

**Lee County Board of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20040517

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve a Disclosure and Waiver of Conflicts Letter from the law firm of Holland & Knight. A conflict of interest could potentially exist from the representation by Holland & Knight LLP of IMC Phosphates Company in the "Charlotte County" litigation.

**WHY ACTION IS NECESSARY:** Board approval is required to waive potential conflicts of interest for law firms.

**WHAT ACTION ACCOMPLISHES:** Allows Holland & Knight to continue to represent IMC Phosphates Company in the "Charlotte County" litigation and provide Bond and Disclosure Counsel services to Lee County.

**2. DEPARTMENTAL CATEGORY:**

COMMISSION DISTRICT # CW

*C12B*

**3. MEETING DATE:**

*05-04-2004*

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**

(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER
  - Fla. Bar
  - Ethics Rules

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER \_\_\_\_\_
- B. DEPARTMENT County Attorney
- C. DIVISION General Services
- BY: David M. Owen  
Chief Assistant County Attorney

**7. BACKGROUND:**

The Holland & Knight law firm ("H&K") has been, and is currently retained by the County for either Bond Counsel or Disclosure Counsel on several Lee County bond issues. Representation is provided through Edward W. Vogel, III, Esq., of H&K's Lakeland office.

Holland & Knight is a very large nation-wide (and international) multi-service law firm with a multitude of both private and public sector clients.

**(BACKGROUND CONTINUED - NEXT PAGE)**

**8. MANAGEMENT RECOMMENDATIONS:**

The County Attorney's Office recommends granting the Waiver to Holland & Knight and recommends executing the April 6, 2004 Joint Letter consenting to representation.

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	RISK <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i> 4-22-04

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTYS  
FORWARDED  
TO CO. ADMIN.  
*4/21/04*  
3:25 PM

RECEIVED BY  
COUNTY ADMIN:  
*4/21/04*  
3:30 PM  
COUNTY ADMIN  
FORWARDED TO:  
*4/22/04*  
2:15 PM

**BACKGROUND:** (Continued)

In this instance, H&K is representing IMC Phosphates Company in the "Charlotte County" litigation in which, Lee County is an intervening party.

Under the Florida Bar rules, if a law firm is representing clients with potentially adverse interests, the firm may represent both entities only if the representation will not adversely affect either party due to the nature of the representations after consultation with both clients, and their informed consent.

Mr. Vogel has indicated in his attached April 6, 2004 letter that due to the nature of his particular representation of the County in the County's bond issues and the nature of the matters involved in the IMC matter, the County's interests will not be adversely affected nor compromised. Lawyers in the IMC case have no contact with Mr. Vogel and vice versa. No information or confidentiality will be shared between H&K lawyers for either Lee County or IMC on either matters.

A "waiver of conflicts" letter from H&K is attached, already executed by IMC, for the Board's consideration and execution.

The County Attorney's Office recommends granting the waiver based upon the factual circumstances and the representations of H&K counsel.

Attachments: Two (2) Original Disclosure and Waiver of Conflicts of Interest Letters

# HOLLAND & KNIGHT LLP

92 Lake Wire Drive  
P.O. Box 32092 (ZIP 33802-2092)  
Lakeland, Florida 33815

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Tokyo

\*\*Representative Office

April 16, 2004

**EDWARD W. VOGEL III**  
863-499-5356  
ed.vogel@hklaw.com

David Owen, Esq.  
Assistant County Attorney, Lee County  
2115 Second Street  
Fort Myers, FL 33901

Re: Disclosure and Waiver of Conflicts of Interest

Dear David:

Pursuant to our discussion and utilizing the form of conflict waiver letter you provided, I have obtained a waiver by IMC Phosphates Company related to the Charlotte County litigation to which both IMC and Lee County are parties. I am enclosing two signed waiver letters from IMC. Please do whatever you can to have our waiver request approved by the County Commission and have both letters executed by the appropriate person at the County. I would like to have one original returned to me.

If you have any questions, please do not hesitate to call.

Sincerely yours,

HOLLAND & KNIGHT LLP

  
Edward W. Vogel III

EWV/lcm  
# 1831081\_v1  
9331-8

2004 APR 19 AM 10:03  
RECEIVED BY  
LEE CO. ATTORNEY

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April 6, 2004

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David Owen, Esq.  
Assistant County Attorney, Lee County  
2115 Second Street  
Fort Myers, FL 33901

Sherry Holland, Esq.  
IMC Global Operations  
100 S. Saunders, Suite 300  
Lake Forest, IL 60045

Re: Disclosure and Waiver of Conflicts of Interest

Dear David and Ms. Holland:

The purpose of this letter is to disclose the existence of a potential conflict of interest arising out of the representation by Holland & Knight LLP ("Firm") of IMC Phosphates Company and/or its affiliates ("IMC") and of Lee County, Florida (the "County"). As you know, the Firm is representing IMC in Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Company and DEP, Division of Administrative Hearing Case No. 03-0791, in which the County has intervened. The Firm has been requested by the County to represent the County as bond counsel in connection with Lee County, Florida Capital Revenue Bonds, Series 2004 and as disclosure counsel in connection with Lee County, Florida Tourist Development Tax Refunding Revenue Bonds, Series 2004.

The County is being represented in the aforementioned litigation between the County and IMC by counsel independent of the Firm, and the County understands that the Firm is not representing the County in such litigation.

The applicable ethics rules permit us to represent clients with adverse, or potentially adverse, interests in circumstances where our responsibilities to and relationship with one client will not be adversely affected by our representation of another client, and on the condition that both clients have provided consent after consultation.

We hereby confirm to you that, under the circumstances of this matter, our current representation of IMC will not adversely affect our responsibilities to and relationship with, the County and vice versa. We further confirm to you that the lawyers from the Firm that will be

David Owen, Esq.  
Sherry Holland, Esq.  
April 6, 2004  
Page 2

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representing the County in connection with the bond issues will have no involvement in the litigation with IMC, and the Firm will not share with either client any confidential or proprietary information related to the Firm's work for the other client.

Under these circumstances, if you agree that Holland & Knight LLP may undertake the concurrent representation of the County in the matters described above, and that all conflict issues with respect to such concurrent representations are waived by you, please indicate your consent and waiver by signing below. Also, please return, via facsimile and U.S. Mail, the executed copy to me as soon as possible, keeping a copy for your records. We appreciate your assistance in this matter.

Sincerely yours,

HOLLAND & KNIGHT LLP

  
Edward W. Vogel III

EWV/lcm  
# 1831081\_v1

Acknowledged and agreed to:

LEE COUNTY, a political subdivision  
of the State of Florida

IMC Phosphates Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Sherry L. Holland

Title: Counsel

Dated: 4/15/04

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April 6, 2004

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Lake Forest, IL 60045

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Sherry Holland

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HOLLAND & KNIGHT LLP



Edward W. Vogel III

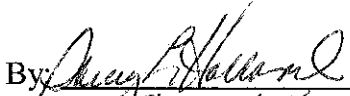
EWV/lcm  
# 1831081\_v1

Acknowledged and agreed to:

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of the State of Florida

IMC Phosphates Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

By:  \_\_\_\_\_  
Name: Sherry Holland  
Title: Counsel  
Dated: 4/15/04