

**Nelson M. Stewart**

**PO Box 1833**

**Quogue, N.Y. 11959**

**(646) 258- 9369**

**April 10, 2010**

**Donna N. Kooperstein,**

**Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice,  
450 5<sup>th</sup> St. NW, Suite 8000, Washington, D.C. 20530**

**Re: United States of America, U.S. Department of Justice, Antitrust Division v. Keyspan Corporation.**

Dear Ms. Kooperstein,

In accordance with the details of the February 22, 2010 press release issued by the United States Department of Justice I am writing to urge you not to accept the plea from Keyspan Energy that now awaits approval from the United States District Court. Keyspan Energy has been the subject of numerous investigations resulting from questionable conduct over the years. In many instances the company simply paid a fine and admitted no wrongdoing. Particularly with large corporations like Keyspan Energy, the profit gained from this behavior is usually much more substantial than the fines levied. Consider the golden parachute payments to William Catacasinos and other executives (a \$1.5 million settlement was paid to the NYS Attorney General's Office) and the sale of \$29 Million in stock by Keyspan's CFO, COO and President prior to the publication of substantial losses related to the acquisition of Roy Kay, Inc. I would contend that such penalties fail to alter misconduct and increase the temptation to push the boundaries of unethical conduct. Where one might expect the compliance office to guard against such conduct, the compliance office of Keyspan Energy and its parent company National Grid appears to ignore these actions and, on at least one occasion, even assisted in an attempt to retaliate against someone who endeavored to report them.

In 2008 I attempted to follow up on my third effort to notify Keyspan Energy/National Grid of fraud, perjury, forgery and accounting fraud committed by employees of Keyspan Energy, its wholly owned subsidiary KSI Contracting (The former Roy Kay, Inc) and their attorneys. These highly unethical and illegal acts stem from two contract actions filed by my company related to work performed for the now infamous Roy Kay, Inc/ KSI Contracting. On this third attempt I spoke with Margaret Ireland of the National Grid Compliance Office and detailed a number of these allegations. I further explained that the attorney defending this matter, Mark Rosen of McElroy, Mulvaney, Deutsche and Carpenter, LLP, had

used illegal and highly unethical tactics to prevent further discovery of the conduct I alleged. Ms. Ireland asked me to send her whatever recent documentation I had and said she would look into the matter. Having received no response I called again and asked if she would like me to send more documentation. Ms. Ireland stated she had not had time to look into the documents I had sent but I should call again at a later time. The document in **Attachment a** is the only response I have ever received from National Grid or Keyspan regarding the information I submitted to Ms. Ireland. It is the direct result of a message I left for Ms. Ireland with the National Grid compliance office after several failed attempts to contact her as she had suggested. Mr. Rosen's email is a continuation of the threats made in his letter of December 27, 2007 (See **page 2 of Attachment b**) in response to my previous attempts to contact the defendants concerning the conduct of their employees and Mr. Rosen. To date I have made no less than five attempts to report this conduct to the compliance offices of Keyspan and National Grid. Mr. Rosen's letter and email are the only responses I have ever received. A copy of the documents sent to Ms. Ireland are included as **Attachment c**.

Mr. Rosen and his clients have good reason to thwart any discovery related to Roy Kay, Inc/KSI Contracting. In response to our initial claims to recover monies from work performed for Roy Kay, Inc/KSI Contracting the defendants produced two forged contracts and purported them to be genuine. One contract forged the signature of our company's president, Nelson Stewart, Sr. and the other reduced the amount of the original contract from \$750,000.00 to \$250,000.00 and altered the original date from March 15, 2002 to May 14, 2002 (despite the fact that the date of the signature page, which is identical on their contract and the genuine contract, reads March 15, 2002). The defendants also submitted false, unsubstantiated back charges and several of the statements made by employees of the defendants have proved to be untrue. In over seven years of litigation the defendants have never produced a single document that would refute or explain the evidence we have submitted.

The documentation we have been able to obtain from third parties provide evidence that Roy Kay/KSI Contracting was altering accounting documents and omitting information from job records to make it appear as though work performed by subcontractors was performed by KSI Contracting. What were actually liabilities to Roy Kay, Inc/KSI Contracting appear to have been misrepresented as money owed to the company. While the documents we obtained are only relevant to the two projects our company worked on, Roy Kay, Inc/KSI Contracting was involved in up to twenty six projects at the time. Losses from Roy Kay, Inc/KSI Contracting, well over \$100 Million in the third quarter of 2002 alone, were a thorn in the side of Keyspan Energy and company executives were desperate to stop them (Please see **Attachment d**). If this same conduct was found to be present at these other projects the amount of money being misrepresented would be enormous.


The ability to report allegations of unethical and criminal conduct to the compliance office of a publicly traded corporation without the threat of retaliation is a fairly reasonable expectation. Most first year law students, if not most lay people, would know that that represented parties to a litigation may discuss issues related to that litigation. I am not an attorney and neither is my business partner. My attempts to communicate with Ms Ireland were not improper. Yet this was the second time Mr. Rosen attempted to prevent such communication. Knowledge of the facts and the law mean little to Mr. Rosen and his clients. What is most important is the use any of tactic, however unethical, to deter

continued discovery of the assertions raised in these matters. That the compliance office would refer this matter back to the same attorney who played a substantial role in the allegations at issue illustrates that these practices are systemic throughout the company. Keyspan's refusal to even consider these allegations is bad enough. Threats of further abuse of the legal process by their attorney in this matter demonstrate that the compliance offices of Keyspan energy and National Grid exist simply to pay lip service to the ideal of ethical and legal business conduct. When these ideals become an inconvenience the compliance office not only steps aside but, as evidenced by **attachment a**, actively participates in attempting to remove that inconvenience.

The conduct of the Keyspan Energy's compliance office in this matter is indicative of a pattern that has led to numerous allegations of misconduct over the years. I respectfully submit to the Department of Justice that fines have done little to correct the conduct of this company in the past and cannot be expected to alter such conduct in the future. It is worth noting that Mr. Rosen and his clients, no doubt encouraged by the support they have received thus far, continue the same pattern of obstructive and improper conduct to this day in the above referenced actions. For much the same reason that an independent auditor oversees the accounting statements of a public company, a separate compliance office, free from the influence of Keyspan Energy and National Grid, should be charged with the responsibility of enforcing the ethical business standards to which both companies publicly claim to aspire. To deter the kind of behavior that is now before the United States District Court, Keyspan needs a truly independent compliance office that will respond to allegations of unethical practices in a diligent and appropriate manner. It is clear that the current management lacks the will to impose these standards on itself. Without this kind of impartial supervision of company conduct the next mendacious scheme will likely be a simple matter of time.

I truly appreciate the opportunity to voice an opinion in this matter and I thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'N. Stewart', with a long horizontal line extending to the right.

Nelson Stewart

#### **List of Attachments**

Please Note: The documents I have submitted and the allegations I have raised are by no means a complete account of the actions of Keyspan Energy and KSI Contracting with respect to these matters. There are well over 1,500 documents related to these matters.

In consideration of the two month time constraint the court is acting under I have attempted to be as brief as possible while providing an informative sample of the unethical conduct of both Keyspan Energy and its compliance office. Additional documentation can be made available at your request.

#### **Attachment a**

This email was sent to my attorney in response to a phone call I placed to Margaret Ireland, compliance officer for National Grid. National Grid is the parent company of Keyspan Energy. Together with attachment b it is the only response I have ever received from Keyspan Energy regarding the allegations I raised.

#### **Attachment b**

This letter was sent in response to our numerous demands upon Mr. Rosen and his clients for the production of documents. The court did not accept Mr. Rosen's attempts to blame the plaintiffs for his failure to produce witnesses and documents. An motion to strike the defendants' answer in this matter was granted by the court on December 22, 2008.

#### **Attachment c**

These letters were sent to several members of the National Grid Compliance Office by return-receipt mail. They came back unsigned for. When Ms. Ireland of National Grid asked me to send her a copy of some the allegations I had related to her I sent the letter to Vincent Miseo, Claims Attorney for Federal Insurance, (Federal issued the payment and performance bond on one of the projects) along with my letter to the NYS Insurance Department because they included the most recent developments with respect to these actions. Two previous letters containing substantial documentation of our allegations were sent on June 28, 2006 and October 24, 2006. A copy of these documents can be made available at your request.

#### **Attachment d**

The attached exchange between Keyspan executives demonstrates the frustration resulting from the Roy Kay losses. Keyspan eventually offset these losses by hiring out the remaining work on these projects to subcontractors and later refusing to pay them. Many of those who attempted to collect these sums in court were met with the same tactics described in this letter.

**Attachment a**

10/14/2008 11:11 FAX 19734250160

MCELROY DEUTSCH MULVANEY

0001/0001

**MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**  
ATTORNEYS AT LAW

1300 MOUNT KEMBLE AVENUE  
P.O. BOX 2075  
MORRISTOWN, NEW JERSEY 07962-2075  
(973) 963-8100  
FACSIMILE: (973) 425-0151

MARK A. ROSEN  
Direct line: (973) 425-0752  
mrosen@mcdm-law.com

October 14, 2008

Via Facsimile 212-307-0247 and Regular Mail

Carl E. Person, Esq.  
225 West 45<sup>th</sup> Street - Suite 201  
New York, New York 10036

Re: Ronel Bennett, Inc. of New Jersey v. Keyspan, et al.  
New York County Index No. 601641/08  
MDMC No. K0135-1019

Dear Mr. Person:

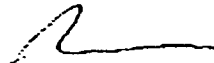
As you know, we represent the Keyspan defendants in the above-referenced matter.

My client, Keyspan, has advised that your client, Mr. Stewart, has been contacting National Grid, Keyspan's parent, regarding the subject matter of this litigation.

Disciplinary Rule 7-104 prohibits direct communication with a represented party unless there is specific consent by that party's attorney. We do not consent to any communication between your client and parties that are represented by us. Please immediately advise your client to desist from any further such communication. We have had prior instances of this conduct by your client in the related Queens County action and it simply won't be tolerated any further.

Very truly yours,

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



Mark A. Rosen

MAR/jk

**Carl E. Person**

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From: "Carl E. Person" <carlpers@ix.netcom.com>  
To: <Mrosen@mdmc-law.com>  
Cc: "Carl E. Person" <carlpers@ix.netcom.com>  
Sent: Tuesday, October 14, 2008 10:44 PM  
Attach: dot.gif  
Subject: NSF: Ronel Bennett v Keyspan - response to 10/14/08 letter re client-to-client communications

I have read your 10/10/08 letter very carefully and wish to point out that the prohibition you are thinking of, an attorney talking with an adverse represented party directly, is not applicable to client-to-client communications. I was unaware of these communications, and certainly did not put my client up to making them. On the other hand, I have no right or duty to tell him to stop whatever he's doing. There is a right for adverse lawyers to talk with each other, and there is a corresponding right for adverse parties to talk with each other, probably because it is considered the best way to try to resolve litigation when the lawyers themselves are unable to do it.

U.S. v. Hammad, 846 F.2d 854, 856 (2nd Cir. 1988) stated that "Model Code of Professional Responsibility DR 7-104(A)(1). Accordingly, lawyers are constrained to communicate indirectly with adverse parties through opposing counsel." This was a criminal case.

The rule provides: A. During the course of his representation of a client a lawyer shall not: 1. Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so."

During a quick look, I came across another case which seems to be in point:

**R.I. Island House, LLC v. North Town Phase II Houses, . . .**  
51 A.D.3d 890, 893, 858 N.Y.S.2d 372  
N.Y.A.D. 2 Dept., 2008.  
May 20, 2008 (Approx. 4 pages)

Initially, the plaintiffs' argument that the further agreements reached on December 5, 2005, are invalid by virtue of the violation of the prohibition against communication by one lawyer with the client of another ( *see* DR 7-104 [a](1), 22 NYCRR 1200.35[a](1) ) is without merit. That proscription applies to a lawyer only "[d]uring the course of the representation of a client" ( *id.*). Here, the person who made the allegedly offending communication, although a lawyer, was identified throughout the documents as the president of two of the contracting entities, not as their attorney. The documentary evidence established, **\*\*376** therefore, that this disciplinary rule is not implicated.

Please let me know if you have anything to the contrary.

Carl E. Person

10/14/2008

hp officejet 7130  
printer/fax/scanner/copier

**Fax-History Report for**  
Carl Person  
212-307-0247  
Oct 14 2008 11:08am

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**Last Transaction**

| <u>Date</u> | <u>Time</u> | <u>Type</u> | <u>Identification</u> | <u>Duration</u> | <u>Pages</u> | <u>Result</u> |
|-------------|-------------|-------------|-----------------------|-----------------|--------------|---------------|
| Oct 14      | 11:06am     | Received    | 19734250160           | 0:29            | 1            | OK            |

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**Attachment b**

**McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**  
ATTORNEYS AT LAW

1300 MOUNT KEMBLE AVENUE  
P.O. BOX 2075  
MORRISTOWN, NEW JERSEY 07962-2075  
(973) 993-8100  
FACSIMILE (973) 425-0161

MARK A. ROSEN  
Direct dial: (973) 425-8753  
mrosen@mdmo-law.com

December 28, 2007

**Via Facsimile 516-944-2751 and Regular Mail**

Joseph J. Sciacca, Esq.  
33 Main Street  
Port Washington, New York 11050

**RE: Ronel Bennett, Inc. of N.J. v. KSI Contracting, LLC, et al.**  
**(One Jamaica Center)**  
Index No. 021894/03  
MDM File No: K0138-1019

Dear Mr. Sciacca:

This is in response to your letter dated December 18, 2007.

Both the tone and content of your letter are completely outrageous. You are the third attorney that has been engaged by your client to represent them in this matter. The record in this case is replete with prolonged inactivity, non-responsiveness and disappearances by your client, many lasting for several months and some for more than one year. The most recent five months is just another example. Any delays in this case are solely the result of your client's failure to prosecute.

Your request for original documents was made more than four years into the pendency of this case. It was made more than five years after the underlying events at issue in the case. As such the request is patently improper and grossly untimely. Nevertheless, KSI has searched and continues to search for original documents. Originals have yet to be found but the search is continuing.

We are reaching out to Mr. Miscio and will provide dates that he is available to be deposed.

NEWARK, NEW JERSEY  
1034260\_1.DOC

RIDGEWOOD, NEW JERSEY

NEW YORK, NEW YORK

DENVER, COLORADO

PHILADELPHIA, PENNSYLVANIA

**RBI-00934**

**McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**

Joseph J. Sciacca, Esq.  
December 28, 2007  
Page 2

Lastly, we have cautioned both you and your client in the past regarding the specious and scurrilous allegations that you both continue to make regarding improper conduct in this matter. In addition, we stated that we did not want you or your client contacting our clients directly. Yet, your letter persists with this egregious conduct and we have been advised that your client has again contacted one of our clients directly.

Please be advised that it is KSI's intention to pursue both of you to the fullest extent of the law with respect to this continued improper conduct.

Very truly yours,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



Mark A. Rosen

MAR/li

**JOSEPH J. SCIACCA**  
Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
(516) 944-6058  
Fax (516) 944-2751  
email JSciaAtty@aol.com

CLIENT'S COPY

January 24, 2008

**CERTIFIED MAIL RRR**  
**7006-2760-0005-0490-0884**

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

I am in receipt of your letter dated December 28, 2007.

Quite clearly, if anything is completely outrageous, it is your letter and your conduct. This case is replete with your failure to provide discovery and failure to complete the depositions.

I am sending you copies of my letters dated April 3, 2006, March 14, 2007, April 20, 2007, June 15, 2007, July 17, 2007, July 19, 2007, July 31, 2007, and December 18, 2007 which speak for themselves and which clearly support the above paragraph.

Since I have been involved in this case, you are the only one that has delayed this case. Even in your December 28, 2007 letter, you have failed to provide me with dates for the continued examination of Mr. Giannico and for the deposition of Mr. Miseo. Since December 28, 2007 to the present, you have failed to contact me about any of the issues.

**RBI-00936**

Page Two  
January 24, 2008  
Mark A. Rosen, Esq.

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In addition, you have failed to provide me with the original documents, although you claimed to, among others, to the New York State Insurance Department, that you have already provided these documents. Now you are claiming that you cannot locate these documents. Which is it?

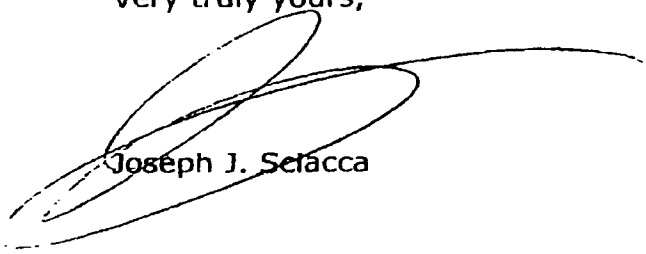
Unless I am provided with these dates with seven (7) days, I will present the appropriate motion to the Court and you can make whatever ridiculous arguments you want. The facts are clear.

Since you cannot communicate directly with my client, please advise me when you told my client that he could not communicate with your client directly and also provide me with the Statute which prevents parties to a litigation from communicating with each other.

Please stop threatening us and provide my office with the dates and documentation immediately.

Please be guided accordingly.

Very truly yours,



Joseph J. Sciacca

JJS\se

cc: Ronel Bennett Inc. of N.J.  
letters\ronelbennettofnj.attorneymarkrosen22.ltr.january08

**RBI-00937**

**JOSEPH J. SCIACCA**  
Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
(516) 944-6058  
Fax (516) 944-2751  
email JSciaAtty@aol.com

December 18, 2007

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

On the date of Anthony Giannico's deposition, you stated for the record that you would produce the documents we requested prior to that proceeding for the Anthony Giannico deposition on July 21, 2007. You further indicated that dates for the completion of Anthony Giannico's deposition for KSI Contracting and the deposition of Vincent Miseo of Chubb Insurance would be provided on or before July 21, 2007. On July 21, 2007, I wrote to inform you that neither your statement nor the dates submitted had been complied with. It is now December 18, 2007, a period of five months has elapsed and you have hereby failed to answer any correspondence demanding your promised compliance.

We have made one attempt after another to move these proceedings along and you in turn have made every attempt to obstruct them with your endless delays. No doubt this is because every step forward in this matter reveals that the contract submitted to the Court as genuine is a forged contract and in addition, endless claims and defenses raised by you and your clients are utterly without merit. You have claimed on numerous occasions, before the Court, to the New York State Insurance Department, to my clients during depositions, etc., that these documents have been produced.

Once again I am demanding you produce the requested documents in their original form that back up your claims to the above parties so that we can proceed to uncover Mr. Giannico's part in the fraud and forgeries perpetrated against my client with this deposition.

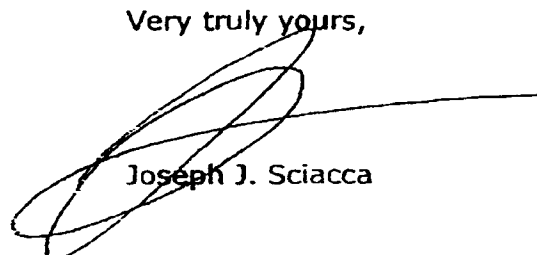
**RBI-00938**

Page Two  
December 18, 2007  
Mark A. Rosen, Esq.

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Your continued refusal to comply with this demand is hereby taken as your admission that the documents you allege prove your case to the above mentioned parties, do not exist in any form as you have stated other than the intentional and deliberate obstruction of my clients' civil right to the fair and equal right of due process. If no response is received by January 3, 2008, then I shall move to strike your client's answer and for a default judgment.

Very truly yours,



Joseph J. Sciacca

JJS\se

cc: Ronel Bennett Inc. of N.J. ✓  
letters\ronelbennettofnj.attomeymarkrosen21.ltr.december07

**RBI-00939**

**JOSEPH J. SCIACCA**  
Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
(516) 944-6058  
Fax (516) 944-2751  
email JSciaAtty@aol.com

**FAXED**

July 31, 2007

By Telefax : 1.973.425.0161 - Number of pages transmltted : 1

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

You had indicated in the last deposition that you would be ready to present the original documents that were requested months ago by July 20, 2007 and that you would also give me dates to continue the deposition of your clients by July 20, 2007.

I have received no information from you by July 20, 2007. I called your office and spoke to your secretary, June, after July 20<sup>th</sup>, and although it has been close to 10 days, you have still not returned my telephone call.

Please let this letter serve as formal notice that if I do not hear from you and receive the documents requested by Wednesday, August 1, 2007, and dates for the completion of your clients' depositions, I shall move to strike your clients' answer.

Please be guided accordingly.

Very truly yours,

Joseph J. Sciacca

JJS\se

cc: Ronel Bennett Inc. of N.J.  
letters\ronelbennettofnj.attorneymarkrosen20.ltr.july07.depositiondates.

**RBI-00940**



**Attachment c**

**Nelson Stewart  
PO Box 1833  
Quogue, N.Y. 11959  
Telephone: 646-258-9369**

**Mr. Tom McBride  
Director – Ethics and Compliance  
Legal Department  
National Grid Ethics Office  
P.O. Box 7203  
Syracuse, N.Y. 13261-7203**

**February 26, 2008**

**Re: RONEL BENNETT, INC. OF N.J. v.  
KSI CONTRACTING, LLC. Successor-in-interest to Roy Kay, Inc., S.  
LEO HARMONAY, AL DIGUILLIO, ANTHONY A. GIANNICO,  
TRAVELERS BOND, successor-in-interest to Reliance Insurance  
Company, FEDERAL INSURANCE COMPANY, THE DORMATORY  
AUTHORITY OF THE STATE OF NEW YORK and JOHN DOE.**

**And**

**RONEL BENNETT, OF N.J. v.  
KSI CONTRACTING, LLC., S. LEO HARMONAY, FEDERAL  
INSURANCE COMPANY, THE MATTONE GROUP, THE STEGLA  
GROUP and JOHN DOE.**

Dear Mr. McBride,

We write to inform you of an ongoing scheme to defraud perpetrated by employees of the newly acquired Keyspan Energy and their attorneys. From the period of 2001 to 2002 Keyspan Energy announced it had lost almost \$300 million dollars due to the operations of its wholly owned subsidiary Roy Kay, Inc. The company was subsequently renamed KSI Contracting, LLC and enormous pressure was put on both Keyspan Energy and Roy Kay, Inc/KSI Contracting LLC personnel to reduce losses. As a direct result of this pressure, employees of KSI Contracting, LLC altered or altogether omitted amounts owed to subcontractors from their monthly requisitions and accounting records to make it appear that KSI Contracting, LLC, and not the subcontractors, performed and profited from various items of work. At a project for the Dormitory Authority of the State of New York for example, work performed by a number of contractors totaling over \$2,500,000.00 was not listed in the monthly payment requisitions. The requisitions themselves contain the following requirement:

**False statements, information or data submitted on or with application for payment may result in one or more of the following actions: Termination of Contract for cause; Disapproval of future bids, or contracts or subcontracts; withholding of final payments on the contract; and Civil and/or criminal prosecution.**

KSI Contracting then collected those funds, which, by contract, should have been held in trust for the subcontractors. In the above referenced cases, when the subcontractors attempted to collect on the work they performed they were met with the same fraud and obstruction described in the attached letter of February 26, 2008.

The February 26, 2008 letter marks the third time members of KSI Contracting, LLC, Keyspan Energy and their attorneys have been notified of the fraudulent conduct committed on behalf of KSI Contracting. A previous letter, sent on June 28, 2006, was received and responded to by KSI Contracting LLC attorney Mark Rosen of McElroy, Deutsch, Mulvaney and Carpenter, LLP on July 20, 2006 (Steven Greenspan, In House Counsel for Keyspan Energy received a copy of the response as well). The deliberate misrepresentations of fact found in that response are the subject of the attached letter of February 26, 2008. A second letter detailing fraudulent conduct in both cases was sent on October 24, 2006. Copies of that letter, which contained 16 attachments providing overwhelming evidence of fraud, forgery and malicious misrepresentation of fact, were sent to the Ethics Office of Keyspan Energy as well as CEO Robert Catel, CFO Gerald Luterman and COO Robert Fani. No response to these allegations was ever received.

It is worth noting that Roy Kay, Inc/KSI Contracting, LLC had approximately 26 projects under contract during the time period in question. There is sufficient reason to suspect that the misconduct found in the above referenced cases may have been the rule rather than the exception. As a result, it is possible that Keyspan Energy grossly miscalculated losses relating to Roy Kay, Inc/KSI Contracting, LLC in its financial reports. We ask that National Grid examine the attached documents and conduct its own review of the allegations detailed therein. Additional documentation, contact information for the individuals listed and the previous letters of June 28, 2006 and October 24, 2006 can be made available at your request. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nelson Stewart', with a long horizontal flourish extending to the right.

Nelson Stewart

**Nelson Stewart  
PO Box 1833  
Quogue, N.Y. 11959  
Telephone: 646-258-9369**

**Mr. Barry Bistreich  
Principal Insurance Examiner  
New York State Insurance Department  
25 Beaver Street  
New York, N.Y. 10004**

**February 26, 2008**

**Re: RONEL BENNETT, OF N.J. v.  
KSI CONTRACTING, LLC., S. LEO HARMONAY, FEDERAL INSURANCE  
COMPANY, THE MATTONE GROUP, THE STEGLA GROUP and JOHN DOE.**

**Project: One Jamaica Center**

**New York State Insurance Department File #: CSB - 471200**

**Dear Mr. Bistreich,**

On June 28, 2006 we filed a complaint with the New York State Department of Insurance. The complaint was assigned the number CSB – 471200 by the department. A response to our complaint was issued on July 20, 2006 by the attorney for Federal Insurance Company, Mark Rosen, of McElroy, Deutsch, Mulvaney and Carpenter. We later received a letter from Alan Brill, Examiner for the Consumer Services Bureau stating that, in deference to the pending action in the Supreme Court, the Department would take no further action in this matter.

Since that time Mr. Rosen and his clients have demonstrated that the letter he submitted on behalf of his clients in response to the inquiry of the New York State Insurance Department contains a number of willful and malicious misrepresentations of fact which, we believe, may have unduly influenced Mr. Brill to take no further action regarding our complaint. While we respect the decision of Mr. Brill, we contend that, as a matter of public policy, no one should be permitted to maliciously submit deliberate misrepresentations of fact to investigators from a state agency. The fraud and obstruction perpetrated by the defendants in this action, which has delayed the progress of this case for over five years, has continued unabated. Proof of this obstruction can be found in the series of letters listed attached hereto as Exhibit A. Note that the last letter from our attorney is dated January 11, 2008. As of today February 26, 2008, Mr. Rosen has failed to issue any response. Also attached is a portion an exchange between the attorney for Ronel Bennett and Mark Rosen during the deposition of Anthony Giannico in which Mr.

Rosen states that he did not bring the specific documents we requested two weeks prior to the deposition because he didn't have time (Exhibit B). Mr. Rosen continues to invent one poor excuse after another to cover up the fact that he and his clients do not have, and have never had, the supporting documentation they claim to have produced.

Attached is a detailed breakdown of the false statements made by Mr. Rosen and a brief description of the contrary evidence regarding these claims. Another letter describing the fraud and obstruction committed on behalf of the defendants to Mr. Vincent Miseo of Federal Insurance is also attached. Copies of the documents, affidavits, and depositions described in this breakdown as well as the contact information for individuals named can be made available at your request. We greatly appreciate any assistance you can provide. Thank you.

Sincerely,

Nelson Stewart

Cc: Mr. John Mansfield, Supervising Examiner, Consumer Services Bureau, New York State Insurance Department

**Misrepresentations of fact found in Mark Rosen's July 20, 2006 response to the New York State Insurance Department.**

**"A second invoice for \$22,000 was not paid because there was a dispute between the parties as to the amount of work performed by Ronel Bennett and certain credits and back charges KSI had with respect to Ronel Bennett's work". (Pages 1 and 2 of Mark Rosen's letter of July 20, 2006).**

1. The invoice for \$22,000 that Mr. Rosen refers to was the remaining balance after the first payment of \$70,000.00 on April 23, 2002. After that there are several invoices for payment in the amount of \$229,651.00, \$64,666.00, \$138,000 and \$95,000.00. All have Roy Kay or KSI Bates numbers on them and all have the name and fax number of KSI project manager Leo Harmony on them. It is obvious that if Mr. Rosen had performed the kind of "detailed review" he claims in his July 20, 2006 response, he would have known that his statements regarding these invoices are untrue. In either case Mr. Rosen clearly misrepresented the truth. The \$229,651.00 invoice was the invoice for which Ronel Bennett was promised payment by Leo Harmony and KSI Contracting, Sr. VP Anthony Giannico. The other invoices are the result of double charges, altered line items and other shady accounting practices perpetrated by KSI Contracting.

2. As we stated in our letter of June 28, 2006, the back charges claimed by the defendants in this matter have never been substantiated. There are numerous inconsistencies related to these claims and KSI Contracting has never offered any explanation or documentation which might refute these inconsistencies. Mr. Rosen's letter of July 20, 2006 claims that "supporting documentation has been provided to Mr. Stewart". This claim is entirely false. As proof we offer the most recent communication from Mr. Rosen attached hereto as Exhibit A in which he states that the supporting documentation which he has claimed to have produced on so many occasions cannot be found. These back charges together with the forged contract submitted by KSI Contracting are the heart of the defendants' counterclaims in this matter. Since 2003 these documents have been the subject of numerous discovery requests, hearings and motions seeking to compel Mr. Rosen to produce these documents. Now, after having told the New York State Supreme Court, The New York State Insurance Department and the Plaintiffs in this case that these documents were already produced Mr. Rosen claims that they cannot be found.

**"It should be noted that KSI has no record in its files of ever receiving those invoices or claims for extra work prior to the commencement of the lawsuit" (Page 2 of Mark Rosen's letter of July 20, 2006).**

1. Regarding the first invoice Mr. Rosen refers to for \$378,200.00, there are requests for pricing and billing from both project managers on this job and these are part of the KSI file. Additionally there is testimony from another legal proceeding related to One Jamaica Center in which both Dean Barnett (Project Manager for KSI ) and Jeff Decovitch

(Project Supervisor for KSI) discuss the fact that this extra work was necessary due to the poor fabrication and incorrect installation of the cooling tower by KSI Contracting. The idea that someone would fail to issue a requisition for \$378,200.00 when that requisition had been requested on several occasions is absurd.

2. The second invoice referred to in Mr. Rosen's letter was simply a combination of the \$229,651.00 which, as we have already stated, can be found in the Roy Kay and KSI files with the fax number of KSI Project Manager Leo Harmonay, and the \$378,200.00 which was requested by both project managers. Both invoices were submitted in separate form in June of 2002. Again, if Mr. Rosen's review of the Ronel Bennett claim was as detailed as he suggests in his letter to the New York State Insurance Department then he should have been aware that his statements regarding these invoices was untrue.

**"Ronel Bennett's claims regarding fraud and diversion of trust funds has been dismissed".**

1. Mr. Rosen's statement is only half true. The claim regarding diversion of trust funds was dismissed not its merits but because the claim was not brought as a class action. Thus the claim itself was not dismissed because the allegations of fraud were untrue.

2. The claim against Mr. Harmonay was dismissed based in part on an affidavit which contained false statements. Mr. Harmonay's affidavit states "I played absolutely no role in any accounting functions for KSI or for the project." (Leo Harmonay Affidavit of May 2, 2006, Paragraph 4). Mr. Rosen echoes this claim in his motion to dismiss, "In addition, as set forth in the accompanying affidavit of Mr. Harmony, he was not an officer, director or even employee of defendant KSI. He was an independent consultant brought on to provide assistance at the project site with project management functions. He had no role in any accounting function for the project." (Defendants Motion to Dismiss, dated May 2, 2006, Paragraph 12). Contrary to these claims there are a number of accounting documents which have been "adjusted" by Leo Harmonay. Among these are the document hereto attached as exhibit C. The document clearly shows that these deductions were made by Leo Harmonay. There are also Cost to Complete schedules, requisitions, contract documents, etc. which demonstrate that Leo Harmonay played a more significant role in the accounting and payment process than he and Mr. Rosen have stated. Given that there are a number of these documents in the Roy Kay and KSI Contracting files, Mr. Rosen should have known, if his review of our allegations was as "detailed" as he claims, that the statements made by him and his client regarding the activities of Leo Harmonay at One Jamaica Center were untrue. As with the false back charges no supporting documentation has ever been submitted by the defendants which would explain these "adjustments".

**"The spurious allegations made by Mr. Stewart in his letter are completely and utterly without merit".**

As was stated above the forged contract submitted by KSI Contracting is a substantial part of the defenses raised by Mr. Rosen and his clients in this matter. It is rather curious

therefore that nowhere in his three page response of July 20, 2006 does Mr. Rosen attempt to refute or even address the allegations of forgery in this case. If the allegations raised in our letter of June 28, 2006 are completely and without merit why did Mr. Rosen not completely and utterly refute them?

On October 9, 2006 we obtained an affidavit from Mr. Dean Barnett, Project Manager for KSI Contracting. Mr. Barnett is listed in KSI discovery documents as a person with knowledge of the facts and circumstances of this case. His affidavit states unequivocally that the Contract submitted by Ronel Bennett is the true and original contract. On June 28, 2007 Mr. Anthony Giannico, Sr. VP of KSI Contracting was deposed by the attorney for Ronel Bennett. When presented with Mr. Barnett's affidavit Mr. Giannico admitted that the facts as presented in the affidavit were true. Mr. Giannico also admitted, contrary to Mr. Rosen's claims, that Ronel Bennet was owed money and could not offer any explanation as to why these funds were never paid. Mr. Giannico further failed to explain or corroborate the back charges alleged by the defendants and offered no evidence or testimony regarding the "dispute" Mr. Rosen refers to in his July 20, 2006 letter.

Every step forward in this matter reveals that KSI Contracting and Federal Insurance Company do not have the documents or witnesses to support the defenses they have raised. As a result they continue to resort to obstruction and deceit in order to prevent this case from reaching a conclusion. Mr. Rosen will no doubt issue his usual claim that Ronel Bennett has changed attorneys in an attempt to justify his stall tactics. Included in Exhibit A are several letters from Joseph Sciacca, attorney for Ronel Bennett, to Mark Rosen. These letters clearly demonstrate our attempts to move these proceedings along. One need look no further than Mr. Rosen's December 28, 2007 letter in which he attempts to blame Ronel Bennett for his own failure to provide the deposition dates and documentation we requested to see how absurd his claims have become.



**Nelson Stewart  
PO Box 1833  
Quogue, N.Y. 11959  
Telephone: 646-258-9369**

Vincent Miseo,  
Surety Claims Attorney  
Chubb Group of Insurance Companies  
15 Mountain View Road, P.O. Box 1615  
Warren, NJ 07061-1615

February 26, 2008

Re: RONEL BENNETT, OF N.J. v.  
KSI CONTRACTING, LLC., S. LEO HARMONAY, FEDERAL INSURANCE  
COMPANY, THE MATTONE GROUP, THE STEGLA GROUP and JOHN DOE.

State of New York Department of Insurance Complaint Number: 471200

Project: One Jamaica Center

Dear Mr. Miseo,

On June 28, 2006 we wrote to inform you of fraud, forgery, perjury and other acts of misconduct that have been perpetrated by the defendants in the above referenced case. Federal Insurance Company responded on July 21, 2006 by referring us to their attorney in this matter Mark Rosen of McElroy, Mulvaney, Deutsch and Carpenter, LLP. A separate response containing numerous willful and malicious misrepresentations of fact was sent to the New York State Insurance Department by Mr. Rosen on July 20, 2006. Since that time further discovery has made it clear that, contrary to their repeated claims to the Supreme Court of the State of New York and the New York State Insurance Department, Mr. Rosen and his clients do not have any documents to substantiate their claims. It is also clear that Mr. Rosen and Federal Insurance Company had sufficient reason to believe that the back charges submitted by KSI Contracting are false documents and that the document submitted by KSI Contracting as the genuine contract for One Jamaica Center is in fact an ill advised and poorly executed forgery.

During the recent deposition of KSI Contracting Senior VP, Anthony Giannico, Mark Rosen stated on the record that he would provide dates for the completion of Mr. Giannico's deposition, dates for availability of Vincent Miseo, Suerty Claims Attorney for Federal Insurance and dates for the production of documents he has long claimed to have already produced. These dates were to be received by no later than July 21, 2007. On December 28, 2007, after numerous phone calls and letters demanding his compliance Mr. Rosen finally responded that he would "reach out to Vincent Miseo" almost six months after he was supposed to provide dates for his deposition (A copy of that letter is

attached as Exhibit A along with letters from our attorney which demonstrate Mr. Rosen's continued pattern of obstruction in this matter). The letter itself seems more concerned with preventing us from contacting other defendants in this case and, given that such communication is neither improper nor illegal, the objection of Mr. Rosen speaks volumes about his conduct and the conduct of the defendants in this matter. We ask that you consider the following:

1. On October 9, 2006 we obtained an affidavit from Mr. Dean Barnett, former Project Manager for KSI Contracting. Mr. Barnett witnessed the signature of Mr. Nelson Stewart during the execution of the original contract and he is listed by the defendants in court documents responsive to Ronel Bennett demands for discovery as a person with knowledge of the facts and circumstances of this case. The affidavit confirms that the contract submitted by Ronel Bennett is the genuine contract which can only mean that the contract submitted by the defendants is a forgery.
2. Following that development we spoke with Jeff Decovitch, Supervisor for KSI Contracting at One Jamaica Center. Although he did not want to involve himself in this matter he too confirmed the Ronel Bennet version of the genuine contract. Mr. Decovitch, like Mr. Barnett, is listed by the defendants as a person with knowledge of the facts and circumstances of this case. He also signed the contract as a witness.
3. We also spoke with Mr. Al DiGuillio, Project Manager for KSI Contracting at Brooklyn College. Mr. DiGuillio is listed court documents submitted by the defendants as the individual who filled in the details and terms of the document purported by KSI Contracting to be the true and original contract. Mr. DiGuillio vehemently denied any involvement with that document and stated he never gave any of the defendants reason to believe otherwise.
4. In August, 2006 Mr. Nelson Stewart, Sr. of Ronel Bennett was deposed by Mark Rosen. In his response to the New York State Insurance Department Mr. Rosen stated that KSI Contracting had never received more than two invoices from Ronel Bennett. At the deposition of Mr. Stewart however, Mr. Rosen produced several requisitions that were based on invoices, progress reports, job reports, etc. submitted to Mr. Dean Barnett of KSI Contracting by Ronel Bennett. These requisitions were produced by Mr. Barnett and Mr. Stewart and had anyone from KSI Contracting spoken with Mr. Barnett, or performed the kind of detailed investigation that Mr. Rosen claims in his letter to the New York State Insurance Department, Mr. Rosen would have known that his statements concerning the receipt of only two invoices from Ronel Bennett are completely untrue. His statements concerning a thorough investigation are therefore, completely untrue as well.
5. On June 26, 2007 Mr. Anthony Giannico, Sr Vice President of KSI Contracting, was deposed by Ronel Bennett. Mr. Giannico made several admissions which directly contradict the claims of the defendants in this case. He further failed to corroborate a number of other claims:

- When presented with the affidavit of Dean Barnett, which confirms that the Ronel Bennett Contract is the true and original contract, Mr. Giannico admitted that the facts as stated in Mr. Barnett's affidavit were true.
- When presented with correspondence addressed to him regarding promises of payment to Ronel Bennett Mr. Giannico admitted that Ronel Bennett was owed money.
- Mr. Giannico further admitted that he did not know whether these monies were paid and could provide no justification for the failure of KSI Contracting to honor these promises of payment.
- Mr. Giannico could not detail or provide any knowledge whatsoever of the back charges claimed by Mr. Rosen and his clients. Once again the documents supporting these claims which, according to Mr. Rosen, were already produced, failed to materialize in any form.
- Neither Mr. Giannico nor Mr. Rosen produced a single document that would support the defenses raised by the defendant even though these documents were demanded by the attorney for Ronel Bennett twice in writing.
- Mr. Giannico could not explain why amounts owed to Ronel Bennett and other contractors were deleted from cost to complete schedules and other accounting documents when no payment for these amounts had been made. He also failed to explain why the defendant KSI Contracting filed a lien against the general contractor which incorporated amounts owed to Ronel Bennett and other contractors while, during the same time period, denying Ronel Bennett and the other contractors were owed these very same funds.
- Mr. Giannico stated, incorrectly, that KSI Contracting had its own workforce of Steamfitters working on the project during the same time period Ronel Bennett was present. Ronel Bennett supervised and directed the entire Steamfitter workforce from February 20, 2002 through April 23, 2002. While KSI contracting paid the payroll for that period, Ronel Bennett was back charged \$140,928.00 for that payroll. The remaining payroll for that period was charged to KSI Contracting and Stegla Corp. as extras to the Ronel Bennett contract. Thereafter Ronel Bennett assumed responsibility for the entire Steamfitter payroll. Documents supporting this statement were submitted to Mr. Rosen during the deposition of Mr. Stewart. KSI Contracting did not have any Steamfitter workforce on the One Jamaica Center Project after April 23, 2002. Despite numerous claims to the contrary neither Mr. Rosen nor KSI Contracting have ever provided documentation that would demonstrate otherwise.
- When asked why Mr. Rosen is listed on the defendant's lien against the general contractor as "attorney in fact" Mr. Giannico could not recall Mr. Rosen having been granted power of attorney by KSI Contracting. Our attorney called for the production of some documentation that would indicate a power of attorney and, not surprisingly, no such documentation has been received.

6. On December 28, 2007 Mr. Rosen finally responded to numerous requests for the continuation of Mr. Giannco's deposition and the documents he has claimed to have produced. Far from responding to our demands the letter seeks to blame the plaintiffs for the delay despite the obvious fact that we cannot produce witnesses and documents for the defendants. Mr. Rosen fails to provide dates for Mr. Miseo, doesn't even mention Mr. Giannico and now after years of stating that he had already produced the documents which substantiate the claims of the defendants, states that KSI Contracting cannot find these documents.

Since 2003 Mr. Rosen has been challenged over and over again to produce these documents and has failed on every occasion. Similarly he has altogether ignored the allegations that the KSI Contracting contract is a forgery. The inconsistencies surrounding the forged contract detailed in our letter of June 28, 2006 have never been addressed. Likewise the inconsistencies surrounding the false back charges in our letter of June 28, 2006 have never been addressed. It is obvious that Mr. Rosen and representatives from KSI Contracting never spoke with Dean Barnett, Jeff Decovitch or Al DiGuillio regarding the execution of the original contract. The reason for this is also obvious: Faced with overwhelming evidence of fraud, Mr. Rosen and KSI Contracting chose to obstruct the very process that would further expose that fraud. This is a stark contrast to the "detailed review" Mr. Rosen refers to in his July 20, 2007 letter to the New York State Insurance Department. Any of the documentation referred to in this letter as well as contact information for Dean Barnett, Al DiGuillio and Jeff Decovitch can be made available at your request.

This is the third time we have contacted Federal Insurance regarding this matter (Another letter detailing numerous counts of fraud in the Brooklyn College action and the One Jamaica Center Action was sent to the Ethics Department of Chubb Insurance in October, 2006). The continued fraud and obstruction perpetrated on behalf of Federal Insurance and the apparent consent of Federal Insurance regarding this conduct has resulted in what is essentially a counterfeit bond for the project at One Jamaica Center. We are asking once again that Federal Insurance perform its own good faith investigation into these allegations. Simply referring the matter back to Mark Rosen is unacceptable. Please note that any such investigation should include a demand for the documents either in copy or original form that Mr. Rosen claims to have produced. These should include, at the very least, payroll records supporting the alleged KSI Contracting back charges, documentation and payroll records relating to the Stegla Corp. back charges and documents which would substantiate or explain the forged contract submitted by KSI Contracting. Should you have any questions or require further information please contact us at your convenience.

Sincerely,

Nelson Stewart

**Cc: Mr. Barry Bistreich, Principal Insurance Examiner, New York State Department of Insurance, Mr. John M. Mansfield, Supervising Examiner, Consumer Services Bureau, New York State Insurance Department, Tom McBride, Director – Ethics and Compliance Legal Department, National Grid, Paul Shubmehl, Principal Ethics Representative, Legal Department, National Grid, Linda Doering, Principal Ethics Representative, Legal Department, National Grid.**

**EXHIBIT A**  
**Mr. Rosen's Letter of December 28, 2007 and Letters**  
**from Ronel Bennett Attorney Joseph Sciacca**  
**Demonstrating a Repeated Pattern of Obstruction By**  
**Mr. Rosen.**

**McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**  
ATTORNEYS AT LAW

1300 MOUNT KEMBLE AVENUE  
P.O. BOX 2075  
MORRISTOWN, NEW JERSEY 07962-2075  
(973) 993-8100  
FACSIMILE (973) 425-0161

MARK A ROSEN  
Direct dial: (973) 425-8753  
mrosen@mdmc-law.com

December 28, 2007

**Via Facsimile 516-944-2751 and Regular Mail**

Joseph J. Sciacca, Esq.  
33 Main Street  
Port Washington, New York 11050

RE: **Ronel Bennett, Inc. of N.J. v. KSI Contracting, LLC, et al.**  
**(One Jamaica Center)**  
Index No. 021894/03  
MDM File No: K0138-1019

Dear Mr. Sciacca:

This is in response to your letter dated December 18, 2007.

Both the tone and content of your letter are completely outrageous. You are the third attorney that has been engaged by your client to represent them in this matter. The record in this case is replete with prolonged inactivity, non-responsiveness and disappearances by your client, many lasting for several months and some for more than one year. The most recent five months is just another example. Any delays in this case are solely the result of your client's failure to prosecute.

Your request for original documents was made more than four years into the pendency of this case. It was made more than five years after the underlying events at issue in the case. As such the request is patently improper and grossly untimely. Nevertheless, KSI has searched and continues to search for original documents. Originals have yet to be found but the search is continuing.

We are reaching out to Mr. Miseo and will provide dates that he is available to be deposed.

Page 2

Lastly, we have cautioned both you and your client in the past regarding the specious and scurrilous allegations that you both continue to make regarding improper conduct in this matter. In addition, we stated that we did not want you or your client contacting our clients directly. Yet, your letter persists with this egregious conduct and we have been advised that your client has again contacted one of our clients directly.

Please be advised that it is KSI's intention to pursue both of you to the fullest extent of the law with respect to this continued improper conduct.

Very truly yours,

MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

A handwritten signature in black ink, appearing to read 'Mark A. Rosen', with a long horizontal flourish extending to the right.

Mark A. Rosen

MAR/li



**JOSEPH J. SCIACCA**  
Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
(516) 944-6058  
Fax (516) 944-2751  
email JSciaAtty@aol.com

CLIENT'S COPY

January 24, 2008

**CERTIFIED MAIL RRR**  
**7006-2760-0005-0490-0884**

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

I am in receipt of your letter dated December 28, 2007.

Quite clearly, if anything is completely outrageous, it is your letter and your conduct. This case is replete with your failure to provide discovery and failure to complete the depositions.

I am sending you copies of my letters dated April 3, 2006, March 14, 2007, April 20, 2007, June 15, 2007, July 17, 2007, July 19, 2007, July 31, 2007, and December 18, 2007 which speak for themselves and which clearly support the above paragraph.

Since I have been involved in this case, you are the only one that has delayed this case. Even in your December 28, 2007 letter, you have failed to provide me with dates for the continued examination of Mr. Giannico and for the deposition of Mr. Miseo. Since December 28, 2007 to the present, you have failed to contact me about any of the issues.

Page Two  
January 24, 2008  
Mark A. Rosen, Esq.

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In addition, you have failed to provide me with the original documents, although you claimed to, among others, to the New York State Insurance Department, that you have already provided these documents. Now you are claiming that you cannot locate these documents. Which is it?

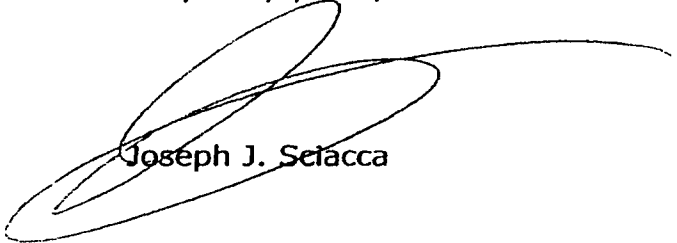
Unless I am provided with these dates with seven (7) days, I will present the appropriate motion to the Court and you can make whatever ridiculous arguments you want. The facts are clear.

Since you cannot communicate directly with my client, please advise me when you told my client that he could not communicate with your client directly and also provide me with the Statute which prevents parties to a litigation from communicating with each other.

Please stop threatening us and provide my office with the dates and documentation immediately.

Please be guided accordingly.

Very truly yours,



Joseph J. Sciacca

JJS\se  
cc: Ronel Bennett Inc. of N.J.  
letters\ronelbennettofnj.attorneymarkrosen22.ltr.january08

**JOSEPH J. SCIACCA**

Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
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Fax (516) 944-2751  
email JSciaAtty@aol.com

December 18, 2007

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

On the date of Anthony Giannico's deposition, you stated for the record that you would produce the documents we requested prior to that proceeding for the Anthony Giannico deposition on July 21, 2007. You further indicated that dates for the completion of Anthony Giannico's deposition for KSI Contracting and the deposition of Vincent Miseo of Chubb Insurance would be provided on or before July 21, 2007. On July 21, 2007, I wrote to inform you that neither your statement nor the dates submitted had been complied with. It is now December 18, 2007, a period of five months has elapsed and you have hereby failed to answer any correspondence demanding your promised compliance.

We have made one attempt after another to move these proceedings along and you in turn have made every attempt to obstruct them with your endless delays. No doubt this is because every step forward in this matter reveals that the contract submitted to the Court as genuine is a forged contract and in addition, endless claims and defenses raised by you and your clients are utterly without merit. You have claimed on numerous occasions, before the Court, to the New York State Insurance Department, to my clients during depositions, etc., that these documents have been produced.

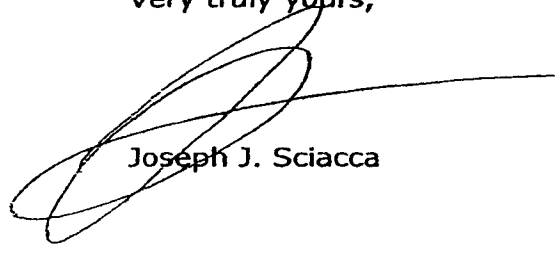
Once again I am demanding you produce the requested documents in their original form that back up your claims to the above parties so that we can proceed to uncover Mr. Giannico's part in the fraud and forgeries perpetrated against my client with this deposition.

Page Two  
December 18, 2007  
Mark A. Rosen, Esq.

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Your continued refusal to comply with this demand is hereby taken as your admission that the documents you allege prove your case to the above mentioned parties, do not exist in any form as you have stated other than the intentional and deliberate obstruction of my clients' civil right to the fair and equal right of due process. If no response is received by January 3, 2008, then I shall move to strike your client's answer and for a default judgment.

Very truly yours,



Joseph J. Sciacca

JJS\se

cc: Ronel Bennett Inc. of N.J. ✓  
letters\ronelbennettfnj.attorneymarkrosen21.ltr.december07

**JOSEPH J. SCIACCA**  
Attorney At Law  
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Fax (516) 944-2751  
email JSciaAtty@aol.com

**FAXED**

July 31, 2007

By Telefax : 1.973.425.0161 - Number of pages transmitted : 1

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

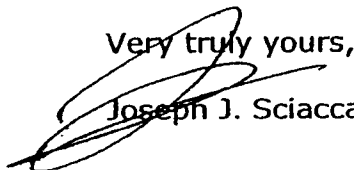
You had indicated in the last deposition that you would be ready to present the original documents that were requested months ago by July 20, 2007 and that you would also give me dates to continue the deposition of your clients by July 20, 2007.

I have received no information from you by July 20, 2007. I called your office and spoke to your secretary, June, after July 20<sup>th</sup>, and although it has been close to 10 days, you have still not returned my telephone call.

Please let this letter serve as formal notice that if I do not hear from you and receive the documents requested by Wednesday, August 1, 2007, and dates for the completion of your clients' depositions, I shall move to strike your clients' answer.

Please be guided accordingly.

Very truly yours,

  
Joseph J. Sciacca

JJS\se

cc: Ronel Bennett Inc. of N.J.

letters\ronelbennettofnj.attorneymarkrosen20.ltr.july07.depositiondates.

**JOSEPH J. SCIACCA**  
Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
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email JSciaAtty@aol.com

July 19, 2007

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

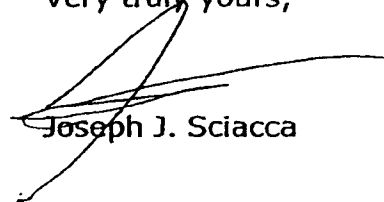
Enclosed please find the original and one copy of your client's examination before trial with regard to the above-referenced matter. Please have the original duly executed by your client and returned to me, retaining the copy for your file.

Please take notice that failure to return the above within thirty (30) days hence will result in our deeming said transcript duly executed. [CPLR 3116(a)].

If the witness should have any corrections, additions or deletions, they are to be made on the enclosed Errata Sheet at the back of the transcript. Please have the witness sign the transcript and the Errata Sheet and return it to my office at your earliest convenience.

To avoid the necessity of costly motion practice, please be certain that all requests for information and/or documents are complied with and that all insertions are made.

Very truly yours,



Joseph J. Sciacca

JJS/se  
Enclosure  
cc: Ronel Bennett Inc. of N.J.  
letters\ronelbennettofnj.attorneymarkrosen19.july07.glannicotranscript

JOSEPH J. SCIACCA  
Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
(516) 944-6058  
Fax (516) 944-2751  
email JSciaAtty@aol.com

**FAXED**  
**AND MAIL**

July 17, 2007

By Telefax : 1.973.425.0161  
Number of pages transmitted : 2  
and Regular Mail

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

Pursuant to the deposition held on June 27, 2007 in your New York offices, you were to advise me of the next deposition date of Anthony Giannico as well as give me tentative deposition dates so we can depose Mr. Miseo. To date I have received no notification from you.

This letter also serves to remind you that the original documents requested are to be available by July 20, 2007.

Your immediate attention to these matters is requested.

Very truly yours,

Joseph J. Sciacca

JJS\se

cc: Ronel Bennett Inc. of N.J. ✓

letters\ronelbennetttofnj.attorneymarkrosen18.ltr.july07.depositiondates.docx

**JOSEPH J. SCIACCA**  
Attorney At Law  
33 Main Street  
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(516) 944-6058  
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June 15, 2007

By Telefax : 1.973.425.0161  
Number of pages transmitted : 1

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

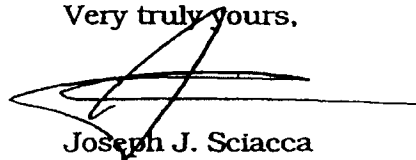
Re: **Ronel Bennett Inc. -v- KSI et al.**

Dear Mr. Rosen:

On May 22, 2007, we scheduled the depositions of your clients for June 13, 14 and 15, 2007. On June 8, 2007 I wrote to you to confirm the depositions and sent you a notice with respect to documents that your clients needed to produce at the depositions. Not hearing from you I contacted your offices on June 12, 2007. Not until late in the day on June 12<sup>th</sup> did I learn from your offices that there would be no depositions on June 13<sup>th</sup> with no explanation whatsoever despite the fact that my schedule as well as my clients was cleared for these three days. On June 13<sup>th</sup> I was informed by your office that there would be no depositions on June 14 and 15<sup>th</sup>, again without any explanation. We were told that you could have a witness available on June 20<sup>th</sup>. Your office was informed that I would be in court on that date and asked that you contact me to schedule your clients deposition. It is now Friday at 3:10 p.m. and you have failed to contact me.

If you fail to contact me by Monday June 18<sup>th</sup> to schedule your clients depositions within a reasonable time, I shall move to dismiss your client's Answer and will provide the Court with a copy of this letter along with my prior letters attempting to complete discovery in this matter.

Very truly yours,



Joseph J. Sciacca

JJS\se  
cc: Ronel Bennett Inc. of N.J.  
letters\ronelbennettofny.attorneymarkrosen15.1trjune07



**JOSEPH J. SCIACCA**

Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
(516) 944-6058  
Fax (516) 944-2751  
email JSciaAtty@aol.com

April 20, 2007

By Telefax : 1.973.425.0161  
Number of pages transmitted : 1  
and Regular Mail

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

On March 14, 2007, I wrote to you requesting that you contact me concerning the completion of my client's deposition and to schedule your client's depositions. You have failed to contact me. I am enclosing a copy of my March 14, 2007 letter for your convenience.

I am giving you another opportunity to contact me with reasonable dates by Friday, April 27, 2007. If you fail to do so, I shall move to dismiss your client's Answer and will provide the Court with a copy of this letter.

Very truly yours,



Joseph J. Sciacca

JJS\se  
cc: Ronel Bennett Inc. of N.J.  
letters\ronelbennetttofuj.attorneymarkrosen15.ltr.april07

April 3, 2006

**Certified Mail RRR**  
**7004-1160-0001-4771-0315**  
**and**  
**By Telefax : 973.425.0161**  
**Number of Pages Transmitted : 4**

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

As suspected and confirmed by my client, you have failed to provide the documents requested in the discovery demands. This is the same thing that you did back in 2005 when my client's prior attorney came to your offices to inspect documents.

This letter, which I know is a waste of time, because you have steadfastly refused to provide the documents requested, is a prelude to my renewing my motion before Justice Price to strike your client's answers.

For the record, on Day 1 when my client appeared at your offices on March 2, 2006, you provided him with four (4) boxes containing approximately 17 books and approximately 34,000 pages of documents. The master list for these documents was deliberately withheld and the documents were from another litigation, Stegla -v- KSI and Federal Insurance, Index No. 02-602959. As you

Page Two  
Mark A. Rosen, Esq.  
April 3, 2006

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did in the past, there was no identifying mark cataloging the contents. When I apprized you of this in my letter dated March 3, 2006, you sent a letter of March 3, 2006, continuing the subterfuge and refusal to provide the documents requested.

At 2:00 p.m. on March 2, 2006, you advised my client that there were 17 more boxes for review. On day 2, March 6, 2006, my client again appeared and received the first 5 of a much disorganized delivery of 31 boxes of KSI and Stegla documents used in the Roy Kay, Inc., litigation of 2003 containing approximately 90,000 documents (Bates marked RK-00001-087999). Again, the Master List for these documents was deliberately withheld and again were documents from another litigation - Roy Kay v. KeySpan. No index numbers were affixed, and apart from the Bates numbers, there were no other identifying marks. Again, none of these documents were the documents requested in the discovery demands.

On days 3 and 4, March 7 and March 8, 2006, another seven boxes were presented with exactly the same unidentified material - a continuation of non-party Stegla and Roy Kay documents unrelated to the One Jamaica Center documents requested. Again, these same documents were of no value to this instant law suit except to show a systematic pattern of non-payment of trust funds, fraud and various other illegal activities of your client, KSI.

There were no financial records of any kind except for one handwritten, fraudulent "Committed Cost Schedule" documents prepared by Tony Giannico showing a \$13 Million Dollar loss in one month, along with other various examples of fraud and conversion of trust funds.

On Day 5, March 8, 2006, my client appeared at your offices at 10:00 a.m. and was promised an additional five boxes. My client waited from 10:00 a.m. to 3:00 p.m. and no boxes ever materialized.

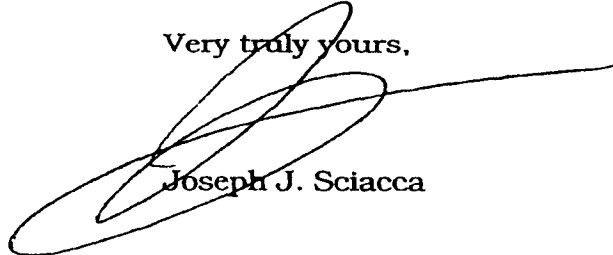
On Day 6, March 13, 2006, five more boxes and three files were delivered, some from various other non party Roy Kay litigation. There was a Queens College file, a file for Federal Insurance Company prior to my client's involvement with the project, some Leo S. Harmony files not dealing with Jamaica, and a general file and copies of several GC Stegla Group to KSI checks endorsed and

Page Four  
Mark A. Rosen, Esq.  
April 3, 2006

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Please be guided accordingly.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Joseph J. Sciacca

JJS\se

cc: Thomas De Luca, Esq.  
Ronel Bennett Inc. of N.J.

letters\ronelbennetttofaj.attorneymarkrosen4.ltr.march06

**JOSEPH J. SCIACCA**  
Attorney At Law  
33 Main Street  
Port Washington, New York 11050-2916  
(516) 944-6058  
Fax (516) 944-2751  
email JSciaAttr@aol.com

March 14, 2007

By Telefax : 1.973.425.0161  
Number of pages transmitted : 1  
and Regular Mail

Mark A. Rosen, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
Morristown, New Jersey 07962

Re: **Ronel Bennett Inc. -v- KSI**

Dear Mr. Rosen:

The documents that my client provided to you were copied by the company you retained, Metro Copy and Duplicating Corp., the company who picked up the box from my office on February 8, 2007 and returned same to me on February 9, 2007. Sufficient time has elapsed for you to have reviewed the documents.

I would ask that you contact me within seven (7) days from the date of this letter so that we can schedule the completion of my client's deposition and the deposition of your clients.

Your immediate attention to this matter is requested.

Very truly yours,

  
Joseph J. Sciacca

JJS\se  
cc: Ronel Bennett Inc. of N.J.  
letters\ronelbennettfnj.attorneymarkrosen14.ltr.march07

**EXHIBIT B**  
**Deposition of Anthony Giannico in Which Mr. Rosen**  
**Fails to Produce Any Supporting Documentation.**

1 A. Giannico

2 Q. Do you have a copy with you of the  
3 original contract between KSI and The Stegla  
4 Group?

5 A. No, I do not.

6 MR. SCIACCA: Can I have this marked,  
7 please, as the first plaintiff's exhibit.

8 (Plaintiff's Exhibit 1, Notice of  
9 Deposition, was marked for identification.)

10 Q. Let me show you what's been marked as  
11 Plaintiff's Exhibit 1, a notice to take  
12 deposition. Have you seen that document before  
13 today?

14 A. No, I have not.

15 Q. Your attorney has not shown you that  
16 document?

17 A. No, I have not seen this document.

18 Q. Do you have any records with you with  
19 respect to this project from KSI from February  
20 through July of 2002?

21 A. No, I do not.

22 MR. SCIACCA: Counsel, do you have the  
23 original contract in your file?

24 MR. ROSEN: I have not had the  
25 opportunity to check for the originals of

1 A. Giannico

2 the documents for which you have requested  
3 originals, but I would note that pursuant to  
4 prior discovery proceedings in this case,  
5 KSI has made virtually its entire project  
6 available with respect to the Jamaica  
7 project. I have not had a chance to look in  
8 that voluminous file.

9 MR. SCIACCA: I've asked for the  
10 originals at this deposition. You have  
11 wasted everybody's time by not having the  
12 originals and not indicating you weren't  
13 going to have the originals. We could have  
14 adjourned this until you have the originals.  
15 I sent this to you by fax back on June 8 of  
16 2007. I'm entitled to those originals.

17 MR. ROSEN: You have made your speech.  
18 I've stated our position.

19 MR. SCIACCA: I'm asking you to  
20 produce the originals.

21 MR. ROSEN: I don't have them here  
22 today.

23 MR. SCIACCA: Why not? You were  
24 noticed to produce the originals.

25 MR. ROSEN: Counsel, I've stated my



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A. Giannico

response. You want to proceed, proceed.

MR. SCIACCA: I'm not going to proceed without the original documents.

MR. ROSEN: Then adjourn.

MR. SCIACCA: I'm going to move for cost and sanctions for you bringing me here without producing the documents.

MR. ROSEN: Are you going to proceed with the questioning or are you going to argue?

MR. SCIACCA: I need the originals to question your client. You had to know that. You are an attorney, and you got served with a notice to take deposition which specifically requested the original documents.

MR. ROSEN: Are we done?

MR. SCIACCA: I'm not done. I want the original documents. Where are they?

MR. ROSEN: I stated the response. Can we go off the record.

(Discussion off the record.)

MR. SCIACCA: You have a file in this case, Federal Insurance Company in this

1 A. Giannico

2 particular case, correct?

3 MR. ROSEN: I'm not going to be  
4 questioned on the record. I stated our  
5 position.

6 MR. SCIACCA: I want to know when you  
7 are going to have on the record the original  
8 documents that I requested on June 8.

9 MR. ROSEN: I will have a response to  
10 you as to whether we will be able to produce  
11 the originals by July 20.

12 Q. Mr. Giannico, there was a subcontract  
13 on this particular project between KSI and the  
14 plaintiff, Ronel Bennett?

15 A. I believe there was, yes.

16 Q. Were those original documents  
17 maintained by KSI?

18 A. They would have been.

19 Q. Where would they have been maintained?

20 A. Freehold, New Jersey.

21 Q. Where in the office would they be  
22 maintained?

23 A. At that time there was a specific file  
24 room where all project files were maintained.

25 Q. And when KSI changed locations, was

**EXHIBIT C**  
**KSI Accounting Document Indicating “Adj. Leo H” for**  
**Amounts Owed to Ronel Bennett.**

SYSTEM TIME: 9:55 am

----- 401 4004

| <u>Commitment</u>                |                            | <u>Cost Code</u> | <u>Original Amount</u> | <u>Apprvd Commit CO Amt</u> | <u>Revised Contract</u> | <u>Amount Invoiced</u> | <u>Amount Being Retained</u> | <u>Amount Paid</u> | <u>Contract Balance</u> |
|----------------------------------|----------------------------|------------------|------------------------|-----------------------------|-------------------------|------------------------|------------------------------|--------------------|-------------------------|
| <b>ONEJ - ONE JAMAICA CENTER</b> |                            |                  |                        |                             |                         |                        |                              |                    |                         |
| PRM                              | PRIMA ELECTRIC SUPPLY INC. | 20987            |                        |                             |                         |                        |                              |                    |                         |
|                                  |                            | 06-0605          | 122.70                 |                             | 122.70                  |                        |                              |                    | 122.70                  |
|                                  | Commit 20987               | Totals:          | 122.70                 | .00                         | 122.70                  | .00                    | .00                          | .00                | 122.70                  |
|                                  |                            |                  |                        | Comm Invoice Totals:        |                         | .00                    | .00                          | .00                |                         |
|                                  | Vendor PRM                 | Totals:          | 27,519.91              | .00                         | 27,519.91               | 27,519.91              | .00                          | 27,519.91          | 77.56                   |
|                                  |                            |                  |                        | Vendor Invoice Totals:      |                         | 27,519.91              | .00                          | 27,519.91          | *****                   |
| <b>RICH</b>                      |                            |                  |                        |                             |                         |                        |                              |                    |                         |
|                                  | RICHARD ENERGY CORP        | 15913            |                        |                             |                         |                        |                              |                    |                         |
|                                  |                            | 11-0010          | 72.96                  |                             | 72.96                   | 72.96                  |                              | 72.96              |                         |
|                                  | Invoices: 071601           |                  |                        |                             |                         | 72.96                  |                              | 72.96              |                         |
|                                  | Commit 15913               | Totals:          | 72.96                  | .00                         | 72.96                   | 72.96                  | .00                          | 72.96              | .00                     |
|                                  |                            |                  |                        | Comm Invoice Totals:        |                         | 72.96                  | .00                          | 72.96              |                         |
|                                  | Vendor RICH                | Totals:          | 72.96                  | .00                         | 72.96                   | 72.96                  | .00                          | 72.96              | .00                     |
|                                  |                            |                  |                        | Vendor Invoice Totals:      |                         | 72.96                  | .00                          | 72.96              | *****                   |
| <b>RONE</b>                      |                            |                  |                        |                             |                         |                        |                              |                    |                         |
|                                  | ROSEL BERNETT, INC. OF NJ  | 3781             |                        |                             |                         |                        |                              |                    |                         |
|                                  |                            | 01-0010          | 255,000.00             | -210,000.00                 | 45,000.00               | 45,000.00              | -2,500.00                    | 70,000.00          |                         |
|                                  | Invoices: ADJ L.H          |                  |                        | ADJ LEO H                   |                         | -25,000.00             | -2,500.00                    | .00                |                         |
|                                  | Invoices: 1-3781           |                  |                        |                             |                         | 70,000.00              |                              | 70,000.00          |                         |
|                                  | Commit 3781                | Totals:          | 255,000.00             | -210,000.00                 | 45,000.00               | 45,000.00              | -2,500.00                    | 70,000.00          | .00                     |
|                                  |                            |                  |                        | Comm Invoice Totals:        |                         | 45,000.00              | -2,500.00                    | 70,000.00          |                         |
|                                  | Vendor RONE                | Totals:          | 255,000.00             | -210,000.00                 | 45,000.00               | 45,000.00              | -2,500.00                    | 70,000.00          | .00                     |
|                                  |                            |                  |                        | Vendor Invoice Totals:      |                         | 45,000.00              | -2,500.00                    | 70,000.00          | *****                   |
| <b>SAFE01</b>                    |                            |                  |                        |                             |                         |                        |                              |                    |                         |
|                                  | SAFETY CONSULTANT, INC.    | 3798             |                        |                             |                         |                        |                              |                    |                         |
|                                  |                            | 02-0200          | 9,140.00               |                             | 9,140.00                | 9,140.00               |                              | 5,820.00           |                         |
|                                  | Invoices: 041702           |                  |                        | DEPOSIT OF 2,500 UP FRONT   |                         | 9,140.00               |                              | 5,820.00           |                         |
|                                  | Invoices: 041702           |                  |                        |                             |                         | .00                    |                              | .00                |                         |
|                                  | Commit 3798                | Totals:          | 9,140.00               | .00                         | 9,140.00                | 9,140.00               | .00                          | 5,820.00           | .00                     |
|                                  |                            |                  |                        | Comm Invoice Totals:        |                         | 9,140.00               | .00                          | 5,820.00           |                         |
|                                  | Vendor SAFE01              | Totals:          | 9,140.00               | .00                         | 9,140.00                | 9,140.00               | .00                          | 5,820.00           | .00                     |
|                                  |                            |                  |                        | Vendor Invoice Totals:      |                         | 9,140.00               | .00                          | 5,820.00           | *****                   |

RK 087467

01/06/2008 23:52 FAX

**Attachment d**

after the walk through, to discuss the options available to KeySpan respecting the Rail project vis à vis Roy Kay's default and Liberty's rights under the performance bond. Feraudo represented that KeySpan was strongly considering replacing Roy Kay on the Rail project and desired to gauge its rights and liabilities associated therewith before taking the plunge.

b. Second, after some more discussion concerning the Rail project and other Roy Kay problem contracts, including the Student Activities Center at the State University of New York at Stony Brook, defendant Feraudo confessed to having intimate knowledge (on his and defendant Catell's part) of all of Roy Kay's problem construction projects. He said:

I am going to tell you now I made some plans – I can't – I had to come up with a plan. I can't work like this anymore. O.K. I can't. You get two disqualifications, I get Tom Murphy threaten a third one. O.K. The landing stations want to sue us. So I mean, *I have fucking vendors calling me every day, calling Bob Catell every day.* It is really getting out of hand. It's unbelievable. *Instead of getting better, it is getting worse.* I can't allow this to go anymore. I have put together a plan that is why we are down here tonight. I want to try to go through this plan, see if we can all get on board with it, and see if we can get ourselves out of this situation. So that's what I want to walk through with you because I can't, I can't let this go on. *And I suspect I am going to have to put in another big chunk of cash in here* and I am not just going to put it in here. I will put it in here and administer it the way I want to administer it. (Emphasis added.)

c. Later on, in the same conversation, defendant Feraudo continued:

But I mean the situation is *you have serious cash problems.* I mean I am sure you got yourself out. The problem is, I will tell you what I think and again I do not want to argue this.

\* \* \*

I think you got very big very quick. *And I don't think the systems and the processes were in place to keep track with that. Then we ended up in cash problem.* Then you ended up having [inaudible]. Then all of a sudden this whole thing, which is all tied together, starts to, starts to creek. *And what happened now? It's so far in a ditch, you can never win. You're never going to generate enough cash to keep these people happy. I mean some of these vendors are out*

*there 6 months, 7 months [inaudible]. So here we are in this situation. We can debate forever how the hell we got here and I really don't want to. . . . I know I am going to have to put some more money. I think one of the things we have to do is get you current so you don't have a vendor up your ass every five minutes. Get the projects under control and get the billing going correctly. (Emphasis added.)*

66. Although the precise amount and timing of KeySpan's cash advances are unclear from the foregoing statements, it is clear that, at least by January 25, 2001, a year after the acquisition, a substantial sum was already advanced to Roy Kay deriving from its "serious cash problems" and further sums equal to or greater than those already made in the past were now again required. It is also clear that defendants Feraudo and Catell knew by this time that Roy Kay: (i) did not have the proper financial and operations systems, processes and controls in place to keep track of its finances and performance; (ii) had a substantial cash problem; (iii) could not generate enough cash to continue operations without substantial and multiple cash infusions from KeySpan; and (iv) that Roy Kay's projects were not under control and the billing on those projects was unreliable.

67. In defense of his actions, David Kay responded to defendant Feraudo as follows:

*They want. They owe me a million and a half dollars and they don't want to pay me. Tom [Bonacuso] doesn't want to pay me the money. They want to take the money that, that they were supposed to pay me so I could pay the people that I need to pay, and they want to pay the people that they want to pay. So, so now I can't pay my payroll. I can't pay my staff because they are not paying me and they're paying who they want. I mean this is preventing me from doing any work. We all know that SUNY is not paying me. But, but I got no money there. I got no money at the, the, the KeySpan jobs because they're not paying me and they're going to pay my subs. So they're not going to pay. So, so where am I supposed to go? I'm boxed in a corner. (Emphasis added.)*

68. From the foregoing statements it is clear that at least as of January 25, 2001, defendant Feraudo knew, in addition to the matters stated above, that the condition at Roy Kay

had deteriorated to the nadir that it could not make its payroll, was up to seven months late in paying its vendors, and "instead of getting better, it is getting worse."

69. Later on in the same conversation, after discussing earlier contracting and payment problems on the Rail project and disclosure of LeRoy Kay's firing of a key supervisory employee because of Roy Kay's financial difficulties, defendant Feraudo retorted:

You know, again, you still have your remedies. You still have your remedies to go after, to go after them to get your money. I'm not going to stop you from doing that. But . . . *right now we're in a poison, where I got to tell you KeySpan's reputation is being killed with this.* (Emphasis added.)

70. Finally, in wrapping up their conversation, defendant Feraudo advised the Kays of his intention to have KeySpan take over the Rail project with the help of a loaner of key Roy Kay personnel to see that job through completion. In addressing the remaining problems of Roy Kay, Feraudo said:

I want to take out the *projects in distress*. O.K. And my intent is to fix them to the best of my fucking ability, O.K. I'm at the point where I don't even give a shit if we just break even. If we can fucking break even I'll raise a flag, O.K. I don't want to take major fucking losses on these projects.

\* \* \*

And then your supervisors got lax. So right there is four fucking things that are gonna take you down. To get big, there's no way you gonna get big. So I'm saying step back the goodness out of this trip, is that we learned a fucking lot? O.K. So now given that, let's re-systematize Roy Kay. We gotta get back our reputation, O.K. *Our reputation is fucking shit on Long Island.* You can't believe the fucking letters I'm getting and it just becomes a snowballing, a snowballing thing. The other day a vendor refused to deliver now to [KSI's Consumer Services division], to Mike Ruff's company, because Roy Kay owes them money. Listen, what the fuck are you doing? We're not delivering. I say fuck you, but understand what's going on now, O.K. *We got damaged reputation. We got to fix that because our whole fucking, our whole fucking future is based on our reputation.* (Emphasis added.)



#### **Timeline of Events**

**February 14, 2002.** Our company signs a contract to complete HVAC work at One Jamaica Center in Queens, New York for Roy Kay, Inc/KSI Contracting.