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FAX TRANSMITTAL SHEET

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DATE: July 27, 2005

TIME: 9:09 AM

TOTAL PAGES: 23

From: Gary W. Gantz, Assistant Attorney General
Transportation Section, Anchorage

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: JARED HECK

LOCATION: NRC

FAX NO.: 301-415-3200

CASE: *Robert Farmer v. SOA/DOT&PF*

COMMENTS: Please see the attached documents.

IF YOU DO NOT RECEIVE ALL THE PAGES, OR HAVE ANY PROBLEMS WITH THE TRANSMITTAL, PLEASE CALL BETH GOODWIN AT (907) 269-5162.

Draft # 3 presented by BG

SETTLEMENT AGREEMENT

Robert L. Farmer, the State of Alaska (State), the Alaska State Employees Association ASEA/AFSCME Local 52 (Union), and the United States Nuclear Regulatory Commission (NRC) agree to the following settlement terms:

I. GENERAL TERMS REGARDING INTENT OF THE PARTIES

- A. Nothing in this Settlement Agreement restricts the NRC's independent authority to regulate the State's possession, use, or transfer of radioactive materials under the Atomic Energy Act of 1954, as amended.
- B. Nothing in this Settlement Agreement modifies the Confirmatory Order issued by the NRC to the Alaska Department of Transportation and Public Facilities on March 15, 2004.¹
- C. The State and Mr. Farmer intend that this Settlement Agreement provide Mr. Farmer and his eligible dependents medical benefits, as if he had reached eligibility for major medical health benefits through the public employees's retirement system. (To have sufficient time in service for medical retirement benefits, Mr. Farmer must purchase his three years and three months of military service indebtedness for approximately \$18,000.00 not later than November 17, 2005).
- D. The State, the Union, and Mr. Farmer agree that any disputes they may have over the interpretation and enforceability of this Settlement Agreement will be mediated by the Circuit Mediator for the United States Court of Appeals for the Ninth Circuit, until the Ninth Circuit is divested of jurisdiction. After the Ninth Circuit is divested of jurisdiction, the State, the Union, and Mr. Farmer agree that any disputes they may have over the interpretation and enforceability of this Settlement Agreement will be resolved under the laws of the State of Alaska.
- E. Nothing in this Settlement Agreement should be interpreted as an admission of any kind by any party.
- F. Each party to this Settlement Agreement will bear its own costs and attorney's fees related to any allegations, investigations, claims, or lawsuits directly or indirectly covered by this Settlement Agreement.

GG

II. ACTIONS TO BE TAKEN BY THE PARTIES

In exchange for the promises and conditions set forth in section II.C.1. below, the NRC will.

- 1. Close all pending inquiries into ~~employment discrimination~~ ~~employment discrimination~~ allegations raised by Mr. Farmer against the Alaska Department of Transportation and Public Facilities, its ~~agents and employees~~ ~~its~~ on or before the date of this settlement. Specifically, the NRC will close allegation number, _____, under investigation by the Office of ~~Investigations as of~~ ~~Investigations as of~~ [INSERT NUMBER OF TRANSFER ALLEGATION] and the associated Report of Investigation number 4-2004-05, and allegation number [INSERT NUMBER OF TERMINATION ALLEGATION], without concluding whether or not the discrimination allegations are substantiated.

Final Positions:
A.
BG has agreed to the language NRC + State have agreed to so this is resolved.

BG GG objected + BG concedes

see memo by GG of 7/25/05 + by JH of 7/26/05 at 7:22:33

¹See *In the Matter of State of Alaska Department of Transportation & Public Facilities, Anchorage, AK Confirmatory Order Modifying License, (Effective Immediately)*, 69 Fed. Reg. 13,594 (March 23, 2004).

resignation, until the date he turns 60 years of age and he becomes eligible for retirement medical benefits (assuming he has purchased his three years and three months of military service indebtedness for approximately \$18,000 not later than November 17, 2005 as mentioned above in paragraph 1.C.).

GG's Change 3.

On the effective date of Mr. Farmer's resignation (November 17, 2005), remove from Mr. Farmer's personnel file any transfer and termination letters, letters of reprimand, and notices of union grievances. All performance evaluations and rebuttals will remain in Mr. Farmer's personnel file.

C. In exchange for the promises and conditions set forth in sections II.A. and II.B., Mr. Farmer will:

1. Dismiss with prejudice his two petitions for review currently pending before the United States Court of Appeals for the Ninth Circuit in case numbers 05-70718 and 05-70725.

Dismiss with prejudice his lawsuit filed against the State of Alaska, Department of Transportation and Public Facilities and its various named and un-named employees in Alaska Superior Court (Action No. 3AN-05-6786 CI).

Dismiss with prejudice all Union grievances, complaints, or other disputes regarding Mr. Farmer's employment by the State. (The Union will also dismiss with prejudice all Union grievances, complaints, or other disputes regarding Mr. Farmer's employment by the State.)

4. Resign, after reinstatement pursuant to section II.B.1. above, effective close of business on November 17, 2005. Mr. Farmer will not speak for the State in any matter during the period of reinstatement.

5. Not apply for or accept any future employment with the State or any of its agencies. This provision may be modified by agreement of the State Attorney General, or his/her designee.

Submit all materials and information pertaining to the State's alleged discrimination, as well as any other allegations or concerns, to his counsel and to the NRC for their consideration and action. The documents will also be made available to the and to the State of Alaska, for review and copying, ~~either~~ (sent to Department of Law, Attention Gary W. Gantz) for the State's information. -Mr. Farmer will submit the materials and information no later than August 31, 2005.

Release the State from claims as described in section III. below.

8. Remain free to submit a petition for rulemaking to the NRC that sets forth his legal and policy concerns and the bases therefor.

GG's change
No obj by BG

Agreement Reached 6
GG's change
BG's change 7.

GG's Change

III. RELEASE OF ACTUAL AND POTENTIAL CLAIMS HELD BY MR. FARMER AGAINST THE STATE OF ALASKA AND ITS AGENCIES, AGENTS AND EMPLOYEES (PAST

2. Accept from Mr. Farmer the materials and information described in section II.C.6. below and take whatever regulatory action the NRC deems appropriate after its review of these information and materials provided and that information.

3. Write Mr. Farmer a letter acknowledging that his actions as a Statewide Radiation Safety Officer were appropriate, directly contributed to improving the public health and safety of the State of Alaska, as well as the radiation-safety program of the Alaska Department of Transportation and Public Facilities.

Resolve any petition for rulemaking filed by Mr. Farmer as described in section II.C.8. below.

In exchange for the promises and conditions contained in sections II.C.2. through II.C.7. and section III. of this Settlement Agreement, the State will:

Return Mr. Farmer to employment with the State, retroactive to the date of his termination until November 17, 2005, and place him on administrative leave (pay status) during that period of time.

a) Mr. Farmer will be placed at General Government ~~Union Unit~~ - Range 20; Step G. He will not be eligible for any merit increases during the period of reinstatement.

b) The State will issue Mr. Farmer a check for retroactive payment in the amount of ~~INSERT AMOUNT~~ not later than five working days after this Settlement Agreement is fully executed. Payment will be made by direct deposit to Mr. Farmer's personal account. ~~INSERT ACCOUNT~~. This payment will be calculated as though Mr. Farmer were reinstated as of August 1, 2005, regardless of the date of actual reinstatement.

c) Mr. Farmer will have no duties whatsoever, and will not be authorized to speak for the State in any matter during the period of reinstatement.

2. Pay Mr. Farmer a total of lump sum of \$200,000.00 as settlement of his any asserted or unasserted emotional distress claims, but not as wages, on or before ~~INSERT DATE~~ payable as follows: \$18,000 payable on or before October 17, 2005 (to allow Mr. Farmer funds to pay his military service indebtedness); \$12,000 payable on or before November 17, 2005 (to allow Mr. Farmer funds to pay his monthly health insurance premiums after his resignation but before the final \$170,000 lump sum payment is made); Payment of \$170,000.00 after January 1, 2006, but on or before \$170,000 payable on or before June 30, 2006. It is the intention of the parties that the final payment be made as soon as possible, and not longer than 10 business days following the Alaska Legislature's appropriation. Payments will be made by direct deposit to ~~INSERT ACCOUNT~~.

This money is in addition to that Mr. Farmer will receive under paragraph B.1. above. Mr. Farmer understands that he will be responsible for securing and paying health insurance for himself and his family after November 17, 2005, his date of

BG's proposal Noobj by BG

BG's proposals State does not agree that all Farmer's acts were appropriate.

Amount will be supplied by DOA

BG's change but GG says Form needed

BG's addition

GG's suggested change

after the appropriation has been recorded on the accounting system

GG's change - No objection by BG

AND PRESENT)

- A. This Settlement Agreement settles all claims that Mr. Farmer and the Union have raised or could have raised against the State, its agencies, agents, and employees (past and present), arising out of any employment matter or any alleged discrimination, contractual claims, or tort claims. This Settlement Agreement extinguishes any claim that Mr. Farmer has raised or could have raised in his lawsuit filed in the Alaska Superior Court (Action No. 3AN-05-6786 CI), including all employment matters, alleged discrimination, and any and all damages that have occurred or may occur in the future arising out of those matters contained in the lawsuit or which could have been brought in that lawsuit.
- B. Upon submission to the NRC of the materials and information described in Section II.C.6. of this Settlement Agreement, Mr. Farmer acknowledges that he has submitted all materials and information relevant to his allegations of discrimination by the State to the NRC. Notwithstanding Mr. Farmer's submission of further materials and information as described above, any and all claims Mr. Farmer has or may have against the State arising out of events that occurred on or before the date of this settlement are settled and extinguished by this Settlement Agreement as described in section III.A. above.
- C. Nothing in this Settlement Agreement restricts the NRC's independent authority to fully review the material and information Mr. Farmer will submit as described in section II.C.6. above, or any other material or information submitted by Mr. Farmer. Nothing in this Settlement Agreement restricts the NRC's independent authority to take whatever regulatory action it deems appropriate after reviewing Mr. Farmer's submission, which may include an interview of Mr. Farmer, investigation of the State, and enforcement action against the State.
- ~~D.~~ ~~D.~~ Nothing in this Settlement Agreement shall be construed to limit Mr. Farmer's right to engage in protected activity under 10 C.F.R. § 30.7 or equivalent regulations.
- E. The parties to this agreement understand that the Secretary of Labor or his designee, the Administrative Appeals Board, will have to approve this document before it becomes final and binding on the parties.

IV ~~is~~ This is the entire agreement of the parties and no other ^{promise or} inducement, written or oral, has been made.
 Dated this _____ day of _____, 2005

[Notarized signature blocks for ADOT&PF, Mr. Farmer, GGU, and NRC will be added]

Gary Gantz - Re: Farmer - NRC

From: <Bpgarde@aol.com>
To: <Gary_Gantz@law.state.ak.us>, <stanh@afscmelocal52.org>, <rieser.mary@dol.gov>;
<GMV@nrc.gov>, <JKH3@nrc.gov>
Date: 7/26/2005 3:27 PM
Subject: Re: Farmer - NRC
CC: <lhlo@alaska.net>, <rlessy@pattonboggs.com>, <leeholen@pobox.alaska.net>

Gary and others,

To keep this ball moving, and with Jared's explanation of the pending issues, I agree to the language as proposed by Jared about pending allegations.

As to my need to provide you some "extraordinary justification" about the lump sum payment sooner than next summer-- **you never explained to me that I had the burden of providing such an explanation.** Mr. Farmer has an invalid wife with a serious health condition. He can't work without finding some employment that could accommodate relatively extraordinary needs for him to be at home. What type of "extraordinary circumstances" do you need? Is there some criteria set out somewhere that describes this? I don't want to play "go get me another rock" on this. I will look for your guidance on what kind, i.e., color, size, weight, and type, of rock you need and will then write you a memo for consideration.

I would appreciate your sending all the correspondence to Ms. Ashe for her review. I may have some difficulty joining the call tomorrow, as I am on the East Coast and will be at Dulles Airport tomorrow at the time of the call. I am hoping that Lee can join it, but have not heard back from her about her schedule. I will be on my cell phone, and getting ready to board, so not able to participate fully and candidly in front of airport travelers. However, I think that bringing her up to speed is important. I am on my way back to Alaska and will sit down with Mr. Farmer when we have a final document that we ALL agree on. I see no point in giving him a moving target. I also am not optimistic that he will accept any settlement with the delayed payment plan you propose.

Billie Garde

Gary Gantz - Re: Farmer - NRC

From: Gary Gantz
To: Bpgarde@aol.com; Jared Heck; Michael Vasquez; rieser.mary@dol.gov; stanh@afscmelocal52.org
Date: 7/26/2005 2:14 PM
Subject: Re: Farmer - NRC
CC: leeholen@pobox.alaska.net; lhlo@alaska.net; riessy@pattonboggs.com

Dear Ms. Garde,

I have just gotten off the phone with Mr. Heck. I believe the NRC and the State of Alaska are willing to have the language that is set out below in my earlier original message to you. Since this is a resolution of the disagreements between the State and the NRC, we believe Mr. Farmer should defer to the NRC and State.

With regard to the staged payments, I think we should let our mediator, Roxanne Ashe, help us on this issue tomorrow. If you can give some reason why the State should apply extraordinary procedures to advance the payment schedule beyond what we have proposed, we will certainly listen. **So far you have not done so.** The advanced payments we are suggesting are extraordinary and not in compliance with the State's normal procedures. We have tried to accommodate Mr. Farmer so that the settlement is a viable one for him. Unless you can provide us justification, we will stick with the staged payments as set out below.

I will bundle up the e-mail messages on our progress and send them to Roxanne Ashe.

Regarding the account number, ADOT&PF provides the following about the direct deposit system Mr. Farmer must use: To get electronic deposit of these payments, Mr. Farmer will have to fill out a form that is located on the DOA website (Apparently the information contained in AKPAY and used to deposit his paycheck is not available in the state accounting system and the 2 systems don't talk - thus the additional form). The form is located under the Electronic Payment Packet, single mailout form at http://fin.admin.state.ak.us/dof/electronic_payments/Index.jsp

What this means is that you should have Mr. Farmer fill out the form and you can deliver it to me with the executed release to be sent to the DOT&PF, DOA and DOLW administrative staff.

Gary

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OR AS CONTAINING ATTORNEY WORK PRODUCT INFORMATION.
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>>> Jared Heck <JKH3@nrc.gov> 7/26/2005 7:22:33 AM >>>
Billie and Gary,

Mr. Farmer has only two pending allegations with the NRC, both of which are claims of discrimination/retaliation. Other technical or safety-related allegations Mr. Farmer has raised over the years have been closed. So, the general language that "all pending inquiries" will be closed has the effect of closing discrimination allegations only, which Mr. Farmer would agree to settle.

To be clear, if Mr. Farmer agrees to these terms, the NRC would not investigate further allegations of discrimination Mr. Farmer may make in the submittal described in section II.C.6. Those allegations would be settled and extinguished under sections III.A. and III.B. The NRC would instead focus its reviews on technical

and safety issues, and on whether ADOT provided accurate information in the predecisional enforcement conference.

Jared

>>> <Bpgarde@aol.com> 07/25/05 11:37 PM >>>
Gary and Jared,

Here are my responses to your comments. I have written my responses in italics:

Paragraph II A (1): Mr. Heck has proposed some substitute language that the State will accept (except that we want to make specific reference to a release of ADOT&PF's agents and employees) and I defer to him for the exact language. It will delete the specific case investigation numbers. It will not limit the dismissal to employment discrimination matters which your proposed change does. I would rather have the broader language that Mr. Heck will allow. I note again that I am specifically including a reference to not only ADOT&PF, but also its agents and employees.

the provision will read: "Close all pending inquiries into allegations raised by Mr. Farmer against the Alaska Department of Transportation and Public Facilities its agents and employees, on or before the date of this settlement, without concluding whether or not the allegations are substantiated."

BPG's REPLY:

I have no problem in removing the specific case numbers. But, I think there must be a misunderstanding about what allegations the NRC will close if we actually conclude this settlement. While the misunderstanding may be mine, it is my recollection that we agreed that the NRC would close Mr. Farmer's allegations into retaliation and discrimination. To the extent that there are other safety related allegations or information provided by Mr. Farmer, we expect that the NRC is continuing to conduct inspections and oversight as it deems appropriate. I haven't reviewed the list of allegation numbers lately, so I am not even sure that there are current allegations open. However, we didn't discuss closure of technical or programmatic allegations.

Paragraph II B(1)(b): We still need to have the account number of Mr. Farmer for direct deposit.

BPG REPLY: Mr. Farmer says you have it, it is the same as you had before. I don't really want you to put the account number in a settlement document that could be accessed by others though.

II B(2): We need to have a slight change from your revision. You provide for payment within 10 days following appropriation by the Legislature. The problem is that both the Office of Management and Budget and the Governor's Office must give approval before the Department of Law can record the appropriation. Recordation is necessary to issue the warrant. So, I propose the following language to paragraph II B(2): After the words "10 business days", strike the words " following the Alaska Legislatures appropriation" and substitute the words " after the appropriation has been recorded in the accounting system".

BPG REPLY: This may be moot if we can't change the amounts and timing of payments.

II C(6): We need to clean up the language, but in principle, the State will agree to copy the materials you submit to us and return the materials after copying.

BPG REPLY: OK

Turning now to your two numbered paragraphs below, please consider the following:

1.) From the very beginning of the mediation we advised our mediator of the special problems with legislative appropriations in Alaska. Because DOT&PF wanted to make sure it was doing everything it could under our system to accommodate Mr. Farmer, I was authorized to agree to make payments earlier than is usually allowed under our admittedly cumbersome system. The payments I have secured for this settlement give Mr. Farmer four payments, not three and I believe meet the needs to allow the settlement to go through.

First, he receives back pay of approximately \$25,000 within five days of settlement which will bring him back to where he would have been had he not been terminated in January. The State is not asking for a return of, or credit for, any unemployment compensation payments that Mr. Farmer is presumably receiving now.

Second, he will receive a payment of \$18,000 in mid September to cover the military indebtedness.

Third, he will receive a payment of \$12,000 upon retirement to cover the interim insurance expenses.

Fourth, he will be paid the balance of \$170,000 after the legislature has appropriated and the appropriation has been recorded.

Moreover in addition to these four lump sum payments, Mr. Farmer will begin receiving pay from August through November 17 at his regular pay level.

During our mediation negotiations, we were never provided with any information that would suggest that there are other anticipated needs after November 17, but before the appropriation is approved. The end result of this settlement is that Mr. Farmer will likely do better than if the matter were litigated fully. In addition to the payments referenced in the settlement, he will be eligible for retirement benefits that will likely be very valuable to Mr. Farmer and his family. It may not be all that Mr. Farmer wants, but we hope he will recognize the good faith effort we have made to achieve a final resolution of this dispute short of protracted litigation.

BPG REPLY: This is not going to work, you need a different payment plan.

2.) The settlement we are entering into provides for each side to pay its own costs and attorneys' fees, as is customary. (See paragraph I F of the Settlement document.) We did not make a designation of any portion of the lump sum to be applied to attorneys' fees. We have no problem doing so as long as they are reasonable and the U.S. Department of Labor approves. Mr. Freden of the U.S. Department of Labor legal office called me following my sending Mary

Rieser a copy of our tentative agreement on Friday, July 15. He and I discussed the timetable and while he is not the person to decide, he indicated that things generally looked to be in order. I suppose he or Ms. Rieser is the person you should be discussing this with. Please let us know if we need to put some language into the agreement to meet Labor's requirements.

BPG REPLY: I will want to designate the attorney's fees to be paid separately to either my or Lee's Client Trust Fund. If we actually get this done, Mr. Farmer and i will have to reach an agreeenet on the amount, and will want in separately desingnated in the agreemennt.

Gary Gantz - Re: Farmer - NRC

From: Gary Gantz
To: Bpgarde@aol.com; GMV@nrc.gov; JKH3@nrc.gov; rieser.mary@dol.gov; stanh@afscmelocal52.org
Date: 7/25/2005 5:44 PM
Subject: Re: Farmer - NRC
CC: leehollen@pobox.alaska.net; lhlo@alaska.net; rlessy@pattonboggs.com

Dear Ms. Garde,

I have reviewed your proposed revisions of the agreement proposed by Jared Heck of the NRC and slightly revised by me. The document I reviewed that you made changes to is designated as "revision 3". The further changes you proposed are generally acceptable except for the following:

Paragraph II A (1): Mr. Heck has proposed some substitute language that the State will accept (except that we want to make specific reference to a release of ADOT&PF's agents and employees) and I defer to him for the exact language. It will delete the specific case investigation numbers. It will not limit the dismissal to employment discrimination matters which your proposed change does. I would rather have the broader language that Mr. Heck will allow. I note again that I am specifically including a reference to not only ADOT&PF, but also its agents and employees.

the provision will read: "Close all pending inquiries into allegations raised by Mr. Farmer against the Alaska Department of Transportation and Public Facilities its agents and employees, on or before the date of this settlement, without concluding whether or not the allegations are substantiated."

Paragraph II B(1)(b): We still need to have the account number of Mr. Farmer for direct deposit.

II B(2): We need to have a slight change from your revision. You provide for payment within 10 days following appropriation by the Legislature. The problem is that both the Office of Management and Budget and the Governor's Office must give approval before the Department of Law can record the appropriation. Recordation is necessary to issue the warrant. So, I propose the following language to paragraph II B(2): After the words "10 business days", strike the words " following the Alaska Legislature's appropriation" and substitute the words " after the appropriation has been recorded in the accounting system".

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Turning now to your two numbered paragraphs below, please consider the following:

1.) From the very beginning of the mediation we advised our mediator of the special problems with legislative appropriations in Alaska. Because DOT&PF wanted to make sure it was doing everything it could under our system to accommodate Mr. Farmer, I was authorized to agree to make payments earlier than is usually allowed under our admittedly cumbersome system. The payments I have secured for this settlement give Mr. Farmer four payments, not three and I believe meet the needs to allow the settlement to go through.

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>>> <Bpgarde@aol.com> 7/25/2005 12:34:27 PM >>>
Counsel,

I have reviewed the last version of the settlement, made some changes to the language and am forwarding it to you. However, there are several other issues that I have not included in my edits in this report:

1) Timing of payment -- is not acceptable. You can't expect him to accept a settlement that provides only minimal financial relief right now, after being out of work for six-seven months, and then give him two small chunks of money that are almost immediately dedicated, again leaving him with no cash for living expenses. This is expecting too much. When we left the room the original discussion, including shared with Mr. Farmer, was that the department was going to borrow money to provide for payment to him. The original signed document has September 15, and although that was lined through, there was NO DISCUSSION about the potential for waiting until next June! The State is going to have to figure out a different plan for payment, or more money in the interim -- perhaps keeping him on salary until the lump sum payment is made, OR SOMETHING

2) Payment of attorney's fees. The amount of fees and expenses that Mr. Farmer pays need to be delineated separately. The DOL requires that in its settlements, and payment of fees separately will provide Mr. Farmer some tax relief.

Please get back to me on these points, as I continue to talk to Mr. Farmer.

Billie Garde

Gary Gantz - Re: Farmer - NRC

From: <Bpgarde@aol.com>
To: <Gary_Gantz@law.state.ak.us>, <stanh@afscmelocal52.org>, <rieser.mary@dof.gov>, <GMV@nrc.gov>, <JKH3@nrc.gov>
Date: 7/25/2005 7:37 PM
Subject: Re: Farmer - NRC
CC: <hlo@alaska.net>, <rlessy@pattonboggs.com>, <leeholen@pobox.alaska.net>

Gary and Jared,

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BPG's REPLY:

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BPG REPLY: *Mr. Farmer says you have it, it is the same as you had before. I don't really want you to put the account number in a settlement document that could be accessed by others though.*

II B(2): We need to have a slight change from your revision. You provide for payment within 10 days following appropriation by the Legislature. The problem is that both the Office of Management and Budget and the Governor's Office must give approval before the Department of Law can record the appropriation. Recordation is necessary to issue the warrant. So, I propose the following language to paragraph II B(2): After the words "10 business days", strike the words " following the Alaska Legislatures appropriation" and substitute the words " after the appropriation has been recorded in the accounting system".

BPG REPLY: *This may be moot if we can't change the amounts and timing of payments.*

II C(6): We need to clean up the language, but in principle, the State will agree to copy the materials you submit to us and return the materials after copying.

BPG REPLY: OK

Turning now to your two numbered paragraphs below, please consider the following:

1.) From the very beginning of the mediation we advised our mediator of the special problems with legislative appropriations in Alaska. Because DOT&PF wanted to make sure it was doing everything it could under our system to accommodate Mr. Farmer, I was authorized to agree to make payments earlier than is usually allowed under our admittedly cumbersome system. The payments I have secured for this settlement give Mr. Farmer four payments, not three and I believe meet the needs to allow the settlement to go through.

First, he receives back pay of approximately \$25,000 within five days of settlement which will bring him back to where he would have been had he not been terminated in January. The State is not asking for a return of, or credit for, any unemployment compensation payments that Mr. Farmer is presumably receiving now.

Second, he will receive a payment of \$18,000 in mid September to cover the military indebtedness.

Third, he will receive a payment of \$12,000 upon retirement to cover the interim insurance expenses.

Fourth, he will be paid the balance of \$170,000 after the legislature has appropriated and the appropriation has been recorded.

Moreover in addition to these four lump sum payments, Mr. Farmer will begin receiving pay from August through November 17 at his regular pay level.

During our mediation negotiations, we were never provided with any information that would suggest that there are other anticipated needs after November 17, but before the appropriation is approved. The end result of this settlement is that Mr. Farmer will likely do better than if the matter were litigated fully. In addition to the payments referenced in the settlement, he will be eligible for retirement benefits that will likely be very valuable to Mr. Farmer and his family. It may not be all that Mr. Farmer wants, but we hope he will recognize the good faith effort we have made to achieve a final resolution of this dispute short of protracted litigation.

BPG REPLY: *This is not going to work, you need a different payment plan.*

2.) The settlement we are entering into provides for each side to pay its own costs and attorneys' fees, as is customary. (See paragraph I F of the Settlement document.) We did not make a designation of any portion of the lump sum to be applied to attorneys' fees. We have no problem doing so as long as they are reasonable and the U.S. Department of Labor approves. Mr. Freden of the U.S. Department of Labor legal office called me following my sending Mary Rieser a copy of our tentative agreement on Friday, July 15. He and I discussed the timetable and while he is not the person to decide, he indicated that things generally looked to be in order. I suppose he or Ms. Rieser is the person you should be discussing this with. Please let us know if we need to put some language into the agreement to meet Labor's requirements.

BPG REPLY: *I will want to designate the attorney's fees to be paid separately to either my or Lee's Client Trust Fund. If we actually get this done, Mr. Farmer and i will have to reach an agreement on the amount, and will want in separately designated in the agreement.*

Gary Gantz - Re: Farmer - NRC

From: <Bpgarde@aol.com>
To: <Gary_Gantz@law.state.ak.us>, <stanh@afscmelocal52.org>, <rieser.mary@dol.gov>, <GMV@nrc.gov>, <JKH3@nrc.gov>
Date: 7/25/2005 7:37 PM
Subject: Re: Farmer - NRC
CC: <hllo@alaska.net>, <rlessy@pattonboggs.com>, <leeholen@pobox.alaska.net>

Gary and Jared,

Here are my responses to your comments. I have written my responses in italics:

Paragraph II A (1): Mr. Heck has proposed some substitute language that the State will accept (except that we want to make specific reference to a release of ADOT&PF's agents and employees) and I defer to him for the exact language. It will delete the specific case investigation numbers. It will not limit the dismissal to employment discrimination matters which your proposed change does. I would rather have the broader language that Mr. Heck will allow. I note again that I am specifically including a reference to not only ADOT&PF, but also its agents and employees.

the provision will read: "Close all pending inquiries into allegations raised by Mr. Farmer against the Alaska Department of Transportation and Public Facilities its agents and employees, on or before the date of this settlement, without concluding whether or not the allegations are substantiated."

BPG's REPLY:

I have no problem in removing the specific case numbers. But, I think there must be a misunderstanding about what allegations the NRC will close if we actually conclude this settlement. While the misunderstanding may be mine, it is my recollection that we agreed that the NRC would close Mr. Farmer's allegations into retaliation and discrimination. To the extent that there are other safety related allegations or information provided by Mr. Farmer, we expect that the NRC is continuing to conduct inspections and oversight as it deems appropriate. I haven't reviewed the list of allegation numbers lately, so I am not even sure that there are current allegations open. However, we didn't discuss closure of technical or programmatic allegations.

Paragraph II B(1)(b): We still need to have the account number of Mr. Farmer for direct deposit.

BPG REPLY: *Mr. Farmer says you have it, it is the same as you had before. I don't really want you to put the account number in a settlement document that could be accessed by others though.*

II B(2): We need to have a slight change from your revision. You provide for payment within 10 days following appropriation by the Legislature. The problem is that both the Office of Management and Budget and the Governor's Office must give approval before the Department of Law can record the appropriation. Recordation is necessary to issue the warrant. So, I propose the following language to paragraph II B(2): After the words "10 business days", strike the words " following the Alaska Legislatures appropriation" and substitute the words " after the appropriation has been recorded in the accounting system".

BPG REPLY: *This may be moot if we can't change the amounts and timing of payments.*

II C(6): We need to clean up the language, but in principle, the State will agree to copy the materials you submit to us and return the materials after copying.

BPG REPLY: OK

Turning now to your two numbered paragraphs below, please consider the following:

1.) From the very beginning of the mediation we advised our mediator of the special problems with legislative appropriations in Alaska. Because DOT&PF wanted to make sure it was doing everything it could under our system to accommodate Mr. Farmer, I was authorized to agree to make payments earlier than is usually allowed under our admittedly cumbersome system. The payments I have secured for this settlement give Mr. Farmer four payments, not three and I believe meet the needs to allow the settlement to go through.

First, he receives back pay of approximately \$25,000 within five days of settlement which will bring him back to where he would have been had he not been terminated in January. The State is not asking for a return of, or credit for, any unemployment compensation payments that Mr. Farmer is presumably receiving now.

Second, he will receive a payment of \$18,000 in mid September to cover the military indebtedness.

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BPG REPLY: This is not going to work, you need a different payment plan.

2.) The settlement we are entering into provides for each side to pay its own costs and attorneys' fees, as is customary. (See paragraph I F of the Settlement document.) We did not make a designation of any portion of the lump sum to be applied to attorneys' fees. We have no problem doing so as long as they are reasonable and the U.S. Department of Labor approves. Mr. Freden of the U.S. Department of Labor legal office called me following my sending Mary Rieser a copy of our tentative agreement on Friday, July 15. He and I discussed the timetable and while he is not the person to decide, he indicated that things generally looked to be in order. I suppose he or Ms. Rieser is the person you should be discussing this with. Please let us know if we need to put some language into the agreement to meet Labor's requirements.

BPG REPLY: I will want to designate the attorney's fees to be paid separately to either my or Lee's Client Trust Fund. If we actually get this done, Mr. Farmer and I will have to reach an agreement on the amount, and will want in separately designated in the agreement.

Gary Gantz - Farmer- Request for extension on suit service

From: Gary Gantz
To: Lee Holen
Date: 7/22/2005 3:08 PM
Subject: Farmer- Request for extension on suit service
CC: Billie Garde; Jared Heck; rieser.mary@dol.gov; Stan Hafferman

Dear Lee,

This is in response to your letter of July 20 asking for extension of service and acceptance of service in the Superior Court Action you have filed on behalf of Mr. Farmer.

Our office has a policy of not accepting service informally, so you will have to do it the regular way. I will assist you in getting addresses for individual defendants so you will not be spinning your wheels, but I will not be able to accept service directly for any of the defendants.

As for as your August 5 deadline, it looks like we may have a settlement. All we need is for Farmer's approval on the dates I have secured for payment. Billie told me she would talk to him today, so we should know today or at the latest Monday whether we have a settlement or not and whether you need to proceed with service.
Gary

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LEE HOLEN LAW OFFICE

608 WEST FOURTH AVENUE, SUITE 21
ANCHORAGE, ALASKA 99501
(907) 278-0298 OFFICE (907) 278-0247 FAX

LEE HOLEN

leeholen@pobox.alaska.net

July 20, 2005

Gary W. Gantz
Assistant Attorney General
Attorney General's Office
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501

Re: Farmer v. State of Alaska DOT, et al.

Dear Gary:

We have held off service of process in Farmer's Superior Court case; hoping the matter settles. I have August 5, 2005, as the date for service to be complete. If settlement has not been finalized by then, will the State and individual defendants agree that we can extend the time for service? Or, alternatively, will you accept service on behalf of all defendants?

Thanks for your consideration.

Sincerely,
LEE HOLEN LAW OFFICE



Lee Holen .

LH/jg

cc: Robert Farmer
Billie P. Garde, Esq.

RECEIVED

JUL 21 2005

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
3rd JUDICIAL DISTRICT
ANCHORAGE, ALASKA

From: Gary Gantz
To: Billie Garde; Jared Heck; Michael Vasquez; rieser.mary@dol.gov; Stan Hafferman
Date: 7/20/2005 3:41:14 PM
Subject: Farmer - NRC

Ladies and Gentlemen,

I have secured authority to structure the settlement with three payments as indicated in the attached document. I have made some changes to the NRC document and thank Mr. Heck for the good work.

Ms. Garde, please advise us if this is acceptable to Mr. Farmer. If so, please provide us with his account number for direct deposit and I will finalize the document.

Mr. Heck, Please provide me with the appropriate signature block for the NRC representative who will sign for it. Also provide for me the identification numbers of the investigations.

Mr. Hafferman, Please provide your signature block.

Ms. Rieser, Please provide the appropriate wording and signature block for Secretary of Labor or Administrative Appeals Board approval. Also please provide approximate time frame needed for approval. Can this be started as soon as Mr. Farmer gives his approval since time is of the essence.
Gary

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CC: Roy Lessy

Gary Gantz - Farmer- tentative settlement

From: Gary Gantz
To: Billie Garde
Date: 7/19/2005 9:18 AM
Subject: Farmer- tentative settlement
CC: Jared Heck; Michael Vasquez; rieser.mary@dol.gov; Roy Lessy; Stan Hafferman

Dear Ms. Garde,

I am still working on the funding issue and making progress.

Because the settlement, as currently structured, will have an immediate payment of approximately \$25,000 for back pay, Mr. Farmer will have sufficient funds to immediately pay his military service indebtedness of approximately \$18,000.

I am working on trying to find a way to allow sufficient money to fund the interim medical insurance from December 1, 2005, the date the premiums must begin, until the Alaska Legislature appropriates the money next year. The premiums will run about \$1,500 per month. I expect to have an answer later today as to how this will be accomplished.

Yesterday's e-mail to Jared from me should be corrected in that the Alaska Legislature does not "authorize" the payment but rather "appropriates" money to pay judgments and settlements.

By cc to Jared, I am asking if he has made progress on the NRC's approving the provisions of the tentative settlement (see paragraphs 1 and 2). I am also interested in getting any standard language that the NRC might want in the release document that I will prepare for everyone's signature. I want to expedite the settlement execution process, so would appreciate NRC input ASAP.

I will keep you posted.

Gary

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Gary Gantz - RE: Farmer Settlement

From: Gary Gantz
To: Stan Hafferman
Date: 7/18/2005 2:46 PM
Subject: RE: Farmer Settlement
CC: Bpgarde@aol.com

Dear Stan,

I am currently looking into what options are available. Mr. Farmer has not been put back on the payroll. This will not occur until there has been a final settlement.

Gary

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>>> Stan Hafferman <SHafferman@ofscmelocal52.org> 7/18/2005 1:32:06 PM >>>

Gary,

I thought the Department had a procedure in which to loan the money to the settlement pending approval by the legislature. Please remember that time is of the essence on this matter. Would you please confirm Mr. Farmer is back on the payroll and eligible for HI.

Thanks,
Stan

From: Gary Gantz [mailto:Gary_Gantz@law.state.ak.us]
Sent: Monday, July 18, 2005 10:56 AM
To: rieser.mary@dol.gov; GMV@nrc.gov; JKH3@nrc.gov
Cc: Stan Hafferman; Bpgarde@aol.com; friden.paul@dol.gov; rlessy@pattonboggs.com
Subject: Re: Farmer Settlement

Dear Jared,

Thank you for your prompt response. I hope your visit with your Alaska family was good. We worked into the evening last Thursday to hammer out the tentative settlement. Please let us know as soon as possible if the provisions relating to the NRC are acceptable.

In reviewing my memo below I noticed a glaring grammatical error. Please excuse it.

Our problem with timing of the payment is that while the Attorney General is empowered by the Alaska Constitution to resolve disputes by compromise and settlement, the Alaska Legislature must authorize the payment of them. The Legislature will not convene again until next January. The Attorney General's Office will put the appropriation on the fast track agenda, but it still causes a substantial delay in payment of any lump sum. In recent years, even the fast track appropriations bill has been delayed. So payment will not likely occur until March and may take as long as June.

I am working on alternatives but so far have not been able to come up with a way to solve this problem. We pointed this problem out to our mediator at the outset of the mediation. It is something that our office is constantly having to deal with when trying to achieve a compromise resolution of a case. I am keeping Ms. Garde closely advised and will do the same for you and Mr. Vasquez.

I received a call from Paul Friden, Mary Rieser's supervisor, who informed me that the Secretary of Labor or the Administrative Appeals Board must review the settlement. I believe they will need a week maximum.
Gar

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Y
>>> Jared Heck <JKH3@nrc.gov> 7/18/2005 6:02:30 AM >>>
Gary,

The NRC will look closely at the dismissal/release clauses and will probably have some wording changes. My primary concern is that the settlement makes clear distinctions between (1) claims Mr. Farmer has raised or could have already raised versus claims that have not yet arisen; and (2) the independent regulatory duties of the NRC versus the private causes of action held by Mr. Farmer.

I am glad we have reached this point. We are very close to a final settlement.

Thank you,
Jared Heck

>>> "Gary Gantz" <Gary_Gantz@law.state.ak.us> 07/15/05 3:24 PM >>>
Lady and Gentlemen,

Attached is a pdf copy of the tentative terms and conditions of agreement signed yesterday evening by Mr. Farmer, Ms. Garde, his attorney, Stan Hafferman, the union B.A. and I.
Gary