

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

August 15, 2016

MEMORANDUM

To: Port Commissioners, Port of Seattle

Cc: Mike Merritt, Chief of Staff, Port Commission

From: Russ Perisho

Re: CEO service on private for-profit board of directors (National Truck Protection Co., Inc.)

A. Background and overview of research.

Ted Fick informed the Port Commission of the Port of Seattle ("Commission") that he is interested in serving as a member of the board of directors of a private for-profit company, National Truck Protection Co., Inc. ("NTP"). I was contacted on July 28, 2016, about conducting background research into the entities and individuals related to NTP and its board of directors. I was asked to gather information related to the factual questions raised by such board service by Fick's contract with the Port of Seattle.

I conducted Internet research. I obtained Dun & Bradstreet reports about NTP and its new owner, Kinderhook Industries LLC.

By its nature, my research revealed only limited information about NTP's precise holdings, operations and financial circumstances.

B. Contract questions.

Under the Chief Executive Officer Employment Agreement between Ted Fick and the Commission, dated September 29, 2014 ("CEO Agreement"), contains a section that allows Fick to serve as a member of the board of directors of a private for-profit entity under certain conditions. (Section 2, CEO's Services) The following factual questions¹ are raised by this section:

1. Will the CEO perform the service on this own time (e.g., after close of business or during Paid Time Off)?
2. Does the service commence after the two year anniversary of the CEO Agreement?

¹ My list of factual questions is based on the terms of the CEO Agreement. The short list should not be misconstrued. There may be ambiguities about the operation of and interrelationship of the contract terms in specific situations. The contract terms, themselves, will of course govern all legal questions.

3. Does the board of directors' service involve an entity doing business in aviation, real estate, warehousing, maritime or logistics?
4. Does the for-profit entity do business related to Port activity?
5. Did the CEO obtain approval of the Commission prior to accepting the board appointment?
6. Will the board service create an actual conflict of interest or reasonably create an appearance of conflict of interest?
7. Will the board service otherwise interfere with the CEO's ability to perform his Port obligations?

C. Preliminary assumptions, representations and answers.

1. Service on own time?

Fick has told the Commission: "The board will meet 4 times per year. As a result no more than 10 days per year would be required, and some of those days may be weekend days. In order to meet the obligations of my employment agreement, I would attend these meetings using my personal time or Paid Time Off from the Port to attend the board meetings."

2. Starts after two years?

The CEO Agreement states it began on September 29, 2014. I do not have a signed version, but I will assume this is correct. Fick has told the Commission: "In order to meet the obligations of my employment agreement I would not join the board until after both two years of employment with the Port (October 1st), and after Commission approval of this proposed action August 9th."

3. Doing business in aviation, real estate, warehousing, maritime or logistics?

My Internet research did not reveal any direct business activity by NTP in these areas. In saying this, NTP's publicly-stated primary activity of selling warranty and service contracts to the North American trucking industry relates indirectly to one aspect of logistics (trucking companies – dealers, owners and drivers). There may be facts relating to this issue that were not revealed in my research.

4. Doing business related to Port activity?

My Internet research of NTP did not reveal any apparent business activity related to Port activity.² Mike Merritt checked with the Port's purchasing system and learned that the Port has no record of any contract payments to National Truck Protection or NTP. There may be facts relating to this issue that were not revealed by my research and the review of contract payments.

² This conclusion is based on my general knowledge of Port activity.

5. Obtain prior approval of Commission?

Fick is seeking to do so.³

6. Create an actual conflict of interest or reasonably create an appearance of conflict of interest?

My Internet research did not reveal any NTP activity that would create an actual conflict of interest or reasonably create an appearance of conflict of interest. It appears that the Port will not pay for any aspect of the proposed board service. Fick has told the Commission: "The board meetings would likely be held in the greater New York City area. The Port of Seattle would not bear any costs of travel." Careful attention should be given by Fick to properly accounting for NTP expenses as he incurs costs related to the board service to ensure that the Port does not provide services, supplies or other items of value in support of the board service. Similarly, Fick will need to be vigilant as NTP engages in future activity to ensure that conflicts of interest and circumstances that reasonably create an apparent conflict of interest do not arise. There may be facts relating to this issue that were not revealed in my research.

7. Interfere with CEO's Port obligations?

My Internet research did not reveal any publicly-described NTP activity that would lead to the conclusion that NTP board of directors' service would interfere with Fick's obligations as CEO to the Port. Again, there may be facts relating to this issue that were not revealed in my research. The Commission will likely want to consider all information it has about the CEO's obligations to the Port in assessing this issue.

D. Information based on my research.

I conducted basic Internet research about NTP and its owner, Kinderhook Industries LLC. Given that both entities are privately-held, there was little available information on the Internet about their precise holdings, operations and financial circumstances.

National Truck Protection Co., Inc. is self-described at its Internet site as follows:

National Truck Protection Co., Inc. is the leading independent provider of warranty and service contracts to the North American trucking industry. NTP, celebrating its 30th year, provides private label warranties to major OEMs as well as extended service contracts to the used truck segment through its extensive network of corporate and independent dealers. NTP provides the most comprehensive repair and breakdown management services in the industry.

³ Because of the terms and structure of Section 2 of the CEO Agreement ("the CEO shall obtain approval of the Commission"), the Commission should be able to approve or withhold approval in its discretion even if NTP is not doing business in aviation, real estate, warehousing, maritime or logistics, and is not doing business related to Port activity.

<http://www.ntpwarranty.com/about-ntp/history/>

An April 2016 NTP press release said:

NTP Inc., based in Cranford, NJ, is the leading independent provider of warranty and service contracts to the North American trucking industry. For over 33 years, NTP has provided private label warranties to major OEMs as well as extended service contracts to the used truck segment through its extensive network of corporate and independent dealers. NTP provides the most comprehensive repair and breakdown management services in the industry.

<http://www.businesswire.com/news/home/20160429005681/en/NTP-Launches-PAC-PRO-MX-Warranty-Program-Peterbilt>

NTP was incorporated in 1983. It is based in Cranford, New Jersey.

Dun & Bradstreet describes NTP as an “insurance carrier, specializing in automobile warranty insurance (100%).” Dun & Bradstreet says it has 20 employees, including officers. Basic balance sheet information was not publicly available.

In April 2016, NTP announced the launch of the PAC-PRO MX Warranty for Peterbilt and Kenworth Vehicles. The company announcement said that the PAC-PRO MX Warranty is designed to support the PACCAR MX engine platform, offering the warranty holder outstanding protection against the high cost of commercial diesel engine repair. Further, the announcement stated the following:

The PAC-PRO MX Plan provides comprehensive coverage that includes 33 vital engine components including Turbocharger(s), Fuel Injectors and Water Pump as well as optional Transmission and Rear Differential coverage. Every PAC-PRO Warranty includes an After-treatment bundle for the EGR Valve, Doser Injector, DOC, DPF, DEF and SCR components individually or when configured in a “One-Box” application. NTP’s PAC-PRO MX Warranty satisfies the needs of buyers of PACCAR’S proprietary MX engines in Kenworth or Peterbilt trucks. NTP provides additional programs for Kenworth or Peterbilt trucks powered by Cummins engines.

NTP is rated A+ by the Better Business Bureau.

My research found one court filing involving NTP. NTP was the plaintiff in an action in U.S. District Court (New Jersey). NTP’s lawsuit against Inland Power Group, Inc., a Wisconsin corporation, concerned a dispute about an alleged agreement to administer an extended warranty service contract for truck engines at a bus transit business. The lawsuit was dismissed with prejudice on the pleadings on January 12, 2016. There is not sufficient public information to evaluate the merits of this dispute.

Fick provided the following information about three current members of the board of directors of NTP:

Ron Gardner: Mr. Gardner frequently assists Kinderhook in evaluating investment opportunities in the F&I space. Mr. Gardner is currently a Consultant for the Rosemark Group. Prior to working with the Rosemark Group, Mr. Kaufman [sic] was the former CFO of the London Broadcasting Company, former CFO for the Rosemark Group, and held various leadership positions at CareGard Warranty Services, Keycor Services Group, FFG Insurance Company and E&Y.

Derek Kaufman: Mr. Kaufman frequently assists Kinderhook in evaluating investment opportunities in the heavy-duty trucking and telematics industries. Mr. Kaufman is currently a Managing Partner at Schwartz Advisors, an automotive aftermarket industry consulting firm. Prior to working with Schwartz Advisors, Mr. Kaufman was the former VP of Marketing for Freightliner Trucks, President of Diesel Technology, Senior Vice President of Hino Trucks and CEO of Mission Motors.

Jim Porcari: Mr. Porcari frequently assists Kinderhook in evaluating investment opportunities in the insurance and collision industry. Mr. Porcari is a seasoned insurance executive and is currently the Managing Partner for Insurance Resources International, a strategic consulting firm for the property and casualty industry. Prior to founding Insurance Resources International, Mr. Procari was a former Senior Vice President for Farmers Insurance, President for American International Group, and held various other leadership positions with GMAC, USF&G Corporation, Transport Group, Progressive Insurance and K-Mart Corporation. Mr. Porcari was recently added to the board of directors at Collision Diagnostic Services, a Kinderhook Fund III portfolio company.

My Internet research found little on Ron Gardner. He does own a portion of the Rosemark Group, a Texas company. Internet web sites, articles and industry program descriptions confirmed activity and work experience by Kaufman and Porcari that was consistent with the above information.

My Internet research did not find newspaper or other media articles raising issues of concern about NTP. The few references and business stories located on the Internet about the company were consistent with its publicly-described business activity.

Kinderhook Industries is described at its web site as follows:

Founded in 2003, Kinderhook Industries is a private equity firm with over \$2.0 billion of committed capital and an investment philosophy based on combining senior management and operating experience in a variety of industries with the financial and investment know-how of private equity professionals. Kinderhook

primarily makes control investments in companies in which the firm can achieve significant financial, operational and growth improvements. The firm targets orphaned non-core subsidiaries of corporate parents, existing small capitalization public companies lacking institutional support and management-led recapitalizations of entrepreneur-owned companies.

The web site states further:

Kinderhook's investors are comprised of leading domestic endowments, foundations, family offices, pensions, operating partners and other institutional investors.

<http://www.kinderhook.com/news/6.7.2016.html>

According to Bloomberg News, Kinderhook Industries LLC operates as a private equity firm. Bloomberg News states:

Kinderhook Industries is a private equity firm specializing in emerging growth, mid-cap buyouts, later stage, mature, growth capital, industry consolidation, recapitalization, and middle market investments. It invests in orphaned non core divisions of corporate parents and public companies, existing small capitalization public companies lacking institutional support and management-led recapitalizations and buyouts of entrepreneur-owned companies and troubled situations. The firm seeks to invest in environmental services, healthcare services, light manufacturing, automotive aftermarket, logistics, business services, insurance, data management services, food, retail, and travel. The firm typically invests in the United States. It typically invests between \$10 million and \$75 million in companies with enterprise value between \$20 million and \$200 million and minimum EBITDA of \$3 million. The firm prefers to make control investments. Kinderhook Industries was founded in 2003 and is headquartered in New York, New York.

<http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=9985453>

Kinderhook Industries has several different entities and funds. SEC filings confirm a series of Kinderhook Industries entities raised funds for acquisitions since 2003.

Kinderhook Capital SBIC Fund I, L.P., a 1983 fund, was registered in 1983 as a Small Business Investment Company ("SBIC"). The federal SBIC program works with private investment funds licensed as SBICs to provide growth capital to U.S. small businesses. Although SBICs are regulated by the Small Business Administration, SBICs are private, profit-seeking investment companies that make independent investment decisions.

The Dun & Bradstreet report described a number of holdings of Kinderhook Industries, LLC. My Internet research did not find newspaper or other media articles raising issues of

concern about the company. The Internet references and business stories about the company were consistent with its publicly-described business activities and generally related to announcements of Kinderhook Industries entities' fund raising, acquisitions and sales.

According to various Internet news articles, Kinderhook Industries, LLC has acquired and sold a number of environmental services companies. Rizzo Environmental Services Inc., is owned by Kinderhook Industries LLC. Rizzo Environmental Services Inc. is described in a news article as the market leader in Southeast Michigan in providing curbside collection services for municipal solid waste. It serves 31 municipalities in three counties in the area. In 2013, Rizzo Environmental Services Inc. acquired a V&M Corporation, d/b/a Royal Oak Recycling Royal Oak Recycling, described in a news article as one of the largest independent recyclers in the Midwest region for paper, plastic and metal. At that time, the news article said that the acquisition was Kinderhook Industries, LLC's 15th environmental services transaction. Also in 2014, Custom Ecology, Inc. owned by Kinderhook Industries, LLC, announced the acquisition of B.J. Bear Grain Co. LTD. B.J. Bear was described as the fourth acquisition by Kinderhook on the Custom Ecology platform and Kinderhook's 16th transaction in the environmental services sector. Headquartered in Mableton, Georgia, Custom Ecology was described as a niche market leader in the provision of outsourced waste services for large commercial waste collection businesses and waste generators. The Company's diversified services provide hauling for three waste streams: municipal solid waste, hazardous waste and industrial waste. Based in Ontario, Canada, B.J. Bear was described as providing outsourced municipal solid waste hauling services to large commercial waste collection businesses and waste generators. The acquisition of B.J. Bear was said to expand Custom Ecology's service geography into the Greater Toronto Area, which Custom Ecology currently services with its 55 truck operation based in Southeast Michigan.

In 2014, Kinderhook Industries, LLC announced the sale of Environmental Quality Co. According to an AP news article at the time, Environmental Quality Co. was based in Wayne, Mich., and had facilities in the Eastern U.S., including one hazardous waste permitted landfill located outside of Detroit, 13 waste treatment and recycling facilities and 21 dedicated service centers. The company was owned by an affiliate of Kinderhook Industries LLC.
