



January 9, 2024

Re: *Yaakwdáat Latínx'i Coalition Efforts on Behalf of Yak Tat Kwaan Incorporated*

Dear Ladies and Gentlemen:

This letter identifies some contextual circumstances surrounding the Yaakwdáat Latínx'i Coalition efforts that culminated in the Superior Court for the State of Alaska Third Judicial District at Anchorage ordering Yak Tat Kwaan Incorporated (the "Corporation") to hold a shareholder meeting with all nine seats up for election on September 23, 2023, and then ordering the Corporation to recognize the election of nine new directors. I am counsel of record for the plaintiffs Amanda Bremner and Jay Stevens and intervenor Meda DeWitt in that case, case No. 3AN-23-06096CI. Ms. DeWitt requested I provide a contextual summary of this situation. The letter's purpose is limited to orienting the reader to the unusual circumstances that gave rise to the entire board of directors for an Alaska native village corporation being replaced at one election. The public record, including but not limited to the cases cited in this letter, provides more information about these matters.

Before the September 2023 shareholder meeting, the last time shareholders elected a director was January 2021. In October 2022, the State of Alaska Division of Banking and Securities issued an enforcement order voiding the proxy votes on the Corporation's board solicited proxy because the Corporation had not distributed the 2021 audit.<sup>1</sup> This enforcement action, based upon 3AAC08.345, suggested that the Corporation may not hold another shareholder meeting until the incumbent directors distribute audited financial statements to shareholders.

In the spring of 2023, the Corporation had yet to release an audit of the 2021 financial statements, and it appeared it was unlikely to release the audited financial statements for 2022. The Corporation would not hold a 2023 shareholder meeting absent a court order. The Corporation was in obvious financial distress. A lawsuit filed by the Corporation's largest creditor, among others, indicated that the Corporation's subsidiary, Yak Timber Inc., was insolvent and could not repay loans that the parent corporation guaranteed.<sup>2</sup> In May of 2023, Yak Timber filed for bankruptcy protection and, in the course of that proceeding, indicated it would advance a plan of reorganization that relied upon logging the Corporation's lands, a controversial notion.<sup>3</sup> The

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<sup>1</sup> Banking and Securities Order No. 22-15-2-S, which is available on the State of Alaska Department of Commerce website at [www.commerce.alaska.gov/web/Portals/3/pub/Amended%20Order%20No.%202022-15-2-S%20\(Redacted\).pdf?ver=2022-11-07-130417-897](http://www.commerce.alaska.gov/web/Portals/3/pub/Amended%20Order%20No.%202022-15-2-S%20(Redacted).pdf?ver=2022-11-07-130417-897)

<sup>2</sup> See *AgWest Farm Credit PCA v. Yak-Tat Kwaan Incorporated*, 2:23-cv-00496-JCC (United States District Court for the District of Washington)

<sup>3</sup> See *In re Yak Timber, Inc.*, 23-00080 GS (United States Bankruptcy Court for the District of Alaska)

dynamic whereby the incumbent directors, some of whom were also salaried employees, could maintain control by not meeting their obligations to audit the financial statements and hold shareholder meetings was unacceptable to many shareholders.

Some of the Corporation's shareholders formed a group called Yaakwdáat Latinx'i Coalition (the "Coalition") to pursue the objective of holding a shareholder meeting for a director election. In May of 2023, co-chairs of the Coalition Amanda Bremner and Jay Stevens filed superior court case 3AN-23-06096CI, seeking an order requiring the Corporation to send notice of an annual meeting. The shareholder suit for a court-ordered meeting relied upon an Alaska Statute, which authorizes the superior court to summarily order a shareholder meeting if it has been more than 13 months since the last annual meeting. After being served with the complaint, the Corporation showed no indications it would act to hold a timely shareholder meeting.

In the summer of 2023, the agents of the Corporation erected and identified several obstacles to complying with the obligation to hold a shareholder meeting. The Coalition collected signatures of sufficient shareholders to notice a shareholder meeting to vote to remove the entire board of directors and elect nine new directors. However, the Corporation refused to provide the shareholder list so that the notice of the meeting could be perfected. Bremner and Stevens filed a motion with the superior court seeking an order directing the Corporation to release the shareholder list and hold a shareholder meeting on September 23, 2023.

Initially, the Corporation claimed that it could not hold a meeting of shareholders until its audited financial statements were completed, pointing to a statement by the Assistant Attorney General for the State of Alaska, representing the Division of Banking and Securities, who wrote in a status report:

[the Corporation] must obtain and distribute to its shareholders audited financial statements for the 2021 fiscal year before it can hold a 2022 annual meeting. Once the audit is complete and the financial statements are available, [the Corporation] may proceed with a 2022 annual meeting.<sup>4</sup>

The Corporation claimed this position was an obstacle to its complying with the legal requirement to hold a shareholder meeting. Ms. Bremner and Mr. Steven's counsel wrote to the Assistant Attorney General,<sup>5</sup> who later clarified that the purpose of the status report was limited to a scheduling matter in the Office of Administrative Hearings and the Division did not intend to imply the Corporation is exempt from complying with its Bylaws and Title 10, Chapter 6 of the Alaska Statutes, both of which required an annual shareholder meeting.<sup>6</sup> With more clarity from

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4 Appendix A Third Joint Status Report, OAH 22-0862-SEC.

5 Appendix B. August 22, 2023, letter titled Re Yak tat Kwaan Incorporated, OAH. No. 22-0862-SEC, third Joint Status Report.

6 Appendix C. email dated August 23, 2023, Yak Tat Kwáan Incorporated: OAH No. 22-0862-SEC, THIRD JOINT STATUS REPORT.

the Banking and Security's counsel, the Corporation asked the court to deny the request for a September 23 2023 shareholder and set the meeting date in November of 2023.

On August 28, 2023, the superior court ordered the Corporation to turn over the shareholder list and send notice of the September 23, 2023, shareholder meeting with nine seats up for election. The Coalition was prepared with an organized proxy solicitation campaign to ensure that a quorum was represented at the meeting and an election could take place. Commonly, a village corporation board of directors uses the corporate assets to encourage shareholders to attend the shareholder meeting or return a proxy so that a quorum is achieved. But in September of 2023, the Corporation was actively providing shareholders with a means to revoke their proxy so that there would be no quorum and the incumbent director would remain in control.

Through September of 2023, the Coalition had collected sufficient proxies, together with the persons attending the meeting in person, to achieve a quorum. However, on the day of the meeting, the President and Chief Executive Officer of the Corporation refused to recognize the existence of a quorum. The shareholders continued with the meeting and elected the nine new directors. The newly elected board organized and appointed Ms. DeWitt as the President.

In the days that followed, the former directors did not stand down, and their law firms refused to recognize the results of the shareholder election, advancing theories about how quorum was to be calculated that made it more difficult for shareholders to achieve a quorum and decide who should run the Corporation. Amanda Bremner and Jay Stevens filed a motion asking the superior court to recognize the election of the nine new directors. The tenth candidate for director, and the only other person to run, provided an affidavit confirming he withdrew his candidacy to expedite removing the old directors from office. Ms. DeWitt intervened as the newly elected director who was selected as President at the newly elected board's organizational meeting. The superior court confirmed a quorum was present and the election of the nine new directors at the lawful shareholder meeting held on September 23, 2023.<sup>7</sup> Shortly after the superior court issued its order, the former President and Chief Executive Officer issued a public statement recognizing the election of the nine new directors.<sup>8</sup>

Absent the efforts of the Yaakwdáat Latinx'i Coalition, it is unlikely that the Corporation would have met its legal obligation to hold a lawful shareholder meeting in 2023; it is unlikely that the shareholders of the Corporation would have been provided with the opportunity to elect a board of directors to manage their Corporation; and it is unlikely the Alaska legal system and those that look to it for guidance would recognize the elected directors as the board of directors for Yak Tat Kwaan Incorporated. The efforts of the Yaakwdáat Latinx'i Coalition are the reason the Corporation held a 2023 shareholder meeting and elected directors for the first time since January

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<sup>7</sup> Appendix D. Order Confirming election of Nine Directors of Yak-tat Kwaan Inc. at Shareholder meeting on September 23, 2023, dated October 27, 2023

<sup>8</sup> Appendix E. October 27, 2023, letter from Shari Jensen