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September 3, 2008

FOR SETTLEMENT PURPOSES ONLY INADMISSIBLE

**VIA ELECTRONIC MAIL
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George M. Weaver, Esq.
Hollberg & Weaver LLP
2921 Piedmont Road, Suite C
Atlanta, GA 30305

Re: United States ex rel.
Lewis, McElmurray and Boyce v. Walker, et al.
United States District Court
Middle District of Georgia
Civil Action File No. 3:06-CV-16
DHBB File No. 2829/002

Dear Mr. Lott and Mr. Weaver:

As I have discussed with both of you, the purpose of this letter is to present a proposal for settlement of the above-styled matter prior to initiation of discovery and the expenditure of significant funds by all parties to proceed with this case. This letter is written for possible settlement purposes only. This letter, or any portion of this letter, may not be used in any legal proceeding or otherwise.

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In addition to trying to settle this matter before the beginning of discovery, please be advised that Relators, David Lewis and Andy McElmurray, have been called to testify before the United States Senate Environment and Public Works Committee about the potential harms of the land application of sewage sludge. The hearing is scheduled for September 11, 2008, which is next Thursday. In preparation for the hearing we have realized that it will be a significant event that will bring the issues in this lawsuit to the national level and elevate our client's claims.

Dr. Lewis and Mr. McElmurray are expected to answer questions about their personal experiences with government agencies and academic institutions, including the University of Georgia and its employees, regarding the government programs associated with, and the regulation of the land application of, sewage sludge. The Relators are expected to testify about the interactions with representatives of government agencies and academic institutions, and how these individuals have addressed the damages caused by the actions of such entities for in excess of 10 years. Integral to this testimony will be the allegations of networking among research institutions to create biased and unreliable data for supporting the flawed policies of federal agencies regarding the history of the Government's sewage sludge or "biosolids" land application program.

We see a unique opportunity for the Research Foundation and the individual UGA Defendants to settle this matter prior to the Senate hearings on the 11th of September. We have this very brief window of time to resolve this case in a way that circumstances will not permit from henceforth, which is why we are taking this very unusual step.

Inadmissability of Offer and Compromise

Under O.C.G.A. § 24-3-37, statements made with a view towards compromise are inadmissible at trial. This Georgia law was enacted to encourage the settlement of controversies by permitting parties to discuss their cases candidly with the assurance that admissions and proposals for compromise made in the course of their good faith settlement negotiations may not be used against them in any subsequent lawsuit. *Benn v. McBride*, 140 Ga. App. 698 (1976). This entire settlement brochure and all the exhibits enclosed herewith are submitted with a view towards compromise and settlement of this claim.

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Proposed Settlement Terms Pending Approval by the DOJ

I am sure that you can appreciate that Senator Johnny Isakson is a Member of the EPW Committee, and that the Committee will want to know UGA's position regarding U.S. District Judge Anthony Alaimo's recent ruling that Robert Brobst of the EPA provided "fudged," "fabricated," and "invented" data to UGA to publish in the Gaskin *et al.* paper. In order for the Research Foundation and the individual UGA Defendants to allow Dr. Lewis and Mr. McElmurray to praise UGA for its handling of this matter at the Senate Hearings, and to properly insulate UGA individuals and the Research Foundation from the Senate Actions condemning of the use of false data in research, we propose the following:

Letter Provided by the Authors of the Report

The Defendants shall provide the Relators with a letter from Julia Gaskin to the UGA Vice President Regina Smith indicating that the individual UGA authors of the Gaskin paper have reviewed Judge Alaimo's February 25, 2008 ruling in the McElmurray v. United States Department of Agriculture case concerning the environmental monitoring data from Augusta, which Mr. Brobst summarized for the article in the Journal of Environmental Quality (JEQ) and provided to the USDA. In the letter, Ms. Gaskin will state that she does not disagree with Judge Alaimo's Order, including the Court's determination that the data Mr. Brobst provided are unreliable and in some cases "fudged," "fabricated," or "invented." The form of the proposed letter is enclosed herewith as Exhibit A. This letter shall be copied to all co-authors of the JEQ article. Beyond the proposed language, we would allow Ms. Gaskin to claim, for example, that she did not know that the data were false or fabricated when she submitted the paper. Dr. Lewis and Mr. McElmurray have agreed not to contest or question Ms. Gaskin's or UGA's position in that regard.

As you will see in the proposed letter to Dr. Smith, Ms. Gaskin shall include the following statement: "Contrary to what EPA has stated or implied in letters or other documents which reference our Augusta study, for example in Mr. Mehan's letter dated December 24, 2004, our study has no bearing whatsoever on the quality or quantity of sewage sludge that Augusta applied to either the McElmurray or Boyce farms. Nor does our study have any bearing on any effects Augusta's sewage sludge may have had on the McElmurray or Boyce dairy herds." This, in fact, has been Ms. Gaskin's public position.

We believe that the proposed letter sufficiently absolves the Research Foundation and the individual UGA Defendants from any implications of wrongdoing before the Senate EPW Committee, and otherwise, if the letter is issued prior to September 11, 2008.

Compensation for Unintended Damages Caused by Unreliable Data

If settlement is reached, Relators Lewis, McElmurray, and Boyce will state that they have not included, and will not bring in this action or otherwise, any Section H "whistleblower" claims relating to their qui tam lawsuit naming the Research Foundation and authors of the Gaskin paper. Relators will further agree that they are not due any compensation for losses suffered as a result of filing the qui tam. The Relators would also agree that the Research Foundation bears no responsibility for any damages that the scientific data provided by Mr. Brobst and published under the auspices of the Research Foundation may have caused to Dr. Lewis' employment opportunities at UGA or the dairy farm businesses lost by the McElmurray and Boyce families.

Nevertheless, the Research Foundation must recognize the impact that the unreliable data that Mr. Brobst and the EPA provided in the Gaskin paper may have allowed the study to be misused by the EPA and others to undermine Dr. Lewis' scientific reputation and the McElmurray's and Boyce's ability to recover damages to their businesses. Therefore, the Research Foundation would agree to:

(1) Provide Dr. Lewis with temporary employment at UGA as a non-tenure-track Senior Research Associate in the Department of Marine Sciences to help restore his reputation at UGA. This position will include the standard benefits associated with such a position, including a reasonable annual salary to be negotiated. Dr. Lewis will be allowed to keep his current office in that department. This arrangement shall become null and void should Dr. Lewis apply for, and receive, any other employment position within the University of Georgia system.

(2) The Defendants shall pay Relators R. A. McElmurray III and G. William Boyce the sum of \$100,000 each, for a total amount of \$200,000.

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Our clients have instructed us that these are the minimum terms of settlement that they will accept to settle this matter at this time. We have already worked at length with our clients to reach these minimal, acceptable terms and numbers and we are not allowed to negotiate further.

In exchange for these items, the Relators will agree to dismiss your clients from this lawsuit with prejudice. All parties will bear their own legal expenses. You will note that we have not included the federal EPA employees as addressees of this settlement agreement. While our clients are willing to enter into a settlement agreement with your clients, our clients will not agree to any terms of settlement with the federal Defendants. At the same time, if your clients will agree to the terms outlined herein, our clients will dismiss your clients and will agree also to dismiss the federal Defendants from this suit.

Please note that any terms of this settlement proposal are subject to the approval of the United States Department of Justice. Please contact us as soon as possible to acknowledge that you have discussed the contents of this letter with your clients and that you are interested in possible settlement. We must settle this matter by close of business on September 8 to allow for the proper preparation for the hearing on September 11. Although we would normally propose an in-person meeting to discuss these issues, because time is of the essence we are available to meet with you over the telephone to discuss this matter. We look forward to your reply.

Sincerely,



F. Edwin Hallman, Jr.

For DECKER, HALLMAN, BARBER & BRIGGS

FEHjr:raw

Enclosure

c: Dr. David Lewis
Mr. R. A. McElmurray III
Mr. G. William Boyce

The University of Georgia

Regina A. Smith
Associate Vice President
Office for Research
617B Boyd Graduate Research Center
University of Georgia
Athens, Ga 30602-7411

I have carefully reviewed Feb. 25, 2008 Court Decision in *R.A. McElmurray III v. United States Department of Agriculture*, Case No. CV105-159. In the Court's Decision, Judge Anthony A. Alaimo of the United States District Court, Southern District of Georgia, describes Augusta, Georgia's historical environmental monitoring reports.

Robert Brobst of the U.S. Environmental Protection Agency, Region 8, Denver, Colorado summarized these reports our research article, "Long-term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage," *Journal of Environmental Quality*, Vol. 32, pages 146-152 (2003). The authors were Julia W Gaskin, Robert B. Brobst, William P. Miller, and E. William Tollner. Mr. Brobst heads EPA's Biosolids Incident Response Team (BIRT) and was investigating cattle deaths on dairy farms owned by the McElmurray and Boyce families in Richmond and Burke Counties at the time our study in Burke County was conducted in 1999.

Some of the data addressed by the Court appear in our article in Table 2 at the bottom of page 148. This table lists concentrations of the nine regulated metals in Augusta's biosolids from 1987-1997, including means, standard deviations and maximum values. Other data that Mr. Brobst summarized from Augusta's reports and included in our paper were total nitrogen concentrations in the biosolids and biosolids application rates. We used these data to conclude that Augusta's sewage sludge was applied at agronomic (proper nitrogen) rates and generally met federal and state requirements for levels of regulated metals.

The Court found evidence "that the City fabricated data from its computer records in an attempt to distort its past sewage sludge applications. ... In January 1999, the City rehired [former City of Augusta supervisor Alan] Saxon to create a record of sludge applications that did not exist previously." Based on these and other admissions by City employees, as well a variety of sources of reliable testimony and evidence, the Court ruled that "there is a broad consensus that Augusta's reports were unreliable, incomplete, and in some cases, fudged." The Court also described the various data that Mr. Brobst provided to the University of Georgia and the USDA as being "fabricated and, in some cases, invented."

The USDA chose not to appeal these findings by the Court. After carefully reviewing the Decision, I have no basis upon which to challenge the Court's findings either. I must agree, therefore, that any conclusions in our article based on the questionable data provided by Mr.

Brobst are invalid. Specifically, I refer to our conclusions that Augusta's biosolids were applied at agronomic (proper nitrogen) rates and generally met federal and state requirements for levels of regulated metals.

The Court also found, based on reliable information, that the McElmurray's dairy farm was too polluted from various contaminants in Augusta's sewage sludge to grow food-chain crops. For example, the Court found:

"Other specific evidence showed that heavy metals were found at levels that were above the regulatory limits on the McElmurrays' farm, making the land unfit for food grown for human consumption. On one piece of property alone, antimony levels registered at 96.8 ppm, while the regulatory limit was 4 ppm. Arsenic registered at 44.2 ppm, more than twice the amount allowed by law. Cadmium was found at a level of 6.41 ppm, which was more than three times the level deemed safe under the law. Selenium registered at 5.4 ppm, although the cleanup standard provided under the law was set at 2 ppm. Thallium was found at 51.6 ppm on that particular piece of property, although the regulatory limit is 2 ppm."

Finally, the Court rejected Mr. Brobst's and the USDA's arguments that a letter written on December 24, 2003 by EPA Assistant Administrator G. Tracy Mehan, III applies to the McElmurray farm. The Assistant used our article to dismiss a jury verdict in favor of Boyceland Dairy as follows:

"On February 2, 1999, Region 4 staff and the BIRT met with University of Georgia veterinarian scientists and soil scientists to discuss the livestock deaths and the University's possible participation in assessing soil and forage characteristics in Burke and Richmond Counties. On August 5, 1999, EPA Headquarters issued a grant to the University of Georgia ... This effort resulted in the publication of a paper entitled Long-Term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage (Gaskin *et al.*, 2003)."

"The University of Georgia's findings of their analyses of trace metals levels in soils and feed that were implicated in the Georgia case. The paper indicates 'that toxic levels of metals have not accumulated in the soils due to long-term biosolids application. Overall forage quality from the biosolids-amended fields was similar to that of commercially fertilized fields...'"

I have always maintained that our study in no way applies to the McElmurray or Boyce farms, or any other farms that did not participate in our study. Therefore, I do not dispute the Court's findings concerning levels of contaminants on the McElmurray farm.

[The Relators in *U.S. ex. rel. Lewis, McElmurray and Boyce v. Walker, et al.* agree not to dispute any claims Ms. Gaskin or the University of Georgia wish to include in this letter so long as they do not negate any of the content above.]

Sincerely,

Julia W. Gaskin
Land Application Specialist