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11-4-13

**Cairns, Kelly (OIC)**

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**From:** Singer, Alan (OIC)  
**Sent:** Friday, November 01, 2013 6:03 PM  
**To:** Cairns, Kelly (OIC); 'Parker, Tim'  
**Cc:** 'Beard, Ronald'; Gellermann, AnnaLisa (OIC); DeLeon, Marta (ATG)  
**Subject:** In Re Edmund C. Scarborough, et al - no. 13-0084 - request for subpoena for records  
**Attachments:** Declaration of Records Custodian Wells Fargo - Chief Hearing Officer (proposed).doc;  
Subpoena Duces Tecum Wells Fargo - Chief Hearings Officer (proposed).doc

Hi Kelly,

I write to request a prehearing telephone conference please be scheduled so that I can request that Judge Petersen please issue a "subpoena to produce records" which would be directed to Wells Fargo Bank Northwest, N.A. The documents sought from Wells Fargo are set forth in the "addendum A" in the attached proposed or suggested draft subpoena.

Wells Fargo's Seattle attorney, Ron Beard, who I copy to this e-mail, has kindly agreed to accept service of a subpoena. However, I do not mean to suggest he or his client has agreed with this request or with the form of the draft subpoena. By copy to Mr. Beard, I invite his participation in such a conference. I have also attached a proposed or suggested draft records custodian declaration for everyone's consideration.

Prior to such a conference, I invite Mr. Parker and Mr. Beard to please contact me by telephone to discuss this request. I welcome any questions or suggestion as to how to facilitate this discovery effort.

Thanks,

Alan

**Alan Michael Singer**

Staff Attorney, Legal Affairs

Washington State Office of the Insurance Commissioner

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BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In Re Edmund C. Scarborough, et al,

Respondents.

No. 13-0084

SUBPOENA TO PRODUCE RECORDS

THE STATE OF WASHINGTON: Wells Fargo Bank Northwest, N.A.  
c/o Wells Fargo Bank Northwest, N.A. counsel, Ron Beard

YOU ARE COMMANDED to appear in the Superior Court of the State of Washington at the place, date, and time specified below to testify in the above case.

<b>Place of Testimony:</b>	<b>Courtroom:</b> <b>Date and Time:</b>
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YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case in the presence of a court reporter.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. CR 30(b)(6).

<b>Place: Washington Office of the Insurance Commissioner 5000 Capitol Blvd Tumwater, WA 98501</b>	<b>Date: November 19, 2013    Time: 1:00pm</b>
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or objects): See below "Addendum A"

<b>Place: Washington Office of the Insurance Commissioner 5000 Capitol Blvd Tumwater, WA 98501</b>	<b>Date: November 19, 2013    Time: 1:00pm</b>
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

<b>Premises:</b>	<b>Date:</b>	<b>Time:</b>
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<b>Issuing Officer Signature and Title: Patricia D. Petersen, WSBA No. 11522 – Chief Hearing Officer</b>	<b>Date and Time:</b>
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<b>Issuing Officer's Name, Address and Phone Number: Patricia D. Petersen, Esq. Officer's Phone No. 360.725.7002, 5000 Capitol Blvd., Tumwater, WA 98501</b>
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**PROOF OF SERVICE**

Date:	Place:	Served:
Served on (Print Name):		Manner of Service:
Served by (Print Name):		Title:

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
Date/Place

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

CR 45, Sections (c) & (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden, provided that, the court may condition denial of the motion upon a requirement that the subpoenaing

party advance the reasonable cost of producing the books, papers, documents, or tangible things.

**(B) If a subpoena**

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If the information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

**No. 13-0084 – SUBPOENA TO PRODUCE RECORDS – ADDENDUM A**

YOU ARE COMMANDED to produce and permit inspection and copying of:

- 1) All agreements and contracts relating to Edmund C. Scarborough.
- 2) All communications from Edmund C. Scarborough, his attorneys, or his other representatives regarding Mr. Scarborough's Washington bonds or his bonds involving Washington contractors, Washington projects, Washington contracts, or Washington owners.
- 3) Every irrevocable trust receipt ("ITR") for every Edmund C. Scarborough bond involving Washington contractors, Washington projects, Washington contracts, or Washington owners.
- 4) All indentures relating to Edmund C. Scarborough or ITRs between Mr. Scarborough and Wells Fargo Bank Northwest, N.A.
- 5) All Trust Indenture and Security Agreements (including but not limited to "Surety Bond Trust No. 1") relating to Edmund C. Scarborough or ITRs between Mr. Scarborough and Wells Fargo Bank Northwest, N.A.
- 6) All documents keeping track of which coal is allocated for which of Mr. Scarborough's bonds.
- 7) All documents setting forth any security interests in any and all of Mr. Scarborough's assets, including any coal assets.
- 8) All tonnage calculation open ITR reports related to Mr. Scarborough's bonds.
- 9) All monthly or other periodic reports sent to Edmund C. Scarborough or to any of his agents, attorneys or other representatives.
- 10) Documents setting forth any questions or hesitation on the part of Wells Fargo Bank Northwest, N.A. to continue doing business with Mr. Scarborough.
- 11) All documents setting forth analyses of the actual value of any and all of Mr. Scarborough's assets, including any coal assets.

In lieu of a records deposition, a copy of these records along with an executed declaration of can be provided directly to the requesting party, Office of the Insurance Commissioner, care of its Staff Attorney, Alan Michael Singer. Please advise us at your earliest convenience if you will be providing the records and a time frame for their receipt if you are not able to provide them by the date commanded by this Subpoena. If you are providing the records directly, please include an invoice for reasonable copy charges. The records are to be sent to:

Office of the Insurance Commissioner  
c/o Alan Michael Singer  
5000 Capitol Blvd  
Tumwater, WA 98501  
(360) 725-7046

In Re Edmund C. Scarborough, et al,  
Respondents.

NO. 13-0084

DECLARATION OF RECORDS  
CUSTODIAN

**THE INSURANCE COMMISSIONER OF  
THE STATE OF WASHINGTON FROM:**

Records Custodian

I DECLARE UNDER PENALTY OF PERJURY under the laws of the State Washington that the following is true and correct.

My name is \_\_\_\_\_, My employer is \_\_\_\_\_, My job title is \_\_\_\_\_.

I am an authorized custodian of the records for \_\_\_\_\_.

The attached \_\_\_\_\_ pages of documents are true and correct copies of records kept and maintained by \_\_\_\_\_. These documents were made in the regular course of business, at or near the time of the act, condition, or event referred to in each such document.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_,

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_