

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

TREMPEALEAU COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

CIRCUIT COURT
TREMPEALEAU COUNTY

AUG 25 2014

RECEIVED AND FILED
MICHELLE WEISENBERGER
CLERK OF COURT

Plaintiff,

v.

Case No. 14-CX- 03
Complex Forfeiture: 30109

ARCADIA SAND, LLC
N27557 Thompson Valley Road
Arcadia, Wisconsin 54612
a foreign limited liability company,

and

MISSISSIPPI SAND, LLC
12209 Big Bend Road
St. Louis, Missouri 63122
a foreign limited liability company,

Defendants.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Trempealeau County Circuit Court, P.O. Box 67, Whitehall, WI 54773-0067, and to Bradley J. Motl, plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, WI 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 21st day of August, 2014.

J.B. VAN HOLLEN
Attorney General



BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
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COMPLAINT

The State of Wisconsin by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Bradley J. Motl, brings this complaint against the above-named Defendants at the request of the Wisconsin Department of Natural Resources (WDNR) pursuant to Wis. Stat. ch. 283 and Wis. Admin. Code ch. NR 216, and alleges as follows:

FACTS

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Dane County, Wisconsin.

2. Defendant Arcadia Sand, LLC (Arcadia Sand) is a foreign limited liability company with its principal office at N27557 Thompson Valley Road, Arcadia, Wisconsin 54612. Its registered agent is C T Corporation System at 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

3. Defendant Mississippi Sand, LLC (Mississippi Sand) is a foreign limited liability company with its principal office at 12209 Big Bend Road, St. Louis, Missouri 63122. Its registered agent is C T Corporation System at 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

4. Arcadia Sand owns a non-metallic sand mine and processing facility located at N27557 Thompson Valley Road, Arcadia, Trempealeau County, Wisconsin (Site).

5. At all times relevant to the violations alleged in this Complaint, the Site consisted of 4 Trempealeau County property parcels; Trempealeau County Tax Key Nos.: 004-01535-0000 (Town of Arcadia), 201-01139-0000 (City of Arcadia), 201-01140-0000 (City of Arcadia), and 201-01142-0000 (City of Arcadia).

6. The Site contains an unnamed navigable stream that flows into Thompson Valley Creek, which flows into Turton Creek (Unnamed Creek).

7. Thompson Valley Creek and Turton Creek are navigable streams.

8. The Site contains a berm that separates the production portion of the Site from the Unnamed Creek (Berm).

9. The Site contains a stockpile storage area located outside of the production portion of the Site and next to the Unnamed Creek (Stockpile Storage Area)

10. The Stockpile Storage Area contains overburden material that will be used in future reclamation activities.

11. On or around July 25, 2011, a Notice of Intent was submitted to WDNR by Ottawa Sand Company, LLC seeking coverage under the Nonmetallic Mining Operations Wisconsin Pollutant Discharge Elimination System Permit No. WI-0046515-5 for the Site (Notice of Intent I).

12. In addition to the Notice of Intent I, Ottawa Sand Company, LLC submitted to WDNR a Stormwater Pollution Prevention Plan.

13. On or around September 14, 2011, a Notice of Intent was submitted to WDNR by Douglas Sokup seeking coverage under the Nonmetallic Mining Operations Wisconsin Pollutant Discharge Elimination System Permit No. WI-0046515-5 for the Site (Notice of Intent II).

14. On April 12, 2012, WDNR granted Douglas Sokup coverage under the Nonmetallic Mining Operations General Wisconsin Pollutant Discharge Elimination System Permit No. WI-0046515-5 (General Permit) based on the Notice of Intent I and Notice of Intent II.

15. The General Permit was issued pursuant to Wis. Stat. ch. 283 and became effective on July 1, 2009.

16. The General Permit allows a person that meets the applicability criteria of the permit and receives a letter from WDNR granting coverage under the permit to discharge storm water and process wastewater directly to surface waters of the state and/or indirectly to groundwater of the state in accordance with the effluent limitations, monitoring requirements and other conditions contained in the General Permit.

17. Starting April 12, 2012, and at all times relevant to the alleged violations in this Complaint, the owner and operator of the Site have been obligated to comply with the General Permit.

18. Arcadia Sand purchased the Site on October 1, 2012.

19. On October 9, 2012, WDNR Stormwater Specialist Roberta Walls inspected the Site.

20. At the October 9, 2012 inspection, Roberta Walls determined that Arcadia Sand: (a) failed to amend the Stormwater Pollution Prevention Plan in violation of Wis. Admin. Code § NR 216.27; (b) failed to implement and maintain best management practices in violation of Wis. Admin. Code § NR 216.29(5); (c) failed to use sound engineering principles and practices in violation of General Permit Section 3.1.1.1; (d) failed to show that best management practices are being implemented, properly operated, and adequately maintained in violation of General Permit Section 3.2; and (e) failed to notify WDNR of planned modifications to the Site that will result in new, different, or increased discharges of pollutants in violation of General Permit Section 6.6.

21. On October 12, 2012, WDNR issued Arcadia Sand a Notice of Noncompliance for the violations observed at the October 9, 2012 inspection.

22. On or around October 18, 2012, a Notice of Intent was submitted to WDNR by Arcadia Sand informing WDNR that Arcadia Sand was the owner and operator of the Site and seeking coverage under the General Permit for the Site (Notice of Intent III).

23. On November 6, 2012, WDNR approved an amendment to the conditions of the General Permit. The amendment updated how the Site would be constructed and operated but did not change any of the provisions of the General Permit.

24. Prior to May 19, 2013, the Berm was not covered with established vegetation.

25. Prior to May 19, 2013, the Stockpile Storage Area was not covered with established vegetation.

26. Within a 24-hour time period ending on May 20, 2013, the Site received 3.5 inches of rain.

27. On May 20, 2013, the Berm failed.

28. On May 20, 2013, the Stockpile Storage Area eroded.

29. Failure of the Berm on May 20, 2013 caused the discharge of berm material and sediment-laden stormwater into the Unnamed Creek.

30. Erosion from the Stockpile Storage Area on May 20, 2013 caused the discharge of sediment-laden stormwater into the Unnamed Creek.

31. On May 21, 2013, Trempealeau County Department of Land Management Zoning and Environmental Specialist Jake Budish received a complaint that sediment-laden water was discharging from the Unnamed Creek into Thompson Valley Creek.

32. On May 22, 2013, WDNR Stormwater Specialist Roberta Walls inspected the Site.

33. On May 22, 2013, the Berm failure that occurred on May 20, 2013 had not been repaired.

34. On May 22, 2013, the Berm was not covered with established vegetation.

35. On May 22, 2013, the Stockpile Storage Area was not covered with established vegetation.

36. On May 22, 2013, sediment-laden stormwater discharged from the Site into the Unnamed Creek.

37. On May 22, 2013, sediment-laden water existed in the Unnamed Creek.

38. On May 22, 2013, sediment deposits existed on the bed and bank of the Unnamed Creek.

39. Within a 24-hour time period ending on May 21, 2013, the Site received 1.5 inches of rain.

40. Within a 24-hour time period ending on May 30, 2013, the Site received 1.0 inches of rain.

41. On or around May 30, 2013, Mississippi Sand became the operator of the Site.

42. On or around May 30, 2013, a Notice of Intent was submitted to WDNR by Mississippi Sand informing WDNR that it was the operator of the Site (Notice of Intent IV).

43. On May 30, 2013, WDNR issued Arcadia Sand a Notice of Violation regarding violations observed on May 22, 2013.

44. On June 10, 2013, WDNR conducted an enforcement conference with Arcadia Sand in attendance.

45. On June 13, 2013, WDNR Stormwater Specialist Roberta Walls, WDNR Water Resources Management Specialist Chris Willger and Trempealeau County Department of Land Management Zoning and Environmental Specialist Jake Budish inspected the Site.

46. On June 13, 2013, the Berm failure that occurred on May 20, 2013 had not been repaired.

47. On June 13, 2013, the Berm was not covered with established vegetation.

48. On June 13, 2013, the Stockpile Storage Area was not covered with established vegetation.

49. On June 13, 2013, sediment deposits existed on the bed and bank of the Unnamed Creek.

50. On July 9, 2013, Arcadia Sand sent WDNR a revised Stormwater Pollution Prevention Plan.

51. On August 26, 2013, WDNR Stormwater Specialist Roberta Walls inspected the Site.

52. On August 26, 2013, the Berm was repaired.

53. On August 26, 2013, the Stockpile Storage Area had been seeded and covered with erosion control matting.

VIOLATION: FAILURE TO IMPLEMENT SOURCE AREA POLLUTION
PREVENTION BEST MANAGEMENT PRACTICES.

54. Section 3.1 of the General Permit states that "[n]onmetallic mining operations . . . covered under this permit shall operate the following physical controls to prevent the discharge of storm water contaminants to surface or ground waters."

55. Section 3.1.1 of the General Permit, titled Source Area Pollution Prevention Best Management Practices (BMPs), states that "[t]he permittee shall install, to the maximum extent practicable and to the extent it is cost effective, source area pollution prevention BMPs that are designed to prevent storm water from becoming contaminated at the site."

56. Pursuant to Section 3.1.1.1 of the General Permit, source area pollution prevention BMPs include "[p]ractices that prevent and control soil erosion and sediment movement including, but not limited to, soil stabilization practices, structural practices to divert overland storm flow away from exposed soil and material stockpiles, and minimization of tracking on access roads. Sound engineering principles and practices shall be utilized to minimize erosion and movement of sediment by storm water."

57. Wisconsin Admin. Code § NR 216.002(1) defines "best management practices" (BMPs) as "structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state."

58. Sediment is a stormwater contaminant.

59. A properly constructed and vegetated berm is a BMP.

60. From at least May 20, 2013 to August 26, 2013, the Berm was not properly constructed and vegetated.

61. From at least May 20, 2013 to August 26, 2013, the Berm did not act as a BMP.

62. A properly vegetated stockpile storage area is a BMP.

63. From at least May 20, 2013 to August 26, 2013, the Stockpile Storage Area was not properly vegetated.

64. From at least May 20, 2013 to August 26, 2013, the Stockpile Storage Area did not act as a BMP.

65. Arcadia Sand violated Sections 3.1, 3.1.1, and 3.1.1.1 of the General Permit from at least May 20, 2013 to August 26, 2013 for failing to install source area pollution prevention BMPs to prevent the discharge of stormwater contaminants to the Unnamed Creek.

66. Mississippi Sand violated Sections 3.1, 3.1.1, and 3.1.1.1 of the General Permit from at least May 30, 2013 to August 26, 2013 for failing to install source area pollution prevention BMPs to prevent the discharge of stormwater contaminants to the Unnamed Creek.

PENALTY PROVISIONS

67. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. ch. 283 and all rules promulgated and permits issued under that chapter, subject to exceptions not applicable to this case.

68. Wisconsin Stat. § 283.91(1) states that the "department of justice . . . may initiate a civil action for a temporary or permanent injunction for any violation of [Wis. Stat. ch. 283] or any rule promulgated thereunder or of a term or condition of any permit issued under [Wis. Stat. ch. 283]."

69. Wisconsin Stat. §§ 283.89(4) and 299.95 authorize the circuit court for the county where the violation occurred to hear the matter and to enforce chapters 283 "by injunctive and other relief appropriate for enforcement."

70. Under Wis. Stat. § 283.91(2), "[a]ny person who violates this chapter, any rule promulgated under this chapter, [or] any term or condition of a permit issued under this chapter . . . shall forfeit not less than \$10 nor more than \$10,000 for each day of violation."

71. Wisconsin Stat. §283.01(11) defines "person" as "an individual, owner, operator, corporation, limited liability company. . . ."

72. Wisconsin Stat. § 283.91(5) authorizes the Court to "assess as an additional penalty a portion or all of the costs of the investigation, including monitoring, which led to the establishment of the violation" and "award the department of justice the reasonable and necessary expenses of the prosecution, including attorney fees."

RELIEF REQUESTED

WHEREFORE, plaintiff asks the Court to enter judgment as follows:

1. Forfeitures as provided for in Wis. Stat. § 283.91(2);
2. The 26% penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20% environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1% jail surcharge

pursuant to Wis. Stat. § 814.75(14), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15);

3. The costs and disbursements of this action, the costs of the investigation, and the reasonable and necessary expenses of the prosecution including attorney fees, pursuant to Wis. Stat. § 283.91(5);

4. An injunction, pursuant to Wis. Stat. §§ 283.89(4), 283.91(1), and 299.95, requiring Arcadia Sand and Mississippi Sand to operate the Site in compliance with the General Permit; and

5. Any other relief the Court deems just and appropriate.

Dated this 21st day of August, 2014.

J.B. VAN HOLLEN
Attorney General



BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 14-CX- 03
Complex Forfeiture: 30109

ARCADIA SAND, LLC,
and MISSISSIPPI SAND, LLC,

Defendants.

STIPULATION AND ORDER FOR JUDGMENT

Plaintiff State of Wisconsin brought this civil action against defendants Arcadia Sand, LLC and Mississippi Sand, LLC regarding alleged stormwater pollution control violations at a hydraulic fracturing sand mining facility. The Complaint alleges violations of a Wisconsin Department of Natural Resources-issued Nonmetallic Mining Operations General Wisconsin Pollutant Discharge Elimination System Permit. The parties now wish to settle this matter by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS STIPULATED AND AGREED by the State of Wisconsin and Arcadia Sand, LLC and Mississippi Sand, LLC that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. The parties to this Stipulation are the plaintiff State of Wisconsin and the defendants Arcadia Sand, LLC and Mississippi Sand, LLC.

2. The Circuit Court for Trempealeau County, Wisconsin (the "Court") has jurisdiction over the parties and the subject matter of this action.

3. This Stipulation and Order for Judgment as approved by the Court shall apply to and be binding on the parties and on the successors and assignees of the parties. No change in ownership or corporate or partnership status shall in any way alter the responsibilities of the defendants Arcadia Sand, LLC and Mississippi Sand, LLC under this Stipulation and Order for Judgment.

4. Judgment shall be entered in favor of the plaintiff State of Wisconsin and against the defendants Arcadia Sand, LLC and Mississippi Sand, LLC in the amount of \$60,000.00. This sum is comprised of forfeitures, statutory surcharges, costs, and attorney fees as follows: forfeitures of \$38,348.63 under Wis. Stat. § 283.91(2), a 26% penalty surcharge of \$9,970.65 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$7,669.73 under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$383.49 under Wis. Stat. § 814.75(14), a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15), and attorney fees of \$3,500.00 under Wis. Stat. § 283.91(5).

5. Defendants Arcadia Sand, LLC and Mississippi Sand, LLC will pay \$56,500.00 by check payable to the Trempealeau County Clerk of Courts and delivered

to the Clerk of Court, P.O. Box 67, Whitehall, Wisconsin 54773-0067, along with a cover letter to the Court identifying the case by name and number. A copy of the check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Bradley J. Motl at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payment shall be made on or before October 1, 2014.

6. Defendants Arcadia Sand, LLC and Mississippi Sand, LLC will pay the \$3,500.00 in attorney fees by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Bradley J. Motl at the address provided in paragraph 5, above, on or before October 1, 2014.

7. Defendants Arcadia Sand, LLC and Mississippi Sand, LLC shall be jointly and severally liable for satisfying the stipulated judgment described in paragraphs 4, 5, and 6.

8. The parties acknowledge that this Stipulation and Order for Judgment sets forth the entire understanding of the parties with respect to the subject matter hereto.

9. Defendants Arcadia Sand, LLC and Mississippi Sand, LLC waive the requirement for formal service of the authenticated Summons and Complaint.

10. Except as between the parties hereto, nothing contained in this Stipulation and Order for Judgment shall be construed as an admission of liability in any other administrative or judicial proceeding now pending or hereafter commenced.

11. Compliance by defendants Arcadia Sand, LLC and Mississippi Sand, LLC with their obligations under this Stipulation and Order for Judgment shall constitute full

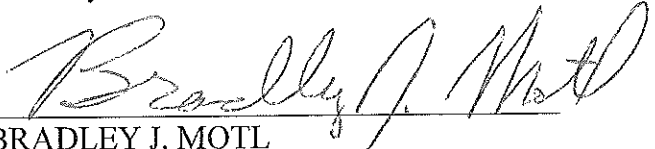
compromise, settlement, and satisfaction of their liability for the violations described in the Complaint.

12. The Order for Judgment accompanying this Stipulation will be a final and appealable Order. However, the parties hereby waive their right to appeal the Order.

13. The Order for Judgment and Judgment may be entered incorporating the terms of this Stipulation without further notice, and the Judgment may be docketed, pursuant to Wis. Stat. § 806.10(1).

Dated this 21st day of August, 2014.

J.B. VAN HOLLEN
Attorney General

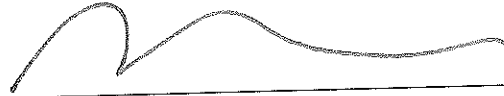

BRADLEY J. MOTL
Assistant Attorney General
State Bar #1074743

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
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Madison, Wisconsin 53707-7857
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(608) 266-2250 (fax)
motlbg@doj.state.wi.us

Dated this 18th day of August, 2014.

REINHART BOERNER VAN DEUREN S.C.




JOHN M. VAN LIESHOUT
State Bar #1014714

Attorneys for defendants Arcadia Sand, LLC
and Mississippi Sand, LLC

1000 North Water Street, Suite 1700
P.O. Box 2965
Milwaukee, Wisconsin 53201-2965
(414) 298-8182
(414) 298-8097 (fax)
jvanlieshout@reinhardtllc.com

Dated this 11 day of August, 2014.

ARCADIA SAND, LLC

By: 

Printed Name: Tony Giordano

Title: President

Dated this 11 day of August, 2014.

MISSISSIPPI SAND, LLC

By: 

Printed Name: Tony Giordano

Title: President

AUG 26 2014

RECEIVED AND FILED
MICHELLE WEISENBERGER
CLERK OF COURT

ORDER FOR JUDGMENT

The Court approves the terms of the foregoing settlement Stipulation in *State of Wisconsin v. Arcadia Sand, LLC and Mississippi Sand, LLC*, Trempealeau County Case No. 14-CX-03, pursuant to which defendants Arcadia Sand, LLC and Mississippi Sand, LLC will pay \$60,000.00 in forfeitures, surcharges, costs, and attorney fees. The Court therefore directs the clerk to enter and docket the Judgment accordingly.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Arcadia Sand, LLC and Mississippi Sand, LLC, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

Dated this 26 day of August 2014.

BY THE COURT:

/s/ John A. Damon

HONORABLE JOHN A. DAMON
TREMPEALEAU COUNTY CIRCUIT COURT

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and

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a foreign limited liability company,

Defendants.

JUDGMENT

Based on the Stipulation between the plaintiff State of Wisconsin and the defendants Arcadia Sand, LLC and Mississippi Sand, LLC and on the Court's Order, the terms of which are incorporated into this Judgment in their entirety, judgment is granted in favor of the plaintiff State of Wisconsin and against the defendants Arcadia Sand, LLC and Mississippi Sand, LLC in the amount of \$60,000.00. This sum is comprised of forfeitures, statutory surcharges, costs, and attorney fees as follows: forfeitures of \$38,348.63 under Wis. Stat. § 283.91(2), a 26% penalty surcharge of \$9,970.65 under

Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$7,669.73 under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$383.49 under Wis. Stat. § 814.75(14), a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15), and attorney fees of \$3,500.00 under Wis. Stat. § 283.91(5).

Defendants Arcadia Sand, LLC and Mississippi Sand, LLC will pay \$56,500.00 by check payable to the Trempealeau County Clerk of Courts and delivered to the Clerk of Court, P.O. Box 67, Whitehall, Wisconsin 54773-0067, along with a cover letter to the Court identifying the case by name and number. A copy of the check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Bradley J. Motl at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payment shall be made on or before October 1, 2014.

Defendants Arcadia Sand, LLC and Mississippi Sand, LLC will pay the \$3,500.00 in attorney fees by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Bradley J. Motl at the address above on or before October 1, 2014.

This Judgment is final for purposes of appeal.

Dated this 26th day of August 2014.

BY THE COURT:

/s/ John A. Damon

HONORABLE JOHN A. DAMON
CIRCUIT COURT JUDGE