

From: Collier, Steven
Sent: Wednesday, October 31, 2012 1:51 PM
To: Lofy, Bill
Subject: FW: HERE'S THE DIGGER ARTICLE:

ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED COMMUNICATION

Dear Chief Lofy:

Please find below the synopsis we discussed. Thanks very much.

Steve

Steven Collier
General Counsel
Department of Human Resources
110 State Street
Montpelier, VT 05620
(802) 828-1264

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From: Collier, Steven
Sent: Monday, October 29, 2012 12:26 AM
To: Duffy, Kate
Cc: Spaulding, Jeb; Clasen, Michael; Lofy, Bill; London, Sarah; Allen, Susan; Collier, Steven
Subject: RE: HERE'S THE DIGGER ARTICLE:

ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED COMMUNICATION

Dear Mr. Secretary:

I have some rough employee settlement numbers from July 1, 2010 to the present. We provide the numbers for internal evaluation. (I am somewhat reluctant to provide the same synopsis publicly, because discerning the dollar value of some of the settlements requires significant explanation (like evaluating the value of leave usage, and determining an employee's entitlements without agreement.)) I expect it will be better to produce the settlement agreements than to try value/explain each, and then answer questions as appropriate.

The settlements include those known to DHR that have some monetary value. Most of our settlements do not provide payment, and involve discipline and/or resignations. In general, we only provide significant compensation to resolve some form of termination. In total, we settled with approximately 88 employees for some form of payment since July 1, 2010. Twenty-seven of the 88 employees are Troopers who jointly filed a claim soliciting earlier promotions, and 18 of the 88 were allowed to retain their current rate of pay—typically following demotions. I did not calculate the value of these “red

circle" rate settlements, as they are difficult to evaluate. Twenty-five of the remaining 43 claims involved an employee's separation from state service.

In the second half of 2010, we settled 9 cases of monetary value. Two involved separations, two retained current pay, and the total paid was approximately \$20,528. (I believe the largest settlement in the first half of 2010 was \$50,000.)

In 2011, we settled 29 cases of monetary value. Thirteen involved separations, ten retained current pay, and the total paid was approximately \$346,281. Cheri Bull settled for \$150,000—by far the most expensive settlement. We also paid a liquor control investigator \$40,000 because the Labor Board reinstated him after we terminated him, and we then owed approximately \$60,000 in back pay. He was a liar and crook, and as part of the settlement, agreed to never work for the State again. (We had some leverage because we fired him a second time based on evidence we acquired after the first termination.) He received \$40,000 and approximately \$13,000 in retirement contributions. The remaining \$143,000 covered the seventeen additional settlements, including eleven more separations.

In 2012, we settled 50 cases of value to date. Ten involved separations, six retained current pay, 27 permitted new Troopers to promote, and the total paid was approximately \$54,607. (This number will increase some, as I do not have the financial details on one resignation. In addition, we settled a terminated Game Warden's case for \$10,000 one week ago that is not yet final.)

We have much more to do before we can respond to the public records request, but this synopsis provides a rough framework.

Thanks very much.

Steve

From: Duffy, Kate
Sent: Saturday, October 27, 2012 11:30 AM
To: Collier, Steven
Cc: Spaulding, Jeb; Clasen, Michael; Lofy, Bill; London, Sarah; Allen, Susan
Subject: Re: HERE'S THE DIGGER ARTICLE:

As part of the consolidation of HR staff, DHR did a quick analysis revealing the state paid approximately 2.9 million from 2000 to 2009 in damages for claims brought by employees. The high numbers were part of the justification for the consolidation. About 500k of that may be related to the jury verdict that was overturned by the supreme court. And just so everyone knows, whenever an employee is over 40 and we are asking for a general release, we need to do a separate age discrimination waiver. Other reporters have assumed our cases are related to age discrimination, as Digger does here, because of that fact. I think we will have such waivers with most of the settlements, and want to caution that it does not mean we are routinely being sued for and settling age discrimination claims. If you would like additional information on cases per-2009, please let me know. K

Sent from my iPad

On Oct 27, 2012, at 9:22 AM, "Collier, Steven" <Steven.Collier@state.vt.us> wrote:

ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED COMMUNICATION

Thanks for the information Sue. Just so folks know, we did not “heavily redact” the Bull agreement. Instead, we redacted a few preliminary clauses explaining that Bull was terminated, that she filed a charge with the HRC and EEOC, and that her lawyer said he planned to withdraw the HRC charge and file a lawsuit. I do not believe DHR—at least centrally—was involved in the decision to terminate Ms. Bull—who had cancer. Indeed, one of our central missions is to avoid terminations where we are exposed to this type of liability, as it is unacceptable to have to pay so much to a former employee.

I started 12-29-09, so do not have a terrific historical perspective on state employee settlements, but do know that in 2009, one AOT employee settled a discrimination lawsuit for approximately \$330,000, and a jury awarded an AOT employee \$500,000 (fortunately, the Supreme Court reversed that judgment earlier this year).

If necessary, it will take time to dig through earlier year settlements, so I think it unwise to start volunteering numbers when we do not have the full picture. But, it may be helpful for you to know about those large 2009 cases. Kate knows more about those cases than I do, but I believe they both had substantial court filings which are public.

Regardless, large employee settlements—as unfortunate as they are—are the anomaly, and generally involve constitutional or discrimination claims where the State is exposed to attorneys fees—a factor that substantially increases our risk. (A few years ago, an annoying Vermont court protestor won \$50,000 or less in First Amendment damages, and was awarded several hundred thousand in attorneys fees.)

The vast majority of our settlements do not involve money. Most are disciplinary agreements and/or resignation in lieu of discharge. Generally, we only pay to resolve some minor dispute over contractual language, to allow an employee to retain his/her pay when being demoted, or to sustain a termination and preclude the Labor Board from reinstating a poor employee. I reviewed two-thirds of the post July 1, 2010 monetary settlements last night, and will be able to provide a synopsis by Monday. (The Bull settlement is the largest I’m aware of since January 2010.)

Thanks very much.

Steve

From: Allen, Susan
Sent: Saturday, October 27, 2012 6:09 AM
To: Collier, Steven; Jackson, Melissa; Duffy, Kate
Cc: Reardon, Jim
Subject: HERE'S THE DIGGER ARTICLE:

VTDIGGER:

State settled four cases with workers in 2011; largest payout was to former Vermont Veterans Home worker for \$150,000

by Nat Rudarakanchana

The state settled four cases with state employees last year and made \$190,000 in cash payments to two former workers. The largest of these was a \$150,000 settlement with Cheri Bull, a former Vermont Veterans Home clinical care coordinator in 2011.

The state paid Bull \$45,000 to settle claims over lost back pay, along with \$105,000 for compensation, attorney's fees, and other unspecified reasons, according to settlement documents obtained from the Department of Human Resources.

The agreement between the state and Bull is heavily redacted, so the exact nature of the dispute between Bull and the state remains unclear. Steve Collier, an attorney with the Vermont Department of Human Resources, said the settlement had nothing to do with recent controversy related to the home's near closure.

In other cases settled in 2011:

- David Jacobs, an investigator who was dismissed from the Department of Liquor Control, received \$40,000 from the state, and promised not to apply for future employment with the state;
- Jeanne Johnson, a highway safety chief from Waterbury, agreed to retire in August 2011. The Department of Public Safety agreed not to file any civil action against her for actions related to her job. She received four month's salary upon retirement;
- Lawrence Rosenberger from the Department of Fish and Wildlife, a Burlington game warden dismissed in August 2005, was eventually reinstated after filing grievances with the state's Labor Relations Board.

Collier said that he couldn't say anything more about the settlements without violating attorney-client confidentiality. He explained that often in settlements, details in the two competing narratives by the settling parties were redacted, even in public documents, because they contained sensitive personal information.

The documents in the case of Cheri Bull suggest that the claims are broadly related to age discrimination, as she agreed to waive potential claims under the Age Discrimination in Employment Act, a 1967 federal statute banning discrimination for those aged 40 or above.

Brian Sawyer, who is listed in documents as Bull's attorney, didn't return calls for comment. Sawyer formerly worked at Vermont Legal Aid and specializes in the legal issues concerning the elderly.

According to the settlement documents, Bull worked at the home from September 28, 2009 to June 18, 2010, leading the home's North Unit. She cared for the residents in that unit and supervised its staff.

According to an undated letter of reference from Melissa Jackson, the home's administrator, "Ms. Bull was a conscientious and dedicated worker who 'went above

and beyond' the normal requirements of her duties in caring for residents of North Unit."

Reached for comment, Jackson couldn't say anything about Bull's dispute with the state, citing confidentiality concerns, the state statute dealing with public records, and legal advice from Collier and others.

"I can't give you any more information other than what is right there," in the documents, said Jackson. "We don't talk about employee or personnel actions: That's all confidential information."

Gubernatorial candidate Randy Brock, whose records request yesterday sparked interest in this issue, said that \$150,000 seemed like a lot of money, but wouldn't comment further.

Brock wouldn't say who tipped him off about settlements involving state employees, saying only several people had approached him in recent weeks and days.

From: Collier, Steven
Sent: Friday, October 26, 2012 6:46 PM
To: Jackson, Melissa; Duffy, Kate
Cc: Reardon, Jim; Allen, Susan
Subject: RE: VT Digger

ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED COMMUNICATION

Thanks Melissa. Given what you heard about Cheri's e-mail, and given that I now understand who Winnie is, I'd probably leave it alone other than asking Tonya what she knows about Winnie's access to confidential information. If Winnie says anything we can assess her comments, but I'm reluctant to approach Digger if Cheri's termination was widely known at VVH.

Thanks very much.

Steve

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From: Jackson, Melissa
Sent: Friday, October 26, 2012 6:33 PM
To: Duffy, Kate
Cc: Collier, Steven; Reardon, Jim; Allen, Susan
Subject: Re: VT Digger

I am not sure what Winnie knows about why Cheri is no longer employed with us. I have heard that Cheri sent an email to the staff saying she was fired. I can Check with Tonya to see if Winnie was involved in any grievances with Cheri. This was before my time so I am out of the loop in the details. Yes I meant that my Director would not say anything more than I did. I'll follow up with everyone on Monday.

Sent from my iPhone

On Oct 26, 2012, at 5:54 PM, "Duffy, Kate" <Kate.Duffy@state.vt.us> wrote:

I don't think she would have access to confidential information. If she does, let's talk about it. We might want to advise VSEA and let them handle it. Winnie is a steward who has a very close relationship with Mark Mitchell.

Sent from my iPad

On Oct 26, 2012, at 5:38 PM, "Collier, Steven" <Steven.Collier@state.vt.us> wrote:

ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED
COMMUNICATION

Hey Melissa, the State's confidentiality policies (5.4, 5.45, 5.5) apply to everyone and their oral disclosures. Assessing public records is more nuanced, but that determination does not fall to individual employees.

Regulating our employees' speech can be challenging. If employees have access to confidential information, they cannot share it. If a terminated employee tells another employee she was fired, however, I'm not at all sure we can regulate that. In sum, disclosure of official confidential information is precluded; hearsay and gossip probably not.

Does Winnie Rose have access to any confidential information about Cheri Bull (other than from Bull herself)? If she does, I may call Nat and explain he could be asking her to commit misconduct, but want Kate's thoughts first.

I assume you meant to say your director will not say anything more than you did?

Thanks Melissa.

Steve

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From: Jackson, Melissa
Sent: Friday, October 26, 2012 5:25 PM
To: Collier, Steven; Duffy, Kate; Reardon, Jim; Allen, Susan
Subject: VT Digger

Good Afternoon,

Nat called me back and was very persistent about finding out the "context" of the information redacted. He was not happy with my response that I could not speak to those areas. I do believe we will be hearing from him again. He is asking to speak to my Director of Nursing and Winnie Rose, staff nurse because he is aware that I cannot speak to the issues but they might be able to. I know that my Director of Nursing will say anything beyond what I have said. I am not sure what Winnie will say.

Have a great weekend.

Melissa Jackson, BSW, LNHA
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