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May 21, 2012

VIA ELECTRONIC MAIL

Ted C. Ziemer, Jr.
Ziemer, Stayman, Weitzel & Shoulders, LLP
20 NW 1st Street - 9th Floor
PO Box 916
Evansville, IN 47706-0916

Dear Mr. Ziemer:

We were disappointed that you allowed your client to publish an op-ed article yesterday in the Evansville Courier & Press that makes both legal and factual misstatements.

As we pointed out to you in my May 11, 2012 letter (a copy of which is attached for your convenience), the City has not provided to Earthcare the required notice of any alleged default under the terms of the February 28, 2012 contract between the City and Earthcare (the "February 2012 Contract"). Repeated statements to the media do not constitute the notice required by the February 2012 Contract or by Indiana law. *See City of Jeffersonville v. EMC*, 954 N.E.2d 1000 (Ind. App. 2011). Once the City provides the formal notice required by the contract, Earthcare has 30 days to cure any alleged default. Moreover, Mayor Winnecke's statement that it was in his control to make "the decision not to close on the deal" or "cancel[]" the deal is— as you know — belied by the express language of the February 2012 Contract.

Mayor Winnecke's op-ed also continues to repeat the same factual inaccuracies that we identified in my May 11, 2012 letter. Specifically, the Department of Energy ("DOE") loan guarantee programs that the City insisted be included in the contract had either been discontinued or were not accepting applications by the time the February 2012 Contract was signed. You have first-hand knowledge of this fact as you were on a call when representatives of the DOE told you as much. At any rate, Earthcare did make efforts to apply, which is all that is required by the contract that your office drafted. The Mayor's desperate effort to try to justify his reversal of course based on Earthcare's alleged failure to meet a condition that the City knew (or should have known) could not be met when it insisted on its inclusion in the contract is both legally baseless and shockingly cynical.

Ted C. Ziemer, Jr.
May 21, 2012
Page 2

Similarly, the Mayor's continued reliance on the lack of a "written exclusive license agreement" is inexplicable. As I pointed out in my letter, the contract does not require a "written exclusive license agreement." It requires a "letter from Langson Energy addressed to Mayor Winnecke which outlines the agreement between Langson Energy and Earthcare with respect to Langson's intellectual property." As you well know, that letter was provided well in advance of the closing.

As always, I am available at your convenience to discuss. Meanwhile, Earthcare reserves all of its rights and remedies under the February 2012 Agreement and applicable Indiana law.

Sincerely,



Scott T. Schutte

STS/hb

cc: Evansville Courier & Press