

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
3 DIVISION OF BANKING AND SECURITIES

4
5 IN THE MATTER OF:) **ORDER NO. 14-1170-S**
6 UKPEAGVIK INUPIAT) **ORDER TO CEASE AND DESIST**
7 DAVID LEAVITT, JR.) **ASSESSING CIVIL PENALTIES**
8 Respondents.) **and**
9) **CONSENT TO ORDER**

10 The Director of the Department of Commerce, Community, and Economic
11 Development, Division of Banking and Securities (“Administrator”), has conducted an
12 investigation into certain activities of Ukpeagvik Inupiat Corporation (“UIC”) and David
13 Leavitt, Jr. (collectively, the “Respondents”), and has determined that Respondents violated
14 certain provisions of the Alaska Securities Act, Alaska Statute (AS) 45.55.

15 Respondents agree that the Administrator has jurisdiction over Respondents and these
16 matters pursuant to the Alaska Securities Act.

17 Respondents wish to resolve and settle this matter with the Administrator. As
18 evidenced by the authorized signatures on this Order, Respondents consent to the entry of this
19 Order assessing civil penalties based on the Conclusions of Law and Order. Respondents
20 waive their right of appeal under AS 45.55.920(d).

21 **I. FACTS**

22 1. UIC is a corporation organized pursuant to the Alaska Native Claims Settlement
23 Act (“ANCSA”), 43 U.S.C. 1601 et seq., and maintains its headquarters at 1250 Agvik Street,
24 Barrow, Alaska, 99723.

1 2. Mr. Leavitt is a resident of Barrow, Alaska and a UIC shareholder.

2 3. Pursuant to AS 45.55.139, ANCSA corporations with 500 or more shareholders
3 and total assets exceeding \$1,000,000 must file with the Administrator all annual reports,
4 proxies, consents or authorizations, proxy statements, or other proxy solicitations distributed
5 and made available by any person to 30 or more Alaska resident shareholders concurrently
6 with distribution of those materials to shareholders.

7 4. UIC has certified to the Administrator that it has more than 500 shareholders and
8 total assets exceeding \$1,000,000.

9 5. Pursuant to 3 AAC 08.345(b)(1)(G), UIC board of director proxy solicitations must
10 be preceded or accompanied by a dated, written proxy statement that includes a description of
11 each nominee of the board and if that nominee has any criminal convictions, except traffic
12 violations or other minor offenses, within the last five years that are material to an evaluation of
13 the nominee's ability or integrity.

14 6. A minor offense includes only those violations enumerated in Rule 2 of the Alaska
15 Rules of Minor Offense Procedure.

16 7. On June 5, 2009, Mr. Leavitt pled guilty to importing alcohol to a local option area
17 (AS 04.11.499),¹ a class A misdemeanor, and was sentenced to 20 days in jail, with 20 days
18 suspended, and a \$300 fine was imposed. Mr. Leavitt did not pay the fine and it was sent to
19 collections.

20 8. On March 19, 2014, Mr. Leavitt signed a candidate application for the UIC board of
21 directors and wrote "no" in response to a question as to whether he had any criminal
22 convictions within the last five years. Previously, Mr. Leavitt failed to disclose the criminal
23 conviction in his 2011 UIC candidate application as well.²

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¹ In October 1997, Barrow, Alaska voted to go damp by a vote of 911 to 789.

² Mr. Leavitt was elected to the UIC board in 2011.

1 9. Sometime after Mr. Leavitt filed his candidate application, UIC's board of directors
2 met to discuss whether to disclose Mr. Leavitt's criminal conviction in UIC's proxy statement
3 for its upcoming annual meeting on June 7, 2014.

4 10. On May 16, 2014, UIC sent out its proxy statement and knowingly and
5 intentionally omitted Mr. Leavitt's criminal conviction from his candidate disclosures.

6 11. On June 7, 2014, Mr. Leavitt was elected to the UIC board of directors.

7 12. UIC and Mr. Leavitt have fully cooperated with the Administrator in its
8 investigation into this matter.

9 II. CONCLUSIONS OF LAW

10 1. UIC and Mr. Leavitt are subject to the filing requirements of AS 45.55.139.

11 2. UIC and Mr. Leavitt must make certain mandatory disclosures in proxy
12 solicitations including those described in 3 AAC 08.345(b).

13 3. Mr. Leavitt's criminal conviction is not a minor offense because it is not included in
14 the violations enumerated in Rule 2 of the Alaska Rules of Minor Offense Procedure.

15 4. Mr. Leavitt's criminal conviction is material to his ability and integrity because it
16 stems from a local option law determined by the Barrow community and he subsequently failed
17 to pay the imposed fine.

18 5. UIC violated 3 AAC 08.345(b)(1)(G) by knowingly and intentionally failing to
19 disclose Mr. Leavitt's criminal conviction in its 2014 proxy statement.

20 6. Mr. Leavitt violated 3 AAC 08.345(b)(1)(G) by knowing and intentionally failing to
21 disclose his criminal conviction in his 2011 and 2014 UIC candidate applications.

22 7. UIC is subject to a civil penalty pursuant to AS 45.55.920(b) because it knowingly
23 and intentionally failed to disclose Mr. Leavitt's criminal conviction in its 2014 proxy
24 statement.

1 8. Mr. Leavitt is subject to a civil penalty pursuant to AS 45.55.920(b) because he
2 knowingly and intentionally failed to disclose his criminal conviction in his 2011 and 2014 UIC
3 candidate applications.

4 **III. ORDER**

5 The Administrator, pursuant to AS 45.55.920, hereby ORDERS:

6 1. UIC to CEASE AND DESIST from omitting mandatory disclosures in its proxy
7 solicitations.

8 2. Mr. Leavitt to CEASE AND DESIST from failing to make required disclosures in
9 his ANCSA candidate applications.

10 3. UIC and Mr. Leavitt to comply with all provisions of the Alaska Securities Act,
11 including associated regulations.

12 4. UIC to pay a civil penalty in the amount of one thousand dollars (\$1,000).

13 5. Mr. Leavitt to pay a civil penalty in the amount of five hundred dollars (\$500),
14 with five hundred dollars (\$500) suspended for a period of five years. If Mr. Leavitt commits
15 any violation of the Alaska Securities Act, the suspended portion of the civil penalty will be
16 immediately due.

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1 matter; that UIC understands that the Administrator reserves the right to take further actions
2 to enforce this Order or to take appropriate action upon discovery of other violations of the
3 Alaska Securities Act, and that UIC will fully comply with the terms and conditions stated
4 herein.

5 UIC understands that this Order is a publicly disclosable document.

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7 DATED: 12/16/2014 /s/ Price E. Brower
Ukpeagvik Inupiat Corporation

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9 Name: Price E. Brower
Title: Chairman of the Board

10 SUBSCRIBED AND SWORN TO before me this 16th day of December, 2014 at
11 Barrow, Alaska.

12 /s/ Harriet M. Reich
Notary Public in and for Alaska

13 Harriet M. Reich
14 Notary Printed Name
15 My commission expires: 3/9/2015

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18 Consent to Entry of Order

19 I, David Leavitt, Jr., state that I am a shareholder of the Ukpeagvik Inupiat
20 Corporation; that I have read the foregoing Order and that I know and fully understand the
21 Order contents; that I have been represented by counsel in this matter; that I acknowledge
22 violation of the Alaska Securities Act; that I have been advised of the right to a hearing; that I
23 voluntarily and without any force or duress, consent to the entry of this Order, without
24 admitting or denying that factual allegations stated herein; that I expressly waive any right to

1 a hearing in this matter; that I understand that the Administrator reserves the right to take
2 further actions to enforce this Order or to take appropriate action upon discovery of other
3 violations of the Alaska Securities Act, and that I will fully comply with the terms and
4 conditions stated herein.

5 I understand that this Order is a publicly disclosable document.

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7 DATED: 12/17/2014 /s/ David Leavitt, Jr.
David Leavitt, Jr.

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10 SUBSCRIBED AND SWORN TO before me this 17th day of December, 2014 at
Anchorage, Alaska.

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12 /s/ Anita R. Tardugno
Notary Public in and for Alaska

13 Anita R. Tardugno
14 Notary Printed Name
My commission expires: 1/1/2016

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16 **Approved as to form and content:**

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18 12/17/2014 /s/ Walter Featherly
Date Walter Featherly
19 Attorney for Ukpeagvik Inupiat Corporation
and David Leavitt, Jr.

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22 Contact Person:
David Newman
23 Securities Examiner
(907) 269-7678
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