

**To:** Victor Coleman [**Board Member of the Wetherly Capital Group – President, Chief Operating Officer of Arden Realty – New York Stock Exchange symbol - [ARI](#)**]

**Cc:** Dan [**Weinstein**], Vicky [**Schiff**]

**Date:** November 2, 2001

**Subject:** Strategy Meeting #3 – edited with CAPS for easier reading.

Victor, I think it will help serve a better understanding of my role if I were to explain my understanding of the nature of my consulting services to Wetherly and to describe more about what it is that I have been doing since coming on board officially Oct 1<sup>st</sup>.

With regard to providing consulting services: Vicky approached me with the following: First, to assist in evaluating business opportunities that come through Wetherly's doors, opportunities created independent of or in conjunction with my own efforts. Second, to proactively seek out business opportunities that would benefit from Wetherly's services/expertise, i.e. its fund raising/structuring/management strategy/political relationships etc. These are in fact areas where I have some core competencies including "deal sourcing." Consequently, I felt the "bridge-acquisition" facility would be something we as a group might be interested in exploring further. My first approach was to see whether in fact this was something we might want to take to one of the funding institutions like CALPERS or a player like **Ron Burkle** and so I discussed these possibilities with both Dan and Vicky, before sending out the memo to you. I felt that there was the possibility we as a group might be interested in using this opportunity to create our own fund. I was unaware that a decision had already been taken that any fund that we would do ourselves had to be real estate oriented. My memo, "high leverage" which I prepared for our last meeting laid out my thoughts, that it might make sense given all of our strengths to create a fund; not necessarily with a strong real estate component. The memo references deferring to you all on the real estate side although I have extensive experience in real estate both in publicly traded as well as with private groups, in both work-out situations and new developments, domestically and abroad. This market, Los Angeles, is certainly more your cup of tea than it is mine.

I simply wanted to bring to your attention a very time sensitive opportunity one that could have the potential for very significant upside with the downside heavily mitigated. By the way, to further amplify my point about why banks wouldn't be suitable for this, besides for a timing factor and the fact that bank financing has all but dried up, banks are hard pressed to accept equity kickers for it could impact their ability to foreclose on their debt, should that become necessary. Neither [Newell Starks](#) nor I are of the type that shoots from the hip. Again, I think Vicky can drive home this point which goes back to when she and I first became acquainted. Nearly a year ago I brought her an opportunity while she was still at StorAmerica, again it involved a publicly traded company; had this been presented to Lou Gonda and had it been his cup of tea they would have

been able to realize a gain approaching \$100 million [50% plus profit], all within a matter of weeks. As Vicky can attest to I try my best not to waste my time or other people's time, cutting to the chase in fairly short order. There are times, however, when my style may in fact be a little irritating but I endeavor to act with the utmost care.

I had invested relatively very little time in this "bridge-acquisition" opportunity, far less than in any other Wetherly activity. The decision not to proceed is certainly one that I can now better appreciate.

With regard to my other activities during the past month, there have been three separate activities. With respect to Gamecraft I think Vicky can again best speak to my contributions; the timing of my involvement as well as getting them up to speed on the critical issues of proper and adequate financial management, disclosure, etc. Despite the progress which has been made I continue to consider this deal very high risk with limited upside; their lack of a stellar track record to speak of is all self-evident in the way they have approached every facet of their business that I am capable of getting my arms around. I take no issue with the product itself, what is or what is not proprietary or how easy it would be to stop them well before they get out of the starting gates by a more savvy competitor. In fact I accept that the product is excellent. My only issue is the management. I have only met their founder/CEO and their marketing advisor. Darryl, their CEO, has a terrific personality, he is, however, lacking in nearly every category that a sophisticated financial investor would be looking at for reassurance. A strategic partner who understands this business is probably the only way to go; a financial investor with no experience in this field is likely to get a significant hair CUT before it is all said and done. Along with providing Darryl and his lieutenants with guidance as to where they need to improve I have also tapped into my own resources in this area. Although it has been years since I laid a bet on a poker table, knowing a little about the odds and my own limitations, I have long standing relationships in the gaming space including a group known as MGS that is managed and controlled by folks that I know pretty well. Their great uncle and my grandfather formed the Moshal Gevisser Group of Companies back in 1910 that eventually became one of the largest trading conglomerates in the country with operations worldwide. The individual family member that was the offshoot of the linking up of our families would later become the chief executive of Charles Engelhard's worldwide estate, primarily because of the group's timber holdings. In 1970 both our families' interests were bought out in what was considered the very first leverage buyout of a publicly traded company in South Africa. The business of this generation of Moshals has what many in the gaming industry consider to be a "commanding control" of Internet Gaming. Their feedback has validated nearly all of my concerns about Gamecraft and then some. Again, however, a strategic player could probably leverage Gamecraft's core competency, its core technology. Gamecraft is not however, something that I would consider within the core strengths of Wetherly [and perhaps that is why I was a little confused with the first part of our conversation.] Since Darryl and his

team are in many ways so unsophisticated, they require higher maintenance than most. Despite the obvious risks of this deal blowing up and Wetherly possibly looking a little tattered, Gamecraft could still be a home run in which case everyone should come out looking good. There remain areas of concern including the need to enforce both the agreement and certain understandings, and where ambiguity remains, this is the time to nail everything down.

Re: Representing plaintiff class action lawyers. This is certainly a business in which I have considerable experience and expertise. I provided Vicky with extensive background analysis in this particular area of litigation. My other relationships in this field allowed Wetherly to negotiate a far more favorable deal than Bob Kaplan had first presented. There remains at least one other law firm who would be willing to sweeten the pot if for any reason Bob Kaplan falls out. There is no doubt that my in depth knowledge of this business could make some of these folks pay more attention and perhaps a bit nervous. Plaintiff lawyers like Bob Kaplan can at times be relied on 'to fight the right' when others firms choose to stay out of the limelight, primarily for political expediency; even then it sometimes take some prodding for guys like Bob Kaplan to respond when the right opportunity avails itself. Significant sums of money can and are being made in this arena; getting a sure leg in with the institutions is indeed the "holy grail", hence a potentially very rich back end deal. Realizing the full magnitude of these rewards is, however, another matter altogether. If need be I can elaborate more on this point. Again, although there is no real estate component if one is positioned properly, location some might argue, the rewards can be equivalent to a King's ransom, which is why Bob Kaplan and I first became acquainted. He and I are very much on the same team even if his ego is a little bruised. The business of shareholder class action litigation is not for the feint hearted; the stakes are very high; improving the odds of success is the name of the game, gaining the right leverage. The right insight can often result in obtaining the necessary proof required in proving "scienter" – culpable state of mind. In hindsight my insight on the one case I have worked on directly involving Bob's firm has now been fully vindicated; that doesn't mean to say the battle is over, certainly not the distribution of the winnings, again an area I could expand upon. Most SCALLYS [Shareholder Class Action Lawsuit Lawyers] recognize the need to stay calm, maintaining perspective, and move on to claim more territory, more rewards. Most realize that no matter how bruising it gets it never makes sense to enter into an internecine war. My presence will undoubtedly protect Wetherly's financial interests in this arena. It has already paid dividends. Systems of "command and control" are very important in an effort to hold peoples' feet to the fire. There is always the other option, which I have previously expressed, one that aligns us even more with the institutions. Although they have their own "monitors" in place, it is unlikely they could do as good a job as a group that really has the inside track. Again, it is all a question of what direction Wetherly wishes to proceed down.

Re: Water Fund. This area is the one that had my appetite wetted from the get go. When Vicky first approached me to assist her in helping with the due diligence on new business opportunities, it didn't take me long to get excited about this water space for it seems a perfect match up of all our strengths. There is first of all a significant real estate component; second, we already know funds are already being earmarked by institutions like CALPERS, third, the political winds are moving forcefully in this direction at the federal, state and local levels; fourth, there is a critical need for financial and management engineering both in the development and execution of a game plan. I have already begun fostering ties with individuals already linked to Wetherly as well as my personal relationships that extend back close to three decades and then some. In fact my fascination with water "conservation" began almost 30 years ago, September 1<sup>st</sup> 1972, to be precise, during a water fight in the Negev dessert. A month later to the day, 29 years ago to the day yesterday, I would meet in a very quiet setting with David Ben-Gurion. I will spare you the details but suffice to say this was an experience I will never forget. However, it is no secret that Israel has been on the forefront of water conservation/purification going back well before the establishment of modern Israel in 1948. Over the years I have been involved with several businesses and projects that have originated from that particular desert. As we know the situation here is not that different than it is there, today more so than ever. Each day is another reminder. Even if we were to win this new war the problems of the California desert will remain. A perfect opportunity for smart people to remain level headed.

One final point. I have tended to avoid politics in general but there are times when I do assist especially when I have a strong gut feel for an individual; case in point, Joy Chen. I understand that she might not have been Wetherly's first choice for the Director of Director of Economic Recovery but I can assure all of you that the mayor could have done a whole lot worse. I have worked as close with Joy as I have with any other client and I can assure you she is not only extraordinarily competent, she also has the highest integrity. I have little doubt she will do a very fine job for the city, and for folks wanting to do good business I guarantee she will be a breath of fresh air. I look forward to continuing to work with her and trust that this will also serve Wetherly's interests as well.

I look forward to your comments and suggestions.

Gary