

LICENSE PLATE AUCTION GROUP (LPAG)

GoToMeeting Only

October 17, 2014

Minutes to the Meeting

Members in Attendance: Bobby Juchem, Mark Simon, Bob Gall, Peter Pike, Zach Pierce, Gina Robinson and Ryan Carson, TH Mack, Rich Medina all via telephone.

Guests in Attendance: LeeAnn Morrill – AG’s office, Chris Hochmuth – DOR, Jeff Porter – Hand Bid, Marty Zimmerman – Zim Consulting all via telephone.

CONVENE: Bobby Convened the meeting at 11:30 a.m. A quorum was present.

Impact on Patent Infringement:

LeeAnn discussed at length, the letter received by Zim Consulting (addressed to LPAG) and Hand Bid (directly) from Richard Barnett’s attorney (Mr. Schwartz) claiming patent infringement, the highlights of which are:

- LeeAnn gave a brief history/run-up to what the discussions had been prior to the auction and the receipt of the letter – noting that LPAG need not take any action at that time.
- LeeAnn stated that the AG’s office still believes that there is no infringement.
- AG’s office did contact Mr. Schwartz and asked about how they thought there was infringement and got general responses without specifics. AG’s office will pull the Patent Prosecution process for this patent and discuss this at a future phone meeting the week of 10/27/14.
- The letter is not a cease and desist, a claim for damages or notice of intent to file suit.
- LeeAnn asked what they were looking for, Mr. Schwartz state that a “reasonable royalty” would suffice (a percentage or flat fee as yet to be determined).
- The issue will not be resolved before the scheduled online auction for 10/24/2014.
- IF it was determined to pay a royalty or fee it could be retroactive.
- Hand Bid and Zim have concerns about their potential liability.
- Question is should LPAG move forward with the 10/24 online auction or not.

The group had a number of questions around these points, which LeeAnn answered.

Among the more salient questions and LeeAnn’s answers:

- > Was LPAG covered under the State’s Risk Management fund? *Yes*
- > Could LPAG be sued as a group or individually? *Yes to both – AG’s office would defend and represent you.*
- > Will the Risk Management fund pay the damages for the patent infringement claim should they occur? *LeeAnn didn’t know but would work on finding out.*
- > Marty asked if this protection extended to Zim Consulting and Hand Bid. *LeeAnn wasn’t sure as the PO doesn’t really discuss any of these things and the liability protection/indemnification flows the other direction where in the vendor protects the State for acts and claims.*

- > Jeff Porter was very concerned as Hand Bid is a sub-contractor and has NO relationship with the state at all. Their cost of defending any suit (win, lose or draw) would exceed any money they would make.

There was, then, general discussion what a Royalty might be, how much it might be etc.

Hand Bid said they'd be willing to proceed as long as the State was going to provide documentation stating that they were willing to indemnify and defend Hand Bid against any potential claims. LeeAnn said she'd have to run all of this by the Contract Attorney's in her office to be sure, but she believed that the State did not indemnify their Contractors and certainly not their Sub-Contractors.

LeeAnn asked Marty what was the latest he needed to know about moving forward with the Auction. Scott said last week, Marty said it depends as they've missed some marketing deadlines already but there were some good opportunities coming up that they would need to take advantage of but an absolute drop dead date would be 10/22/2014 at Noon.

LeeAnn noted that this will not be resolved before then. There is no way to eliminate any risk for anyone. Marty asked about the PO and the Contract with the State where he believed that he was covered under these agreements. LeeAnn wasn't sure and wanted to review all the documentation but believed that, as stated above, the liability flow the other way, that the vendor indemnified the State.

LeeAnn asked Gina (the Treasurer) where the proceeds of the last auction were. Zach stated that the Controller of the Governor's office has received the money. Based on this, LeeAnn suggested that proceeds from future auctions could be set aside to pay any future, agreed to Royalties.

There was then general discussion about which way the liability and indemnifications actually flowed based on the documents and who authorized what. LeeAnn was going to review the documents further for final clarifications, but initially believed that the flow was the vendor(s) indemnifying the State. She would look into whether the group could authorized/extend indemnification to the Vendor(s). Gina agreed with LeeAnn's interpretation.

Mark tried to imply that Zim and Hand Bid did as the State asked and therefore should be covered. LeeAnn disagreed stating that the contractual language simply did not support that belief.

Marty and Jeff need to meet and discuss if they are comfortable and willing to proceed based on the current situation.

LeeAnn did not believe that, currently, any claim was concerning, but again would not be resolved soon.

Bob Gall moved to proceed with the Auction as scheduled and to defer to Marty and Handbid. Bobby indicated this motion was not necessary at this time.

Bobby recommended a meeting on 10/22 to make a final decision.

Bob moved: "LPAG get an independent legal opinion/analysis of Mr. Barnett's patent to determine any patent infringement by LPAG Auction/action or the Hand Bid process". Rich thought we ought to trust our current legal advice. Bob stated he was asking to the independent opinion to support LeeAnn. Rich didn't see the need for additional legal fees.

LeeAnn, who stated that she wasn't offended by Bob's motion, that statute stated that the AG's office would have to approve outside counsel because of conflict of interest or because the expertise was not available in the AG's office (which it is) so it was unlikely to be approved. Additionally the independent view probably wouldn't really help or pull any weight with Mr. Barnett's attorney.

Bob withdrew his motion.

Bobby restated his motion to meet on 10/22, Bob 2nd the motion. The motion passed. Meeting was set from 9-10:30 a.m.

Peter asked about the continued marketing. Marty said they were proceeding with the marketing as if everything were going forward, at the moment.

Bobby adjourned the meeting at 12:54 p.m.

Respectfully submitted
Chris Hochmuth
Administrative Services Supervisor
Title and Registration Sections
Department of Revenue