

## PUCO EXHIBIT FILING

Date of Hearing: September 24 - October 2, 2018Case No. 16-1871-EL-BGN

PUCO Case Caption: In the Matter of the Application of  
Icebreaker Windpower Inc. for a Certificate to  
Construct a Wind-Powered Electric Generation  
Facility in Cuyahoga County, Ohio.

List of exhibits being filed: Volume VIApplicant 47, 48Reporter's Signature: Karen Sue Gibson

Date Submitted: \_\_\_\_\_

PUCO

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BEFORE THE OHIO POWER SITING BOARD

- - -

In the Matter of the :  
Application of Icebreaker :  
Windpower Inc. for a :  
Certificate to Construct : Case No. 16-1871-EL-BGN  
a Wind-Powered Electric :  
Generation Facility in :  
Cuyahoga County, Ohio. :

- - -

PROCEEDINGS

before Mr. Nick Walstra and Ms. Megan Addison,  
Administrative Law Judges, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 9:21 a.m. on Monday,  
October 1, 2018.

- - -

VOLUME VI - PUBLIC VERSION

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481

- - -

Exponent

Exponent  
149 Commonwealth Drive  
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telex 650-326-8072  
www.exponent.com

September 11, 2017

John Stock, Esq.  
Partner  
Benesch, Friedlander, Coplan & Aronoff LLP  
41 South High Street, Suite 2600  
Columbus, OH 43215

Subject: Icebreaker Windpower  
Exponent Project No. 1707425

Dear Mr. Stock:

Thank you for your interest in retaining Exponent, Inc. (Exponent) to provide services related to the above-referenced project. This letter presents our current understanding of the scope of services sought and the terms of the engagement.

Our scope of services is anticipated to include engineering consulting as requested on the above matter. This project shall be performed at the direction of Benesch Friedlander Coplan & Aronoff LLP, but is generally expected to include expert witness support related to the Icebreaker Windpower project including issues related to (1) the economic viability of a small wind turbine fleet; (2) the general economics of wind power generation in the United States; and (3) the impact of extensive wind farm development on current PJM baseload and price impact.

Exponent's services will be provided on a time-and-expense basis. Charges will include professional fees, equipment use fees, and other out-of-pocket expenses according to our *Schedule of Rates & Charges*, a copy of which is enclosed and made a part hereof by reference. Exponent charges \$430 per hour for my services in calendar year 2017. Other Exponent staff members will be utilized where appropriate.

Exponent's services are provided only in accordance with our *Terms and Conditions of Agreement*, a copy of which is enclosed and made a part hereof by reference. It is our understanding that Exponent's retention on this project is with Benesch, Friedlander, Coplan & Aronoff LLP, on behalf of Murray Energy Corporation (Murray Energy), and, as such, all charges (i.e., fees and expenses) incurred by Exponent on this project will be billed to your office but will be the responsibility of Murray Energy, independent of other parties/payees involved. Please verify the contact information for billing purposes in the table at the end of this letter. If it is not correct, please provide the updated information. For purposes of the *Terms and Conditions of Agreement*, "client" shall mean Murray Energy.

1707425.000 - 0048



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John Stock, Esq.  
September 11, 2017  
Page 2

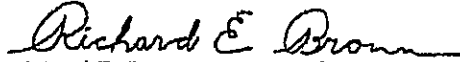
Based on the information you have provided, we have performed a conflict-of-interest check for the following parties:

- Murray Energy Corporation
- Bonheur ASA
- Lake Erie Energy Development
- LEEDCo
- Icebreaker Wind
- Fred.Olsen Renewables

Using this information, Exponent has determined that it does not currently have a conflict that would preclude us from assisting you in this matter. Please inform us as soon as possible if this list of parties is inaccurate or incomplete, and if other parties become involved as this matter proceeds.

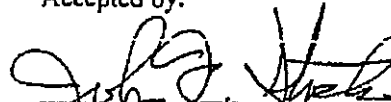
This proposed retention letter is valid for 15 days from the date first set forth above. Please sign and return this letter if you would like us to proceed with this work. If you have any questions or require additional information, please do not hesitate to contact me at (303) 882-6469. We look forward to working with you.

Sincerely,

  
Richard E. Brown, Ph.D., P.E.  
Principal Engineer & Practice Director

Enclosures (2)

Accepted by:

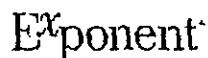
  
Authorized Signature

John F. Stock, Partner  
Name and Title

Borash, Friedlander, Coplen & Cunningham, LLC  
Organization

9/13/17  
Date

| <b><u>INVOICE TRANSMITTAL ADDRESS</u></b>   |                       |
|---|-----------------------|
| By default, Exponent will email invoices to the email address(es) listed below. Please verify the email address(es) as well as any reference information that should be contained on the invoice. |                       |
| If you wish to receive hard copies of invoices via US Mail, please check the box below and provide the address(es) to which the hard copies should be mailed.                                     |                       |
| <b>Invoice Reference Number(s):</b>   |                       |
|   |                       |
| <b>Name/Title</b>   | <b>Email</b>          |
| John Stock, Esq. / Partner  | jstock@Beneschlaw.com |
|   |                       |
|   |                       |
|   |                       |
| Please send hard copy of invoices via US Mail: Yes <input type="checkbox"/> No <input type="checkbox"/>   |                       |
| <b>Physical address for invoicing:</b>  |                       |
| <b>Other Notes:</b>   |                       |



## SCHEDULE OF RATES AND CHARGES

### PROFESSIONAL FEES

Exponent charges its clients for services provided according to the qualifications and experience level of the individuals assigned to the client's project at each employee's specific current hourly rate. These rates are modified annually on or about January 1. Exponent provides the following staff classifications that designate relative experience, training, and accomplishment within a technical field, together with the range of hourly rates. Payment is required in U.S. dollars within 30 days after the date of the invoice, or interest charges may be applied.

|   |  |             |
|---|--|-------------|
| Principal/Officer                       | Senior-level technical or management person, responsible for technical direction or general management or administration.  | \$275-\$750 |
| Senior Manager                          | Senior technical professional providing high-level or individual consulting assignments, or overall technical direction of projects, may have management responsibility for a technical field. | \$250-\$500 |
| Manager                                 | Senior technical professional providing high-level or individual consulting assignments or overall technical direction of projects.  | \$200-\$425 |
| Senior Engineer/<br>Scientist/Associate | Experienced technical professional skilled in planning, organizing, controlling, and executing complex, higher-order projects or assignments.  | \$175-\$325 |
| Engineer/Scientist/<br>Associate        | Trained/degreed professional responsible for executing technical assignments in support of client projects.  | \$150-\$275 |
| Technical/Research<br>Specialist        | Personnel experienced in instrumentation, programming, testing, library science, or the development or execution of research methodologies in support of projects.                             | \$135-\$200 |
| Technical/Research<br>Assistant         | Laboratory, data processing, engineering-graphics, engineering technician, or other personnel responsible for the execution of specialized tasks in support of projects.                       | \$90-\$150  |
| Non-technical<br>Assistant              | Personnel who assist technical staff in various non-technical areas, including scheduling, report productions, communications, logistics, and project support.                                 | \$ 75-\$125 |

### TECHNICAL EQUIPMENT, SOFTWARE AND LAB CHARGES

Exponent personnel may utilize Exponent's technical equipment and software to assist them in the performance of client's project. Exponent charges an hourly or daily usage fee for selected equipment, software and labs (e.g., scanning electron microscope, finite element software and biomedical laboratory).

### TRAVEL AND MEAL EXPENSES

Travel and meal expenses are charged at Exponent's cost. Local mileage is charged in accordance with I.R.S. guidelines. The most effective air travel for the project will be utilized and personnel below the Principal classification will charge coach fares.

### OTHER PROJECT EXPENSES

Project expenses including materials, subcontractors and third-party vendors are charged at cost plus fifteen percent. If the client prefers to procure the project expenses directly to avoid the additional fifteen percent charge then notify Exponent at the initiation of the engagement. Consumable materials may be charged on an applied rate rather than an incurred cost basis.



## TERMS AND CONDITIONS OF AGREEMENT

1. Work performed on a time-and-expenses basis will be billed in accordance with Exponent's most current Schedule of Rates and Charges. Work performed under a fixed-price arrangement will be billed at the agreed fixed amount. A payment in advance or a suitable retainer may be required from the client. Exponent will hold any retainer until the final invoice is prepared, at which time it will reconcile the client's account. Following Exponent's completion of work, the client is responsible for and may be charged for the storage and disposal of evidence, exemplars and samples. Exponent will charge taxes where applicable.
2. Invoices are typically rendered monthly or in accordance with the agreed upon payment schedule, and are due in U.S. dollars within 30 days of the date of the invoice. Exponent, without liability, may withhold delivery of reports and other data, and may suspend performance of its obligations to the client, pending payment of outstanding charges. Exponent reserves the right to decline further work with any client who has been delinquent in payment of Exponent's invoices.
3. Exponent will perform its services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. In the event that Exponent fails to meet the foregoing standard of care or that the client has any other claim, client's sole and exclusive remedy shall be limited to Exponent re-performing the work at Exponent's expense, or reimbursing the client up to the amount the client paid Exponent for the work. No other warranty, express or implied, is made concerning work performed under the agreement.
4. The client assumes full and complete responsibility for all uses and applications of Exponent's recommendations or work under this agreement, or failure to use recommendations or work, and agrees to indemnify and hold harmless Exponent, its affiliates, officers, directors, employees, agents, and stockholders against any and all liabilities, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses resulting from the death or injury to any person or damage to any property or any other alleged or actual damages resulting from the aforementioned use, application, or nonuse of Exponent's recommendations or work under this agreement.
5. In no event shall Exponent, its affiliates, officers, directors, employees, agents, or stockholders be liable for any incidental or consequential damages.
6. Exponent will hold in confidence all information provided by the client that the client designates and/or marks as confidential or proprietary. If Exponent and the client have entered into a separate non-disclosure agreement, it is deemed incorporated herein. All deliverables and any improvements to the client's processes or products arising from this agreement shall be and remain the property of client; however, Exponent has a right to retain a copy of such deliverable(s). Exponent shall retain all rights, title, and interest in and to its proprietary information (along with any modifications or improvements to such information), including, but not limited to Exponent's know-how, methodologies, techniques, processes, tools, test fixtures, technologies, trade secrets, software, data, databases, algorithms, source code, computational engines, logic formulas, non-interface worksheets, macros, and other materials used by Exponent in connection with providing its services.
7. Anybody required to be present at Exponent's laboratories for the project, including other parties and the like, will be required to sign an agreement that contains confidentiality obligations and a general release of claims for injuries or damages to property related to the visit.
8. Client understands that evidence, materials, test articles or the like ("Articles") may be damaged or destroyed during testing and as such Exponent is not responsible for any loss or damage thereto. The client shall bear the risk of loss of the Articles while they are in transit. Notwithstanding any language to the contrary herein, should Exponent be obligated to replace the Articles, the cost of such replacement shall be its fair market value and not any implicit value. Exponent, unless other specific arrangements are made, will maintain technical files and evidence for 30 days after the completion of work. Exponent will retain financial records according to I.R.S. requirements, but in no event less than 1 year after completion of the work.
9. Client shall not use Exponent's (or any of its affiliates' or its personnel's) name(s), trade names, service marks, trademarks, trade dresses, logos, symbols, or the like in any form for advertising, publicity, marketing, or in any way that could be construed as endorsement or promotion and the like without the prior written consent of Exponent in each instance.
10. This agreement is solely between, and may only be enforced by, Exponent and the client, and this agreement shall not create or be construed to create any third party rights, obligations, or liabilities including, but not limited to, affiliates, employees, contractors, stockholders, licensees, or the like. Any deliverables, recommendations, or service provided by Exponent shall be for the client's use only. Exponent's services are expressly limited to the terms herein and are not modified or supplemented by terms from the client's purchase order. Exponent will reference the client's purchase order for billing purposes only.
11. Upon receipt of written notice from the client, Exponent will terminate work under this agreement. Work under a fixed-price agreement that is terminated before completion will be billed on a percentage of completion basis. Exponent may terminate work under this Agreement only for cause. "Cause" includes, but is not limited to, development of a material conflict of interest, delinquency in payment, judicially required participation in onerous discovery or other legal process outside the intended scope of the work, or the presence of circumstances beyond Exponent's control, such as natural disasters or government intervention. Exponent shall not be liable for any delay or failure to perform resulting from unforeseen causes beyond its reasonable control.
12. If Exponent is required to testify or to produce information regarding work under this agreement in any third party litigation, including but not limited by subpoena or court order, the client agrees to provide counsel of its choosing and to pay Exponent's reasonable time and expenses, including attorney's fees associated with responding to such request. In the event of any such request, Exponent will promptly notify the client to enable the client to object to any such testimony or production. This paragraph is not intended to apply to claims between Exponent and the client.
13. This agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the internal laws of the state of California, without regard to the conflicts of laws principles of such state. The parties to this agreement consent to the jurisdiction of any state or federal court located in San Francisco, California. The prevailing party in any action shall recover from the losing party its reasonable attorney's fees and costs of suit incurred in addition to any other relief granted.

Rev. 010315

BR000019

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Icebreaker     )  
Windpower Inc., for a Certificate to Construct    )  
a Wind-Powered Electric Generation Facility     )   Case No. 16-1871-EL-BGN  
in Cuyahoga County, Ohio.                             )

**INTERVENOR ROBERT M. MALONEY'S:**

**ICEBREAKER WINDPOWER INC.'S  
THIRD SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF  
DOCUMENT TO INTERVENOR  
ROBERT MALONEY**

Intervenor Robert M. Maloney objects to the definitions and instructions contained in Applicant Icebreaker Windpower, Inc.'s Third Set of Interrogatories and Request for Production of Documents (the "Discovery Requests") to the extent that they attempt to modify or enlarge Intervenor's obligations under the Power Siting Board's procedural rules, O.A.C. Chapter 4906-2, and, to the extent applicable, the Ohio Rules of Civil Procedure, in responding to the Discovery Requests.

Furthermore, Intervenor objects to all Discovery Requests to the extent they seek information that is protected by the attorney-client privilege and/or under the attorney work-product doctrine. Without waiving the foregoing objections, Intervenor answers the Discovery Requests as follows.

**INTERROGATORIES**

1. Identify "yes" or "no" as to whether you will be providing voluntary testimony at the evidentiary hearing in this matter, which is scheduled to commence at the offices of the Public Utilities Commission in Columbus, Ohio on September 24, 2018?

**ANSWER:** Yes.

**REQUEST FOR PRODUCTION OF DOCUMENTS**

1. Produce the legal representation/engagement letter between you and the legal counsel/ firm who/that is representing you in this matter.



**RESPONSE:** Intervenor objects to this request on the grounds that the subject engagement letter is protected by the attorney-client privilege and the attorney work product doctrine. Without waiving these objections, Intervenor will produce the engagement letter.

s/ John F. Stock  
John F. Stock (0004921)  
Orla E. Collier (0014317)  
BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP  
41 S. High St., 26th Floor  
Columbus, Ohio 43215  
(614) 223-9300  
FAX: (614) 223-9330

*Attorneys for Intervenor W. Susan Dempsey*

**VERIFICATION**

STATE OF OHIO)

COUNTY OF FRANKLIN) ss:

*Robert M. Mahoney*

I, ~~W. Susan Dempsey~~, being first duly cautioned and sworn, and having personal knowledge of the forgoing, depose and say that the foregoing responses to the Interrogatories are true and correct to the best of my knowledge.

*Robert M. Mahoney*  
~~W. Susan Dempsey~~ *Robert M. Mahoney*

Sworn to before me and subscribed in my presence this 23 day of September, 2018.

*John E. Stock*  
Notary Public  
*Attorney-at-Law*  
*Life Commission*



**JOHN E. STOCK, Attorney At Law**  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon each person below via electronic mail this 24th day of September 2018.

/s/ John F. Stock

Counsel:

[cpirik@dickinsonwright.com](mailto:cpirik@dickinsonwright.com)  
[jsecrest@dickinsonwright.com](mailto:jsecrest@dickinsonwright.com)  
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[paul@ptblaw.com](mailto:paul@ptblaw.com)



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Columbus, Ohio 43215-6164  
Direct Dial: 614.223.9345  
Fax: 614.223.9330  
jstock@beneschlaw.com

November 30, 2017

Via Email ([rmalon11a@aol.com](mailto:rmalon11a@aol.com))

Mr. Robert M. Maloney  
Bratenahl Place Two  
Bratenahl, Ohio 44108

Dear Mr. Maloney:

Benesch, Friedlander, Coplan & Aronoff LLP is pleased to have the opportunity to represent you as legal counsel in connection with opposing regulatory approval for and construction of the proposed Icebreaker wind turbine facility (the "Icebreaker Project") in Lake Erie. This engagement will involve review of, and potential challenges to, various permits, regulatory certifications and tax abatements for the Icebreaker Project. Benesch also is representing a few residents of Cuyahoga County, Ohio in their opposition to the Icebreaker Project. Consistent with the rules by which we are bound, we require a written engagement agreement with all clients.

The engagement agreement consists of this letter and the accompanying Terms and Conditions of Engagement. This engagement agreement describes our responsibilities to each other and sets forth certain other matters regarding our attorney-client relationship.

You will be Benesch's client for purposes of this engagement, even though payment of our fees will be the responsibility of Murray Energy Corporation ("Murray"). We will bill Murray for work performed in this engagement and for costs incurred. In the event that Murray's financing of opposition activities for the Icebreaker Project becomes unavailable for any reason, and you confirm in writing to Benesch that you will continue to retain Benesch to perform such opposition activities, then you will be directly responsible for Benesch's fees and expenses from that point forward. By signing this engagement agreement, you are confirming your consent to such payment arrangement.

If this engagement agreement accurately reflects the agreement between Benesch and you, please confirm your acceptance of its terms. Please do not hesitate to call us to discuss any questions you may have regarding the engagement agreement.

We look forward to a mutually beneficial relationship.

Very truly yours,

BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP

A handwritten signature in black ink, appearing to read 'John F. Stock', written over a horizontal line.

John F. Stock

The engagement agreement is hereby accepted.

By:

  
Robert M. Maloney

Date: Dec 11, 2017, 2017

Enclosure

## **Benesch, Friedlander, Coplan & Aronoff LLP**

### **Terms and Conditions of Engagement**

This document contains the terms and conditions (the "Terms and Conditions") under which you are engaging Benesch, Friedlander, Coplan & Aronoff LLP to provide legal services. The Terms and Conditions apply to all matters for which you might now or in the future request our assistance and as to which we agree, unless, of course, you and we agree to revised Terms and Conditions regarding this or any other matter for which you engage us.

### ***Communications and Confidentiality***

The Firm will keep you informed of the status of the matter or matters for which you are engaging us and we will consult with you when we believe it necessary or appropriate. In the event that you need to reach us and the person sought is unavailable, please leave a message for the person concerned disclosing the nature and urgency of the call.

You understand and agree that, in order for us to represent you effectively, it is necessary for you to assist and cooperate with us during this engagement. You agree to be available to discuss issues as they arise, to attend in person or by conference call and participate in meetings and other activities in connection with our representation, and to provide complete and accurate information and documents to us on a timely basis. Your non-cooperation will be grounds for the Firm's withdrawal from representing you, and thus, it is essential that we maintain open communications.

As lawyers, we are always mindful of our central obligation to preserve the precious trust that our clients repose in us – their secrets and confidences. To that end, it is important that we agree from the outset what kinds of communications technology we will employ in the course of this engagement. For instance, depending on the degree of security that you wish to maintain, it may not be appropriate to use email or to speak using cellular telephones (or at least not to do so where substantive information is being discussed). Similarly, the exchange of documents using the Internet, or even direct computer-to-computer data transfer, may involve some risk that information will be retrieved by third parties with no right to see it. Even the use of fax machines can cause problems if documents are sent to numbers where the documents sit in open view. Nevertheless, we will use high tech communication devices such as cellular telephones, the Internet, unencrypted e-mail and fax machines, unless you instruct us not to use one or more of these devices, generally or in specific instances.

### ***Whom Do We Represent?***

You, the person addressed in the letter accompanying these Terms and Conditions, are our client for purposes of the Icebreaker Project opposition services that are the subject of this engagement, even though the payment of our fees and expenses is the responsibility of Murray. However, we will keep Murray apprised of the Icebreaker Project opposition services that we perform for you pursuant to this engagement agreement, and by signing the letter accompanying these Terms and Conditions, you agree that we may so apprise Murray.

### ***Conflicts of Interest***

We represent and have represented many clients over the years on a variety of legal matters. As a result, you possibly may find yourself in a position adverse to another of our clients in litigation, business negotiations, or some other legal matter in which we do not represent you and which is unrelated to this engagement. Accordingly, we include the following:

You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters are directly adverse to your interests. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. In similar engagement agreements with a number of our other clients, we have asked for similar agreements to preserve our ability to represent you.

### ***Termination of Representation***

Our relationship may be terminated by either of us by giving written notice to the other party. We may withdraw from this representation at any time consistent with applicable rules of ethical conduct, on reasonable notice, without your consent. Our withdrawal may be based upon, but is not limited to: (a) your failure to cooperate with us as provided above; (b) your failure to pay any of our bills when due; (c) any fact or circumstance that would render our continuing representation unlawful or unethical; (d) your failure to follow our advice; or (e) when we have reached an irreconcilable difference of views on the handling of your matter(s). Any termination by us of our representation will be subject to such approval as may be required from any court or other body before which we may be appearing on your behalf.

In the event of termination of our relationship, you agree that you will take all necessary steps to free us of any obligation to perform further, including the execution of any documents necessary or reasonably requested to complete our withdrawal.

When we complete the services you have retained us to perform, our attorney-client relationship for that matter will be terminated. Unless previously terminated by the completion of our services or otherwise, our representation will terminate no later than the date of our final statement for services and expenses for the particular matter. If you later retain us to perform further or additional services, our attorney-client relationship will commence again, subject to our original engagement agreement, unless we change its terms, in writing, at that time.

After termination of our attorney-client relationship regarding any particular matter, changes may occur in applicable laws that could impact your future rights and liabilities. Unless you actually engage us, in writing, to provide additional advice on issues arising from that matter after its completion, we will have no continuing obligation to advise you with respect to future legal developments.

### ***Entire Agreement***

The engagement agreement represented by the Terms and Conditions and the accompanying letter supersedes all prior or other contemporaneous written or oral agreements and understandings between us and constitutes the entire agreement between us. The engagement agreement may be modified only in a writing signed by you and by us. You acknowledge that no promises have been made to you other than those contained in the engagement agreement.

### ***Governing Law***

Unless otherwise specified in the accompanying letter, all questions arising under this engagement agreement or concerning rights and duties between us will be governed by the law of the jurisdiction in which the Benesch attorney sending you this engagement agreement principally practices, excluding choice of law provisions that might select the law of a different jurisdiction. If any provision of the engagement agreement is held by any court

or tribunal to be unenforceable, the remainder of the engagement agreement shall not be affected thereby and shall be enforced.

### ***Miscellaneous***

You understand, of course, that we cannot guarantee the outcome of any aspect of this or any other matter as to which we may represent you. Our services and advice will be based on the law at the time of such services and advice and on the extent of our actual knowledge of the applicable facts.