

August 29, 2019

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To: John Fletcher, Dawes Cooke
Barnwell Whaley Attorneys
Beaufort County Council members,
BC Administrator Ms. Ashley Jacobs
and BC Risk Manager

Re: Demand Letter

RECEIVED
SEP 03 2019
SC Court of Appeals

Dear Mr. Fletcher, Ms. Jacobs, BC Council,

I am filing a Demand for Payment after Beaufort County employees revealed new information in June 2019 public forum and meetings that include admissions and contradictory statements of their involvement in fraud, bid-rigging, unfair trade directly related to this claim. By this letter you will find evidence of the BC employees that corresponds to their admission in their videotaped testimony.

This demand and verified claim for \$ 18,000,000.00 and is presented by delivery of this letter. (I will consider discussing options related to BC's Insurance coverage limits.)

This new information was publicly disclosed by Beaufort County employees in at least two public, videotaped Beaufort County Council meetings, June 10 and June 17, 2019. In the video presentation, BC Purchasing Director Dave Thomas (advised by BC Attorney Tom Keaveny) refutes his sworn testimonies and other BC employee affidavits and Beaufort County attorneys arguments submitted on their behalf.

Taxpayer money and the Court's time is valuable; your clients waste both when they simultaneously deny wrongdoing while they now publicly present new and differing accounts and evidence of their culpability directly related while avoiding all opportunities to explain their actions. The latest statements, preserved on videotape, confirm the BC employees' testimony was deceptive, contradictory and in fact did contain genuine issues of material fact.

Given the very public and obvious nature of statements by Dave Thomas and Tom Keaveny, and the severity of the admissions and contradictions regarding the acquisition of contracts for BC-DSN in 2012 through illicit means.

Continuing to waste the Courts and Taxpayer's valuable time and money would be grossly negligent on the part of BC Council and Executives.

Director Thomas has publicly put forth myriad explanations regarding the County's process for public bid offerings and without question revealed he privately discussed and held "planning meetings" for The 2012 - RFP # 3910/120221 "only" with BC-DSN representative(s), and BC employees involved who in fact submitted competing bids in July 2012. Thomas allowed and arranged BC-DSN to submit bids several months after the bid closing date of March 22, 2012 and after all other bidders submitted theirs and allowed BC-DSN access to the other bidders' information. At the videotaped June 17, 2019 County Council meeting, Thomas remarked and stated the following explanation for putting out an "open market" request (2012 - RFP # 3910/120221) **beginning minute 7:20: "We bid it out anyway, so we could see what the prices would be". And regarding the bid awards to BC-DSN Thomas remarks "the bids were handled completely legal". (See links below)**

1. **June 10, 2019 Beaufort County Council Meeting - online**
http://beaufort.granicus.com/player/clip/4357?view_id=15
2. **June 17, 2019 Beaufort County Council meeting - online**
http://beaufort.granicus.com/player/clip/4369?view_id=15
3. http://beaufort.granicus.com/player/clip/4369?view_id=15

When compared to Thomas earlier emails he contradicts his actions, emails and statutory procurement code; Thomas emails states "Pals changed the scope to lower the price" And the (spec. sheets attached to Thomas' email address) confirm Thomas in-fact changed the specifications "only" for BC-DSN and after receiving and allowing BC-DSN access to other bidders' proposals and allowed them to submit their bids 3 months late – this is bid rigging.

Attorney Keaveny, Director Thomas can offer No case examples, No statutes and Thomas No certifications from professional education that allow this activity.

BC Procurement Director, Dave Thomas's admission confirms my testimony that Beaufort County offered this bid for the purpose of obtaining pricing, supply information, and operational costs for the benefit of and to arrange for BC-DSN to win this bid and BC employees have offered or provided No other reasonable explanations.

Beaufort County employees' agent(s) changed scope of RFP # 3910/120221 for the express purpose of accommodating BC-DSN (only) and their ("consumers").

(Compare the verified Carolina Cleaning contract scope & specs. vs. the BC-DSN contract scope specs.; Note: the link to Thomas' BC email address and notations on the scope of work changed by Thomas' "No, and Omit, cut and paste of Carolina Cleaning RFP figures")

In every dispute in this matter BC employees' have denied and / or avoided ALL facts which later turned out to be true by their own admission and through their own internal BC documents and actions.

Your clients denied FOIA requests regarding the status and make up of the BC-DSN entity, their actions with it, and the payments they received for the BC-DSN program. Subsequently, it was later discovered your clients in fact knew and were intimately involved with the BC-DSN entity, to the degree they secretly changed the status of the Board in 2011 by removing the Governor's statutory mandatory oversight authority by illicit means and replacing it with their own, County oversight.

Upon discovery by the Governor, your clients were notified promptly and compelled by the Governor, in writing May 18, 2018, to make the necessary, statutory correction where your clients took six months to return the ordinance into compliance.

More than a year later and in June 2019 your clients continue to explain their actions while contradicting all of their early sworn statements including their attorney's arguments on their behalf.

As you know, BC employees by their continued irresponsible actions to avoid, not answer refuse to explain their own words and coordinate refusals of FOIA with the office Director, deter inquiries, threaten me and my family, by these actions your clients only broaden the liabilities and cause for additional suits, personal risk to themselves, other BC employees and all Council members and Executives.

Genuine Issue of Material Fact:

- A. *(Thomas affidavit, pg. 4, line 25, "DSN was never given any advantage with regard to bidding or contracting)*
- B. *(Thomas affidavit, pg. 10, line 74, "Beaufort County never misused any confidential information of Island Group Inc. d/b/a Carolina Cleaning in the procurement process"*
- C. *(Thomas affidavit, pg. 10, line 76, "Beaufort County never provided any confidential information of Island Group Inc. d/b/a Carolina Cleaning to DSN in the procurement process". If not how did my documents end up in BC-DSN's 2012 bid?*
- D. *(Thomas' email dated 12/10/2012 stating "more importantly if the scope of work was changed by Pals in order to drop the price". CC may protest" and other comments.*
- E. *(Thomas' email dated 6/28/2012 "conduct a planning good for Mitzy (a bidder and Dir. of BCDSN) to review Mitzy's scope of work and finalize the corrected scope and requirements for the 3 buildings listed above" and other comments.*
- F. *(Mitzy W. emails to Thomas dated 6/27/2012: "DSN can perform all tasks except.."*
- G. *(Mitzy W. email to Loper dated 9/28/2012: "The cost is a little higher" And "the areas I have changed are highlighted"*
- H. *(Roseneua email dated 12/12/2012: "The scope of work between the current contract and the DSN proposal differ" and "please proceed with DSN for the Bluffton gym". (The Bluffton gym and subsequent other facilities removed that were awarded to my company in 2010.)*
- I. *(Thomas email dated 12/10/2012: CC contract price was based on the total number of facilities in the original (2010 RFP)*

- J. (Thomas desktop - showing his email and the attachment where he changed the scope in the 2012 rfp for BC-DSN only)*
- K. (Governors letter: to BC Attorney Keaveny Re: non-compliance of 2011 ordinance changed by BC Council. And compare to (2018 SC Legislative Oversight Report of BC-DSN)*

Your clients have refused FOIA requests for additional documents relating to the makeup and arrangement of the BC-DSN program, after (secretly) seizing control of the BC-DSN Board from the (statutory) Governor's board appointment authority, via an illegal (per Governor and AG) ordinance in 2011 signed by BC employees, Council and [then] Beaufort County Council Chairman, Weston Newton who happens to be first cousin of the Judge in the lower court.

Your clients have refused/denied questions, all requests of depositions and discovery. One reason given is there are "No material facts" to gain – this argument categorically fails per the evidence and emails and your clients most recent admissions.

Your clients have stated a timely claim was not filed; this argument fails completely!
It is / would be impossible for me to have known your clients internal email conversations conspiring to dismantle a contract award to my company and award separate contracts to BC-DSN until I received and assessed the FOIA through 2015 that details their conspiracy in their emails.
The lawsuit was filed timely in August, 2016; well within the two-year statute.

Your clients refuse to acknowledge the salient fact the BC-DSN Board/program was operating outside of the South Carolina Code of Law and the Governor's authority since 2011. Growing in this are the witnesses including the State employees already interviewed.

Your clients intentionally "secretly" changed the Governor's oversight function to an in-house one, which financially benefited only your client, where they secretly removed the oversight. Subsequently, the former (in 2011) Chairman of Beaufort County Council, Weston Newton, also later contradicts his actions when he became (in 2017) the Legislative Oversight Chairman and reported the BC-DSN Board and necessity (statutory requirement) of the Governor's oversight.

Pursuant to §44-20-375(C), the South Carolina Department of Disabilities and Special Needs "shall recognize" only county boards of disabilities and special needs whose members are appointed by the Governor.

The statutory requirement of the Governor exists solely for "oversight" where your clients intentionally and secretly removed and then attempted to conceal through refusal of FOIA requests. The Governor and the Federal Government strictly prohibit by statute your clients actions of removing oversight

In fact, when the BC-DSN Board and Beaufort County entered into these contractual agreements by award of the 2012 contracts, the Board was operating outside the purview of the Governor of South Carolina. Therefore, BC-DSN "is not and should not have been recognized" by the South Carolina Department of Disabilities and Special Needs as and the Governor's office as a Legitimate Board, thus they would be / not eligible for Medicaid reimbursement or participation in the programs, however for your clients intentional scheme caused this to be overlooked.

The facts contradict your clients claims that they operated within the parameters of both County and State procurement statutes. In fact, Federal statutes prohibit these actions as with all funding through Federal Medicaid.

By coincidence or design, Newton is first cousin to the lower court Judge (Marvin Dukes) who presided in this matter. Dukes erred in awarding Summary Judgement to your clients after learning his first cousin signed the (now illegal) Beaufort County Ordinance in 2011, that Newton had No legal authority to sign and had significance in this matter before him.

The Affidavits of Alicia Holland, William Love, and Dave Thomas contradict one another and Thomas's and Kevaney's June 2019 public statements and presentation to County Council contradict your "their Attorney's" arguments on their behalf. Each BC employee provided testimony that differs from each other as to the employment status and make-up of the BC-DSN disabled workers and program.

- L. Thomas's affidavit BC-DSN employees are "**Beaufort County Employees**"
(See Thomas affidavit, pg. 4, line 22).
- M. In Love's sworn statement BC-DSN employees are "**W-9 Consumers**"
(See Love affidavit, pg. 3, line 13).
- N. Hollands' sworn statement they were "**Consumers, Contractors, Vendors**"
(see Holland affidavit, pg. 2, #13).
(See Hollands' 2 nd. affidavit) showing the W-9 Form submitted required for "**Contractors**"
As opposed to a W- 4 for employees or if DSN were "in-house"
- O. And Beaufort County awarded a contract to BC-DSN as a "**Private Vendor**"
(See Contract Award for Dated August 13, 2012 North of the Broad River)
- P. Love, states BC-DSN never engaged in any collusive conduct or "bid rigging" (See Love affidavit, pg. 6, line 38).
- Q. And BC-DSN was allowed to submit a bid months after the official deadline.
(See M. Wagner, June 19,2012, Beaufort County Meeting).

Thomas Affidavit contradicts his 6/2019 televised reports to Council and contradict his own earlier sworn statements and contradict other BC employees and their attorney's arguments on their behalf. Thomas's sworn statements contradict his admission that the 2012 bid was publicly offered to get pricing information. County, State, and Federal Procurement codes, statutes and requirements do not allow for BC actions in this.

Additionally BC-DSN met no "required qualifications" under procurement codes to become a Vendor, Contractor or perform work or bid on contracts.

Your clients claim they "did not rig these bids", this flies in the face of their blatant and intended misrepresentations while their avoidance to answer inquiries while their competing affidavits without doubt dispute one another and Thomas's public statements, recorded for posterity, as to his actions and the actual purpose of the RFP.

At the June 10 and June 17th, 2019 County Council meetings Thomas claims BC-DSN now falls under the County's "Intergovernmental Relations" Ordinance, section 2-552, sections (a) and (d), and that BC-DSN is now a "Public Procurement Unit" for the purpose of these bids and contracts. The universal definition of "Intergovernmental", BC-DSN cannot and does not qualify as an in-house entity, as your clients fraudulently, falsely and have consistently claimed in the lower court hearings and throughout this matter. Simply changing the name does not clear one of fraudulent activity.

Pursuant to §44-20-385, the Beaufort County Disabilities and Special Needs Board was established as a wholly separate administrative, planning, coordinating, and service delivery body for county disabilities and services, and under the South Carolina Department of Disabilities and Special Needs' control, not Beaufort County government. Further, it was to be a body corporate in deed and in law with all the powers incident to corporation including the power to incur debt insofar as that debt is payable from contract, grant, or other revenues and is not a debt of the State or its other political subdivisions, as stated in the April 11, 2018 letter to Attorney Lauren Martel from Dawes Cook, stating that Beaufort County "contracted" with the Beaufort County DSN Board, hence a separate entity.

Beaufort County cannot "contract" with their own department, again contradicting your arguments for BC's actions. County's Attorneys cannot explain their clients actions without contradictions of their own.

Additionally showing there are no limits that your clients won't go to keep from answering to their actions you are aware your partner, Mr. Cooke and Keaveny sat silent next to his / your clients as they "Gruber" threatened me, my attorney and my father when asked a few basic questions about this.

A multitude of false statements about the BC-DSN entity and BC are reflected in an abundance of contracts and documents your clients submitted in order to participate in this program to both the South Carolina Department of Disabilities and Special Needs and the Federal Government for grants and other monies, including, but not limited to, Medicaid and Department of Transportation funds.

Your clients' actions falsifying records to enter into and participate in the DSN programs place BC-DSN employees, their status and their families with liabilities and penalties by the DOL and will be addressed accordingly.

In Thomas' and Keaveny's June 17, 2019 televised report to Council they failed to mention the \$ 38,000.00 fine assessed to BC-DSN for infractions and Keaveny failed to mention to Council the Governor's letter he received stating DSN is non-compliant.

Since 2011, Beaufort County has ignored §44-20-375(A) by creating its own Board for its financial benefit and use. §44-20-30 defines "Department" as the South Carolina Department of Disabilities and Special Needs. Beaufort County then claimed BC-DSN was a vendor, and they now claim BC-DSN is an "intergovernmental" entity.

These are Genuine Issues of Material Fact and your clients conflicting statements, actions provide merit for investigations, discovery possible suits with additional BC affiliates named as this continues.

Your clients now place Beaufort County Council members, new BC Executives and others in the unfavorable positions of culpability after their oaths to uphold the constitution and reporting of suspicious acts brought to their attention. Your clients are spoon feeding Council diluted, scrubbed information without many facts, this is dangerous business.

In closing, for the sake of the taxpayers, in consideration of the Court's valuable time, and to prevent your clients and others in BC from further personal risk and exposure once these public statements contradicting the true facts become widely known, it would be prudent to comply with this Demand.

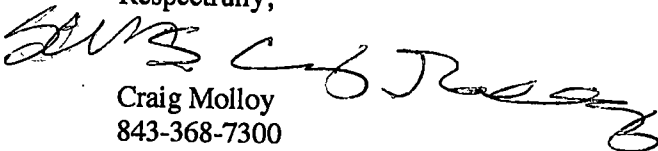
I am presenting this opportunity to you and BC to settle this and limit the additional damage and inevitable harm of your clients, BC officials, employees and Taxpayers.

Demand for Payment

The mitigating nature of this case and the unconscionable actions including bid-rigging, price fixing, unfair trade by Beaufort County, BC-DSN, and BC employees that caused direct injury to me and my 25-year business I am officially filing this demand and verified claim for payment. I am entitled to recover damages for my losses related to the undisputed negligence by numerous BC employees' who knew or should have known better and acted without conscience to interrupt contracts awarded to my business.

Please pay this demand in the amount of: \$ 18,000,000.00 dollars (Eighteen Million Dollars), within (2) two weeks of the date of this letter. I am open to discuss alternatives that align with your insurance coverage limits, within the same time frame.

Respectfully,



Craig Molloy
843-368-7300
scmolloy@gmail.com

cc SC Appeals Court
County Council
BC Risk Manager

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8/28/2019

Honorable Jenny Abbott Kitchings
Clerk of Court - SC Court of Appeals
PO Box 11629
Columbia, SC. 29211

RECEIVED
SEP 03 2019
SC Court of Appeals

RE: SC Court of Appeal # 2018-002170
Lower Court case # 2016-001825

Dear Honorable Jenny Abbott Kitchings,

Enclosed is a copy of the demand letter sent to Beaufort County for payment for issues related to this matter and before the Court. Your office suggested I copy the Court so they're aware of this demand based on the recent events by the respondents and related directly to this matter.

The respondents made recent televised reports to BC Council that provide undisputed evidence of contradictions and untruths of most all of their previous arguments in this matter, including "No material facts exist" and the "statute on time has passed".

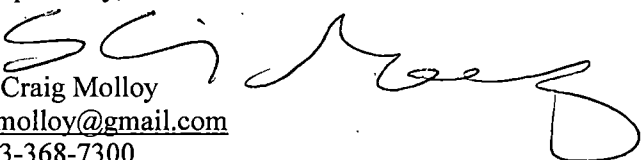
It is now clear without a doubt the respondents strategy has been to stall, answer nothing, submit known untruths to the courts, threaten and retaliate, spin the truth related in this matter. These tactics only continue to waste the Court's time and Taxpayers money.

With their latest admissions the respondents have contradicted every argument, they have no defense in this matter. This continues to severely prejudice me.

If respondents choose to ignore or not address the facts and this demand, I am respectfully requesting the Court take special note and perhaps special measures and intervene appropriately with judgement for the appellant, propose settlement commensurate to BC individuals' actions and assign independent investigations as necessary.

I've enclosed eight copies for the Court and a \$ 50.00 filing fee.
Please contact me with any questions / requests.

Respectfully,


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SC Court of Appeals
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8/28

