

Walter H. Bithell (ISB # 1206)
 Steven C. Bowman (ISB # 4404)
 Erik F. Stidham (ISB # 5483)
 Kevin C. Braley (ISB # 6948)
 HOLLAND & HART LLP
 101 South Capitol Boulevard, Suite 1400
 Post Office Box 2527
 Boise, Idaho 83701
 Telephone: (208) 342-5000
 Facsimile: (208) 343-8869

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 MOFFATT, THOMAS, BARRETT,
 ROCK & FIELDS, CHTD.

Attorneys For Plaintiff
 Ada County Highway District

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ADA COUNTY HIGHWAY DISTRICT,)	Case No. CV-OC-0605904
a body politic and corporate of the State)	
of Idaho,)	SECOND AMENDED
)	COMPLAINT
Plaintiff/Counterdefendant,)	
vs.)	
)	
SETTLERS' IRRIGATION DISTRICT,)	
an irrigation district organized and)	
existing under and by virtue of the laws)	
of the State of Idaho,)	
)	
Defendant/Counterclaimant.)	

1. Plaintiff, Ada County Highway District, files its Second Amended Complaint in this matter against the above-named Defendant, and complains and alleges as follows:

I. Parties

2. Plaintiff, Ada County Highway District ("Plaintiff" or "ACHD"), is a body politic, duly and legally organized and created pursuant to and by virtue of the laws of the State of Idaho.

FILE

3.

3. Defendant, Settlers' Irrigation District ("Defendant" or "Settlers"), is an irrigation district organized and existing under and by virtue of the laws of the State of Idaho.

II. Introduction

4. In this action, ACHD seeks a declaratory judgment that (1) under Idaho Code § 42-1209, Settlers has no right to demand a condition or term that is unrelated to whether a proposed encroachment unreasonably or materially interferes with Settlers' use and enjoyment of its easement or right-of-way as a precondition to Settlers granting permission to enter upon its easement or right-of-way; (2) under Idaho Code § 42-1209, Settlers has no right to demand terms or conditions when a proposed encroachment does not unreasonably or materially interfere with Settlers' use and enjoyment of its easement or right-of-way; (3) Idaho Code § 42-1209 contains no provision requiring ACHD to pay attorney fees or engineering fees to Settlers as a precondition to ACHD obtaining permission to enter upon Settlers' right-of-way for construction of a public bridge; in particular, § 42-1209 does not require ACHD to sign an open-ended retainer agreement with Settlers' legal counsel requiring ACHD to pay and replenish a retainer to opposing counsel's law firm and be responsible, without limitation, for all costs and fees charged by these attorneys at their sole discretion; (4) Idaho Code § 42-1208 does not apply retroactively; and (5) Idaho Code § 42-1209 does not apply retroactively.

5. ACHD also seeks to recover damages based on claims of indemnity, negligence, interference with ACHD's property rights, unfair trade practices, and estoppel.

III. Jurisdiction Venue

6. Jurisdiction and venue are proper before this Court on the following grounds. The events giving rise to the dispute between the parties occurred in Ada County, Idaho. Both ACHD and Settlers are residents of Ada County, and the real property at issue is located in Ada County.

IV. General Allegations

7. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 6 above as if set forth in their entirety.

8. ACHD is responsible for the construction, improvement, and maintenance of all roads in Ada County and all roads within the cities of Ada County.

9. Settlers Canal runs through areas in which ACHD is required to build and maintain roads. ACHD must build bridges over Settlers Canal in order to provide the public with a functioning and adequate road system.

10. Settlers is required by common law and statute to allow encroachments on its canal easement or right-of-way for bridge crossings and other purposes, provided that the encroachments do not unreasonably or materially interfere with the easement.

11. Idaho Code § 42-1209, enacted in 2004, relates to access on easements or rights-of-way held by irrigation districts such as Settlers. Section 42-1209 provides, in pertinent part, as follows:

[N]o person or entity shall cause or permit any encroachment onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures, or other construction or placement of objects, without the written permission of the irrigation district . . . owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. . . .

I.C. § 42-1209. Section 42-1209 imposes no requirement for payment of attorney fees or engineering fees as a precondition for obtaining the written permission of the irrigation district, and does not permit the irrigation district to demand terms or conditions unrelated to whether the encroachment will unreasonably or materially interfere with the easement.

12. Settlers owes ACHD a duty to exercise Settlers' legal rights and duties with reasonable care and in accordance with the law.

13. Since at least 1997, Settlers has engaged in an unfair and unlawful scheme to extract attorney fees and other compensation from persons and entities, including ACHD, who need access across a canal to complete public or private development projects. Settlers refuses to grant permission for access unless attorney fees and other compensation is paid. Settlers uses the requesting party's need for access as leverage to force the requesting party to enter into unfair and one-sided attorney fee agreements with Settlers' attorneys. Specifically, the requesting party is forced to enter into a *retainer* agreement with Settlers' attorneys, even though those attorneys will be solely representing Settlers. The requesting party is then forced to pay a retainer to Settlers' attorneys, and to replenish the retainer whenever demanded by those attorneys. The requesting party is then required to pay all legal fees charged by Settlers' attorneys, regardless of the alleged need for the work, regardless of the alleged cause of the claimed need for the work, regardless of the amount of the legal work, regardless of the quality of the legal work, regardless of the fact that the claimed need for attorney work is a subterfuge and/or is otherwise unnecessary and made solely to accumulate attorney

fees, and regardless of the fact that the fees charged primarily benefit the law firm and not Settlers or the requesting party.

14. ACHD has been forced to enter into these coercive agreements in the past in order to build public road projects, and has been forced to pay attorney fees demanded by attorneys for Settlers.

15. At present, ACHD is engaged in the construction of a road improvement project to extend Maple Grove Road north from its present ending terminus, down off the bench area of Boise to Chinden Boulevard (hereinafter “the Maple Grove Extension Project” or “Project”). A map of the location, alignment, and route of the Project is attached as Exhibit 1 to this Second Amended Complaint.

16. The purpose of the Maple Grove Extension Project is to improve north-south travel in the Boise area. The Project has been planned for over a decade, and is an integral part of the “Bench-to-Valley Study.” The Bench-to-Valley Study has had extensive public input over many years, and has led to the planning and construction of a number of north-south road improvement projects extending arterial roadways from the bench area of Boise down off the bench and connecting to Chinden Boulevard and areas of Boise and Ada County to the north.

17. Construction of the Maple Grove Extension Project is well under way, and portions of the Project have already been built.

18. In order to complete the Project, ACHD must construct a bridge over Settlers Canal, known as the Maple Grove Bridge (“the Bridge”).

19. ACHD owns in fee simple the land where the Maple Grove Bridge is to be constructed.

20. ACHD also owns two storm water drainage pipes which empty into Settlers' Canal in the vicinity where the Maple Grove Bridge is to be constructed. One pipe is approximately 24 inches wide and has been used by ACHD and its predecessors for storm water drainage since the 1960s. The other pipe is approximately 48 inches wide and has been used by ACHD for storm water drainage since the 1970s.

21. Construction of the Bridge was to be completed by March 15, 2006, but has been delayed as a result of the unlawful actions of Settlers that are the subject of this litigation.

22. ACHD has attempted to obtain permission from Settlers to enter upon Settlers' right-of-way in order to construct the Maple Grove Bridge.

23. Since at least 1999, ACHD and its engineers worked cooperatively with Settlers regarding the planning and design of the Maple Grove Bridge. In 2003 and 2004, ACHD presented design plans for the Bridge to Settlers.

24. On October 6, 2005, ACHD presented final design plans for the Bridge, which included all of the revisions and additions previously demanded by Settlers.

25. Despite Settlers' long-standing knowledge of the plans, repeated requests for design changes agreed to by ACHD, and despite Settlers' prior approvals of the plans, Settlers again demanded, in October of 2005, substantial revisions of the design plans for the Bridge.

26. It became clear that Settlers was using its position as leverage to demand a series of self-serving, unnecessary and improper design changes, as well as unrelated terms and conditions, and to create disagreements in order to force ACHD to pay substantial amounts in attorney fees and other compensation for the benefit of Settlers'

attorneys. Settlers refused to allow access and refused to allow construction of the Bridge to proceed unless ACHD agreed to all of these demands.

27. Settlers has wrongfully refused to give ACHD permission to enter upon Settlers' right-of-way and wrongfully refused to allow construction of the Bridge. Specifically, Settlers wrongfully refused to grant permission to enter upon its right-of-way unless ACHD agreed to (i) relinquish its rights to the two storm water drains referenced above; (ii) relinquish its right to continue to discharge storm water through the two drains; (iii) make all design changes and comply with all demanded terms and conditions whether or not they related to the issue of whether the Bridge materially interfered with the canal; and (iv) pay all of Settlers' attorney fees incurred in these coerced negotiations, the need for and the amounts of these fees to be determined at the sole discretion of Settlers' attorneys.

28. Settlers has wrongfully demanded these same kinds of ultra vires concessions and payments in the past when ACHD has sought permission for access needed for other public construction projects. ACHD anticipates that Settlers will make these same unlawful demands in the future.

29. Settlers' actions are contrary to law and established rights held by ACHD, and Settlers' demands for payment of attorney fees and engineering fees are not authorized by the plain language of Idaho Code § 42-1209.

30. An actual controversy has arisen and now exists between ACHD and Settlers regarding the matters set forth herein.

COUNT ONE

DECLARATORY JUDGMENT

31. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 30 above as if set forth in their entirety.

32. ACHD is entitled to a judicial determination that:

a. Under Idaho Code § 42-1209, Settlers has no right to demand a condition or term that is unrelated to whether a proposed encroachment unreasonably or materially interferes with Settlers' use and enjoyment of its easement or right-of-way as a precondition to Settlers granting permission to enter upon its easement or right-of-way;

b. Under Idaho Code § 42-1209, Settlers has no right to demand terms or conditions when a proposed encroachment does not unreasonably or materially interfere with Settlers' use and enjoyment of its easement or right-of-way;

c. Idaho Code § 42-1209 contains no provision requiring ACHD to pay attorney fees or engineering fees to Settlers as a precondition to ACHD obtaining permission to enter upon Settlers' right-of-way for construction of a public bridge; in particular, § 42-1209 does not require ACHD to sign an open-ended retainer agreement with Settlers' legal counsel requiring ACHD to pay and replenish a retainer to opposing counsel's law firm and be responsible, without limitation, for all costs and fees charged by these attorneys at their discretion;

d. Idaho Code § 42-1208 does not apply retroactively; and

e. Idaho Code § 42-1209 does not apply retroactively.

COUNT TWO

INDEMNITY

33. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 32 above as if set forth in their entirety.

34. Settlers owes ACHD a duty to perform common law, statutory, regulatory, and operational functions with ordinary care and in accordance with the law. Settlers must perform these functions in good faith.

35. By virtue of common law and statute, an indemnity relationship exists between Settlers and ACHD.

36. Settlers breached that indemnity relationship by, among other things:

a. imposing conditions upon ACHD for construction of the Maple Grove Bridge which are not authorized under Idaho Code § 42-1209;

b. imposing conditions upon ACHD even though construction of the Maple Grove Bridge would not unreasonably or materially interfere with Settlers' use and enjoyment of its canal easement;

c. acting in bad faith or without reasonable care in denying access for ACHD to construct the Maple Grove Bridge;

d. wrongfully withholding permission in order to extract benefits to itself and its attorneys from its demands upon ACHD.

37. ACHD has incurred damages and has been required to pay damages to third parties as a result of the wrongful actions of Settlers relating to ACHD's need to construct the Maple Grove Bridge.

38. Settlers' wrongful acts and inactions were the direct and proximate cause of the damages.

39. The costs and damages paid by ACHD to third parties were reasonable.

40. Settlers is required to compensate and indemnify ACHD for the damages caused by Settlers' unlawful actions.

COUNT THREE

NEGLIGENCE

41. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 40 above as if set forth in their entirety.

42. Settlers owes ACHD a duty to exercise Settlers' statutory rights, including rights under Idaho Code § 42-1209, with reasonable care and in accordance with statutory authority.

43. Settlers breached that duty by, among other things:

a. imposing conditions upon ACHD for construction of the Maple Grove Bridge which are not authorized under Idaho Code § 42-1209.

b. imposing conditions upon ACHD even though construction of the Maple Grove Bridge would not unreasonably or materially interfere with Settlers' use and enjoyment of its canal easement.

c. acting in bad faith or without reasonable care in denying access for ACHD to construct the Maple Grove Bridge;

d. wrongfully withholding permission in order to extract benefits to itself and its attorneys from its demands upon ACHD.

44. As a result of Settlers' breach of duty, ACHD has suffered damages.

45. Settlers' breach of duty is the direct and proximate cause of ACHD's damages.

COUNT FOUR

INTERFERENCE WITH PROPERTY RIGHTS

46. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 45 above as if set forth in their entirety.

47. ACHD owns in fee simple the real property upon which the Maple Grove Bridge will be constructed. As the owner of this real property, ACHD has the lawful right to use its property in any manner that does not unreasonably or materially interfere with Settlers' right-of-way.

48. ACHD owns two storm water drainage pipes, identified and described above, which are a long-established and integral part of the road system owned and managed by ACHD.

49. Settlers has unlawfully interfered with ACHD's property rights by preventing ACHD's use of its real property and by demanding that ACHD relinquish rights in established highway facilities owned by ACHD as a condition to Settlers granting permission for ACHD to construct the Maple Grove Bridge.

50. As a result of Settlers' interference with ACHD's property rights, ACHD has suffered damages.

51. Settlers' interference with ACHD's property rights is the direct and proximate cause of ACHD's damages.

COUNT FIVE

UNFAIR TRADE PRACTICES

52. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 51 above as if set forth in their entirety.

53. Settlers owes ACHD a duty to perform statutory, regulatory, and operational functions with ordinary care and in accordance with the law.

54. Settlers breached that duty by, among other things, applying Idaho Code § 42-1209 to impose conditions not authorized by law.

55. Settlers wrongly requires that all parties seeking access onto or across Settlers' canal easement to agree, in advance of any negotiations, to pay a retainer to Settlers' longstanding legal counsel and to be responsible for all attorneys' fees and costs charged by Settlers' legal counsel at their sole discretion. The agreement is coerced, one-sided, and unfair to the requesting party. Settlers uses the requesting party's need for access to control negotiations unfairly, to extract unjustified concessions, and to run up attorney fees to the benefit of its legal counsel.

56. Even when the requested access does not adversely affect Settlers, it wrongfully withholds permission in order to extract unwarranted concessions and attorney fee payments.

57. By wrongfully withholding permission, Settlers has extracted or has attempted to extract from ACHD payment of attorney fees, engineering fees, and other compensation, as well as terms and conditions which are unrelated to whether or not the Maple Grove Bridge unreasonably or materially interferes with Settlers' right-of-way.

58. Settlers has refused to grant ACHD permission to complete the Maple Grove Bridge unless ACHD enters into an unfair, one-sided, open-ended agreement to pay unlimited fees and costs to Settlers' legal counsel at their sole discretion.

59. These practices constitute unfair or deceptive acts and practices in the conduct of and affecting commerce.

60. Settlers' actions and practices are misleading, false, or deceptive.

61. Settlers has knowingly, or with reason to know, induced ACHD to enter into transactions that were excessively one-sided in favor of Settlers.

62. Settlers' conduct and pattern of conduct are outrageous and offensive to the public conscience.

63. As a direct result of Settlers' wrongful acts and practices, ACHD has been damaged.

COUNT SIX

PROMISSORY ESTOPPEL

64. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 63 above as if set forth in their entirety.

65. ACHD pleads this claim in the alternative, if Settlers contends that the storm water drainage pipes at issue in this case were placed with the express or implied consent of Settlers, and/or if Settlers pursues its counterclaim demanding that all storm water pipes in Settlers Canal and the North Slough be removed.

66. ACHD detrimentally relied on Settlers' express or implied consent, promise, or representation that Settlers did not object to the discharge of storm water through the storm water drainage pipes.

67. ACHD also detrimentally relied upon Settlers' longstanding knowledge of the Maple Grove Bridge Project, its repeated demands for design changes agreed to by ACHD, and Settlers' repeated expressions of approval of the design plans for construction of the Bridge prior to October of 2005.

68. ACHD and its predecessors detrimentally relied on these representations and/or the express or implied consent by Settlers.

69. ACHD's reliance was justified and reasonable under the circumstances.

70. As a result of its reliance on Settlers' representations, promises, and/or consent, ACHD has suffered substantial damages, which damages were or should have been foreseeable by Settlers. Moreover, Settlers' changed or threatened change in position as to the storm water pipes that have been in place for many years threatens substantial damages and costs which Settlers is responsible for and for which it must compensate ACHD.

71. ACHD's detrimental reliance on Settlers' representations, promises, and/or consent is the direct and proximate cause of ACHD's damages.

COUNT SEVEN

EQUITABLE ESTOPPEL

72. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 71 above as if set forth in their entirety.

73. ACHD pleads this claim in the alternative, if Settlers contends that the storm water drainage pipes at issue in this case were placed with the express or implied consent of Settlers, and/or if Settlers pursues its counterclaim demanding that all storm water pipes in Settlers Canal and the North Slough be removed.

74. Settlers' representation, promise, and/or express or implied consent to ACHD's discharge of storm water through the storm water drainage pipes was a false representation or concealment of a material fact with Settlers' actual or constructive knowledge of the truth.

75. Settlers' representation, promise, approval, and/or express or implied consent to the Maple Grove Bridge Project prior to October of 2005 was a false representation or concealment of a material fact with Settlers' actual or constructive knowledge of the truth.

76. ACHD did not know or could not discover the truth of Settlers' false representations or concealments.

77. Settlers made the false representations or concealed facts with the intent that ACHD rely on the false representations or concealments.

78. ACHD relied and acted upon the false representations or concealments by, among other things, relying on its right to continue to use existing storm water drainage facilities, entering into contracts for the Maple Grove Project, preparing construction scheduling, and initiating construction work based on Settlers' representations, promises, and/or express or implied consent.

79. As a result of ACHD's reliance and action upon the false representations or concealments of Settlers, ACHD has suffered and will suffer damages.

80. ACHD's reliance and action upon the false representations or concealments of Settlers is the direct and proximate cause of ACHD's damages.

COUNT EIGHT

QUASI-ESTOPPEL

81. ACHD hereby realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 80 above as if set forth in their entirety.

82. ACHD pleads this claim in the alternative, if Settlers contends that the storm water drainage pipes at issue in this case were placed with the express or implied

consent of Settlers, and/or if Settlers pursues its counterclaim demanding that all storm water pipes in Settlers Canal and the North Slough be removed.

83. Settlers impliedly and/or expressly consented to the discharge of storm water through the storm water drainage pipes at issue in this litigation and to ACHD's construction of the Bridge pursuant to the design plans presented to Settlers prior to October of 2005.

84. Settlers has gained an advantage and/or caused ACHD to be disadvantaged by changing Settlers' positions relating to the storm water drainage pipes and ACHD's construction of the Bridge.

85. As a result of Settlers' original position, ACHD was induced to change its position by building public road projects employing the storm water drains at issue, by relying upon the storm water drainage pipes continuing to be available, and by incurring costs, making commitments, and entering into contracts.

86. It would be unconscionable to permit Settlers to change its positions when it has already derived a benefit from its prior positions and/or when ACHD has relied to its detriment on Settlers' prior positions.

RESERVATION OF CLAIMS

87. ACHD has not completed its investigation in this matter, and has not completed discovery. ACHD therefore expressly reserves the right, and gives Settlers notice, that ACHD may amend its complaint to state all other necessary claims and causes of action that come to light during the course of discovery in this matter.

ATTORNEY FEES

88. Under applicable Idaho law, including, but not limited to, Idaho Code §§ 10-1210, 12-120, 12-121, 48-608, and other relevant statutory provisions and common

law, ACHD is entitled to recover its costs and attorney fees incurred in bringing this action.

PRAYER FOR RELIEF

WHEREFORE, ACHD prays for judgment against Settlers as follows:

A. Pursuant to Court I (Declaratory Judgment):

1. A judicial declaration that, under Idaho Code § 42-1209, Settlers has no right to demand a condition or term that is unrelated to whether a proposed encroachment unreasonably or materially interferes with Settlers' use and enjoyment of its easement or right-of-way as a precondition to Settlers granting permission to enter upon its easement or right-of-way.

2. A judicial declaration that, under Idaho Code § 42-1209, Settlers has no right to demand terms or conditions when a proposed encroachment does not unreasonably or materially interfere with Settlers' use and enjoyment of its easement or right-of-way.

3. A judicial declaration that Idaho Code § 42-1209 contains no provision requiring ACHD to pay attorney fees or engineering fees to Settlers as a precondition to ACHD obtaining permission to enter upon Settlers' right-of-way for construction of a public bridge; in particular, § 42-1209 does not require ACHD to sign an open-ended retainer agreement with Settlers' legal counsel requiring ACHD to pay and replenish a retainer to opposing counsel's law firm and be responsible, without limitation, for all costs and fees charged by these attorneys at their sole discretion.

4. A judicial declaration that Idaho Code § 42-1208 does not apply retroactively.

5. A judicial declaration that Idaho Code § 42-1209 does not apply retroactively.

B. Pursuant to Count II (Indemnity), that ACHD recover judgment against Settlers for all general and special damages caused by Settlers' unlawful actions.

C. Pursuant to Count III (Negligence), that ACHD recover judgment against Settlers for all general and special damages caused by Settlers' negligence.

D. Pursuant to Count IV (Interference with Property Rights), that ACHD recover judgment against Settlers for all general and special damages caused by Settlers' interference with ACHD's property rights.

E. Pursuant to Count V (Unfair Trade Practices), that ACHD recover judgment against Settlers for all general and special damages caused by Settlers' unfair trade practices.

F. Pursuant to Count VI (Promissory Estoppel), that ACHD recover judgment against Settlers for all general and special damages caused by ACHD's reliance on Settlers express and/or implied consent.

G. Pursuant to Count VII (Equitable Estoppel), that ACHD recover judgment against Settlers for all general and special damages caused by Settlers' false representations and/or concealments and that Settlers be prohibited from changing its position.

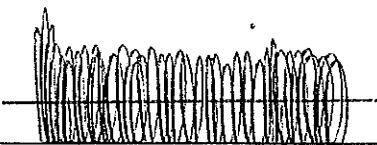
H. Pursuant to Count VIII (Quasi-Estoppel), that ACHD recover judgment against Settlers for all general and special damages caused by Settlers' inconsistent position and that Settlers be prohibited from changing its position.

I. That ACHD recover judgment against Settlers for the full amount of ACHD's costs and attorney fees incurred in this matter.

J. That the Court grant ACHD such other and further relief as the Court deems just and proper.

DATED this 20th day of August 2007.

HOLLAND & HART LLP

By 

Walter H. Bithell, of the firm
Attorneys For Plaintiff
Ada County Highway District

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John C. Ward, Esq.
Scott L. Campbell, Esq.
Andrew J. Waldera, Esq.
Dylan B. Lawrence, Esq.
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (Fax)

Jeffrey A. Thomson, Esq.
Elam & Burke, P.A.
251 East Front Street, Suite 300
Post Office Box 1539
Boise, ID 83701

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (Fax)



for HOLLAND & HART LLP