

The Virgin Islands Consortium

Dema Law Firm Responds To I.G. Report, Defends South Shore Litigation Accomplishments

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ST. CROIX -- Following an Office of the Inspector General report concluding that the Department of Justice, during the administrations of Governor Charles W. Turnbull and John P. de Jongh, failed to follow “competitive procurement laws” in the South Shore pollution cases, the firm at the heart the report, St. Croix-based Law Offices of John K. Dema, has responded with comments praising its accomplishments during the litigation years, while chiding the Mapp administration for using the report as a tool in ongoing court matters.

"After this administration refused to properly address this dispute, a Federal Judge ordered the Government to honor the contract and arbitrate this matter. As the arbitration

proceeding is finally underway, it would not be appropriate to respond in great detail. I believe the position of the Dema law firm is adequately set forth in our response to the draft Inspector General's report – we will let the arbitration process resolve the dispute and we welcome the opinion of an impartial arbitrator," said Attorney Capdeville, representing the Dema firm.

He added: "The release of the Inspector General's report and its use by this administration as a litigation tool comes as no surprise given that the administration chose to release it at the same time its response to the Dema firm's arbitration claim was due."

The O.I.G.'s report says the failures of the attorneys general of the aforementioned administrations wound up costing the Government of the Virgin Islands \$17.9 million, which the Dema law firm made out of the \$27.9 million in settlement funds received from three settlement agreements for the South Shore pollution cases.

Mr. Capdeville, in a telephone conversation with this publication on Friday, said the litigation, which spanned over a decade, included several lawsuits against some of the biggest players in the commodities industry at the time -- HOVENSA and Lockheed Martin, among others -- who were able to retain some of the best attorneys in the field.

"We want to make it clear so the public understands that this was not just one case. They handled four major lawsuits and an appeal, and they were up against seventeen major law firms, with over 2,400 filings with the court and about 150 depositions throughout many different states. It was a major piece of litigation," Mr. Capdeville told this publication.

The litigation included the red mud problem that had plagued residents of the Estate Profit, Harvey, Clifton Hill and New Works neighborhoods (see an in-depth Consortium story on the problem [here](#)). The Dema firm's successful suit against the companies saw those firms paying for cleanup costs.

"All that red mud in St. Croix is gone. That was what Mr. Dema's law firm accomplished. My thing is, it's one thing to knock somebody, but he did the work. And we got the results and because of it, the population of St. Croix is so much better for what he did," he said.

The firm stated in a press release issued earlier that it took great pride in its accomplishments addressing the environmental concerns and securing more than \$100 million that forced the defendants to pay for cleanup costs.

The O.I.G. said in its report that the manner in which the contract was awarded to the Dema law firm on May 7, 2004, was "questionable from the inception" when the [then-Department of Planning and Natural Resources] Commissioner Dean Plaskett, who the report did not name, submitted the August 16, 2003, letter requesting the sole source contract.

"The Code and the Rules and Regulations do allow circumstances for sole source contracting; however, sufficient justification must be provided to show that the proposed contractor is the only one capable of providing the desired services. In addition, the Code establishes the [Department of Property and Procurement] commissioner as the only authorized contracting official for the executive branch and contract negotiations are still

required to be done by the D.P.P. commissioner,” reads the report.

According to the O.I.G., Mr. Plaskett’s statement in the August 16, 2003 letter which says that the Dema law firm was “... the only firm in the Virgin Islands, or elsewhere...” capable of providing the services is highly suspect.

“It is difficult to believe that this contractor was the only firm in the Virgin Islands or the entire United States capable or willing to provide the necessary legal advice sought by D.P.N.R. At a minimum, proposals from other legal firms should have been obtained. Government officials are duty bound to always protect the interest of the government and people of the Virgin Islands and to get the best price for the government. What better way than inducing competition for the services sought?”

The following are the findings of the O.I.G., made available in the audit’s executive summary:

Professional Services

The Government of the Virgin Islands did not follow all competitive procurement laws, when they entered into a costly professional services contract to provide expert and specialized advice in connection with the government’s claims for penalties and damages recoverable for harm to the environment and public health arising from contamination by third parties of the natural resources near and located in the South Shore Industrial Area of St. Croix.

Contract Administration

The contractor was allowed to take control of the litigation process acting as the “Lead Attorney” without the necessary controls in place for the Department of Justice to direct and monitor all actions of the Contractor per the United States Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) litigation process.

The contractor claimed as fees and expenses a total of \$17.9 million of the \$27.9 million in settlement funds received from three Settlement Agreements, with no substantiation of the amounts by DOJ.

Contract Billings

- Funds were withheld by the Dema law firm in violation of the compensation terms of the contract.
- Three summaries submitted by the Dema law firm were premature and included expenses and fee computations that were not in accordance with the provisions of the contract.
- \$27.9 million was inappropriately disbursed from the trust account that was to be established for the government and violated the intent of CERCLA, which prioritizes environmental recovery, restoration and health assessment costs over that of legal expenses.
- The Dema law firm miscalculated, by \$5.1 million, the potential contingency fees due from the funds received and inappropriately claimed \$4.1 million in expenses.
- The \$27.9 million collected should have earned about \$761,000 in interest

The report also comes attached with appendices from former V.I. Attorneys General Vincent Frazier, who served during the de Jongh administration and Iver Stridiron, who served during the Turnbull administration. The former attorneys general contradicted themselves by making statements to the O.I.G. that were different from what they said to an attorney representing the Dema law firm.

Mr. Stridiron said he had forgotten what he told Inspector General Steven van Beverhoudt in an interview when he signed an affidavit with the firm representing the Dema law firm, according to the report. Mr. Frazier, who the report says allowed the Dema law firm to take control of the litigation process with no oversight or supervision by an assistant attorney general, said he had reconsidered what he told the I.G. and that his position had changed.

The audit report says the Dema law firm and its co-counsel –under the leadership of Frazier at the Department of Justice — were allowed to “conduct all depositions, file legal documents, represent the D.O.J. in settlement talks and in court proceedings, and sign two of the three settlement agreements as the representative for the attorney general.”

In its response, the Dema law firm hired Brian D. Miller who is, among other things, a former Inspector General of the United States General Services Administration. Mr. Miller contended the O.I.G.’s audit was “not prepared in compliance with the professional standards that governs inspectors general; is contradicted by objective evidence and sworn statements of material witnesses (Mr. Frazier and Mr. Stridiron); and seems to be intended as litigation support in the Mapp administration’s civil dispute with the two law firms rather than as an objective and impartial inspection to improve the efficiency and effectiveness of a government program or operation.”

Feature Image: Former Martin Marietta/Lockheed Martin, VIALCO, St. Croix Alumina and now St. Croix Renaissance Group, LLLP (Ernice Gilbert, VIC).

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