STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC. DOCKET No. D-13-51

RESPONSE OF THE TOWN OF NEW SHOREHAM TO BLUEWATER, LLC'S RESPONSE AND OBJECTION TO FIRST REQUEST FOR PRODUCTION

It is the position of the Town of New Shoreham ("Town") that all correspondence, responses, objections or other papers of any nature filed by Attorney Overturf in this matter on behalf of Bluewater, LLC are nullities because Attorney Overturf has not been admitted to practice law in the State of Rhode Island *pro hac vice*. As nullities, any such papers filed by Attorney Overturf cannot be recognized by the Division of Public Utilities and Carriers ("Division") or by the parties. This result is clearly and unequivocally dictated by the rules and opinions of the Rhode Island Supreme Court.

In the case of *In Re Ferrey*, 774 A.2d 62 (R.I. 2001), a Massachusetts attorney requested *pro hac vice* status from the Rhode Island Supreme Court for purposes of representing a client before a state agency. The attorney had been filing papers on behalf of that client with the agency before being granted *pro hac vice* status and, therefore, requested that the court grant his petition *nunc pro tunc* to the date of the attorney's first appearance before that agency in order to legitimize the documentation and filings which the attorney had submitted to the agency prior to his petition being granted. Although the Rhode Island Supreme Court granted the attorney's *pro hac vice* petition, the court emphatically refused to grant the petition *nunc pro tunc*. In so ruling, the Supreme Court stated:

> We deny, however, that part of his motion seeking our permission, *nunc pro tunc*, to the date of his first appearance before that state agency, and we deem it advisable at this time to give our reasons for so doing. We begin by noting that this Court never before, in any published opinion or order, has granted a *pro hac vice* request *nunc pro tunc* when to do so "would be tantamount to affixing an *ex post facto* imprimatur of approval on what might under some circumstances be construed as the unauthorized practice of law[,]" a criminal offense prohibited by G.L.1956 § 11-27-5. *Id*. at p. 63.

The court went on to note in this opinion:

> We point out that § 11-27-6 also prohibits any out-of-state lawyer who practices law here without this Court's prior *pro hac vice* permission from receiving "any pay or compensation, directly or indirectly * * * for any services of a legal nature * * * pertaining to any action or proceeding in any court or before any referee, master, auditor, commission, division, department, board, or other judicial person or body, or for the preparation of any legal instrument[.]" Section 11-27-14 provides criminal penalties, both misdemeanor and felony, for violations of the prohibitions contained in chapter 27 of title 11, and, § 11-27-19 imposes upon the Attorney General the duty to prosecute or to restrain and enjoin any such violations. *Id*. at p. 64.

Supreme Courts in other states also adopt the position that any pleading or other filing submitted by an attorney who is not licensed to practice law in their states and who has not been granted *pro hac vice* status is a nullity. For example, in *Black III v. Baptist Medical Center*, 575 So.2d 1087 (1991), the Supreme Court of Alabama ruled that a complaint filed by an attorney who was not licensed to practice law in Alabama and who was not admitted *pro hac vice* at the time that a complaint was filed with the court was a nullity. This ruling resulted in the complaint not being filed within the applicable statute of limitations. The court further held that the ineffective filing was not cured by a notice of appearance filed on the plaintiff's behalf two months after the statute of limitations had expired by an attorney who was licensed to practice law in Alabama. Accordingly, the complaint was dismissed with prejudice and the plaintiff was barred from pursuing his claims against the defendant.

Similarly, in *Preston v. University of Arkansas for Medical Sciences*, 354 Ark. 666, 128 S.W.3d 430 (2003), the Arkansas Supreme Court ruled that a medical malpractice complaint filed by Oklahoma attorneys who were not admitted in Arkansas was a nullity because the filing of the complaint involved the unauthorized practice of law, and thus, a subsequent complaint filed by counsel authorized to practice in Arkansas could not relate back, for limitations purposes, to the filing of the original complaint by the Oklahoma attorneys. Based upon this ruling, the complaint was deemed to be a nullity and was stricken by the court. Moreover, the plaintiffs were deemed not to have filed their medical malpractice case within the statute of limitations and the case was dismissed with prejudice.

Based on the foregoing, the Bluewater LLC response and objection to first request for production is clearly a nullity and cannot be recognized by the Division or by any party. Accordingly, no timely objection to the subpoenaed documents has been filed as specifically required by Rule 45 and, therefore, the Town respectfully requests that the Division order that Bluewater LLC produce all documents as set forth in the *subpoena duces tecum* and that the deposition of Paul Filippi go forward at a time and place to be designated by the Town's solicitor.

In addition, the Town respectfully requests that the Division award to the Town reasonable attorney's fees incidental to the Town's response to Bluewater, LLC's response and objection to the Town's *subpoena duces tecum*.

Town of New Shoreham,
by its Attorneys,

MEROLLA AND ACCETTURO

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CERTIFICATION

I hereby certify that, on October 15, 2015, I served this document via e-mail on the individuals listed on the attached service list.

/s/ Katherine A. Merolla

EXHIBIT A

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