

Richard W. Daily LLC  
ATTORNEY AT LAW

November 30, 2009

Woodmen Hills Metropolitan District  
Janice Pizzi, Board Chair  
Larry Bishop, District Manager  
c/o Jason W. Downie, Esq.  
Susemihl, McDermott & Cowan, P.C.  
660 Southpointe Ct., Ste. 210  
Colorado Springs, CO 80906

A. Michael Pizzi  
9024 Copenhagen Rd  
Peyton, CO 80831-4066

Re: Ronald R. Pace's Claims Against Woodmen Hills Metropolitan District, Larry D. Bishop,  
Janice L. Pizzi and A. Michael Pizzi

Dear District Officials and Mr. Pizzi:

This letter is a demand for settlement of the claims held by Ronald R. Pace against Woodmen Hills Metropolitan District, Larry D. Bishop, Janice L. Pizzi and A. Michael Pizzi.

Mr. Pace achieved a decisive victory in the County Court Action (*Bishop and Woodmen Hills Metropolitan District v. Pace*, Case No. 09C9181, El Paso County Court), which is now final, in light of the Plaintiffs' decision not to appeal. For your convenience, a copy of the transcript of Magistrate Chittum's lengthy ruling is enclosed.

Magistrate Chittum made numerous findings of fact against the District, Mr. Bishop and Mrs. Pizzi, which will have preclusive, collateral estoppel effect in any subsequent litigation. These adverse findings include her determination that the central allegation in the County Court Action – the so-called “AK-47 Threat” – was never made by Mr. Pace; this strongly supports the inference that this threat was fabricated by Mr. and Mrs. Pizzi.

Magistrate Chittum also rejected every other allegation of an illegal threat, including all of the alleged “gun threats.” She found that the testimony about these threats were either not credible or that the actions in question never occurred.

In light of these adverse findings, Mr. Pace is very well positioned to win on all liability issues against the District and Mrs. Pizzi, including the bad faith, willful and wanton character of the District's conduct toward Mr. Pace, led by Mrs. Pizzi. Because Mr. Pizzi agreed to the use of

**Richard W. Daily LLC**  
ATTORNEY AT LAW

November 30, 2009

Page 2

unlawful means to pursue an unlawful goal, and because the supposed AK-47 Threat is defamatory *per se*, Mr. Pace is equally well positioned to prevail against Mr. Pizzi.

Although Magistrate Chittum found that Mr. Bishop acted in "reasonably good faith", that ruling will not preclude Mr. Pace from proving that in fact he acted in bad faith, and did so wilfully and wantonly. As discussed in detail below, (a) Mr. Pace will not be collaterally estopped by that finding because he did not have an opportunity to conduct discovery against Mr. Bishop (and thus did not have a full and fair opportunity to litigate those facts) and (b) Mr. Bishop has demonstrated his continuing bad faith conduct by the press release he caused to be published in the Colorado Springs *Gazette*, in which he republished the same allegations that Magistrate Chittum had rejected as groundless.

Mr. Pace claims very substantial damages, including the destruction of his reputation, the loss of his ability to participate in vocational rehabilitation, the loss of his First Amendment rights of free speech, travel and the right to petition for redress, having to defend against Mr. Bishop's and the District's baseless lawsuit, and the aggravation of a number of physical and psychological conditions.

Mr. Pace is eager to pursue these claims in court. He has, however, authorized me to make this demand, in order to give each of you the opportunity to settle those claims against you, provided that you do so promptly. Because he intends to file suit in early February, 2010, the offer contained in this letter will expire on Friday, January 15, 2010.

Because I am likely to be a witness concerning the conduct of the parties during the County Court Action, I am assisting Mr. Pace in interviewing new counsel. We have found that the sweeping nature of Magistrate Chittum's decision has made this a very attractive case for §1983 litigators.

Mr. Pace's Federal Court litigation will be lengthy, public, and divisive. Discovery will be exhaustive, looking all of the issues – even those that Magistrate Chittum determined not to be relevant to the Civil Protection Order case, including the District's bond negotiations, the issues pertaining to water supply and underground water rights, and the District's covenant enforcement and related litigation.

For convenience, this letter is organized as follows:

- A. Factual Background
- B. Claims Likely to be Asserted

**Richard W. Daily LLC**  
ATTORNEY AT LAW

November 30, 2009

Page 3

- C. Damages Suffered by Mr. Pace
- D. Settlement Demand

Factual Background

The District Officials are familiar with the background of this case, as a result of the lengthy litigation in the County Court Action.

Mr. Pace has long been a vocal critic of the District's conduct of its affairs. In October 2008, Mr. Pace became an advocate for recalling one or more of the incumbent District Directors. Mr. Pace accelerated his efforts to collect information about the District, through Open Records Act requests, as well as investigation through third parties such as the State Engineer.

The District Officials reacted with a concerted campaign to attack Mr. Pace, both to discredit his recall effort and to punish him for doing it. They knew he was a disabled veteran, and as such was more vulnerable to their attacks than a typical resident might be. Mr. Bishop, for example, testified about how easy it was to "throw the switch" on Mr. Pace and destabilize him.

These officials also knew that Mr. Pace was attending Colorado Technical University, as part of his vocational rehabilitation effort, with assistance from the Veteran's Administration.

The anti-Pace campaign included monitoring Mr. Pace's activities while he was at any District facility or meeting, spreading the word to staff members and to friendly members of the community – like Mr. DiCenso – to report to Mr. Bishop anything they saw of interest about Mr. Pace; and collecting a file on all incidents involving Mr. Pace, including reports from staff and members of the community, notes about telephone calls and copies of emails.

Parallel to, or possibly as an adjunct to this campaign, Mrs. Pizzi's husband, Mr. A. Michael Pizzi had a series of verbal altercations with Mr. Pace, culminating in Mr. Pizzi's vehement statement to Mr. Pace on or about December 16, 2008 to the effect that "I'm going to bury you in your back yard." Mr. Pace reported this death threat to the El Paso County Sheriff's Office, giving a statement to Deputy Milligan.

Mr. Pace's efforts to assemble information about the District's operations met with significant resistance from the District Officials. Mr. Bishop illegally "banished" him from the District Headquarters building, inappropriately applying C.R.S. § 18-9-110(3).

**Richard W. Daily LLC**  
ATTORNEY AT LAW

November 30, 2009

Page 4

At the January Board meeting, Mr. Bishop's publicized his threat to sue Mr. Pace for defamation, making it clear to all that his claims against Mr. Pace were personal.

On January 29, Mr. Pace complained to the El Paso County Commissioners about Deputy Milligan's failure to identify Mr. Pizzi as the person who made the death threat against him. Mr. Pace's statement to the Commissioners was carried over Community Access TV, and was widely commented on within the Woodmen Hills community. Later that day, Mr. Pace filed an Internal Affairs complaint against Deputy Milligan.

Deputy Milligan called Mr. Pizzi and reported his dismay with Mr. Pace's filing of the Internal Affairs complaint against him.

On January 30, Mr. Pizzi sent Mrs. Pizzi by email two different versions of a statement about a threat that Mr. Pizzi claimed that Mr. Pace had muttered to him, to the effect that "I ought to get an AK-47 and blow these assholes away." These emails were forwarded by Mrs. Pizzi to Mr. Bishop, who simply filed them away in the "Pace File" without any investigation or critical evaluation.

Magistrate Chittum found:

"[the AK-47 Statement] seems to be the most traumatic evidence that's out there and ***I don't find, by a preponderance of the evidence, that it occurred.***"

Transcript of Ruling, November 9, 2009, at 15 (emphasis supplied). Because this issue was actually and necessarily litigated in the County Court Action, the fact that Mr. Pace never made this statement will be given preclusive, collateral estoppel effect in Mr. Pace's subsequent litigation against the District, the District Officials and Mr. Pizzi. *McNichols v. Elk Dance Colo., LLC*, 139 P.3d 660, 667 (Colo. 2006) (an issue is "necessarily adjudicated" when a determination on that issue was necessary to the judgment).

The clear inference from Magistrate Chittum's findings is that Mr. and Mrs. Pizzi fabricated the evidence about the AK-47 Threat.

As Mr. Pace helped to form the Recall Committee, the campaign against Mr. Pace continued to intensify. Mr. Pace appeared briefly at the February 26 Board Meeting, and read a portion of a prepared statement. When his time was up, he notified the Board that "The recall is on!" and left the meeting. Later in this meeting, Mr. Bishop read an angry statement he had prepared, in which he denounced Mr. Pace's interference in District

**Richard W. Daily LLC**  
ATTORNEY AT LAW

November 30, 2009

Page 5

activities, demanded that Mr. Pace retract his alleged false statements, and threatened to have Mr. Pace prosecuted for blackmail.

During the trial, Mrs. Pizzi demonstrated her willingness to fabricate testimony when she testified that Mr. Pace had made a death threat against Board Members and their spouses at the February 26 Board Meeting. The Court found, however, that Mr. Pace's written statement was merely a common sense observation about how a recall campaign would be traumatic not only for the target of the recall effort, but for the spouse as well. Transcript at 25. Magistrate Chittum questioned Mrs. Pizzi's "political motivations" for pushing the protective order proceeding against Mr. Pace. *Id.* at 26.

On May 7, Mr. Bishop made his 911 call to the Sheriff's office, reporting that Mr. Pace had threatened to get an Uzi submachine gun and take care of problems. Mr. Bishop then asked for several units to provide backup. In fact, all that Mr. Pace wanted to do was look at the current official map, the one that accurately showed the locations of the various filings comprising the District. Mr. Bishop's 911 call appears to have been a set-up to force a confrontation between Mr. Pace and deputies from the Sheriff's Office, which could easily have resulted in serious injury to Mr. Pace.

Although the Court found that Mr. Bishop acted in "reasonably good faith" during this incident, Mr. Pace will not be bound by this finding where other evidence exists that could not have been presented to Magistrate Chittum. *Dale v. Guar. Nat'l Ins. Co.*, 948 P.2d 545, 553 (Colo. 1997) (a finding that conduct is not willful and wanton does not preclude a later lawsuit for bad faith if additional evidence exists which could not have been presented to the first factfinder).

The most prominent piece of evidence that shows Mr. Bishop's continuing bad faith is his November 17, 2009 press release, which he sent to the Colorado Springs *Gazette*. In it, he repeats the allegations that Mr. Pace made the AK-47 Statement, that he wanted to bring a gun to the Board Meeting, that he would not hesitate to get a gun and defend himself against District personnel. ***Nowhere in this press release does Mr. Bishop state that the Court specifically found that (a) the AK-47 Statement had not been made, and (b) none of the other statements attributed to Mr. Pace amounted to threats of any kind.*** It is clear that Mr. Bishop's campaign to vilify Mr. Pace continues despite his pronouncements to the contrary.

**Richard W. Daily LLC**  
ATTORNEY AT LAW

November 30, 2009

Page 6

Claims Likely to be Asserted

Mr. Pace presently contemplates a number of claims against the District, Mr. Bishop, Mrs. Pizzi and Mr. Pizzi. These claims include, but will likely not be limited to the following:

Claims against the District. The District is fully amenable to claims under the Federal civil rights law, 42 U.S.C. § 1983. Because the injuries to Mr. Pace go well beyond the destruction of his reputation, but include deprivations of core First Amendment rights as well as other liberty and property rights, his claim against the District clearly falls within the scope of claims allowed by *Paul v. Davis*, 424 U.S. 693 (1976) (announcing the “stigma plus” standard).

The District will also be found liable for a substantive due process violation, for basing its campaign against Mr. Pace on fabricated evidence. *See, e.g., Tonkovich v. Kansas Board of Regents*, 159 F.3d 504, 528 (10th Cir. 1998) (plaintiff must show a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking).

Claims against Mr. Bishop. Notwithstanding Magistrate Chittum’s finding, Mr. Pace is confident that a federal court will find that Mr. Bishop acted out a personal vendetta against Mr. Pace, in which Mr. Bishop was egged on by Mrs. Pizzi. Mr. Bishop will be proven to have acted wilfully and wantonly against Mr. Pace in illegally banning him from the headquarters building, in the abuse of process embodied in the County Court Action, and in his campaign to destroy Mr. Pace, which included misleading the El Paso County Sheriff’s Office concerning Mr. Pace and in publishing his characterizations of Mr. Pace as a gun-wielding, dangerously disturbed veteran in the *Colorado Springs Gazette*.

The claims against Mr. Bishop will include the federal civil rights claim, as well as state-law claims of civil conspiracy (with Mr. and Mrs. Pizzi), defamation and outrageous conduct.

Claims against Mrs. Pizzi. Magistrate Chittum found Mrs. Pizzi to have directed the conduct of the County Court Action, and to have been responsible, with her husband, for originating the AK-47 Threat. Because she was at all times acting as public official under color of state law, the claims against her will include the federal civil rights claim, as well as state-law claims of civil conspiracy (with Mr. Bishop and Mr. Pizzi), defamation and outrageous conduct.

**Richard W. Daily LLC**  
ATTORNEY AT LAW

November 30, 2009

Page 7

Claims against Mr. Pizzi. Mr. Pizzi originated the nonexistent AK-47 threat, in concert with his wife and Mr. Bishop. He is thus subject state-law claims of civil conspiracy, defamation and outrageous conduct.

Damages Suffered by Mr. Pace

Mr. Pace has suffered these injuries:

- a. Pre-existing physical and psychological conditions have been severely aggravated;
- b. Mr. Pace's reputation has been destroyed;
- c. Mr. Pace's ability to enjoy life has been substantially impaired;
- d. Mr. Pace's marriage has been adversely affected;
- e. Mr. Pace's relationship with children has been substantially impaired;
- f. Mr. Pace has been forced to incur costs and attorneys' fees; and
- g. Mr. Pace's ability to pursue education and/or employment has been substantially impaired.

Within the last month, the Colorado Court of Appeals affirmed *Hoeper v. Air Wis. Airlines Corp.*, 2009 Colo. App. LEXIS 1891 (Colo. App. Nov. 12, 2009), in which Hoeper complained that Air Wisconsin had told the Transportation Security Administration that he was a threat to a departing aircraft because he was mentally unstable and possibly armed. Slip op. at 2. The jury was instructed that the plaintiff was entitled to recover compensatory damages without any proof of actual or pecuniary injury, consistent with Virginia law. Slip op. at 24. The jury awarded the plaintiff damages for defamation in the amount of \$ 849,625 in compensatory damages and \$ 391,875 in punitive damages. Slip op. at 2.

The District's conduct, and that of Mr. and Mrs. Pizzi and Mr. Bishop appear to be significantly worse than the conduct complained of in *Hoeper*. Mr. Pace believes that, like the Denver jury in *Hoeper*, a federal court jury will be persuaded to make a very substantial damage award in his favor.

**Richard W. Daily LLC**  
ATTORNEY AT LAW

November 30, 2009

Page 8

Mr. Pace will be seeking a minimum of \$1.5 million in actual damages. He will seek an award of punitive damages, as well. He will also be entitled to recover his legal fees under 42 U.S.C. § 1988.

Settlement Demand

Mr. Pace offers to settle all of his claims against the District, Mr. Bishop and Mr. and Mrs. Pizzi for an aggregate cash payment of \$650,000 to be made no later than January 31, 2010. Once new counsel assumes control of the case, it will no longer be possible to settle Mr. Pace's claims in this range.

If you have any questions, or wish to discuss any issue presented by this demand, please do not hesitate to contact me.

Very truly yours,



Richard W. Daily

cc: Members of the Board of Directors, Woodmen Hills Metropolitan District  
Ronald R. Pace

Enclosures:

1. Transcript of Judge Chittum's Ruling
2. *Hooper v. Air Wisconsin Airlines*, — P.3d —, 2009 Colo. App. LEXIS 1891 (November 12, 2009)