

January 12, 2018

TO: White Bluff Property Owners

FROM: Your Board of Directors

Leonard Critcher, President

John Bass, Vice President

Jim Fletcher, Secretary

Jeff Williams, Treasurer

Jay Elder

Mike Ellis

Joe Manders

Roy Miller

Marshall Snyder

RE: Implications of Last District Court Ruling

The Hill County District Judge signed the order on January 9th related to the hearing held in district court on January 2<sup>nd</sup>. There were six filings made, and as was reported earlier the judge found in the POA's favor on all six. Below is an explanation of what each ruling means.

1. 3<sup>rd</sup> Motion for Contempt

The Judge has again found that Double Diamond has failed to comply with the discovery order. The Judge has given Double Diamond another deadline of January 31, 2018 to comply with the discovery order. If they do not, the Judge has awarded an additional \$500 per day fine (on top of the \$500 per day under the 2<sup>nd</sup> Contempt Order) beginning on February 1, 2018. The Judge has also said that if Double Diamond does not comply by January 31<sup>st</sup>, on proper motion he may notice a hearing and compel Mike Ward to appear in court to show cause why he should not be held in contempt and subject to imprisonment until the discovery order is satisfied.

The Judge awarded \$9,750 as reimbursement of attorney's fees plus additional fees if Double Diamond unsuccessfully appeals the order.

The Judge has stricken Double Diamond's pleadings, which makes it much more difficult for Double Diamond to defend against the remaining claims. It also means that Double Diamond's counterclaims against the POA for business disparagement, tortious interference, breach of fiduciary duty, unjust enrichment, promissory estoppel, breach of contract, request for an accounting are dismissed from the case.

Double Diamond is not permitted to conduct any further discovery in the lawsuit.

With respect to claims of the POA that rely on documents or information requested during discovery that have not been produced, Double Diamond is

not permitted to oppose those claims and a negative proof inference exists against Double Diamond and in favor of the POA with respect to the claims. This should make it easier for the POA to prove up its remaining claims at trial.

2. Motion to Strike Pleadings

The effect of this ruling is that Double Diamond's amended answer and counterclaims were stricken because they were filed after the agreed deadline in the lawsuit. The effect is the same as above- it makes it much more difficult for Double Diamond to oppose the POA's claims, and it dismisses Double Diamond's counterclaims against the POA.

3. Motion to Quash

The POA does not have to incur the expense and time of putting up Board members to be questioned by Double Diamond or in responding to written discovery by gathering documents and such.

4. Motion to Clarify and Sever Second Summary Judgment

The Court has upheld granting the POA the \$1,125,000 that Double Diamond moved from the POA bank account in December, 2016.

5. Double Diamond's Emergency Motion to Clarify and Cross-Motion to Modify

Double Diamond wanted the Court to stop the POA from accessing the \$1,125,000 on deposit at Plains Capital Bank until all appeals were final. The Judge denied this relief.

6. Double Diamond's Motion to Reconsider order on production of proxies

Double Diamond wanted the Judge to order the POA to turnover un-redacted proxies. The Judge denied that claim.

Your Board will continue to keep you apprised and knowledgeable about what steps your Board continues to take in the protection of our property owners' interests.