THE STILWELL GROUP
111 BROADWAY • 12TH FLOOR
NEW YORK, NY 10006
(212) 269-2005

February 23, 2018

Harry Joseph Dempsey, M.D.
Chairman of the Board of Directors
HopFed Bancorp Inc.

Dear Dr. Dempsey:

Based on our extensive review of the record developed in recent months, we have concluded that HopFed Bancorp, Inc. ("HopFed" or the "Company") has meritorious and valuable claims to recover substantial damages from the law firms Jones Walker LLP and Carter & Carter LLP. The damages arise from the apparent legal malpractice by attorneys at those firms, namely Edward B. Crosland, Jr. at Jones Walker LLP and George M. ("Greg") Carter at Carter & Carter. The Company also has claims against CEO John Peck for breaches of the duty of loyalty and the duty to act in good faith in his dealings with these two firms. The basis for our opinion that the Company has viable causes of action for legal malpractice and breach of fiduciary duty is set forth below. We demand that the Company promptly assert these claims.

In May 2013, Robert Bolton was elected to the Board with an overwhelming vote by HopFed stockholders. Mr. Bolton was the first truly independent director to serve on the Board in years. By "independent," we mean independent of HopFed's CEO John Peck. The Stilwell Group* nominated Mr. Bolton and the stockholders put him on the Board, in contrast to the other directors, all of whom continue to serve, in our opinion, based on their willingness to support Mr. Peck, regardless of the Bank's inferior performance under his leadership. Mr. Bolton's election set in motion a series of costly legal maneuvers, putatively in the name of HopFed, but in reality for the benefit of John Peck. A review of the record confirms that Messrs. Crosland and Carter, while professing to act as legal advisors to HopFed, in fact represented the interests of John Peck. Their conduct demonstrates that their highest priority was advancing Mr. Peck's personal goal in preserving the perks and power of his executive office. Their services were paid for by HopFed (hence, by its stockholders). Mr. Peck was the principal beneficiary of their legal advice.

Mr. Crosland has served as lead corporate and SEC counsel for HopFed for many years, from at least the date of its IPO in 1999. By 2013, he no doubt had a keen interest to preserve a lucrative corporate engagement for him and for his law firm, one that would surely be terminated upon any change in senior management. He was thus ready to do John Peck's bidding at the expense of HopFed and its stockholders.

Mr. Carter has represented John Peck personally on multiple occasions over the past two decades. Before Mr. Bolton's election, Mr. Carter had also represented HopFed's subsidiary, Heritage Savings Bank, in a variety of matters. Upon the election of Mr. Bolton, HopFed also hired Mr. Carter and he became a fixture at each Board and Committee meeting. His attendance, and his advice, were consistently for the benefit of John Peck, his longstanding client. Mr. Carter's lack of independence was not properly disclosed to the Board, thereby facilitating his work for Mr. Peck.

* The term "The Stilwell Group" herein refers to certain of the funds managed by Stilwell Value LLC that own shares of HopFed common stock.

Below are of the acts of legal malpractice perpetrated by Messrs. Crosland and Carter that we believe are actionable.

The Director Disqualification Bylaw

First, as The Stilwell Group's Verified Complaint in Delaware Chancery Court makes clear, the Board of HopFed adopted a bylaw concerning director qualifications (the "Director Disqualification Bylaw") in January 2015 for the principal purpose of blocking The Stilwell Group from ever nominating another candidate. The Director Disqualification Bylaw was poorly worded, poorly conceived, and contrary to Delaware law. Among other things, it would permit a convicted murderer or rapist to serve as a director, but disqualify a highly qualified and independent candidate if he or she were nominated by The Stilwell Group. For no apparent reason, the Bylaw disenfranchised all stockholders who lack expertise in banking matters from the director nomination process. In Court, HopFed's attorneys were incapable of explaining the corporate purpose for its limitations on the nominating process. The reason for their difficulty was simple. THERE WAS NO CORPORATE PURPOSE. The nonsensical distinctions on who could serve and who was disqualified were indefensible.

Addressing the merits of the Director Disqualification Bylaw, Vice Chancellor Laster described the Bylaw as a "truly flabbergasting amendment to the company's bylaws that had the effect of disenfranchising entire classes of stockholders from nominating or supporting otherwise qualified candidates." (Feb. 7, 2018 Hearing Tr. at 5:14-5:18).

The attorneys in question provided legal advice to a corporation based in Kentucky and for this reason, we believe, their conduct must be evaluated under Kentucky law. In order to allege a legal malpractice claim in Kentucky, a plaintiff must prove: (1) there was an employment relationship with the attorney, (2) the attorney neglected his or her duty to exercise the ordinary care of a reasonably competent attorney acting in the same or similar circumstances, and (3) the attorney's negligence was the proximate cause of the damages to the client. *Osborne v. Keeney*, 399 S.W.3d 1, 9-10 (Ky. 2012). To prove that the attorney caused the plaintiff's harm, the plaintiff must show that he or she "would have fared better in the underlying claim; that is, but for the attorney's negligence, the plaintiff would have been more likely successful." *Id*. at 10. Thus, for an attorney to be found liable for legal malpractice, the attorney must have violated the standard of care (to exercise the ordinary care of a reasonably competent attorney acting in the same or similar circumstances) and that violation must be the proximate cause of injury to the client. *Id*. at 12.

Kentucky's "competence rule" also governs the legal advice provided by Messrs. Crosland and Carter. Under Kentucky Supreme Court Rule ("S.C.R.") 3.130(1.1): "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The validity of the Director Disqualification Bylaw, however, must be determined under Delaware law. The Company is organized under Delaware law, and its internal affairs must be governed by the laws of that state. *See Novadx Ventures Corp. v. Gress Engineering, P.C.*, No. 12-78-GFVT, 2013 WL 794375, at *3 (E.D. Ky. Mar. 4, 2013) (noting Kentucky's choice of law rules follow the Restatement (Second) Conflict of Laws and that it considers the "place of incorporation" of a business to be a significant factor); *see also Atherton v. F.D.I.C.*, 519 U.S. 213, 224 (1997) ("States normally look to the State of a business' incorporation for the law that provides the relevant corporate governance general standard of care. Restatement (Second) Conflict of Law § 309 (1971)."). Neither Mr. Crosland nor Mr. Carter is admitted to practice in Delaware. Both men, however, gave advice on Delaware corporate matters—advice that was deeply flawed. The comments to S.C.R. 3.130(1.1), the "competency rule," are instructive. Comment (5) states:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence.

In light of the Court's remarks, it seems clear that neither Mr. Crosland nor Mr. Carter complied with this standard in assessing whether the Director Disqualification Bylaw was proper. The Bylaw appears to have been generated by cutting and pasting from outmoded bylaws used by other companies in the past, without any analysis of its legality under Delaware law. Indeed, the slightest inquiry would have demonstrated that the proposed Bylaw was improper.

The errors committed by these professionals confirm that their representation of the Company also involved serious conflicts. Under S.C.R. 3.130(1.7), a lawyer may not undertake a representation if the matter "involves a concurrent conflict of interest." The accompanying commentary explains that "[l]oyalty and independent judgment are essential elements in the lawyer's relation to a client." This is especially so in the corporate context where individual officers may have personal goals that are contrary to the Company's interests. Here, a Bylaw that blocked The Stilwell Group was beneficial to Mr. Peck, a longstanding Carter client and a *de facto* Crosland client.

The process by which the Board adopted the deficient Bylaw is telling. The Board received no legal memoranda, or even a presentation of counsel, to explain either the changes or how the Director Disqualification Bylaw would work. With Mr. Carter's guidance, the Board did not even receive a redline of the new bylaws compared to the old bylaws, so the directors were uninformed about the nature of the proposed changes. There was no need for haste, since the proposed Bylaw would not be effective for another six weeks. Mr. Carter nonetheless allowed the Board to act in a single meeting without any meaningful input or deliberation. The fact that counsel kept the Board in the dark can only be explained by their indifference to whether the Bylaw was flawed. Without proper legal advice, the Board approved the Bylaw, with Robert Bolton abstaining.

The fact that the Board, by its own admission, did not understand the language of the Bylaw demonstrates how poorly Messrs. Crosland and Carter did their jobs. Vice Chancellor Laster pointed out, “It’s nice now to be able to say, ‘Well, the directors didn’t see it was a big change because they didn’t really understand it in the first place.’ But that actually isn’t a good fact.” (Feb. 7, 2018 Hearing Tr. at 16:17-16:20). It was specifically the duty of Messrs. Crosland and Carter to explain the legal ramifications of enforcing an illegal bylaw, and at the very least, to ensure the Board understood the Bylaw at issue before voting on it.

The further impact of the Director Disqualification Bylaw was confirmed a few months later. In April 2015, Mr. Carter advised the HopFed Nominating Committee to conduct an “investigation” into Mr. Bolton’s qualifications to serve on the Board under the Bylaw. (Apr. 15, 2015 Nominating Committee Minutes). Vice Chancellor Laster observed, “Hopefully people actually read some case law about whether you could kick a sitting director off a board through a qualification bylaw.” (Feb. 7, 2018 Hearing Tr. at 14:1-14:4). Apparently, no such case law was read by Messrs. Crosland and Carter, although it was their responsibility to do so.

It is fundamental to Delaware corporate law, and the corporate laws of the other 49 states, that a duly elected director cannot be unseated by his fellow directors through the adoption of a corporate bylaw that purports to disqualify a targeted board member. *See Klaassen v. Allegro Dev. Corp.*, 2013 WL 5739680, at *23 (Del. Ch. Oct. 11, 2013). Yet it appears Mr. Carter ignored these basic corporate principles in rendering his legal advice. Mr. Carter was surely acting for his long standing client, John Peck, hoping to intimidate Mr. Bolton into leaving the Board.

In July 2016, The Stilwell Group served the Company with a request to examine books and records under Section 220 of the Delaware General Corporation Law. The demand letter expressed the view that the Director Disqualification Bylaw was unlawful. Messrs. Crosland and Carter thus had ample warning that the Bylaw was deficient. Nonetheless, they renewed their legal advice that the Director Disqualification Bylaw was valid. In May 2017, The Stilwell Group filed suit in Delaware Chancery Court to challenge the Bylaw. Once more, Messrs. Crosland and Carter had notice regarding the deficient nature of the Bylaw. Once more, they advised the HopFed Board to devote corporate resources to defending the Bylaw. After being chastised by Vice Chancellor Laster at a hearing in August 2017, the Board reversed course and gutted much of the Director Disqualification Bylaw. Significantly, it did so only after it had retained counsel not beholden to John Peck.

The conflicted and deficient legal advice may have cost the Company millions. Not only has the Company paid counsel substantial fees for their legal work, but it has since spent over $1 million to defend this conduct in Court. It has also been forced to reimburse The Stilwell Group for its fees and expenses in excess of $600,000. The costs incurred in correcting these errors, including the cost of hiring a new legal team to amend the Bylaw is likely substantial.

Advice on Other Corporate Transactions

The deficient legal advice that the Board received is not limited to the Director Disqualification Bylaw. Messrs. Crosland and Carter also advised the Board on two other questionable transactions that have cost the stockholders significant sums.

As Messrs. Crosland and Carter were assisting Mr. Peck with the Director Disqualification Bylaw, they were also guiding him and HopFed on the establishment of an Employee Stock Ownership Plan ("ESOP"). Once again, the evidence demonstrates that their primary purpose was to support Mr. Peck, this time through the placement of a large block of shares in friendly hands, including those of Mr. Peck. The ESOP itself was harmful to the employees of Heritage Savings Bank, as it replaced a diversified pension benefit with one limited to a single security, shares of HopFed. No thoughtful or independent Board would have approved such a plan. After the Board approved the ESOP in concept, no further Board deliberations occurred concerning the many significant terms of the plan. Messrs. Crosland and Carter instead authorized an arrangement in which Mr. Peck represented both HopFed and the ESOP in structuring the number of shares in the ESOP and other terms, a process that permitted Mr. Peck to load the plan with far more shares than needed. This front–loading enhanced Mr. Peck's voting power, while causing substantial loss to HopFed stockholders. For example, even though the ESOP has not paid for more than 80% of its shares, it receives dividends on its full allotment. The Board was also never fully advised regarding the significant personal benefit that Mr. Peck would receive as an ESOP participant, or the enhanced voting power that would accrue to him.

The large dividend that Heritage Savings Bank issued in 2015 was supposed to be used to fund the ESOP, but it was used for different purpose—to help Mr. Peck via a greenmail deal with a hostile stockholder. This transaction was also marred by conflicted legal advice. Mr. Crosland played a key role in advising Mr. Peck on purchasing shares from an institutional firm supportive of The Stilwell Group. Among other things, Mr. Crosland provided a "standstill agreement" to accompany the purchase. The standstill prohibited the institutional firm from purchasing HopFed shares over the next three years. This clause was, on its face, contrary to the interests of HopFed and its stockholders. Its sole purpose was apparently to disguise the fact that HopFed was likely overpaying, as it purchased the shares at a premium to market. Mr. Bolton even questioned the propriety of this arrangement. Messrs. Carter and Crosland, however, failed to advise the Board about the true purpose of the standstill, falsely suggesting that it would be beneficial to the Company. In fact, its main goal was to help Mr. Peck. While HopFed had purchased 298,999 shares in the open market in 2014 at an average price below $11.71, it paid $13.50 per share in February 2015 to the institutional investor.

The Delaware Court described the purchase as "troubling." (Feb. 7, 2018 Hearing Tr. at 6:1). The Court observed, "Perhaps that was legitimate. Perhaps it wasn't. It is at least facially potentially entrenching. It is facially consistent with greenmail." (Feb. 7, 2018 Hearing Tr. at 5:20-5:23). The fact that this "greenmail" transaction was approved on the same day that the Board adopted the defective Bylaw is telling. We submit that, once again, the Board received conflicted and deficient legal advice, designed to advance Mr. Peck's interest at the expense of the stockholders. The cost to HopFed of this poor advice is at least seven figures, according to our estimates.

The events described above are perhaps the clearest examples of the deficient and conflicted legal work by Messrs. Crosland and Carter. Vice Chancellor Laster's remarks indicate a broad pattern of deficient advice to the Board. The Court stated: "But someone has to be the adult in the room. Under Delaware law, the people who are supposed to be adults are the fiduciaries for the company . . . the fiduciaries for the company are its board of directors." (Feb. 7, 2018 Hearing Tr. at 5:3-5:7).

Lawyers are likewise fiduciaries for their clients. According to the Restatement of the Law Governing Lawyers ("Restatement") §16(3), lawyers must "comply with obligations concerning the client's confidences and property, avoid impermissible conflicting interests, deal honestly with the client, and not employ advantages arising from the client-lawyer relationship in a manner adverse to the client." Lawyers must also "act with reasonable competence and diligence" which both Messrs. Crosland and Carter failed to do. Restatement §16(2).

The Chancery Court observed "the record reflects that what ensued was a rather childish series of actions by the board" – a board that followed the advice of both Messrs. Crosland and Carter. (Feb. 7, 2018 Hearing Tr. at 4:9-4:11). And instead of "being adults and taking a principled position," the Board, in the words of the Court, "got down in the dirt and made mud pies." (Feb. 7, 2018 Hearing Tr. at 5:10-5:12).

We are therefore confident that a review of the attorneys' billing records and other work will reveal multiple instances of malpractice.

According to Kentucky Revised Statutes Annotated § 411.165(1), "[i]f any attorney employed to attend to professional business neglects to attend to the business, after being paid anything for his services, or attends to the business negligently, he shall be liable to the client for all damages and costs sustained by reason thereof." However, a plaintiff "may seek punitive damages from the attorney for the attorney's *own* conduct" if the plaintiff can "show that the attorney was grossly negligent in handling the case and acted with oppression, fraud, or malice." *Osborne*, 399 S.W.3d at 23 (emphasis in original). Thus, a plaintiff in Kentucky may recover more than merely the compensatory damages resulting from a lawyer's malpractice and pursue punitive damages against the lawyer himself. *Id.* at 23 (following jury trial, the district court entered judgment of over $5 million against the attorney).

We estimate that the fees charged by these firms, the fees charged to correct their work, and those incurred in a misguided effort to defend it and other costs to the Company, exceed $2 million dollars. The losses to HopFed are far greater and are best determined by further investigation.

We are prepared to assist HopFed in pursuing a recovery on these claims. We are confident that we can locate competent counsel who will accept the case on a customary contingency arrangement. We demand that the Board take action to recover the sums that have been taken from the Company.

Sincerely yours,

/s/ Megan C. Parisi

Megan C. Parisi

cc: Michael Woolfolk

Steve Hunt

Ted Kinsey

Thomas Miller

Richard Perkins

Clay Smith