

and taxpayers of Kootenai County...” Complaint, Exhibit 3, Resolution No. 2009-01, p. 1. On July 23, 2009, NIC executed the lease agreement which provided for NIC to lease the Mill Site from the Foundation on a yearly basis; renewal of the lease would require affirmative action by the Board each year through. Complaint, Exhibit 3, Lease Agreement, p. 2.

On October 27, 2009, plaintiffs filed their *pro se* Complaint, alleging a violation of Article VIII, Section 3 of the Idaho Constitution. Plaintiffs claim the lease agreement is a *de facto* installment land sale contract for which NIC did not obtain the required 2/3 assent of the qualified elector’s in the district. Complaint, p. 5, ¶ ¶ 32-33. Plaintiffs also claim NIC did not obtain judicial validation of the lease agreement pursuant to I.C. § 7-1304, as an alternative to the assent of 2/3 of qualified electors in the district. *Id.*, ¶ 34. Plaintiffs seek: declaratory judgment that the lease agreement violates Article VIII, Section 3 of the Idaho Constitution; permanent injunctive relief prohibiting NIC from making further expenditures under the lease agreement until the lease is approve by 2/3 of qualified electors in the district, should that occur; and an entry of judgment compelling the Foundation to return all monies received from NIC under the lease. Complaint, pp. 6-7. On November 25, 2009, NIC and the Foundation filed their separate Answers to the Complaint.

On January 22, 2010, NIC filed its motion for summary judgment, “Memorandum in Support of Motion for Summary Judgment on Behalf of North Idaho College”, and the “Affidavit of Tom Komberec (Vice-President of NIC Foundation) in Support of Motion for Summary Judgment”. Also on January 22, 2010, the Foundation filed “North Idaho College Foundation’s Joinder in North Idaho College’s Motion for Summary Judgment.” In its motion for summary judgment NIC requests this Court grant summary judgment in

NIC's favor as to the validity of the lease. "If the Lease Agreement does not violate Article VIII, Section 3, all other claims or remedies sought by the Plaintiffs are moot and this lawsuit must be dismissed." Defendants' Memorandum in Support of Motion for Summary Judgment, p. 13. On February 8, 2010, the plaintiffs filed "Plaintiff's Answering Brief in Response to defendant's Motion for Summary Judgment", an "Affidavit of Lawrence Spencer Supplementing Plaintiffs' Answering Brief in Response to Defendants' Motion for Summary Judgment" and the "Affidavit of William McCrory Supplementing Plaintiffs' Answering Brief in Response to Defendants' Motion for Summary Judgment". On February 16, 2010, the Foundation filed the "Foundation Reply Brief in Support of Motion for Summary Judgment." Also on February 16, 2010, NIC filed its "Reply Memorandum in Support of Motion for Summary Judgment." On February 22, 2010, the "Affidavit of William McCrory in Opposition to Motion for Summary Judgment" was filed. Oral argument was held on February 22, 2010. At the conclusion of oral argument, this Court took the motion for summary judgment under advisement.

II. STANDARD OF REVIEW.

A motion for summary judgment shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991). Standards applicable to summary judgment require the district court to liberally construe facts in the existing record in favor of the party opposing the motion, and to draw all reasonable inferences in favor of the non-moving party. *Loomis*, 119 Idaho at 436. If the record contains conflicting inferences or if reasonable minds might reach

different conclusions, summary judgment must be denied. *Id.* The moving party is entitled to judgment when the nonmoving party fails to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126 (1988).

III. ANALYSIS.

NIC argues Article VIII, Section 3 of the Idaho Constitution only prohibits NIC from incurring debt or liability exceeding the income or revenue provided in the current year for that debt or liability. Defendants' Memorandum in Support of Motion for Summary Judgment, pp. 8-9. NIC states the lease agreement does not contemplate future aggregate rents and "the only obligation being incurred by NIC was the current yearly rent under the lease." *Id.*, at p. 9. Therefore, NIC argues, there is no requirement for the assent of two-thirds of the qualified electors; nor does any obligation to seek judicial confirmation exist as this is merely an available discretionary statutory process. *Id.*, pp. 8-9. NIC argues the lease agreement does not violate the Idaho Constitution for several reasons: rents are only due and owing for years beyond the 2009-2010 fiscal year if the lease term is extended, and nothing in the lease agreement obligates NIC to renew for any of the four consecutive one-year terms available under the lease; the lease itself does not create any debt or liability as those terms are defined by Idaho case law; NIC has not pledged or encumbered any of its own property beyond the 2009-2010 term; and the lease agreement is a typical ground lease, therefore NIC's agreement to pay assessments, provide insurance, etc. are common and limited to the current year and no liability for taxes or insurance would be incurred if the lease agreement is not renewed. Defendants' Memorandum in Support of Motion for Summary Judgment, pp. 9-12.

In response, the *pro se* plaintiffs disagree with the assertion that the lease agreement does not create or involve a debt or liability extending beyond one year. Answering Brief in Response to Defendants' Motion for Summary Judgment, p. 2. Specifically, plaintiffs point to public documents (including the lease agreement itself), and claim such evince the Board's intent to acquire title to the Mill Site, and not merely lease the property on an annual basis. *Id.*, pp. 3-6. Plaintiffs write:

Plaintiffs contend that while the Lease Agreement takes the form of a lease, it is in fact a disguised installment purchase agreement that contravenes the Idaho Constitution, Article 8, Section 3.

Id., p. 5. Plaintiffs continue:

The Lease Agreement, ¶ 3, obligates Defendant College to pay Defendant Foundation \$4,000,000 in "prepaid rent" upon execution of the Agreement. As explained earlier, it appears that \$500,000 of that is "good faith deposit." The Lease Agreement does not explain for what period of time the remaining \$3,500,000 of "prepaid rent" pays the rent. Thereafter, Defendant is obligated to make six semi-annual payments of exactly \$1,074, 134.02 for three years, contingent on appropriating the annual amount due by the Defendant College in its annual budget. The total of those six semi-annual payments is \$6,444,804.12. Adding the \$4,000,000 in "prepaid rent" to the sum of the six equal semi-annual payments results in a total amount of \$10,444,804.12 to be paid by Defendant College to Foundation.

Id., pp. 6-7. Plaintiffs note \$444,804.12 in payments "must be interest or fees", but they are unable to further explain the amount pending receipt of discovery responses. *Id.*, p.

7. Additionally, plaintiffs point to the Tax Agreement Regarding Revenue Ruling (attached to plaintiffs' Complaint) conferring tax exempt status, for support of their argument that:

...Defendants had to know and agree when the Lease Agreement was signed that it is, in fact, a sales contract and not a lease-option agreement. It is this Tax Agreement Regarding Revenue Ruling that binds Defendants together was a single unit in this action.

Id., p. 8. Finally, plaintiffs argue NIC's exercise of the non-appropriation option in the

lease agreement may result in actual or possible losses including the good faith deposit and any buildings or improvements placed on the Mill Site by NIC, *inter alia*. *Id.*, p. 10.

The Foundation, in its reply brief, argues no long-term obligation was necessary in this transaction, nor was any long-term obligation the intent of defendants.

Foundation Reply Brief in Support of Summary Judgment, p. 2. The Foundation notes the requirements of the Tax Code “obscure some of the language typically used in this type of transaction but do not change the nature of the transaction.” *Id.* That is: the Foundation incurred a debt to purchase property, it leased the property to NIC on a year-to-year basis, the debt is secured by the property- not by the lease, only the Foundation is obligated to pay the debt, the Foundation intends to use the lease proceeds to make payments on the debt but is not required to do so, NIC did not enter into a long-term lease, and NIC did not incur the debt. *Id.* The Foundation discusses cases cited by plaintiffs as being inapposite and notes the Tax Agreement Revenue Ruling does not require the lease to be a long-term obligation. *Id.*, pp. 4-5. NIC, in its reply brief, argues the only issue before the Court is whether NIC incurred a debt or obligation violative of Article VIII, Section 3, of the Idaho Constitution; whether or not NIC’s ultimate intent is to own the Mill Site is of no import. Reply Memorandum in Support of Motion for Summary Judgment, p. 2. NIC then discusses in detail the Wisconsin case *Dieck v. Unifies School District of Antigo*, 165 Wis.2d 458, 477 N.W.2d 613 (Wisc. 1991), and argues the non-appropriation provision of the Lease Agreement protects NIC’s future incomes and revenues. *Id.*, p. 5.

If the College decides that a successive year’s revenue is insufficient to make such [rent] payments, then the College may elect not to budget rent payments and not renew the Lease for an additional one-year period. There are no penalties associated with failing to renew. Paragraph 2.1 of the Lease Agreement prohibits the College from pledging future years’ income to make rent payments.

Id. At issue here is Article VIII, Section 3 of the Idaho Constitution, which states:

SECTION 3.LIMITATIONS ON COUNTY AND MUNICIPAL

INDEBTEDNESS. No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state...

The issue for this Court then, is whether ¶ 2.1 of the Lease Agreement sufficiently ensures that renewal of the lease agreement beyond the *current* year is *solely* at NIC's option, and whether such renewal may only be had where funds are duly budgeted and appropriated therefore. Paragraph 2.1 reads:

COLLEGE may, solely at its own option, and when it duly budgets and appropriates funds therefore from revenues legally available to it for the ensuing fiscal year, renew this Lease for an additional annual renewal term. Each annual renewal of this Lease shall be deemed to be exercised by the COLLEGE upon the adoption on or before June 30 of each year, of a budget for the ensuing fiscal year, duly budgeting and appropriating the amount of money required to make the Lease payments during such year. Within ten (10) days following the adoption of a budget duly budgeting and appropriating said funds for the ensuing year, COLLEGE shall deliver to the FOUNDATION a written statement certifying that it has duly budgeted and appropriated said funds for the ensuing year, which written statement shall be accompanied by a copy of the budget so adopted. Each renewal term shall commence on July 23 of the fiscal year following adoption of the budget as provided hereinabove and shall terminate on July 22 of the following calendar year.

Complaint, Exhibit 3, Lease Agreement, p. 2, ¶ 2.1. As argued by the Foundation, there are two steps NIC must take in order to renew the Lease Agreement: (1) budget and appropriate funds from the ensuing year's revenues for renewal of the lease term for an

additional year, and (2) delivery to the Foundation, within ten days of adoption of the budget, a written statement certifying NIC has duly budgeted and appropriated funds for the ensuing year, accompanied by a copy of the budget itself. Foundation Reply Brief in Support of Summary Judgment, p. 3. And, as argued by NIC, the only issue raised at the summary judgment stage by NIC and the Foundation, is whether the lease agreement violates Article VIII, Section 3, of the Idaho Constitution so as to make the lease agreement void. Reply Memorandum in Support of Motion for Summary Judgment, p. 2.

Article VIII, Section 3 of the Idaho Constitution prohibits state subdivisions from incurring indebtedness or liability exceeding the income or revenue of that year unless the indebtedness or liability is approved by two-thirds of qualified electors, but ordinary and necessary expenses are excepted from the provision. *Loomis v. City of Hailey*, 119 Idaho 434, 440, 807 P.2d 1272, 1278 (1991). Thus, the *intent* of NIC to ultimately purchase the Mill Site from the Foundation is simply not relevant to the instant motion. Likewise, the issue of any rental surplus resulting from the initial pre-payment of \$4,000,000 in rent, and the possibility that this “surplus” may not be returned to NIC, should NIC opt to not renew the lease agreement, is also not an issue not before the Court on the instant motion. See Lease Agreement, p. 4, ¶ C. See *also*, Complaint, p. 4, ¶¶ 19-20. In *In Re University Place/Idaho Water Center Project*, 146 Idaho 527, 547, 199 P.3d 102, 122 (2008) (J. Jones, concurring), Justice Jones stated:

The district court apparently held the view that the performance under the allegedly novated contract was automatically disqualified as being comparable to the performance under the Foundation’s contract because the Parking Access Agreement provided the University’s parking lease was renewable each year and was subject to termination by the University in the event funds were not available. The fact of the matter is that all state contracts contain those same provisions because Article VIII § 1 of the Idaho Constitution prohibits the State from incurring multi-year

indebtedness without submitting the matter to the public for a vote. Article VIII § 3 imposes a similar limitation on public indebtedness with respect to subdivision of state government. It is virtually impossible the present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government's performance subject to the availability of appropriated funds and (2) making the agreement renewable on an annual basis for the contemplated term.

146 Idaho 527, 547, 199 P.3d 102, 122. As such, the lease agreement before the Court in the instant matter does not differ from those entered into by governments and subdivisions of governments. Although the lease at issue likely implicitly contemplates extending beyond one year, so long as it contains specific language making NIC's renewal subject to the availability of therefore appropriated funds and makes the lease term renewable on a yearly basis, the lease complies with the Idaho Constitution.

This was also the result *Dieck*, the 1991 Wisconsin Supreme Court case discussed by NIC at length. There, the Wisconsin Supreme Court reasoned:

“indebtedness” contemplates a “voluntary and absolute undertaking to pay a sum certain. No indebtedness exists if the municipal body may avoid its obligation or if conditions precedent exist... The undertaking must be enforceable by the creditor against the municipal body or its assets.

165 Wis.2d 458, 470, 477 N.W.2d 613, 625. Because the school district in *Dieck* had the right under the non-appropriation option to terminate the lease by opting to not appropriate funds for the following fiscal year's payment, no district funds were jeopardized beyond the current fiscal year. 165 Wis.2d 458, 465, 477 N.W.2d 613, 620.

We have precisely that same situation in the present case. As stated in *Dieck*:

The test, [for “indebtedness” under Wisconsin's similar constitutional provision], is not whether the municipal body unit will probably pay or whether the municipal body would be foolish not to pay. The test is whether the municipal body is under an obligation to pay and the creditor has a right to enforce payment against the municipal body or its assets.

165 Wis.2d 458, 470, 477 N.W.2d 613, 625. Under the terms of the Lease Agreement,

NIC is not under an obligation to pay and the Foundation has no right to enforce payment by NIC. The *Dieck* Court found that because the lease-purchase at issue in that case contained a “non-appropriation option”, the lease agreement did not violate Wisconsin’s Constitution because payments were to be made solely from the current year’s budget. The *Dieck* Court found the lease-purchase agreement with the non-appropriation option, meets the purposes of and maintains the integrity of the constitutional debt limitations:

A nonappropriation option preserves for each successive legislative body the responsibility of reviewing the wisdom of the lease and of deciding whether to continue it and shield taxpayers from burgeoning debt. Future generations are not burdened by past decisions.

165 Wis.2d 458, 472, 477 N.W.2d 613, 627. The *Dieck* Court noted the majority of other jurisdictions hold that lease agreements containing non-appropriation clauses do not constitute impermissible debt under similar state constitutional limitations, and cited those cases. 165 Wis.2d 458, 472, n. 8, 477 N.W.2d 613, 627, n. 8. Those cases are: *Department of Ecology v. State Finance Comm.*, 116 Wash.2d 246, 804 P.2d 1241, 1244-47 (1991) (“The overwhelming majority of jurisdictions that have considered the issue have concluded that a nonappropriation clause precludes the creation of debt.” 116 Wash.2d 246, 256, n. 9; 804 P.2d 1246, n. 9); *State ex rel. Kane v. Goldschmidt*, 308 Or. 573, 783 P.2d 988, 991-96 (1989) (discussing many prior decisions by the Oregon Supreme Court going back to 1873, consistently adopting the majority view); *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872, 878-79 (Colo.1983); *Edgerly v. Honeywell Information Sys., Inc.*, 377 A.2d 104, 108 (Me.1977); *Ruge v. State*, 201 Neb. 391, 267 N.W.2d 748, 750-52 (1978); *Enourato v. New Jersey Bldg. Auth.*, 182 N.J.Super. 58, 440 A.2d 42, 46-47 (1981), *aff'd*, 90 N.J. 396, 448 A.2d 449, 455-56 (1982); *Caddell v. Lexington Cy. Sch. Dist. 1*, 296 S.C. 397, 373 S.E.2d 598,

599-600 (1988); *McFarland v. Barron*, 83 S.D. 639, 164 N.W.2d 607, 609-10 (1969); *Texas Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924, 928 (Tex.1985); *Baliles v. Mazur*, 224 Va. 462, 297 S.E.2d 695, 698-700 (1982); *State ex rel. West Virginia Resource Recovery-Solid Waste Disposal Auth. v. Gill*, 174 W.Va. 109, 323 S.E.2d 590, 594-95 (1984). This Court has reviewed those cited cases, and finds the *Dieck* Court's analysis sound. This view is consistent with a treatise cited by the *Dieck* Court in which:

One author concluded that declaring a lease purchase agreement with a nonappropriation option constitutional was the "optimal approach that establishes both the correct legal rule and encourages utilization of lease-purchasing." Reuven Mark Bisk, *State and Municipal Lease-Purchase Agreements: A Reassessment*, 7 Harv.J.L. & Pub.Pol'y 521, 546 (1984).

165 Wis.2d 458, 472, n. 8, 477 N.W.2d 613, 627, n. 8. The minority view, according to the *Dieck* Court, was noted in *Montano v. Gabaldon*, 108 N.M. 94, 766 P.2d 1328, 1329-30 (1989), where a lease purchase agreement with nonappropriation clause creates moral or equitable obligation to continue payment and therefore creates debt. 165 Wis.2d 458, 472, n. 8, 477 N.W.2d 613, 627, n. 8. This Court is more persuaded that the majority view is correct. That conclusion that the majority view is correct is certainly bolstered by the concurring opinion of Justice Jim Jones in *In Re University Place/Idaho Water Center Project*, 146 Idaho 527, 547, 199 P.3d 102, 122 (2008), (J. Jones, concurring), where the practicality of such arrangements is noted. NIC simply does not incur a liability if it elects to not renew the Lease Agreement for a subsequent year term. Before a liability exists, there must be an enforceable duty against the municipality to make the payment. *Lewis v. Brady*, 17 Idaho 251, 256, 104 P. 900, 301 (1909). (interpreting Idaho Constitution, Article III, Section 1). Here, there is no enforceable duty against NIC to make the next year's payment. The various hypothetical scenarios presented by plaintiffs of situations that *could* happen which

could result in liabilities (Plaintiff's Answering Brief in Response to Defendant's Motion for Summary Judgment, p. 10), do not show *current* liabilities, they are all contingent on other events occurring in the future. There fact remains there is no penalty if NIC fails to renew the Lease Agreement.

Plaintiffs cite *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956), for the proposition:

What cannot be done directly [by the City of Idaho Falls because of constitutional limitations] cannot be accomplished indirectly. That which the constitution directly prohibits may not be done by indirection through a plan or instrumentality attempting to evade the constitutional prohibition.

Plaintiff's Answering Brief in Response to Defendant's Motion for Summary Judgment, pp. 10-11. William McCrory argued that point at oral argument on his behalf. That is an accurate quote from *O'Bryant*. 78 Idaho 313, 325. While *O'Bryant* also dealt with Article III, Section 3 of the Idaho Constitution, the facts are much different to those of the present case. Some of those facts are set forth below in the following quote from *O'Bryant*:

The creation of the Cooperative, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system and the ordinance of the City of Idaho Falls granting an exclusive franchise for thirty years to the Cooperative with the contract provided for by such ordinance are all parts of a plan and design devised to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes; and to exercise powers not granted to a municipality. The purpose of the whole plan is to allow the City to do indirectly what it cannot do directly, that is, to construct, operate and maintain a system for the distribution of gas; *and to pay for same by the creation of indebtedness and liabilities in excess of its revenues for the current year without a vote of the qualified electors and without providing for an annual tax to retire such indebtedness.*

78 Idaho 313, 327. This quote illustrates just some of the distinctions between the present case and *O'Bryant*, but the italicized portion shows the critical undisputed

distinction between the present case and *O'Bryant* which cause plaintiff's reliance upon *O'Bryant* to be completely misplaced. The evidence is uncontradicted by plaintiffs that NIC paid for this lease by revenues it had for the current year. See, Plant fund Expenditures, Plant fund Budget, General Fund Budget Proposal FY 10, Attached to Affidavit of William McCrory; Lease Agreement, p. 1 ¶ C.

At summary judgment, the non-moving party is entitled to having all reasonable inferences construed in their favor, but must make a showing sufficient to establish the existence of an element essential to its case on which it will bear the burden of proof at trial. *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126 (1988). Here, plaintiffs have raised the following issues for the Court: that documents evince NIC's underlying intent to purchase the Mill Site, regardless of any stated one-year term of the lease; that the tax agreement allowing the Foundation tax exempt status demonstrates the lease was in fact a sales contract; and that exercise of the non-appropriation option by NIC may result in losses. None of the arguments raised by plaintiffs refute NIC's and the Foundation's claims that the language of the lease contemplates the necessity of affirmative action on the part of NIC in order for renewal of the lease to occur. The language of Justice Jim Jones in his concurring opinion, quoted *supra*, indicates how commonplace these types of leases are, and that the Lease Agreement at issue does not violate of Article VIII, Section 3 of the Idaho Constitution:

The fact of the matter is that all state contracts contain those same provisions because Article VIII § 1 of the Idaho Constitution prohibits the State from incurring multi-year indebtedness without submitting the matter to the public for a vote. Article VIII § 3 imposes a similar limitation on public indebtedness with respect to subdivision of state government. It is virtually impossible the present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government's performance subject to the availability of appropriated funds and (2) making the agreement renewable on an annual basis for the

contemplated term.

146 Idaho 527, 547, 199 P.3d 102, 122.

Finally, this Court has been cited to District Judge Hosack's decision in *County of Bonner, Petition for Minimum Security Facility, Petitioner*, Bonner Co. Case No. CV 2008 641. Plaintiff's Answering Brief in Response to Defendant's Motion for Summary Judgment, p. 9. That case is not on point. In that case, Judge Hosack found that Bonner County created a "lien" upon *its own* property by proposing to transfer such property to a Trustee, would then in turn lease that same property back to Bonner County. Also, Bonner County is statutorily mandated to house its detainees. In the present case, NIC does not own the property in dispute. Thus, NIC cannot lien its own property because it does not own such. NIC cannot lose the use of its asset since it does not own the asset. Finally, NIC is not mandated by statute to maintain a particular activity of the property (like a detention facility), NIC can use the property for whatever use it sees fit while it leases the land (presently it is used as a parking lot, Affidavit of Lawrence Spencer, p. 2, ¶ 3), and if NIC were to so choose, NIC could simply not renew the lease vacate the property. No statute requires NIC to have a parking lot, unlike the situation in Judge Hosack's case.

IV. CONCLUSION AND ORDER.

For the reasons stated above, as to each claim made by plaintiffs, this Court must grant NIC's Motion for Summary Judgment (in which the Foundation has joined).

IT IS HEREBY ORDERED NIC's Motion for Summary Judgment (in which the Foundation has joined) is GRANTED as to all claims made by plaintiffs.

Entered this 19th day of March, 2010.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of March, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Party pro se</u>		<u>Lawyer</u>	<u>Fax #</u>
Lawrence Spencer (<i>pro se</i>)	Via U.S. Mail		
William McCrory (<i>pro se</i>)	Via U.S. Mail	Marc Lyons	664-5884
Thomas R. Macy (<i>pro se</i>)	Via U.S. Mail	Dana Rayborn Wetzel	664-6741

Jeanne Clausen, Deputy Clerk