMUND C. SCARBOROUGH and
WALTER W. WOLF,**

Respondents.

) Docket No. 13-0084

)
) **DECLARATION OF**
) **ERIC MARK**

OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER

I, Eric Mark, state and declare as follows:

1. My name is Eric Mark. I make this Declaration on the basis of first hand personal knowledge. I am over the age of eighteen (18) years. I am competent and authorized to testify to the matters set forth herein.
2. I am employed by Insurance Commissioner Mike Kreidler (“Commissioner”) within the Operations Division of his Washington State Office of the Insurance Commissioner (“OIC”). My title is Public Records Manager.
3. Attached hereto and incorporated by reference herein as **Exhibit A** is true and correct copy of both pages of an exemption log prepared June 22, 2012 pursuant to RCW 42.56.210(3), and also attached hereto and incorporated by reference herein as **Exhibit B** is true and correct copy of a single page “update” exemption log prepared July 23, 2012 pursuant to RCW 42.56.210(3). Exhibit B is an update to Exhibit A. While these logs indicate they are each a “privilege log,” each is actually not a “privilege log,” they are exemption logs prepared pursuant to RCW 42.56.210(3), and they should have been titled accordingly.
4. Exhibit A shows exemption log entries which erroneously asserted that documents were being withheld because of “Attorney/Client Privilege” under RCW 5.60.060(2). Exhibit B corrected this error. In the case of the public records listed in Exhibit A, where the log entries erroneously indicated attorney-client privilege and RCW 5.60.060(2) in the “statute” and “comments” columns, the records were either exempt for other reasons indicated in the

“statute” and “comments” columns of Exhibit B, or else the documents were produced.

5. With respect to responses to public records requests under Washington’s Public Records Act, RCW 42.56 *et seq*, OIC applies the attorney-client privilege exemption under RCW 5.60.060(2) and RCW 42.56.070(1) to records prepared by or for an assistant attorney general representing the OIC or the Commissioner. OIC does not assert the attorney-client privilege exemption for documents created by or for OIC staff who are attorneys (unless the documents are prepared for an assistant attorney general.)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 18 day of March, 2014 at Tumwater, Washington.



Eric Mark

DECLARATION OF ERIC MARK

EXHIBIT A

WASHINGTON STATE OFFICE OF THE INSURANCE COMMISSIONER

PRIVILEGE LOG

REQUEST NO. 4538 KREGER

The following documents have been withheld or produced in a redacted form. They are subject to privilege under the identified statutes below. This list is provided in accordance with RCW 42.56.210(3).

Bates #	Date	Type of Document	Recipient	Author	Statute	Comments
23	8/31/10	Licensee Profile		OIC	RCW 42.56.230(2)	This document contains a Social Security number and date of birth which has been redacted to protect the individual's identity.
376-378	5/23/12	Letter RE limited benefit plan	Sharon Mattingly	Andrea Philhower	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.
379-382		Consent Order Levying A Fine	United States Fire Insurance Company	OIC	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.
383-384	5/16/12	Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.
385-386	3/28/12	Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.
387-389	2/8/12	Attachment to 2/9/2012 Email: Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.

390-393	2/8/12	Attachment to 2/9/2012 Email: Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.
394-395	2/8/12	Attachment to 2/16/2012 Email: Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.
396-398	3/28/12	Attachment to 05/09/2012 Email: Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.280 RCW 5.60.060(2)	This document has been withheld for Attorney/Client Privilege. It includes legal strategy and recommendations for agency action in a pending matter. This information is considered exempted under the identified RCWs.

DECLARATION OF ERIC MARK

EXHIBIT B

WASHINGTON STATE OFFICE OF THE INSURANCE COMMISSIONER

PRIVILEGE LOG

REQUEST NO. 4538 KREGER

UPDATE 07/23/2012

The following documents have been withheld or produced in a redacted form. They are subject to privilege under the identified statutes below. This list is provided in accordance with RCW 42.56.210(3).

Bates #	Date	Type of Document	Recipient	Author	Statute	Comments
23	8/31/10	Licensee Profile		OIC	RCW 42.56.230(2)	This document contains a Social Security number and date of birth which has been redacted to protect the individual's identity.
376-378	5/23/12	Letter RE limited benefit plan	Sharon Mattingly	Andrea Philhower	RCW 42.56.240(1)	This document contains information essential to an open investigation. This information is considered exempt under the identified RCW.
379-382		Consent Order Levying A Fine	United States Fire Insurance Company	OIC	RCW 42.56.240(1)	This document contains information essential to an open investigation. This information is considered exempt under the identified RCW.
383-384	5/16/12	Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.240(1)	This document contains information essential to an open investigation. This information is considered exempt under the identified RCW.
385-386	3/28/12	Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.240(1)	This document contains information essential to an open investigation. This information is considered exempt under the identified RCW.
394-395	2/8/12	Attachment to 2/16/2012 Email: Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.240(1)	This document contains information essential to an open investigation. This information is considered exempt under the identified RCW.
396-398	3/28/12	Attachment to 05/09/2012 Email: Compliance Group Review Summary		OIC Legal Affairs Division	RCW 42.56.240(1)	This document contains information essential to an open investigation. This information is considered exempt under the identified RCW.