

Editor:

Your posting of February 5, 2007 ("A New RPS Fraud?"), suggesting that the City of Spokane settled the River Park Square litigation with companies owned by the Cowles' family for only \$400,000 recently came to my attention. The story is wrong in every important respect, and unfair to Council members who made a reasonable call to settle the City's claim against the Cowles for much more than that amount.

For starters, your readers should recall that the settlement resolved securities fraud litigation. Whatever one might think of the Cowles' responsibility for the City's painful foray into the garage business, it was the professionals - not the Cowles - who were principally responsible for drafting the bond prospectus that landed the parties in a securities fraud lawsuit. Yet while a City claim against the Cowles for flawed disclosure was not as direct as the City's claim against the bond underwriter, issuer and other professionals, the claim against the Cowles mattered most to many Spokane citizens. Council members considered settlement carefully, as revealed during the extraordinary Saturday session convened to consider it.

You caricature the Council's decision by reporting, and never questioning, former Council Member Cherie Rodgers' conclusion that the Cowles' settlement had a value of only \$400,000. I represented the City in the contribution case, and I have no idea where a \$400,000 figure comes from.

Considerable evidence of the value of the City's settlement with the Cowles is available, and all of it points to the Cowles' contributing much more than \$400,000 in order to obtain a City release. The City's adversaries hired Bruce Budge, a former managing partner of one of the big four accounting firms, whose analysis and report (available to you) concluded that by getting the Cowles to backstop the City's HUD loan guarantee, the City settled for a value of between \$5.6 and \$9.5 million. The City conceded in the settlement agreement and advocated in its submissions to the court (also available to you) that it settled a variety of issues, but that the portion of the settlement reasonably allocated to the bondholder litigation was \$2 million. After considering the competing evidence and argument, the federal court ruled that the value of the City's settlement with the Cowles was \$5 million.

Yet literally none of this gets any mention in your story. In your otherwise long article implying that Council members were misled or otherwise reprehensibly wrong in settling with the Cowles, you speak only to a dubious and unsubstantiated \$400,000 value.

Obviously I cannot disclose the legal advice I gave the Council on its proposed settlements any more than Gary Ceriani can - assuming that he even gave advice on the agreement that was ultimately reached with the Cowles. As Mr. Ceriani pointed out to Ms. Rodgers in his letter tagged to your story, City lawyer advice is privileged

information. But I can certainly point out that you have failed to report any of the information on the value of the settlement that was presented by the parties or deemed credible by the court.

Which brings me to your so-called smoking gun - Mr. Ceriani's November 29 email. The gist of your story is that Mr. Ceriani's "explosive" email addressed and assailed terms on which the City settled with the Cowles.

Read the email again. It is clear on its face that Mr. Ceriani's email addressed the prospect that the City would not settle with the Cowles. Former Council Member Rodgers has unilaterally disclosed a partial and internal privileged communication concerning the very different proposition that the City would not settle, and might instead voluntarily dismiss the case against the Cowles in order to avoid having its then-imminent trial date derailed by the bankruptcy filing.

As your readers might not know, but you could have determined, the Cowles' threatened filing of bankruptcy would have given rise to an "automatic stay." The timing of the threatened bankruptcy would have made it virtually impossible to keep a January 2005 trial date against five other defendants. The statute of limitations on the City's claim against the Cowles had not run, and it could have been dismissed and re-filed later. Any trial lawyer reviewing Mr. Ceriani's email could see that with only a month to go before a long-awaited trial, the Cowles' threat to file bankruptcy had created a quandary whether to keep the Cowles as defendants and risk losing the trial date, or drop the claim against them, keep the trial date, and proceed against them later.

The privileged communication from Mr. Ceriani that former Council Member Rodgers has elected to release pointed out damaging ways that a voluntary dismissal of the City's claim against the Cowles might be characterized by adversaries, and advocated leaving settlement negotiations to City Attorney Mike Connelly so that I and other City trial lawyers could focus on trial. The entire email chain with Mr. Ceriani and other City lawyers is available to the City Council, although obviously not to you.

The bottom line is that Mr. Ceriani's email says nothing about any prospect of settlement and, on its face, did not address the merits of a settlement that did not exist even in "proposed" terms at the time he wrote.

The irony of your story, coming two and a half years after the fact, is that for many Spokane citizens the wisdom of settling with the Cowles is more apparent in hindsight. \$2 million in a parking meter revenue "loan" fund demanded by the Cowles was released and applied to the City's settlement expense. The City's \$22.65 million HUD loan obligation was finally guaranteed by the Cowles and ultimately defeased by them. The Cowles agreed to repay HUD grants lost prior to the settlement on discounted terms, and ultimately repaid an agreed \$618,674 in 2005. The City is out of

the fractious business of asking an unpaid volunteer parking authority to operate a garage in "public/private partnership" with a powerful property owner and developer. The City re-sold to the Cowles a structure whose deficient reconstruction and deferred maintenance had caused the City concern as early as 2003, thereby avoiding expense and problems with the garage that arose thereafter.

I trust you will have the decency to publish this letter on your website as prominently as the story that calls out for this correction.

  
Lauri Siddoway