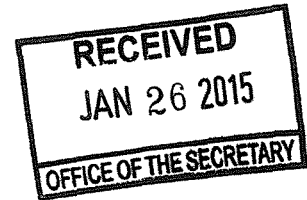


SHARPLESS STAVOLA



FREDERICK K. SHARPLESS
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Direct Dial: 336-333-6384
FKS@sharpless-stavola.com

January 20, 2015

Mr. Brent J. Fields
Secretary of Commission
Securities and Exchange Commission
100 F Street N.E.
Mail Stop 1090
Washington, DC 20549

**Re: In the Matter of Paul Edward "Ed" Lloyd, Jr., CPA;
Administrative Proceeding File No. 3-16182; Our File No. 10965**

Dear Mr. Fields:

I enclose an original and three copies of Exhibit 9 (report of Thomas N. Long) to Respondent's Brief in Support of the Motion for Summary Disposition. The enclosed report replaces that which was submitted on January 16, 2015, because the previous one did not include Mr. Long's signature.

Sincerely yours,

A handwritten signature in black ink, appearing to be "FKS", written over a horizontal line.

Frederick K. Sharpless

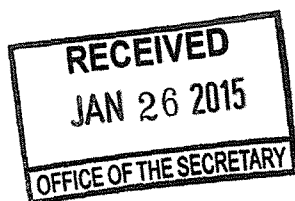
FKS:drc
Encls.

cc: Honorable Carol Fox Foelak (via email and US mail)
Mr. Robert F. Schroeder/Mr. Brian Basinger (via email and US mail)
Mr. Alex Rue (via email and US mail)
Mr. Woody Webb (via email and US mail)
Mr. Ed Lloyd (via email)

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WITH ATTORNEYS ADMITTED IN
WY CO UT CA ID NE ND & WA

January 15, 2015

Mr. Frederick Sharpless
VIA EMAIL: [fks@sharpless-stavola.com](mailto: fks@sharpless-stavola.com)

Re: *In the Matter of Paul Edward "Ed" Lloyd, Jr., CPA, SEC Administrative Proceeding File No. 3-16182*

Dear Mr. Sharpless:

I am furnishing this letter to you in connection with the above-referenced matter (the "SEC Proceeding"). You have engaged me to consider issues of Wyoming law that are involved in the SEC Proceeding. I understand that you represent Mr. Lloyd in the matter and will be utilizing my opinions in his defense.

DOCUMENTS REVIEWED

In connection with this letter, you have supplied me, and I have reviewed, copies of the following documents:

1. Order Instituting Administrative and Cease – and – Desist Proceedings which is undated but apparently was entered in order to commence the SEC Proceeding.
2. Answer and Motion of Paul Edward "Ed" Lloyd, Jr., CPA dated October 22, 2014.
3. Operating Agreement of Forest Conservation 2012, LLC (the "LLC") dated and executed effective as of December 7, 2012 (the "Initial Operating Agreement").
4. The Amendment and Correction to Operating Agreement of Forest Conservation 2012, LLC (the "Amended Operating Agreement") executed by eighteen (18) members of the LLC dated to be effective December 7, 2012. The Amended Operating Agreement and the Initial Operating Agreement are hereinafter sometimes referred to as the "Operating Agreement."

Exhibit 9
Respondent's
Brief

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5. Schedule K-1s for the year 2012 issued by the LLC to various members, including to Christopher R. Brown ("Brown"), James R. Carson ("Carson") and Michael T. Malloy ("Malloy").

6. Checks payable to the LLC drawn upon bank accounts owned by Brown, Carson, Malloy and their wives.

7. An Affidavit of Carson dated January 8, 2015.

8. Affidavits similar to the Carson Affidavit from several of the other members of the LLC.

The items listed above are the only documents I have considered in connection with the SEC Proceeding and the transactions described therein. In connection with my opinion, as to any matters of fact, I am relying on the above-referenced documents and those facts which are further set forth below.

RELEVANT FACTS

The following facts have been brought to my attention by or on behalf of Paul Edward Lloyd, Jr.:

1. Mr. Lloyd communicated with Messrs. Brown, Carson and Malloy (the "Allegedly Omitted Members") regarding the opportunity for the Allegedly Omitted Members to become members of the LLC, and each of the Allegedly Omitted Members verbally agreed with Mr. Lloyd to become members, and Mr. Lloyd on behalf of the LLC verbally agreed to accept them as members.

2. Each of the Allegedly Omitted Members paid cash consideration in exchange for their acquisition of a membership interest in the LLC.

3. Each of the Allegedly Omitted Members received all reports and communications provided by the LLC and by Mr. Lloyd to the other fifteen (15) members of the LLC with respect to their tax reporting and in response to their questions.

4. In particular, each of the Allegedly Omitted Members received a Schedule K-1 from the LLC indicating their proportionate share of all income, loss, expense, deduction, gain and other tax consequences attributable to the LLC, and each such K-1 was timely received and was transferred to the Allegedly Omitted Members at the same time as appropriate K-1s were transmitted by the LLC to the other fifteen (15) members

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of the LLC. Each K-1 reflects each member's percentage interest in the capital of the LLC in an amount equal to the percentage set forth in Exhibit "C" to the Amended Operating Agreement as the "Percentage After Fee."

5. Upon discovery of the omission of the Allegedly Omitted Members from the schedule of members attached to the Initial Operating Agreement, the Amended Operating Agreement was prepared by Mr. Lloyd and each of the Allegedly Omitted Members executed the same confirming their acquisition of a membership interest in the LLC effective as of December 7, 2012. At the same time, each of the other fifteen (15) members of the LLC similarly confirmed their own admission and the admission of the Allegedly Omitted Members as members of the LLC by executing the Amended Operating Agreement.

6. The Amended Operating Agreement was executed at some point in time after December 7, 2012 and was dated back in time to the date of December 7, 2012. As of December 7, 2012, each of the Allegedly Omitted Members and the fifteen (15) other members of the LLC had agreed to acquisition of a membership interest in the LLC, had agreed to the membership of the seventeen (17) other members, and had transferred consideration to the LLC in exchange their membership.

7. The backdating of the Amended Operating Agreement was not intended by any of the eighteen (18) parties signatory thereto to defraud any third party, deprive any third party of rights that may have otherwise accrued, or alter the agreement otherwise then understood among the eighteen (18) signatories.

8. Each of the Allegedly Omitted Members has claimed a deduction on the 2012 Form 1040 submitted by each of the Allegedly Omitted Members to the Internal Revenue Service, reflecting their appropriate proportionate share of the pass-through of the charitable contribution deductions attributable to each, and each has thereby obtained the tax benefit upon which each and in exchange for which each had agreed to become a member of the LLC.

9. There was no condition to membership set forth in the Operating Agreement of the LLC, nor verbal agreement between or among any of the manager, members or Allegedly Omitted Members, that as a condition precedent to membership any member be required to complete any documentation for, or receive approval from, any third party or governmental organization.

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10. There was no condition to membership set forth in the Operating Agreement of the LLC, nor verbal agreement between or among any of the manager, members or Allegedly Omitted Members, that as a condition precedent to membership there be a disclosure to any third party of any information with respect to any specific member.

11. None of the Allegedly Omitted Members dissociated from the LLC at any time relevant to the transactions involved in the SEC Proceeding.

ASSUMPTIONS

For purposes of this opinion, and with your permission, I have assumed the following without independent verification:

1. The genuineness of all signatures on the documents reviewed by me;
2. The exact conformity with the executed originals of all documents submitted to me as photostatic, telefacsimile, or electronic copies, with no subsequent material amendments or modifications thereto or subsequent mandatory agreements, written or verbal, of having been made;
3. The legal capacity of the individual signatories to the Amended Operating Agreement; and
4. The compliance of the transactions described in the SEC Proceeding with tax and other laws not otherwise involved in the SEC Proceeding.

Except as may be expressly provided otherwise herein, this opinion is governed by and shall be interpreted in accordance with the ABA Business Section "Accord" Regarding Third-Party Opinions, to the extent the same may be applicable to situations such as this opinion with respect to the SEC Proceeding. As a consequence of the application of the Accord, my opinion is subject to qualifications, exceptions, definitions, and limitations, all as more particularly described in the Accord, and my opinion should be read in conjunction therewith.

OPINION

I have examined the laws of the State of Wyoming in my consideration of the opinions expressed below. My examination has been limited to only current laws of general applicability to transactions of the nature described in the SEC Proceeding,

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excluding local laws and regulations, and laws or regulations not published in a manner generally available to practicing attorneys. My opinions are primarily based upon the Wyoming limited Liability Company Act and upon the common law of the State of Wyoming with respect to contracts. Based solely on the foregoing and subject to the assumptions, exceptions, qualifications and limitations set forth in this letter, I am of the opinion that Messrs. Brown, Carson and Malloy, the Allegedly Omitted Members, were members of the LLC at all times relevant to the matters described in the SEC Proceeding.

ANALYSIS

Under the Wyoming Limited Liability Company Act, an LLC's operating agreement is just that, an agreement. It is to be judged under basic contract law. An LLC has broad authority to adopt whatever provisions it may wish in its operating agreement, provided that it does not eliminate the contractual obligation of good faith and fair dealing nor adopt any of the other prohibited provisions described in Wyo. Stat. § 17-29-110(c). This contractual nature of an LLC has been recognized both by the Wyoming Supreme Court, *Lieberman v. Wyoming.com LLC*, 82 P.3d 274 (Wyo. 2004), and in the relevant literature, Rogers, *Business Organizations – Staying Afloat with a Hole in the Wyoming LLC Act; Default Rules in a Contractual LLC World*, 5 Wyo. L. Rev. 351 (2005); Cottam *et al.*, *The 2010 Wyoming Limited Liability Company Act; a Uniform Recipe with Wyoming "Home Cooking,"* 11 Wyo. L. Rev. 49 (2011). As is the case with other contractual arrangements, the Wyoming Limited Liability Company Act recognizes that an operating agreement may be based upon the verbal agreement of the members, Wyo. Stat. § 17-29-102(a)(xiv). An operating agreement can be oral, can be set forth in one or more writings, can be implied from the facts and circumstances of the parties, or can be determined based upon any combination thereof, *Id.*

The concern of the SEC appears to arise from its belief that the Allegedly Omitted Members were not actually members of the LLC. However, each of the Allegedly Omitted Members paid a consideration for their membership interest, received a benefit in the form of a tax deduction as the expected result of their membership in the LLC, and executed the amendment to the operating agreement affirming their membership in the LLC pursuant to the provisions of the Initial Operating Agreement. Although the documentation establishing the membership in the LLC of the Allegedly Omitted Members may not have been executed in writing at or prior to the time of their contributions to the LLC or their receipt of the bargained-for benefits from the LLC, such "backdating" does not invalidate the written documentation nor render it something that can be lightly overlooked.

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The “backdating” that is represented by the amendment to the operating agreement simply memorializes all material events that did indeed occur with respect to the Allegedly Omitted Members to the same full extent and effect as had occurred with the fifteen other members of the LLC. Nothing in the amendment to the operating agreement purports to represent that it was actually signed on the “effective” date of December 7, 2012 that is described in the document, and some courts would refrain from using the term “back dating” to describe this after-the-fact written memorialization, *Moore v. Commissioner*, 93 T.C.M. (CCH 1275) (2007). The courts have certainly recognized the effective date of documents that were created after the fact in order to memorialize a prior agreement, *United States v. Micke*, 859 F.2d 473 (7th Cir. 1988). Wyoming is located in the 10th Circuit, which also has acknowledged that back dating of documents, including corporate documents is “not necessarily illegal,” *U.S. v. Gordon*, 710 F.3d 1124 (10th Cir. 2013), citing *United States v. Reyes*, 577 F.3d 1069 (9th Cir. 2009). Where, as here, the backdating reflected the date on which a matter had been agreed, then the court would determine that “the backdating was legitimate . . .” *Micke, supra.* at 478. The government itself has acknowledged the legitimacy of written documentation dated prior to the date of execution which memorializes a prior event. In fact, the government has affirmatively argued that a back dated document indeed memorialized a prior event and that the effective date of the agreed event should be governed by the back dated document, *Moore v. Commissioner, supra* at 283. To the extent the SEC Proceeding is based upon a contention that the three Allegedly Omitted Members were not members of the LLC, it has no foundation in and is contrary to Wyoming law.

The statutory requirements for a person to become a member of an LLC are set forth in Wyo. Stat. § 17-29-401. There are alternative methods for the same to be accomplished, at least two of which have been fulfilled by each of the Allegedly Omitted Members, i.e. their membership is provided in the Operating Agreement and their membership has been consented to by all of the other members of the LLC. In my opinion, the SEC is mistaken as a matter of law insofar as it has concluded that the Allegedly Omitted Members are not members; those three gentlemen are members of the LLC as a matter of Wyoming law.

QUALIFICATIONS

The foregoing opinion is subject to the following qualifications:

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(i) My opinion is limited to the present effect of the internal laws of the state of Wyoming which are generally applicable to transactions of the nature described in the SEC Proceeding. I expressly note that my opinion does not address any of the following legal issues: securities laws and regulations; taxation laws and regulations; fraudulent transfer and conveyance, bankruptcy, moratorium and similar laws involving adequacy of consideration and/or insolvency; and criminal and civil forfeiture laws.

(ii) To the extent the Operating Agreement remains executory in nature, the members', including the Allegedly Omitted Members', rights and remedies, and the validity, binding nature, and enforceability of any of the terms of the Operating Agreement, may be limited or otherwise affected by general principles of equity (regardless of whether enforceability is considered in a proceeding in law or at equity). Without limiting the generality of this observation, I note that Wyoming courts have in the past denied enforcement of various contractual provisions in furtherance of equitable principles involving a duty of good faith and fair dealing, honesty and reasonableness, unconscionability, materiality, commercial impracticability, and other factual circumstances leading a court to find enforcement to be inequitable.

(iii) To the extent the Operating Agreement remains executory in nature, the members', including the Allegedly Omitted Members', rights and remedies, and the validity, binding nature, and enforceability of any of the terms of the Operating Agreement, may be limited or otherwise affected by the effect of general rules of contract law and/or tort law that:

- a. Provide that where less than all of an agreement is unenforceable, the balance is enforceable only when the unenforceable portion is not an essential part of the agreed exchange;
- b. Limit the recovery of damages to the extent the aggrieved party could have avoided damages by reasonable efforts; and
- c. Permit a party who has materially failed to render or offer performance the opportunity to cure such failure prior to the time the applicable performance condition can no longer occur.

(iv) The opinions expressed herein are strictly limited to the matters stated herein and no other opinions may be implied. Without limiting the generality of the foregoing, I specifically advise that I express no opinion as to:

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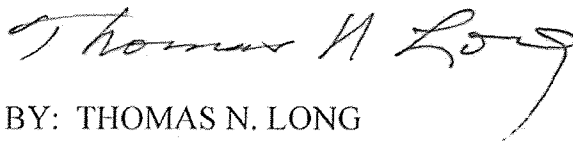
- a. Title to any property of LLC; or
- b. The accuracy of any description of assets or property used in the Operating Agreement or documents filed or submitted in connection with the SEC Proceeding.

(v) I have prepared this letter for you in connection with the SEC Proceeding, and it shall not be used for any other purpose or relied upon by any other party without my permission.

The opinions expressed above are rendered as of the date of this letter and are based on the information provided as noted above. I expressly disclaim any obligation to update this letter or otherwise to advise you of any matters (including, but not limited to, any subsequently enacted, published or reported laws, rules, regulations or judicial decisions having retroactive effect) which may come to my attention after the date of this letter and which affect any of the opinions expressed in this letter.

Very truly yours,

LONG REIMER WINEGAR BEPLER LLP



BY: THOMAS N. LONG

TNL:jip