THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Dock. Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP,
07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP,
07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP,
07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP,
07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP,
07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP,
07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP,
07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP,
07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP,
07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP,
07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP,
07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP,
07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP,
07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP,
07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP,
07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP,
07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP,
07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP,
07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP,
07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP,
07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP,
07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP,
07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP,
07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP,
07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP,
07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP,
07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP,
07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP,
07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP,
07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP,
07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP,
07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP,
07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP,
07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP,
07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP,
07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP,
08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP,
08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP,
08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP,
08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ,

08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ,
08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ,
08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ,
08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ,
08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ,
08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ,
08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ,
08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ,
08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ,
08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ,
08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ,
08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-04-01002-IJ,
08-ALJ-04-01003-IJ, 08-ALJ-04-01004-IJ, 08-ALJ-04-01005-IJ,
08-ALJ-04-01006-IJ, 08-ALJ-04-01007-IJ, 08-ALJ-04-01008-IJ,
08-ALJ-04-01009-IJ, 08-ALJ-04-01010-IJ, 08-ALJ-04-01011-IJ,
08-ALJ-04-01012-IJ, 08-ALJ-04-01013-IJ, 08-ALJ-04-01014-IJ,
08-ALJ-04-01015-IJ, 08-ALJ-04-01016-IJ, 08-ALJ-04-01017-IJ,
08-ALJ-04-01018-IJ, 08-ALJ-04-01019-IJ, 08-ALJ-04-01020-IJ,
08-ALJ-04-01021-IJ, 08-ALJ-04-01022-IJ, 08-ALJ-04-01023-IJ,
08-ALJ-04-01024-IJ, 08-ALJ-04-01025-IJ, 08-ALJ-04-01026-IJ,
08-ALJ-04-01027-IJ, 08-ALJ-04-01028-IJ, 08-ALJ-04-01029-IJ,
08-ALJ-04-01030-IJ, 08-ALJ-04-01031-IJ, 08-ALJ-04-01032-IJ,
08-ALJ-04-01033-IJ, 08-ALJ-04-01034-IJ, 08-ALJ-04-01035-IJ,
08-ALJ-04-01036-IJ, 08-ALJ-04-01037-IJ, 08-ALJ-04-01038-IJ,
08-ALJ-04-01039-IJ, 08-ALJ-04-01040-IJ, 08-ALJ-04-01041-IJ,
08-ALJ-04-01042-IJ, 08-ALJ-04-01043-IJ, 08-ALJ-04-01044-IJ,
08-ALJ-04-01045-IJ, 09-ALJ-04-00304-IJ, 07-ALJ-04-00826-AP.*

Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461, Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472,

---

* Docket No. 07-ALJ-04-00826-AP is probably assigned to an unrelated case. See June 8, 2012 letter to the ALC with copy to the Court of Appeals. The number remains in this caption because it appears in the ALC Second Amended Order caption, line 6, and has not yet been deleted by the Court of Appeals.

Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868, Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682, Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080,

Joseph Kelsey, #217218, Keith Eugine, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118.....Appellants,

v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

---

RECORD ON APPEAL
VOLUME 5 OF 13

---

Douglas H. Westbrook
23 Broad Street
Charleston, SC 29401
(843) 853-9600
Attorney for Appellants

Lake E. Summers
Katherine A. Phillips
Malone, Thompson, Summers & Ott, LLC
339 Heyward Street
Suite 200
Columbia, SC 29201
Attorneys for Respondent

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Due: 5-27-07
INMATE GRIEVANCE FORM
STEP 2

| | | Office Use Only |
|---|---|---|
| INMATE NAME: | Leroy Choice | Grievance No. LCI-0645-04 |
| SCDC NUMBER: | 113990 | Code: General |
| INSTITUTION: | Lieber Correctional Inst. | Policy |
| HOUSING UNIT: | Wando | Disc. Hear. |
| WORK ASSIGNMENT: | P.I. #2 | Class. |
| | | Date Received 5/24 |
| | | IGC Initials |
| | | ✔ IGA - ABH 7-12-07 |

RECEIVED
JUN 11 2007
INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Ackins and Wicker held that §24-3-430's wage provisions were "mandatory," and created a "statutory right to the payment of a prevailing wage." These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under §24-3-430, with review by the ALJ.

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4.00 per hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was no correct, and back wages are owed.

Grievant incorporates by reference Exhibits A-H attached to grievances filed by Darrell Williams and counsel on September 22, 2004.

Leroy Choice
Grievant Signature Date 5-23-07

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Leroy Choice 8-8-2007 Bandy 8/8/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1820

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

CHOICE LCI-0645-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 23, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your voluntary participation in the prison industries project at Lieber began on November 10, 1999 and, as of the date of this response, your participation continues.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly five (5) years after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step 1 grievance.

Therefore, I deny your Step 2 appeal in its entirety.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

1822

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Leroy Choice, #113990, Appellant, | |
| vs. | NOTICE OF APPEAL |
| South Carolina Department of Corrections, Respondent. | DOCKET NO. _07__-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Leroy Choice does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 8-8-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy
8. Appellant claims pre/post judgment interest, costs and attorney fees

Leroy Choice
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205
City, State, Zip Code

Ridgeville, SC 29472
Telephone Number
none

Signed

8-14-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1823

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| LEROY CHOICE, #113990 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 24th day of August, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D. H. Westbrook
Douglas H. Westbrook

1824

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Sheldon Clark
SCDC NUMBER: 264772
INSTITUTION: Lieber Correctional Institution
HOUSING UNIT: Cooper A-51 ✓
WORK ASSIGNMENT: Dorm worker

Office Use Only
Grievance No. Lieber 0635-04
Code: General NU
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The Department is asked to review, and determine whether I'm entitled to receive back wages due to me from working at Lieber Prison Industry Program when they only Paid me .35 cents an hour, and Not Prevailing wage As required under South Carolina Code Ann. Sec. 24-3-430 (A-7) as well as fact that from 1998-03 they denied me prevailing wage.

ACTION REQUESTED:

All money due to me be Paid At Prevailing wage, And over time Rate, And Prevailing wage be Paid Now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed ordered to file Grievance by court Wicker v. SCDC, Adkins v. SCDC

Sheldon Clark 9-23-0
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carson 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

1825

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Sheldon Clark 11-2-2k4
Grievant Signature Date

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1826

Inmate S. Clark, #262772 LCI 0635-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

1827

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF SHELDON CLARK, #264772

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 1927.31 hours in 2000 at $10.66 per hour; 1747.42 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 6349.40 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0778; C, 0081,0086; F, 1025-1027; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1829

AMENDMENT TO GRIEVANCE OF SHELDON CLARK, #264772

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 1927.31 hours in 2000 at $10.66 per hour; 1747.42 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 6349.40 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0778; C, 0081,0086; F, 1025-1027; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

AMENDMENT TO GRIEVANCE OF SHELDON CLARK, #264772

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 1927.31 hours in 2000 at $10.66 per hour; 1747.42 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 6349.40 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

X Sheldon Clark (Grievant Signature) X October 30, 2005 (Date)

* Attached are Exh. A, 0778; C, 0081,0086; F, 1025-1027; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | BUTLER, JOHN | 268753 | S B 15 | 1 | 9/25/00 | 10/12/00 |
| MI 3 | BUTLER, RICHARD | 162467 | C A 57 | 1 | 6/27/00 | 6/26/03 |
| MI 3 | BUTLER, THOMAS | 257552 | C B 28 | 1 | 4/20/04 | 5/14/04 |
| MI 3 | BYRD, CALVIN | 257319 | C B 57 | 1 | 10/1/99 | 4/21/03 |
| MI 3 | CADE, O | 257075 | C A 0 | 0 | | 12/20/99 |
| MI 3 | CALLOWAY, COREY | 285780 | W C160 | 3 | | 3/17/04 |
| | CAMPBELL, DORAS | 246508 | S B 50 | 1 | 7/7/01 | 1/29/02 |
| MI 2 | CAMPBELL, MARCUS | 273397 | C A 31 | 2 | 7/10/01 | 10/7/02 |
| | CAMPBELL, RODNEY | 263521 | C A 42 | 1 | 7/12/00 | 5/30/01 |
| MI 2 | CANTY, MITCHELL | 237815 | C A 2 | 1 | 2/15/00 | 10/31/02 |
| | CARDER, KEVIN | 262296 | C 0 | 1 | 2/10/00 | 3/15/00 |
| | CAREW, EL TAJARIS | 264671 | B B 22 | 1 | 5/31/00 | 7/12/00 |
| MI 3 | CARLSON, RUSSELL | 292938 | E A 52 | 1 | 3/11/04 | 3/15/04 |
| MI 3 | CARN, LAWRENCE | 196852 | C A 48 | 1 | 3/1/04 | 4/13/04 |
| MI 3 | CARR, STEVEN | 296393 | W C264 | 1 | 3/11/04 | 4/16/04 |
| MI 2 | CARSON, FRANKLIN | 141667 | C B 27 | 2 | 9/20/02 | 11/21/02 |
| | CARSON, JONATHAN | 255214 | C 0 | 1 | 1/18/00 | 4/27/00 |
| MI 3 | CARSON, ROYCE | 260228 | S A 41 | 1 | 1/18/00 | 8/18/00 |
| MI 1B | CARTER, CLIFFORD | 247431 | S B 20 | 3 | 12/3/03 | 4/8/04 |
| MI 1B | CARTER, CLIFFORD | 247431 | S B 51 | 1 | 8/6/99 | 11/4/03 |
| MI 3 | CARTER, DEREK | 275938 | C A 2 | 1 | 7/10/01 | 6/24/04 |
| MI 3 | CARTER, K | 243538 | C A 0 | 0 | | 3/25/02 |
| MI 2 | CARTER, THOMAS | 249362 | C A 28 | 1 | 3/15/04 | 6/24/04 |
| MI 2 | CASSADY, RUDY | 238732 | C B 15 | 1 | 4/19/02 | 6/24/04 |
| MI 2 | CASTANA, ERAVISTA | 262067 | C B 43 | 1 | 4/8/02 | 1/13/03 |
| | CATCHINGS, ROBERT | 242956 | C A 48 | 1 | 3/29/00 | 3/5/01 |
| | CAULDER, DAVID | 270718 | E A 24 | 1 | 1/2/01 | 1/8/01 |
| | CAULDER, THOMAS | 180602 | C 0 | 1 | 11/3/99 | 1/6/00 |
| | CHAPMAN, STEPHEN | 125781 | C B 50 | 1 | 10/16/00 | 9/24/01 |
| MI 3 | CHATMAN, CHARLES | 181295 | C B 58 | 2 | 10/17/00 | 11/4/02 |
| | CHAVIS, DAVID | 235867 | M X 9 | 2 | 2/11/00 | 12/20/01 |
| | CHEATHAM, LIONEL | 262440 | C 0 | 1 | 9/13/99 | 1/5/00 |
| MI 3 | CHEEKS, RICHARD | 257571 | C A 5 | 1 | 9/13/99 | 5/2/03 |
| | CHILDS, DONALD | 261121 | E A 0 | 1 | 12/1/99 | 2/22/00 |
| MI 3 | CHISLOM, OTIS | 279408 | C B 19 | 1 | 1/7/02 | 3/20/03 |
| MI 3 | CHOICE, LEROY | 113990 | C B 52 | 1 | 11/10/99 | 6/24/04 |
| | CHRISTOPHER, REGINALD | 269130 | C B 11 | 1 | 10/16/00 | 1/11/02 |
| | CLARK, ERNEST | 263319 | C B 25 | 2 | 8/10/01 | 3/8/02 |
| MI 3 | CLARK, SHELDON | 264772 | C A 51 | 1 | 3/29/00 | 6/26/03 |
| MI 3 | CLARKE, HERIBERTO | 276982 | A B 36 | 3 | 9/11/03 | 10/21/03 |
| MI 3 | CLARKE, HERIBERTO | 276982 | C A 35 | 2 | 8/17/01 | 8/26/02 |
| MI 3 | CLEA, JOHN | 297878 | C B 27 | 3 | | 3/17/04 |
| MI 3 | COBB, ZAWASKI | 187136 | C A 3 | 1 | 9/10/01 | 6/26/03 |
| MI 3 | COBBS, BARON | 280479 | C B 38 | 1 | 1/16/02 | 1/16/03 |
| MI 3 | COBBS, BARON | 280479 | C B 38 | 1 | 7/17/03 | 6/24/04 |

PLAINTIFF'S EXHIBIT 4

A - 0778
June 2004

1832

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 199 8, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 Within 90 days of completion of the Building. Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT

1833

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20001218 | 0.50 | 105.07 | 52.53 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010101 | 0.50 | 34.80 | 17.40 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010115 | 0.50 | 36.24 | 18.12 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010129 | 0.50 | 64.28 | 32.14 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010212 | 0.50 | 68.10 | 34.05 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010226 | 0.50 | 67.18 | 33.59 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010312 | 0.50 | 75.94 | 37.97 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010326 | 0.50 | 87.78 | 43.89 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010409 | 0.50 | 124.76 | 62.38 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010423 | 0.50 | 69.92 | 34.96 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010507 | 0.50 | 91.87 | 45.93 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010521 | 0.50 | 129.97 | 64.98 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010604 | 0.50 | 87.90 | 43.95 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010618 | 0.50 | 133.53 | 66.76 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010702 | 0.50 | 147.87 | 73.93 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010716 | 0.50 | 134.66 | 67.33 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010730 | 0.50 | 98.68 | 49.34 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010813 | 0.50 | 177.26 | 88.63 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010827 | 0.50 | 140.25 | 70.12 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010910 | 0.50 | 148.32 | 74.16 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20010924 | 0.50 | 133.91 | 66.95 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20011008 | 0.50 | 97.05 | 48.52 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20011022 | 0.50 | 112.10 | 56.05 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20011105 | 0.50 | 104.15 | 52.07 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20011119 | 0.50 | 138.55 | 69.27 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20011203 | 0.50 | 128.87 | 64.43 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20011217 | 0.50 | 141.42 | 70.71 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20011231 | 0.50 | 56.83 | 28.41 |
| 269130 | CHRISTOPHER | REGINALD | MANFRED | 20020114 | 0.50 | 86.92 | 43.46 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000424 | 0.35 | 75.00 | 26.25 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000424 | 0.55 | 43.95 | 24.17 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000508 | 0.35 | 75.00 | 26.25 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000508 | 0.55 | 35.63 | 19.59 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000508 | 0.25 | 14.25 | 3.56 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000522 | 0.35 | 67.50 | 23.62 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000522 | 0.55 | 25.08 | 13.79 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000522 | 0.25 | 14.32 | 3.58 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000605 | 0.50 | 67.50 | 33.75 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000605 | 0.75 | 12.98 | 9.73 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000605 | 0.25 | 7.25 | 1.81 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000703 | 0.50 | 60.00 | 30.00 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000703 | 0.55 | 23.60 | 12.98 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000703 | 0.35 | 7.50 | 2.62 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000703 | 0.25 | 7.22 | 1.80 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000717 | 0.50 | 71.26 | 35.63 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000731 | 0.50 | 134.77 | 67.38 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000814 | 0.50 | 88.10 | 44.05 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000828 | 0.50 | 99.97 | 49.98 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000911 | 0.50 | 67.76 | 33.88 |
| 264772 | CLARK | SHELDON | MIGUEL | 20000925 | 0.50 | 103.92 | 51.96 |
| 264772 | CLARK | SHELDON | MIGUEL | 20001009 | 0.50 | 101.24 | 50.62 |
| 264772 | CLARK | SHELDON | MIGUEL | 20001023 | 0.50 | 138.10 | 69.05 |
| 264772 | CLARK | SHELDON | MIGUEL | 20001106 | 0.50 | 118.62 | 59.31 |
| 264772 | CLARK | SHELDON | MIGUEL | 20001120 | 0.50 | 120.05 | 60.02 |

PLAINTIFF'S EXHIBIT

1835

A - 1025
June 2004

| Number | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 264772 | CLARK | SHELDON | MIGUEL | 20001204 | 0.50 | 92.31 | 46.15 |
| 264772 | CLARK | SHELDON | MIGUEL | 20001218 | 0.50 | 185.85 | 92.92 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010101 | 0.50 | 68.58 | 34.29 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010115 | 0.50 | 127.80 | 63.90 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010129 | 0.50 | 149.63 | 74.81 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010212 | 0.50 | 117.82 | 58.91 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010226 | 0.50 | 120.00 | 60.00 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010312 | 0.50 | 131.32 | 65.66 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010326 | 0.50 | 135.90 | 67.95 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010409 | 0.50 | 131.07 | 65.53 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010423 | 0.50 | 118.17 | 59.08 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010507 | 0.50 | 161.23 | 80.61 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010521 | 0.50 | 189.49 | 94.74 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010604 | 0.50 | 101.25 | 50.62 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010618 | 0.50 | 123.97 | 61.98 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010702 | 0.50 | 139.77 | 69.88 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010716 | 0.50 | 152.01 | 76.00 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010730 | 0.50 | 146.47 | 73.23 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010813 | 0.50 | 208.33 | 104.16 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010827 | 0.50 | 172.94 | 86.47 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010910 | 0.50 | 135.14 | 67.57 |
| 264772 | CLARK | SHELDON | MIGUEL | 20010924 | 0.50 | 173.31 | 86.65 |
| 264772 | CLARK | SHELDON | MIGUEL | 20011008 | 0.50 | 205.99 | 102.99 |
| 264772 | CLARK | SHELDON | MIGUEL | 20011022 | 0.50 | 149.92 | 74.96 |
| 264772 | CLARK | SHELDON | MIGUEL | 20011105 | 0.50 | 115.48 | 57.74 |
| 264772 | CLARK | SHELDON | MIGUEL | 20011119 | 0.50 | 156.21 | 78.10 |
| 264772 | CLARK | SHELDON | MIGUEL | 20011203 | 0.50 | 102.04 | 51.02 |
| 264772 | CLARK | SHELDON | MIGUEL | 20011217 | 0.50 | 142.59 | 71.29 |
| 264772 | CLARK | SHELDON | MIGUEL | 20011231 | 0.50 | 64.09 | 32.04 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020114 | 0.50 | 86.99 | 43.49 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020128 | 0.50 | 136.69 | 68.34 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020211 | 0.50 | 125.24 | 62.62 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020225 | 0.50 | 135.13 | 67.56 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020311 | 0.50 | 147.34 | 73.67 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020325 | 0.50 | 122.18 | 61.09 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020408 | 0.50 | 109.70 | 54.85 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020422 | 0.50 | 109.76 | 54.88 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020506 | 0.50 | 149.78 | 74.89 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020520 | 0.50 | 117.95 | 58.97 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020603 | 0.50 | 117.86 | 58.93 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020617 | 0.50 | 124.74 | 62.37 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020701 | 0.50 | 102.83 | 51.41 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020715 | 0.50 | 90.94 | 45.47 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020729 | 0.50 | 128.21 | 64.10 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020812 | 0.50 | 174.66 | 87.33 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020826 | 0.50 | 132.53 | 66.26 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020909 | 0.50 | 95.67 | 47.83 |
| 264772 | CLARK | SHELDON | MIGUEL | 20020923 | 0.50 | 134.66 | 67.33 |
| 264772 | CLARK | SHELDON | MIGUEL | 20021007 | 0.50 | 144.41 | 72.20 |
| 264772 | CLARK | SHELDON | MIGUEL | 20021021 | 0.50 | 113.36 | 56.68 |
| 264772 | CLARK | SHELDON | MIGUEL | 20021104 | 0.50 | 113.99 | 56.99 |
| 264772 | CLARK | SHELDON | MIGUEL | 20021118 | 0.50 | 123.39 | 61.69 |
| 264772 | CLARK | SHELDON | MIGUEL | 20021202 | 0.50 | 112.73 | 56.36 |
| 264772 | CLARK | SHELDON | MIGUEL | 20021216 | 0.50 | 98.78 | 49.39 |

A - 1026
June 2004

1836

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 264772 | CLARK | SHELDON | MIGUEL | 20021230 | 0.50 | 58.23 | 29.11 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030113 | 0.50 | 67.59 | 33.79 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030127 | 0.50 | 100.58 | 50.29 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030210 | 0.50 | 117.76 | 58.88 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030224 | 0.50 | 101.07 | 50.53 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030310 | 0.50 | 112.99 | 56.49 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030324 | 0.50 | 114.61 | 57.30 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030407 | 0.50 | 110.57 | 55.28 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030421 | 0.50 | 102.64 | 51.32 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030505 | 0.50 | 77.81 | 38.90 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030519 | 0.50 | 109.11 | 54.55 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030602 | 0.50 | 95.42 | 47.71 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030616 | 0.50 | 125.39 | 62.69 |
| 264772 | CLARK | SHELDON | MIGUEL | 20030630 | 0.50 | 81.59 | 40.79 |
| 263319 | CLARK III | ERNEST | CECIL | 20010827 | 0.50 | 52.50 | 26.25 |
| 263319 | CLARK III | ERNEST | CECIL | 20010910 | 0.50 | 36.75 | 18.37 |
| 263319 | CLARK III | ERNEST | CECIL | 20010924 | 0.50 | 52.50 | 26.25 |
| 263319 | CLARK III | ERNEST | CECIL | 20011008 | 0.50 | 87.00 | 43.50 |
| 263319 | CLARK III | ERNEST | CECIL | 20011022 | 0.50 | 90.95 | 45.47 |
| 263319 | CLARK III | ERNEST | CECIL | 20011105 | 0.50 | 88.66 | 44.33 |
| 263319 | CLARK III | ERNEST | CECIL | 20011119 | 0.50 | 88.85 | 44.42 |
| 263319 | CLARK III | ERNEST | CECIL | 20011203 | 0.50 | 66.06 | 33.03 |
| 263319 | CLARK III | ERNEST | CECIL | 20011217 | 0.50 | 100.00 | 50.00 |
| 263319 | CLARK III | ERNEST | CECIL | 20011231 | 0.50 | 45.00 | 22.50 |
| 263319 | CLARK III | ERNEST | CECIL | 20020114 | 0.50 | 73.50 | 36.75 |
| 263319 | CLARK III | ERNEST | CECIL | 20020128 | 0.50 | 95.05 | 47.52 |
| 263319 | CLARK III | ERNEST | CECIL | 20020211 | 0.50 | 105.00 | 52.50 |
| 263319 | CLARK III | ERNEST | CECIL | 20020225 | 0.50 | 129.75 | 64.87 |
| 263319 | CLARK III | ERNEST | CECIL | 20020311 | 0.50 | 124.75 | 62.37 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20010827 | 0.50 | 22.30 | 11.15 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20010910 | 0.50 | 41.43 | 20.71 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20010924 | 0.50 | 45.07 | 22.53 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20011008 | 0.50 | 39.50 | 19.75 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20011022 | 0.50 | 15.61 | 7.80 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20011105 | 0.50 | 20.72 | 10.36 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20011119 | 0.50 | 79.44 | 39.72 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20011203 | 0.50 | 34.34 | 17.17 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20011217 | 0.50 | 95.34 | 47.67 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20011231 | 0.50 | 26.64 | 13.32 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020114 | 0.50 | 62.22 | 31.11 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020128 | 0.50 | 75.10 | 37.55 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020211 | 0.50 | 83.62 | 41.81 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020225 | 0.50 | 93.55 | 46.77 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020311 | 0.50 | 127.40 | 63.70 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020325 | 0.50 | 97.98 | 48.99 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020408 | 0.50 | 91.08 | 45.54 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020422 | 0.50 | 107.40 | 53.70 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020506 | 0.50 | 133.46 | 66.73 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020520 | 0.50 | 106.22 | 53.11 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020603 | 0.50 | 98.33 | 49.16 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020617 | 0.50 | 100.52 | 50.26 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020701 | 0.50 | 100.50 | 50.25 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020715 | 0.50 | 100.53 | 50.26 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020729 | 0.50 | 122.43 | 61.21 |

1837

A - 1027
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers--Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

1838

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

1839

**NON-ACADEMIC EXPERIENCE**

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

**PUBLICATIONS**

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

1840

INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: SHELDON CLARK
SCDC NUMBER: 264772 EVANS
INSTITUTION: Lieber Correctional Institution
HOUSING UNIT: Cooper A-51
WORK ASSIGNMENT: Dorm worker

NOV 04 2004

Office Use Only
Grievance No. LCI 0635-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins & Wicker do require payment of prevailing wages. Grievants were employed by WTI, and SCDC was WTI "Agent" in paying our wages. Adkins & Wicker further allow the issue of payment of wages under SC code 24-3-430 to be grieved, pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances file by Darrell Williams and Attorney Douglas Westbrook on 9-22-04

Sheldon Clark 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Sheldon Clark 5-16-2007
Grievant Signature Date

S. Skyzia 5.16.07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1841

CLARK LCI-0635-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 29, 2000 and that your participation in this project ended on June 26, 2003.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly 4 ½ years after SCDC first paid you for your participation in the project located at Lieber, nearly 15 months after your participation in the project at Lieber ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Sheldon Clark, #264772<br>Appellant,<br>vs.<br>South Carolina Department of Corrections,<br>Respondent. | ) | **NOTICE OF APPEAL**<br>DOCKET NO. _07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Sheldon Clark does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-16-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Sheldon Clark
Appellant's Name
Evans C.I.
610 Hy 9 West
Mailing Address
Bennettsville, SC 29512
City, State, Zip Code
none
Telephone Number

D H Westbrook
Signed
5-30-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1845

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| SHELDON CLARK, #264772 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Zawaski Cobb
SCDC NUMBER: 187136
INSTITUTION: Lieber CI
HOUSING UNIT: Cooper A-3 ✓
WORK ASSIGNMENT: Wardkeeper

Office Use Only
Grievance No. Lieber 0081-04
Code: General NU
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
The department is asked to Review and determine whether I am entitled to Recieve back wages due to me from Working at Lieber Prison Industry Program, When they only Paid me .35 cents an hour and Not prevailing wage as required under South Carolina Code Ann. Sec. 24-3-430 (A-7) As well as fact that from 1998-03, they denied me prevailing wage.

ACTION REQUESTED: All Money due to me be Paid at Prevailing Wage and overtime Rate and prevailing Wage be paid Now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was Filed, ordered to File Grievance by Court Wicker V. SCDC, Adkins V. SCDC

Zawaski Cobb 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carson 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11-02-04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1848

Jack Z Cobb, #187136 LC10681-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

1845

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

1850

AMENDMENT TO GRIEVANCE OF ZAWASKI COBB, #187136

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 151.06 hours in 2000 at $10.66 per hour; 259.76 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 4762.49 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Zawaski Cobb 02-05-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0778; C, 0081,0086; F, 1028-1029; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1851

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | BUTLER, JOHN | 268753 | S B 15 | 1 | 9/25/00 | 10/12/00 |
| MI 3 | BUTLER, RICHARD | 162467 | C A 57 | 1 | 6/27/00 | 6/26/03 |
| MI 3 | BUTLER, THOMAS | 257552 | C B 28 | 1 | 4/20/04 | 5/14/04 |
| MI 3 | BYRD, CALVIN | 257319 | C B 57 | 1 | 10/1/99 | 4/21/03 |
| MI 3 | CADE, O | 257075 | C A 0 | 0 | | 12/20/99 |
| MI 3 | CALLOWAY, COREY | 285780 | W C160 | 3 | | 3/17/04 |
| | CAMPBELL, DORAS | 246508 | S B 50 | 1 | 7/7/01 | 1/29/02 |
| MI 2 | CAMPBELL, MARCUS | 273397 | C A 31 | 2 | 7/10/01 | 10/7/02 |
| | CAMPBELL, RODNEY | 263521 | C A 42 | 1 | 7/12/00 | 5/30/01 |
| MI 2 | CANTY, MITCHELL | 237815 | C A 2 | 1 | 2/15/00 | 10/31/02 |
| | CARDER, KEVIN | 262296 | C 0 | 1 | 2/10/00 | 3/15/00 |
| | CAREW, EL TAJARIS | 264671 | E B 22 | 1 | 5/31/00 | 7/12/00 |
| MI 3 | CARLSON, RUSSELL | 292938 | E A 52 | 1 | 3/11/04 | 3/15/04 |
| MI 3 | CARN, LAWRENCE | 196852 | C A 48 | 1 | 3/1/04 | 4/13/04 |
| MI 3 | CARR, STEVEN | 296393 | W C264 | 1 | 3/11/04 | 4/16/04 |
| MI 2 | CARSON, FRANKLIN | 141667 | C B 27 | 2 | 9/20/02 | 11/21/02 |
| | CARSON, JONATHAN | 255214 | C 0 | 1 | 1/18/00 | 4/27/00 |
| MI 3 | CARSON, ROYCE | 260228 | S A 41 | 1 | 1/18/00 | 8/18/00 |
| MI 1B | CARTER, CLIFFORD | 247431 | S B 20 | 3 | 12/3/03 | 4/8/04 |
| MI 1B | CARTER, CLIFFORD | 247431 | S B 51 | 1 | 8/6/99 | 11/4/03 |
| MI 3 | CARTER, DEREK | 275938 | C A 2 | 1 | 7/10/01 | 6/24/04 |
| MI 3 | CARTER, K | 243538 | C A 0 | 0 | | 3/25/02 |
| MI 2 | CARTER, THOMAS | 249362 | C A 28 | 1 | 3/15/04 | 6/24/04 |
| MI 2 | CASSADY, RUDY | 238732 | C B 15 | 1 | 4/19/02 | 6/24/04 |
| MI 2 | CASTANA, ERAVISTA | 262067 | C B 43 | 1 | 4/8/02 | 1/13/03 |
| | CATCHINGS, ROBERT | 242956 | C A 48 | 1 | 3/29/00 | 3/5/01 |
| | CAULDER, DAVID | 270718 | E A 24 | 1 | 1/2/01 | 1/8/01 |
| | CAULDER, THOMAS | 180602 | C 0 | 1 | 11/3/99 | 1/6/00 |
| | CHAPMAN, STEPHEN | 125781 | C B 50 | 1 | 10/16/00 | 9/24/01 |
| MI 3 | CHATMAN, CHARLES | 181295 | C B 58 | 2 | 10/17/00 | 11/4/02 |
| | CHAVIS, DAVID | 235867 | M X 0 | 2 | 2/11/00 | 12/20/01 |
| | CHEATHAM, LIONEL | 262440 | C 0 | 1 | 9/13/99 | 1/5/00 |
| MI 3 | CHEEKS, RICHARD | 257571 | C A 5 | 1 | 9/13/99 | 5/2/03 |
| | CHILDS, DONALD | 261121 | E A 0 | 1 | 12/1/99 | 2/22/00 |
| MI 3 | CHISLOM, OTIS | 279408 | C B 19 | 1 | 1/7/02 | 3/20/03 |
| MI 3 | CHOICE, LEROY | 113990 | C B 52 | 1 | 11/10/99 | 6/24/04 |
| | CHRISTOPHER, REGINALD | 269130 | C B 11 | 1 | 10/16/00 | 1/11/02 |
| | CLARK, ERNEST | 263319 | C B 25 | 2 | 8/10/01 | 3/8/02 |
| MI 3 | CLARK, SHELDON | 264772 | C A 51 | 1 | 3/29/00 | 6/26/03 |
| MI 3 | CLARKE, HERIBERTO | 276982 | A B 36 | 3 | 9/11/03 | 10/21/03 |
| MI 3 | CLARKE, HERIBERTO | 276982 | C A 35 | 2 | 8/17/01 | 8/26/02 |
| MI 3 | CLEA, JOHN | 297878 | C B 27 | 3 | | 3/17/04 |
| MI 3 | COBB, ZAWASKI | 187136 | C A 3 | 1 | 9/10/01 | 6/26/03 |
| MI 3 | COBBS, BARON | 280479 | C B 38 | 1 | 1/16/02 | 1/16/03 |
| MI 3 | COBBS, BARON | 280479 | C B 38 | 1 | 7/17/03 | 6/24/04 |

PLAINTIFF'S EXHIBIT A

A - 0778
June 2004

1852

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

1853

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020812 | 0.50 | 123.28 | 61.64 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020826 | 0.50 | 109.99 | 54.99 |
| 276982 | CLARKE | HERIBERTO | ENRIQUE | 20020909 | 0.50 | 7.96 | 3.98 |
| 237856 | CLARKSON | EDWARD | M. | 20011008 | 0.50 | 139.12 | 69.56 |
| 211799 | COAKLEY | JONATHAN | | 19991025 | 0.35 | 49.00 | 17.15 |
| 211799 | COAKLEY | JONATHAN | | 19991108 | 0.35 | 65.00 | 22.75 |
| 211799 | COAKLEY | JONATHAN | | 19991122 | 0.35 | 56.98 | 19.94 |
| 211799 | COAKLEY | JONATHAN | | 19991206 | 0.35 | 52.38 | 18.33 |
| 211799 | COAKLEY | JONATHAN | | 19991220 | 0.50 | 13.93 | 6.96 |
| 187136 | COBB | ZAWASKI | | 20001204 | 0.50 | 26.45 | 13.22 |
| 187136 | COBB | ZAWASKI | | 20001218 | 0.50 | 96.12 | 48.06 |
| 187136 | COBB | ZAWASKI | | 20010101 | 0.50 | 28.49 | 14.24 |
| 187136 | COBB | ZAWASKI | | 20010115 | 0.50 | 64.46 | 32.23 |
| 187136 | COBB | ZAWASKI | | 20010129 | 0.50 | 104.38 | 52.19 |
| 187136 | COBB | ZAWASKI | | 20010212 | 0.50 | 71.31 | 35.65 |
| 187136 | COBB | ZAWASKI | | 20010226 | 0.50 | 19.61 | 9.80 |
| 187136 | COBB | ZAWASKI | | 20010924 | 0.50 | 71.18 | 35.59 |
| 187136 | COBB | ZAWASKI | | 20011008 | 0.50 | 96.41 | 48.20 |
| 187136 | COBB | ZAWASKI | | 20011022 | 0.50 | 68.02 | 34.01 |
| 187136 | COBB | ZAWASKI | | 20011105 | 0.50 | 59.08 | 29.54 |
| 187136 | COBB | ZAWASKI | | 20011119 | 0.50 | 90.85 | 45.42 |
| 187136 | COBB | ZAWASKI | | 20011203 | 0.50 | 66.60 | 33.30 |
| 187136 | COBB | ZAWASKI | | 20011217 | 0.50 | 85.90 | 42.95 |
| 187136 | COBB | ZAWASKI | | 20011231 | 0.50 | 52.32 | 26.16 |
| 187136 | COBB | ZAWASKI | | 20020114 | 0.50 | 54.26 | 27.13 |
| 187136 | COBB | ZAWASKI | | 20020128 | 0.50 | 80.54 | 40.27 |
| 187136 | COBB | ZAWASKI | | 20020211 | 0.50 | 82.04 | 41.02 |
| 187136 | COBB | ZAWASKI | | 20020225 | 0.50 | 86.40 | 43.20 |
| 187136 | COBB | ZAWASKI | | 20020311 | 0.50 | 102.95 | 51.47 |
| 187136 | COBB | ZAWASKI | | 20020325 | 0.50 | 112.53 | 56.26 |
| 187136 | COBB | ZAWASKI | | 20020408 | 0.50 | 110.06 | 55.03 |
| 187136 | COBB | ZAWASKI | | 20020422 | 0.50 | 112.47 | 56.23 |
| 187136 | COBB | ZAWASKI | | 20020506 | 0.50 | 101.50 | 50.75 |
| 187136 | COBB | ZAWASKI | | 20020520 | 0.50 | 139.14 | 69.57 |
| 187136 | COBB | ZAWASKI | | 20020603 | 0.50 | 142.38 | 71.19 |
| 187136 | COBB | ZAWASKI | | 20020617 | 0.50 | 134.51 | 67.25 |
| 187136 | COBB | ZAWASKI | | 20020701 | 0.50 | 106.83 | 53.41 |
| 187136 | COBB | ZAWASKI | | 20020715 | 0.50 | 106.62 | 53.31 |
| 187136 | COBB | ZAWASKI | | 20020729 | 0.50 | 109.70 | 54.85 |
| 187136 | COBB | ZAWASKI | | 20020812 | 0.50 | 99.75 | 49.87 |
| 187136 | COBB | ZAWASKI | | 20020826 | 0.50 | 134.82 | 67.41 |
| 187136 | COBB | ZAWASKI | | 20020909 | 0.50 | 99.78 | 49.89 |
| 187136 | COBB | ZAWASKI | | 20020923 | 0.50 | 116.52 | 58.26 |
| 187136 | COBB | ZAWASKI | | 20021007 | 0.50 | 127.50 | 63.75 |
| 187136 | COBB | ZAWASKI | | 20021021 | 0.50 | 146.25 | 73.12 |
| 187136 | COBB | ZAWASKI | | 20021104 | 0.50 | 122.49 | 61.24 |
| 187136 | COBB | ZAWASKI | | 20021118 | 0.50 | 115.13 | 57.56 |
| 187136 | COBB | ZAWASKI | | 20021202 | 0.50 | 135.14 | 67.57 |
| 187136 | COBB | ZAWASKI | | 20021216 | 0.50 | 134.99 | 67.49 |
| 187136 | COBB | ZAWASKI | | 20021230 | 0.50 | 63.75 | 31.87 |
| 187136 | COBB | ZAWASKI | | 20030113 | 0.50 | 31.99 | 15.99 |
| 187136 | COBB | ZAWASKI | | 20030127 | 0.50 | 101.32 | 50.66 |
| 187136 | COBB | ZAWASKI | | 20030210 | 0.50 | 112.57 | 56.28 |
| 187136 | COBB | ZAWASKI | | 20030224 | 0.50 | 73.44 | 36.72 |

PLAINTIFF'S EXHIBIT F

A - 1028
June 2004

1855

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 187136 | COBB | ZAWASKI | | 20030310 | 0.50 | 107.02 | 53.51 |
| 187136 | COBB | ZAWASKI | | 20030324 | 0.50 | 163.73 | 81.86 |
| 187136 | COBB | ZAWASKI | | 20030407 | 0.50 | 85.37 | 42.68 |
| 187136 | COBB | ZAWASKI | | 20030421 | 0.50 | 95.15 | 47.57 |
| 187136 | COBB | ZAWASKI | | 20030505 | 0.50 | 79.93 | 39.96 |
| 187136 | COBB | ZAWASKI | | 20030519 | 0.50 | 128.31 | 64.15 |
| 187136 | COBB | ZAWASKI | | 20030602 | 0.50 | 101.75 | 50.87 |
| 187136 | COBB | ZAWASKI | | 20030616 | 0.50 | 132.50 | 66.25 |
| 187136 | COBB | ZAWASKI | | 20030630 | 0.50 | 81.00 | 40.50 |
| 280479 | COBBS | BARON | | 20020311 | 0.50 | 46.40 | 23.20 |
| 280479 | COBBS | BARON | | 20020325 | 0.50 | 71.62 | 35.81 |
| 280479 | COBBS | BARON | | 20020408 | 0.50 | 79.82 | 39.91 |
| 280479 | COBBS | BARON | | 20020422 | 0.50 | 90.00 | 45.00 |
| 280479 | COBBS | BARON | | 20020506 | 0.50 | 102.83 | 51.41 |
| 280479 | COBBS | BARON | | 20020520 | 0.50 | 90.83 | 45.41 |
| 280479 | COBBS | BARON | | 20020603 | 0.50 | 84.03 | 42.01 |
| 280479 | COBBS | BARON | | 20020617 | 0.50 | 94.88 | 47.44 |
| 280479 | COBBS | BARON | | 20020701 | 0.50 | 94.50 | 47.25 |
| 280479 | COBBS | BARON | | 20020715 | 0.50 | 73.82 | 36.91 |
| 280479 | COBBS | BARON | | 20020729 | 0.50 | 93.48 | 46.74 |
| 280479 | COBBS | BARON | | 20020812 | 0.50 | 102.29 | 51.14 |
| 280479 | COBBS | BARON | | 20020826 | 0.50 | 137.36 | 68.68 |
| 280479 | COBBS | BARON | | 20020909 | 0.50 | 113.10 | 56.55 |
| 280479 | COBBS | BARON | | 20020923 | 0.50 | 119.43 | 59.71 |
| 280479 | COBBS | BARON | | 20021007 | 0.50 | 105.66 | 52.83 |
| 280479 | COBBS | BARON | | 20021021 | 0.50 | 111.57 | 55.78 |
| 280479 | COBBS | BARON | | 20021104 | 0.50 | 117.42 | 58.71 |
| 280479 | COBBS | BARON | | 20021118 | 0.50 | 123.86 | 61.93 |
| 280479 | COBBS | BARON | | 20021202 | 0.50 | 100.56 | 50.28 |
| 280479 | COBBS | BARON | | 20021216 | 0.50 | 103.12 | 51.56 |
| 280479 | COBBS | BARON | | 20021230 | 0.50 | 53.06 | 26.53 |
| 280479 | COBBS | BARON | | 20030113 | 0.50 | 53.48 | 26.74 |
| 280479 | COBBS | BARON | | 20030127 | 0.50 | 44.70 | 22.35 |
| 280479 | COBBS | BARON | | 20030728 | 0.50 | 66.27 | 33.13 |
| 280479 | COBBS | BARON | | 20030811 | 0.50 | 98.82 | 49.41 |
| 280479 | COBBS | BARON | | 20030825 | 0.50 | 121.77 | 60.88 |
| 280479 | COBBS | BARON | | 20030908 | 0.50 | 94.81 | 47.40 |
| 280479 | COBBS | BARON | | 20030922 | 0.50 | 110.81 | 55.40 |
| 280479 | COBBS | BARON | | 20031006 | 0.50 | 95.51 | 47.75 |
| 280479 | COBBS | BARON | | 20031020 | 0.50 | 90.24 | 45.12 |
| 280479 | COBBS | BARON | | 20031103 | 0.50 | 48.84 | 24.42 |
| 280479 | COBBS | BARON | | 20031117 | 0.50 | 87.77 | 43.88 |
| 280479 | COBBS | BARON | | 20031201 | 0.50 | 69.11 | 34.55 |
| 280479 | COBBS | BARON | | 20031215 | 0.50 | 87.75 | 43.87 |
| 280479 | COBBS | BARON | | 20031229 | 0.50 | 89.27 | 44.63 |
| 280479 | COBBS | BARON | | 20040112 | 0.50 | 46.89 | 23.44 |
| 280479 | COBBS | BARON | | 20040126 | 0.50 | 110.84 | 55.42 |
| 280479 | COBBS | BARON | | 20040209 | 0.50 | 117.00 | 58.50 |
| 280479 | COBBS | BARON | | 20040223 | 0.50 | 87.84 | 43.92 |
| 280479 | COBBS | BARON | | 20040308 | 0.50 | 116.55 | 58.27 |
| 280479 | COBBS | BARON | | 20040322 | 0.50 | 141.74 | 70.87 |
| 280479 | COBBS | BARON | | 20040405 | 0.50 | 139.50 | 69.75 |
| 280479 | COBBS | BARON | | 20040419 | 0.50 | 98.95 | 49.47 |
| 280479 | COBBS | BARON | | 20040503 | 0.50 | 137.54 | 68.77 |

A - 1029
June 2004

1856

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
H

1857

# RESUME-3/03
# Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

1858

**NON-ACADEMIC EXPERIENCE**

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

**PUBLICATIONS**

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Zawaski Cobb NOV 08 2004
SCDC NUMBER: 187134 PP
INSTITUTION: Lieber CI
HOUSING UNIT: Cooper A-03
WORK ASSIGNMENT: Asst. WardKeeper

Office Use Only
Grievance No. LCI 0681-04
Code: General NV
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Adkins & Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker further allows this issue of payment of wages under SC Code 24-3-430 to be grieved pursuant to SCDC grievance procedures. Grievants incorporates by reference all exhibits attached to grievance filed by Darrell Williams and Attorney, Douglas Westbrook on 9-22-0

Zawaski Cobb 11-02-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Zawaski Cobb 5-22-07
Grievant Signature Date

5/22/
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1860

COBB LCI-0681-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 29, 2000 and that, as of the date of this response, you are still participating in this project.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly 4 ½ years after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Zawaski Cobb, #187136, Appellant, | |
| vs. | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | DOCKET NO. _07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Zawaski Cobb does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Zawaski Cobb
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

Signed
5-31-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1864

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| ZAWASKI COBB, #187136 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D H Westbrook
Douglas H. Westbrook



Ackerman 5-6-11 1503

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Baron Cobbs
SCDC NUMBER: 280479
INSTITUTION: Lieber
HOUSING UNIT: CB 38
WORK ASSIGNMENT: PI 2

Office Use Only
Grievance No. Lieber 0598-04
Code: General 04
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (Include documentation, and date of incident; if SCDC Policy, indicate which policy)

The Department asks to review or determine whether I Am entitled, to recieve back wages, Due to me from working at Lieber Prison Industry Program. When, They only Paid me .35¢ an hour, and not prevailing wages, as required under S.C. Code ANN. Sec. 24-3-430 (A-7). As well As That from 1998-2003, They Denied Prevailing wage.

ACTION REQUESTED: All money Due to me, be paid the prevailing wage And over time rate, At prevailing wage now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Law suit was filed, ordered to file grievance by Court Wicker -vs- SCDC Adkins -vs- SCDC

Baron Cobbs 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Cobbs: See Warden's response.

L Carlton 10/27/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10.5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

1866

Ackerman 5-6-11 1504

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date Oct. 28 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11-2-04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1867

Inmate Baron Cobbs, #280179 LC10598.04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

Ken

11-7-04

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
### STEP 2

INMATE NAME: Baron Cobbs
SCDC NUMBER: 280479
INSTITUTION: Lieber CI
HOUSING UNIT: Cooper B 38
WORK ASSIGNMENT: PI 2

NOV 04 2004

Office Use Only
Grievance No. LCI 0548-04
Code: General MP
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Atkins & Wicker do require payment of prevailing wages. Grievants were employed by WTI, and SCDC was WTI's "Agent" in paying our wages. Atkins & Wicker further allow this issue of payment of wages under SC Code 24-3-430 to be grieved pursuant to SCDC's grievance procedures. Grievants incorporates by reference all exhibits attached to grievance filed by Brook. Darrell Williams and Attorney Douglas West on 9-22-04.

Baron Cobbs 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

6-19-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Baron Cobbs 6-27-07
Grievant Signature Date

6/27/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1870

COBBS LCI-0598-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on June 16, 2002 and ended September 6, 2005. Additionally, these records reflect that you returned to this project for a second work assignment that began June 9, 2006, and, as of the date of this response, your participation continues.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the

prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 2 ½ years after SCDC first paid you for the labor you provided to the project located at Lieber during your first work assignment there and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and

COBBS LCI-0598-04

remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Baron Cobbs, #280479 released<br>Appellant,<br>vs.<br>South Carolina Department of Corrections,<br>Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that Baron Cobbs does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

| | |
|---|---|
| Baron Cobbs<br>Appellant's Name | D H Westbrook<br>Signed |
| c/o Ms. Mary Ann Rhames (mother)<br>Mailing Address | 11-6-04<br>Dated |
| 610 Byrd Farm Rd. | Douglas H. Westbrook<br>23 Broad St.<br>Chas, SC 29401<br>(843) 853-9600<br>Attorney for Appellant |
| St. George, SC 29477<br>City, State, Zip Code | |
| (843) 563-2024<br>Telephone Number | |

(See reverse side for instructions)

1874

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| BARON COBBS, #280479 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

(3) One copy was mailed pursuant to Directive to SCDC Policy GA-01.12 to:

South Carolina Department of Corrections
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221-1787

D H Westbrook
Douglas H. Westbrook

1875

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Karathere A. Cooper INMATE GRIEVANCE FORM

STEP 1

individually, and on behalf of all inmate employees (IE's)

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 145333

INSTITUTION: Lieber C.I.

HOUSING UNIT: C-A-9

WORK ASSIGNMENT: P I-2 Transmission Plant

Office Use Only

Grievance No. Lieber 0788-04

Code: General MY

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials TC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, §37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Karathere A. Cooper 9-27-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

N/A

Grievant Signature Date

SCDC 10-5 (Rev November 1997)

1876 (CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See Attachment.

Oct. 28, 04
Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Kenneth Cogen 11-2-04
Grievant Signature Date

11-2-04
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1877

Jirk K Cooper, # 145333 CCI 0788-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

1878

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

1879

AMENDMENT TO GRIEVANCE OF KAMATHENE COOPER, #145333

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 9130.84 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Kamathene Cooper (Grievant Signature) February 3, 2006 (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1033-1034; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1880

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | COHEN, WILLIE | 257033 | C B 41 | 1 | 10/1/99 | 3/28/01 |
| MI 3 | COLBERT, RASCHAUN | 299840 | E B 37 | 1 | 4/22/04 | 5/13/04 |
| | COLE, MAURICE | 236789 | C 0 | 1 | 3/21/00 | 5/1/00 |
| MI 3 | COLEMAN, ANTONIO | 298192 | C B 31 | 3 | | 3/17/04 |
| MI 3 | COLLIER, ROBERT | 182535 | C A 23 | 3 | 12/8/03 | 1/5/03 |
| | COLLINS, TIMOTHY | 196721 | S B 5 | 1 | 2/15/00 | 7/24/00 |
| MI 2 | COMMANDER, KEVIN | 280413 | C A 31 | 1 | 1/9/02 | 11/25/02 |
| | CONCEPCION, MARIO | 278285 | E A 30 | 2 | 11/26/01 | 3/1/02 |
| | CONSTANCE, WILLIAM | 110613 | C A 3 | 1 | 6/15/00 | 2/22/01 |
| | CONYERS, ANTHONY | 260100 | C 0 | 1 | 11/4/99 | 4/1/00 |
| | COOK, DARRELL | 228677 | E A 27 | 2 | 4/19/02 | 4/25/02 |
| MI 2 | COOPER, KAMATHENE | 145333 | C A 9 | 1 | 8/10/01 | 6/24/04 |
| | COOPER, MATTHEW | 258323 | C B 45 | 1 | 6/29/01 | 7/15/02 |
| | CORBITT, ROY | 197503 | C B 30 | 1 | 9/13/99 | 4/25/01 |
| MI 3 | CORLEY, FRANK | 292975 | C A 26 | 1 | 12/8/03 | 6/24/04 |
| | COUNCIL, THOMAS | 269534 | E B 13 | 1 | 6/7/01 | 6/19/01 |
| | COWARD, STANLEY | 243320 | C A 27 | 2 | 8/17/01 | 3/22/02 |
| | COWICK, RICHARD | 199122 | C B 11 | 1 | 9/22/00 | 5/24/01 |
| | COWLING, ANTHONY | 222026 | C B 36 | 1 | 3/21/00 | 6/20/00 |
| | CRAFT, DAVID | 226320 | C X 0 | 1 | 11/10/99 | 2/22/00 |
| | CRAIN, DONALD | 145253 | C 0 | 1 | 12/5/99 | 4/19/00 |
| | CRIPPEN, SHAWN | 280889 | S B 35 | 1 | 1/18/02 | 3/13/02 |
| MI 3 | CROCKER, TERRY | 296514 | S A 30 | 1 | 3/17/04 | 3/19/04 |
| | CROLLEY, MICHAEL | 259198 | C B 17 | 1 | 11/3/99 | 8/23/00 |
| MI 3 | CRUZ, G | 250136 | C A 0 | 0 | | 10/11/99 |
| | CUDD, JASON | 240049 | E A 6 | 2 | 3/22/02 | 4/1/02 |
| MI 3 | CUMMINGS, GLADSTONE | 267450 | C A 47 | 1 | 7/17/00 | 6/16/03 |
| MI 3 | CURTIS, CLIFTON | 252356 | S B 39 | 2 | 8/26/02 | 11/14/02 |
| | CURTIS, PATRICK | 175139 | C A 18 | 2 | 10/4/01 | 3/22/02 |
| | DAISE, BENJAMIN | 219089 | M X 0 | 2 | 1/12/00 | 12/18/01 |
| MI 2 | DALY, LORENZO | 120387 | C B 1 | 1 | 3/2/01 | 5/2/03 |
| | DANGERFIELD, HERMAN | 280334 | S B 60 | 1 | 1/14/02 | 3/12/02 |
| MI 3 | DANIELS, B | 253205 | C A 0 | 0 | | 12/20/99 |
| MI 2 | DANIELS, CECIL | 249013 | C B 29 | 1 | 6/1/01 | 9/30/02 |
| | DANIELS, DONELL | 235471 | A B 10 | 1 | 5/1/01 | 5/11/01 |
| MI 3 | DANIELS, J | 261493 | C A 0 | 0 | | 12/20/99 |
| MI 3 | DANIELS, QUINTIN | 196284 | C B 45 | 1 | 3/23/02 | 6/24/04 |
| MI 2 | DAVIS, BRUCE | 254740 | C B 33 | 2 | 3/29/00 | 10/7/02 |
| | DAVIS, CURTIS | 238776 | C B 64 | 1 | 10/17/00 | 6/19/02 |
| | DAVIS, FITZGERALD | 242856 | C 0 | 1 | 10/13/99 | 5/8/00 |
| | DAVIS, GARY | 106144 | A A 9 | 1 | 8/2/01 | 11/15/01 |
| | DAVIS, GREGORY | 235247 | M X 0 | 0 | 1/6/00 | 12/10/01 |
| | DAVIS, JOSEPH | 266394 | S B 54 | 1 | 6/27/00 | 9/13/00 |
| | DAVIS, LEON | 259350 | M X 0 | 2 | 7/28/00 | 12/8/00 |
| | DAVIS, SETH | 276961 | C B 27 | 2 | 8/17/01 | 3/26/02 |

PLAINTIFF'S EXHIBIT A

1881

A - 0779
June 2004

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

1882

A - 0081
June 2004

00021

Ackerman 5-6-11 1520

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PLAINTIFF'S EXHIBIT C
1883

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 228677 | COOK | DARRELL | | 20011008 | 0.50 | 133.34 | 66.67 |
| 228677 | COOK | DARRELL | | 20020506 | 0.50 | 12.37 | 6.18 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20010827 | 0.50 | 77.14 | 38.57 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20010910 | 0.50 | 66.20 | 33.10 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20010924 | 0.50 | 70.59 | 35.29 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20011008 | 0.50 | 123.77 | 61.88 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20011022 | 0.50 | 113.93 | 56.96 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20011105 | 0.50 | 100.66 | 50.33 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20011119 | 0.50 | 92.15 | 46.07 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20011203 | 0.50 | 100.63 | 50.31 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20011217 | 0.50 | 127.73 | 63.86 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20011231 | 0.50 | 71.93 | 35.96 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020114 | 0.50 | 84.18 | 42.09 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020128 | 0.50 | 91.42 | 45.71 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020211 | 0.50 | 128.27 | 64.13 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020225 | 0.50 | 177.88 | 88.94 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020311 | 0.50 | 109.31 | 54.65 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020325 | 0.50 | 138.53 | 69.26 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020408 | 0.50 | 118.27 | 59.13 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020422 | 0.50 | 129.72 | 64.86 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020506 | 0.50 | 138.60 | 69.30 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020520 | 0.50 | 143.19 | 71.59 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020603 | 0.50 | 144.35 | 72.17 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020617 | 0.50 | 165.08 | 82.54 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020701 | 0.50 | 136.17 | 68.08 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020715 | 0.50 | 108.85 | 54.42 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020729 | 0.50 | 88.28 | 44.14 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020812 | 0.50 | 131.67 | 65.83 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020826 | 0.50 | 133.58 | 66.79 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020909 | 0.50 | 145.58 | 72.79 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20020923 | 0.50 | 174.35 | 87.17 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20021007 | 0.50 | 182.33 | 91.16 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20021021 | 0.50 | 192.90 | 96.45 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20021104 | 0.50 | 159.76 | 79.88 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20021118 | 0.50 | 134.88 | 67.44 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20021202 | 0.50 | 109.14 | 54.57 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20021216 | 0.50 | 139.73 | 69.86 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20021230 | 0.50 | 96.50 | 48.25 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030113 | 0.50 | 114.24 | 57.12 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030127 | 0.50 | 125.46 | 62.73 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030210 | 0.50 | 127.50 | 63.75 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030224 | 0.50 | 136.83 | 68.41 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030310 | 0.50 | 122.03 | 61.01 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030324 | 0.50 | 124.56 | 62.28 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030407 | 0.50 | 126.70 | 63.35 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030421 | 0.50 | 125.89 | 62.94 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030505 | 0.50 | 93.28 | 46.64 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030519 | 0.50 | 135.40 | 67.70 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030602 | 0.50 | 112.44 | 56.22 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030616 | 0.50 | 134.20 | 67.10 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030630 | 0.50 | 124.22 | 62.11 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030714 | 0.50 | 112.59 | 56.29 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030728 | 0.50 | 121.84 | 60.92 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030811 | 0.50 | 122.37 | 61.18 |

PLAINTIFF'S EXHIBIT

1884

A - 1033
June 2004

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 145333 | COOPER | KAMATHENE | ADONIA | 20030825 | 0.50 | 123.59 | 61.79 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030908 | 0.50 | 117.22 | 58.61 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20030922 | 0.50 | 131.99 | 65.99 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20031006 | 0.50 | 128.92 | 64.46 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20031020 | 0.50 | 128.34 | 64.17 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20031103 | 0.50 | 129.82 | 64.91 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20031117 | 0.50 | 135.61 | 67.80 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20031201 | 0.50 | 113.04 | 56.52 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20031215 | 0.50 | 120.91 | 60.45 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20031229 | 0.50 | 118.00 | 59.00 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040112 | 0.50 | 138.69 | 69.34 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040126 | 0.50 | 120.19 | 60.09 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040209 | 0.50 | 136.32 | 68.16 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040223 | 0.50 | 151.31 | 75.65 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040308 | 0.50 | 134.87 | 67.43 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040322 | 0.50 | 145.99 | 72.99 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040405 | 0.50 | 131.71 | 65.85 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040419 | 0.50 | 123.66 | 61.83 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040503 | 0.50 | 132.79 | 66.39 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040517 | 0.50 | 124.44 | 62.22 |
| 145333 | COOPER | KAMATHENE | ADONIA | 20040531 | 0.50 | 136.63 | 68.31 |
| 258323 | COOPER | MATTHEW | PARKER | 20000717 | 0.50 | 40.58 | 20.29 |
| 258323 | COOPER | MATTHEW | PARKER | 20000731 | 0.50 | 45.49 | 22.74 |
| 258323 | COOPER | MATTHEW | PARKER | 20000814 | 0.50 | 42.13 | 21.06 |
| 258323 | COOPER | MATTHEW | PARKER | 20000828 | 0.50 | 74.63 | 37.31 |
| 258323 | COOPER | MATTHEW | PARKER | 20000911 | 0.50 | 59.53 | 29.76 |
| 258323 | COOPER | MATTHEW | PARKER | 20000925 | 0.50 | 66.70 | 33.35 |
| 258323 | COOPER | MATTHEW | PARKER | 20001009 | 0.50 | 41.35 | 20.67 |
| 258323 | COOPER | MATTHEW | PARKER | 20001023 | 0.50 | 82.07 | 41.03 |
| 258323 | COOPER | MATTHEW | PARKER | 20001106 | 0.50 | 90.55 | 45.27 |
| 258323 | COOPER | MATTHEW | PARKER | 20001120 | 0.50 | 67.47 | 33.73 |
| 258323 | COOPER | MATTHEW | PARKER | 20001204 | 0.50 | 50.54 | 25.27 |
| 258323 | COOPER | MATTHEW | PARKER | 20001218 | 0.50 | 75.72 | 37.86 |
| 258323 | COOPER | MATTHEW | PARKER | 20010101 | 0.50 | 17.55 | 8.77 |
| 258323 | COOPER | MATTHEW | PARKER | 20010115 | 0.50 | 51.60 | 25.80 |
| 258323 | COOPER | MATTHEW | PARKER | 20010129 | 0.50 | 89.17 | 44.58 |
| 258323 | COOPER | MATTHEW | PARKER | 20010212 | 0.50 | 50.22 | 25.11 |
| 258323 | COOPER | MATTHEW | PARKER | 20010226 | 0.50 | 55.02 | 27.51 |
| 258323 | COOPER | MATTHEW | PARKER | 20010312 | 0.50 | 24.03 | 12.01 |
| 258323 | COOPER | MATTHEW | PARKER | 20010716 | 0.50 | 41.22 | 20.61 |
| 258323 | COOPER | MATTHEW | PARKER | 20010730 | 0.50 | 51.99 | 25.99 |
| 258323 | COOPER | MATTHEW | PARKER | 20010813 | 0.50 | 51.91 | 25.95 |
| 258323 | COOPER | MATTHEW | PARKER | 20010827 | 0.50 | 62.15 | 31.07 |
| 258323 | COOPER | MATTHEW | PARKER | 20010910 | 0.50 | 59.60 | 29.80 |
| 258323 | COOPER | MATTHEW | PARKER | 20010924 | 0.50 | 100.10 | 50.05 |
| 258323 | COOPER | MATTHEW | PARKER | 20011008 | 0.50 | 102.86 | 51.43 |
| 258323 | COOPER | MATTHEW | PARKER | 20011022 | 0.50 | 81.88 | 40.94 |
| 258323 | COOPER | MATTHEW | PARKER | 20011105 | 0.50 | 77.60 | 38.80 |
| 258323 | COOPER | MATTHEW | PARKER | 20011119 | 0.50 | 67.40 | 33.70 |
| 258323 | COOPER | MATTHEW | PARKER | 20011203 | 0.50 | 13.62 | 6.81 |
| 258323 | COOPER | MATTHEW | PARKER | 20011217 | 0.50 | 24.22 | 12.11 |
| 258323 | COOPER | MATTHEW | PARKER | 20011231 | 0.50 | 45.34 | 22.67 |
| 258323 | COOPER | MATTHEW | PARKER | 20020114 | 0.50 | 56.21 | 28.10 |
| 258323 | COOPER | MATTHEW | PARKER | 20020128 | 0.50 | 51.35 | 25.67 |

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

1886

PLAINTIFF'S EXHIBIT H

# RESUME-3/03
# Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Kamathere Adonia Cooper
SCDC NUMBER: 145333
INSTITUTION: Lieber Correctional Institution
HOUSING UNIT: Cooper Unit Room A-9
WORK ASSIGNMENT: P.I. #2 Transmission Plant

NOV 04 2004
PP

Office Use Only
Grievance No. LCI 0788-04
Code: General MU
Policy
Disc. Hear.
Class.
Date Received NOV 03 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wickers do require payment of prevailing wages. Grievant were employed by WTI, and SCDC was WTI "Agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C. Code 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and Attorney Douglas Westbrook on September 22, 2004

Kamathere A. Cooper — 11-2-04
Grievant Signature — Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature — 5-14-07
Date

Kamathere A. Cooper

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Kamathere A. Cooper — 5/22/07
Grievant Signature — Date

IGC Signature — 5/22/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-EA (November 1999)

1889

COOPER LCI-0788-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 10, 2001 and that, as of the date of this response, you are still participating in this project.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over three (3) years after SCDC first paid you for your participation in the project located at Lieber and more than 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Kamathene Cooper, #145333, Appellant, | ) | |
| vs. | ) | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | ) | DOCKET NO. 07__-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Kamathene Cooper does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Kamathene Cooper
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

Signed
5-30-07
Dated
Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1893

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| KAMATHENE COOPER, #145333 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

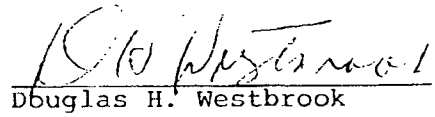
I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201



Douglas H. Westbrook

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Frank Corley INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: individually, and on behalf of all inmate employees (IE's) listed on attached Exh. A *

SCDC NUMBER: 292975

INSTITUTION: Lieber Corr Insti

HOUSING UNIT: Cooper A-26 ✓

WORK ASSIGNMENT: P-I 2

Office Use Only

Grievance No. Lieber0723-04

Code: General MM

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-43( to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 f 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Liebe were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 837.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits docume a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and empl ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F)

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the fu ture; all as determined from Exhibits A-H; and the time cards, pay stubs, a other records for class members shown to IE's counsel July 20, 2004 at Liebe in Jack Staudt's custody. IE's also request pre/post judgment interest, cos and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's ha verbally requested WTI/Lieber to pay them prevailing wages. Darrell William in 2001 formally protested the improper wages, and filed a grievance which w dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Will et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certif a class action representing the class identified in Exh. A. On August 23, 2 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Frank Corley 9/27/0

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

L Carter 10/28/04

IGC Signature Date

N/A

Grievant Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

SCDC 10.5/Rev. November 1997

1895

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11/3/04

IGC Signature Date 11/3/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1896

Jim J. Corley #292975 LCI0723-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

1858

AMENDMENT TO GRIEVANCE OF FRANK CORLEY, #292975

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 1021.83 plus hours* in 7-1-01 to present at $4 per hour; less wages paid; §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1036; H, 1-3.

* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1899

AMENDMENT TO GRIEVANCE OF FRANK CORLEY, #292975

Grievant was/is employed in the Williams Tech/Lieber [illegible] Industries/Private Sector Program for the provision of [illegible] The Program was established under S.C. Code §24-3-310, [illegible] 1999 to July 2001, §24-3-430 required WTI/Lieber to pay [illegible] the prevailing wage for work of similar nature in the [illegible] tor. The prevailing wage was $8.40/$10.97 for 1999, [illegible] for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. [illegible] grievances filed by Darrell Williams and counsel 9-2[illegible] porated herein by reference).* Since July 2001, WTI/[illegible] quired to pay Grievant the negotiated wage of $4/hour ([illegible] No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a [illegible] imum of about $1/hour, and usually less. Exhibits document a [illegible] per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. [illegible]); [illegible] 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for [illegible] (Exh. F). SCDC states rates/hours in Exh. F are incorrect after certain date, however, as an SCDC document Exh. F should [illegible] prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for [illegible] hours in [illegible] at $9.68 per hour; [illegible] hours in 2000 at $10.[illegible] per hour; [illegible] hours in 1-1-01 to 6-30-01 at $11.08 per hour; an[illegible] 1021.83 plus [illegible] hours* in 7-1-01 to present at $4 per hour, less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus [illegible] erest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1036; [illegible]

* An hours "plus" figure here means Grievant may have [illegible] the latest date in Exh. F, June 2004, requiring additional [illegible]

1900

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | COHEN, WILLIE | 257033 | C B 41 | 1 | 10/1/99 | 3/28/01 |
| N MI 3 | COLBERT, RASCHAUN | 299840 | E B 37 | 1 | 4/22/04 | 5/13/04 |
| N | COLE, MAURICE | 236789 | C 0 | 1 | 3/21/00 | 5/1/00 |
| N MI 3 | COLEMAN, ANTONIO | 298192 | C B 31 | 3 | | 3/17/04 |
| N MI 3 | COLLIER, ROBERT | 182535 | C A 23 | 3 | 12/8/03 | 1/5/03 |
| N | COLLINS, TIMOTHY | 196721 | S B 5 | 1 | 2/15/00 | 7/24/00 |
| L MI 2 | COMMANDER, KEVIN | 280413 | C A 31 | 1 | 1/9/02 | 11/25/02 |
| | CONCEPCION, MARIO | 278285 | E A 30 | 2 | 11/26/01 | 3/1/02 |
| N | CONSTANCE, WILLIAM | 110613 | C A 3 | 1 | 6/15/00 | 2/22/01 |
| | CONYERS, ANTHONY | 260100 | C 0 | 1 | 11/4/99 | 4/1/00 |
| | COOK, DARRELL | 228677 | E A 27 | 2 | 4/19/02 | 4/25/02 |
| L MI 2 | COOPER, KAMATHENE | 145333 | C A 9 | 1 | 8/10/01 | 6/24/04 |
| L | COOPER, MATTHEW | 258323 | C B 45 | 1 | 6/29/01 | 7/15/02 |
| | CORBITT, ROY | 197503 | C B 30 | 1 | 9/13/99 | 4/25/01 |
| N MI 3 | CORLEY, FRANK | 292975 | C A 26 | 1 | 12/8/03 | 6/24/04 |
| N | COUNCIL, THOMAS | 269534 | E B 13 | 1 | 6/7/01 | 6/19/01 |
| | COWARD, STANLEY | 243320 | C A 27 | 2 | 8/17/01 | 3/22/02 |
| N | COWICK, RICHARD | 199122 | C B 11 | 1 | 9/22/00 | 5/24/01 |
| | COWLING, ANTHONY | 222026 | C B 36 | 1 | 3/21/00 | 6/20/00 |
| | CRAFT, DAVID | 226320 | C X 0 | 1 | 11/10/99 | 2/22/00 |
| N | CRAIN, DONALD | 145253 | C 0 | 1 | 12/5/99 | 4/19/00 |
| | CRIPPEN, SHAWN | 280889 | S B 35 | 1 | 1/18/02 | 3/13/02 |
| N MI 3 | CROCKER, TERRY | 296514 | S A 30 | 1 | 3/17/04 | 3/19/04 |
| N | CROLLEY, MICHAEL | 259198 | C B 17 | 1 | 11/3/99 | 8/23/00 |
| MI 3 | CRUZ, G | 250136 | C A 0 | 0 | | 10/11/99 |
| N | CUDD, JASON | 240049 | E A 6 | 2 | 3/22/02 | 4/1/02 |
| L MI 3 | CUMMINGS, GLADSTONE | 267450 | C A 47 | 1 | 7/17/00 | 6/16/03 |
| L MI 3 | CURTIS, CLIFTON | 252356 | S B 39 | 2 | 8/26/02 | 11/14/02 |
| L | CURTIS, PATRICK | 175139 | C A 18 | 2 | 10/4/01 | 3/22/02 |
| N | DAISE, BENJAMIN | 219089 | M X 0 | 2 | 1/12/00 | 12/18/01 |
| L MI 2 | DALY, LORENZO | 120387 | C B 1 | 1 | 3/2/01 | 5/2/03 |
| N | DANGERFIELD, HERMAN | 280334 | S B 60 | 1 | 1/14/02 | 3/12/02 |
| N MI 3 | DANIELS, B | 253205 | C A 0 | 0 | | 12/20/99 |
| L MI 2 | DANIELS, CECIL | 249013 | C B 29 | 1 | 6/1/01 | 9/30/02 |
| N | DANIELS, DONELL | 235471 | A B 10 | 1 | 5/1/01 | 5/11/01 |
| MI 3 | DANIELS, J | 261493 | C A 0 | 0 | | 12/20/99 |
| L MI 3 | DANIELS, QUINTIN | 196284 | C B 45 | 1 | 3/23/02 | 6/24/04 |
| L MI 2 | DAVIS, BRUCE | 254740 | C B 33 | 2 | 3/29/00 | 10/7/02 |
| N I | DAVIS, CURTIS | 238776 | C B 64 | 1 | 10/17/00 | 6/19/02 |
| N | DAVIS, FITZGERALD | 242856 | C 0 | 1 | 10/13/99 | 5/8/00 |
| N I | DAVIS, GARY | 106144 | A A 9 | 1 | 8/2/01 | 11/15/01 |
| N | DAVIS, GREGORY | 235247 | M X 0 | 0 | 1/6/00 | 12/10/01 |
| | DAVIS, JOSEPH | 266394 | S B 54 | 1 | 6/27/00 | 9/13/00 |
| N | DAVIS, LEON | 259350 | M X 0 | 2 | 7/28/00 | 12/8/00 |
| | DAVIS, SETH | 276961 | C B 27 | 2 | 8/17/01 | 3/26/02 |

PLAINTIFF'S EXHIBIT 4

A - 0779
June 2004

1901

[illegible] TH CAROLINA )

LEASE

[illegible] CHLAND )

[illegible] T is entered into this 30th day of September, [illegible] between the South Carolina Department of Corrections (hereinafter [illegible] "SCDC") by its duly authorized agent Michael W. Moore, Director and [illegible] chnologies, Inc., (hereafter referred to as "Williams") by its duly [illegible] gent William S. Williams, Chairman.

[illegible] rison Industries is a division of the South Carolina Department of [illegible] charged with establishing business relationships with private [illegible] as to fulfill the intent of Section 24-3-310 Code of Laws of South [illegible] 76 as amended; and has all necessary authorization to enter into this [illegible] nd to bind the State of South Carolina to all the terms contained [illegible]

[illegible] lliams represents and warrants that it is a duly qualified South [illegible] corporation, licensed to conduct business in South Carolina; and,

[illegible] Williams intends to engage in the business of disassembly and/or [illegible] manufacturing of its product lines at Lieber Correctional Institution [illegible] referred to as "LCI"); and ,

[illegible] this agreement is made in the best interest of the State of South [illegible]

[illegible], THEREFORE, the parties hereto do agree as follows:

[illegible] General:

[illegible] consideration of Williams' expenditures to construct on behalf of the [illegible] of South Carolina a building of up to 45,000 square feet on the LCI [illegible] (the "Building") , SCDC hereby enters into this Agreement to [illegible] Williams to use such Building and related premises during the term [illegible] in accordance with the provisions of this Agreement. The State [illegible] er's approval of all building plans is required. Attachment A [illegible] shall indicate the location of the Building and the related [illegible] es, which shall include circulation space for delivery and shipping [illegible] tractor-trailers, parking outside of the secured area sufficient for [illegible] inimum of six (6) trailers and access to the facility via access roads. [illegible] shall be responsible for maintenance of such roadways and related [illegible]

[illegible] Building shall be constructed according to plans approved by the state [illegible] accordance with all applicable federal and state and local rules and [illegible] ulations and SCDC security requirements. The State Engineer's approval [illegible] all building plans is required. The cost of the Building (excluding [illegible] personal property located in the Building such as furnishings and [illegible] quipment) is estimated to be $ 1,200,000 [illegible] Within 90 days of [illegible] completion of the Building, Williams shall provide to SCDC documentation [illegible] the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

1902

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 197503 | CORBITT | ROY | - | 20000619 | 0.65 | 75.00 | 48.75 |
| 197503 | CORBITT | ROY | - | 20000619 | 0.75 | 22.30 | 16.72 |
| 197503 | CORBITT | ROY | - | 20000703 | 0.65 | 60.00 | 39.00 |
| 197503 | CORBITT | ROY | - | 20000703 | 0.75 | 50.18 | 37.63 |
| 197503 | CORBITT | ROY | - | 20000703 | 0.35 | 4.70 | 1.64 |
| 197503 | CORBITT | ROY | - | 20000703 | 0.25 | 18.33 | 4.58 |
| 197503 | CORBITT | ROY | - | 20000717 | 0.50 | 110.69 | 55.34 |
| 197503 | CORBITT | ROY | - | 20000731 | 0.50 | 158.13 | 79.06 |
| 197503 | CORBITT | ROY | - | 20000814 | 0.50 | 96.72 | 48.36 |
| 197503 | CORBITT | ROY | - | 20000828 | 0.50 | 110.81 | 55.40 |
| 197503 | CORBITT | ROY | - | 20000911 | 0.50 | 90.83 | 45.41 |
| 197503 | CORBITT | ROY | - | 20000925 | 0.50 | 119.11 | 59.55 |
| 197503 | CORBITT | ROY | - | 20001009 | 0.50 | 120.92 | 60.46 |
| 197503 | CORBITT | ROY | - | 20001023 | 0.50 | 175.06 | 87.53 |
| 197503 | CORBITT | ROY | - | 20001106 | 0.50 | 156.75 | 78.37 |
| 197503 | CORBITT | ROY | - | 20001120 | 0.50 | 100.71 | 50.35 |
| 197503 | CORBITT | ROY | - | 20001204 | 0.50 | 104.18 | 52.09 |
| 197503 | CORBITT | ROY | - | 20001218 | 0.50 | 155.50 | 77.75 |
| 197503 | CORBITT | ROY | - | 20010101 | 0.50 | 53.59 | 26.79 |
| 197503 | CORBITT | ROY | - | 20010115 | 0.50 | 100.24 | 50.12 |
| 197503 | CORBITT | ROY | - | 20010129 | 0.50 | 108.81 | 54.40 |
| 197503 | CORBITT | ROY | - | 20010212 | 0.50 | 114.97 | 57.48 |
| 197503 | CORBITT | ROY | - | 20010226 | 0.50 | 96.83 | 48.41 |
| 197503 | CORBITT | ROY | - | 20010312 | 0.50 | 136.89 | 68.44 |
| 197503 | CORBITT | ROY | - | 20010326 | 0.50 | 140.85 | 70.42 |
| 197503 | CORBITT | ROY | - | 20010409 | 0.50 | 153.56 | 76.78 |
| 197503 | CORBITT | ROY | - | 20010423 | 0.50 | 134.46 | 67.23 |
| 292975 | CORLEY | FRANK | | 20030714 | 0.50 | 11.06 | 5.53 |
| 292975 | CORLEY | FRANK | | 20030728 | 0.50 | 45.84 | 22.92 |
| 292975 | CORLEY | FRANK | | 20031215 | 0.50 | 19.30 | 9.65 |
| 292975 | CORLEY | FRANK | | 20031229 | 0.50 | 45.44 | 22.72 |
| 292975 | CORLEY | FRANK | | 20040112 | 0.50 | 21.11 | 10.55 |
| 292975 | CORLEY | FRANK | | 20040126 | 0.50 | 57.55 | 28.77 |
| 292975 | CORLEY | FRANK | | 20040209 | 0.50 | 68.58 | 34.29 |
| 292975 | CORLEY | FRANK | | 20040223 | 0.50 | 106.47 | 53.23 |
| 292975 | CORLEY | FRANK | | 20040308 | 0.50 | 110.13 | 55.06 |
| 292975 | CORLEY | FRANK | | 20040322 | 0.50 | 113.21 | 56.60 |
| 292975 | CORLEY | FRANK | | 20040405 | 0.50 | 98.60 | 49.30 |
| 292975 | CORLEY | FRANK | | 20040419 | 0.50 | 87.68 | 43.84 |
| 292975 | CORLEY | FRANK | | 20040503 | 0.50 | 82.13 | 41.06 |
| 292975 | CORLEY | FRANK | | 20040517 | 0.50 | 85.35 | 42.67 |
| 292975 | CORLEY | FRANK | | 20040531 | 0.50 | 69.38 | 34.69 |
| 260121 | CORNELIUS | TYMAINE | | 20000703 | 0.35 | 6.83 | 2.39 |
| 269534 | COUNCIL | THOMAS | | 20010618 | 0.50 | 23.96 | 11.98 |
| 243320 | COWARD | STANLEY | | 20010910 | 0.50 | 47.25 | 23.62 |
| 243320 | COWARD | STANLEY | | 20010924 | 0.50 | 48.51 | 24.25 |
| 243320 | COWARD | STANLEY | | 20011008 | 0.50 | 50.69 | 25.34 |
| 243320 | COWARD | STANLEY | | 20011022 | 0.50 | 42.70 | 21.35 |
| 243320 | COWARD | STANLEY | | 20011105 | 0.50 | 80.22 | 40.11 |
| 243320 | COWARD | STANLEY | | 20011119 | 0.50 | 37.89 | 18.94 |
| 243320 | COWARD | STANLEY | | 20011203 | 0.50 | 30.33 | 15.16 |
| 243320 | COWARD | STANLEY | | 20011217 | 0.50 | 64.26 | 32.13 |
| 243320 | COWARD | STANLEY | | 20011231 | 0.50 | 14.72 | 7.36 |
| 243320 | COWARD | STANLEY | | 20020114 | 0.50 | 26.25 | 13.12 |

PLAINTIFF'S EXHIBIT F

A - 1036
June 2004

1904

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

1905

PLAINTIFF'S EXHIBIT H

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

**NON-ACADEMIC EXPERIENCE**

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

**PUBLICATIONS**

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Frank J. CORLEY
SCDC NUMBER: 292975 NOV 08 2004
INSTITUTION: Lieber Corrections Inst. PP
HOUSING UNIT: Cooper A-26
WORK ASSIGNMENT: P.I 2

Office Use Only
Grievance No. LCI 0723-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins & Wicker do require payment of prevailing wages. Grievants were employed by W.T.I. and S.C.D.C was W.T.I.'s "Agent" in paying our wages. Adkins & Wicker further allows this issue of payment of wages under S.C. Code 24-3-430 to be grieved pursuant to S.C.D.C Grievance procedures. Grievants incorporate by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 8-22-04.

Frank J Corley 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Frank J Corley 6/8/07 Christel Wilson 6/8/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

1908

SCDC 10-5A (November 1997)

Ackerman 5-6-11 1546

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

1509

CORLEY L CI-0723-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on December 8, 2003 and that your participation in this project ended on April 4, 2005.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over nine (9) months after SCDC first paid you for your participation in the project located at Lieber and more than 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Frank J. Corley, #292975<br><br>Appellant,<br><br>vs.<br><br>South Carolina Department of Corrections,<br><br>Respondent. | ) | NOTICE OF APPEAL<br><br>DOCKET NO. 07 -ALJ-04-<br>GRIEVANCE NO.: |

Notice is hereby given that Frank J. Corley does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 6-8-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy
8. Appellant claims pre/post judgment interest, costs and attorney fees

Frank J. Corley
Appellant's Name

Manning C.I.
502 Beckman Dr.
Mailing Address

Columbia, SC 29203
City, State, Zip Code

none
Telephone Number

D H Westbrook
Signed

6-19-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1913

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| FRANK CORLEY, #292975 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 20th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

1914

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

GLADSTONE CUMMINGS INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: individually, and on behalf of all inmate employees (IE's) listed on attached Exh. A *

SCDC NUMBER: 267450

INSTITUTION: Lieber

HOUSING UNIT: Cooper A-47

WORK ASSIGNMENT: DORM

Office Use Only

Grievance No. Lieber 0757-04

Code: General DM

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 f 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits docume a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 3 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and empl ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F)

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate f 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the fu ture; all as determined from Exhibits A-H; and the time cards, pay stubs, ar other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, cost and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's hav verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which wa dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willi et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifi a class action representing the class identified in Exh. A. On August 23, 2C the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Cummings 9-27-0

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carter 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

N/A

Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 1915

(CONTINUED ON REVERSE SIDE)

Ackerman 5-6-11 1553

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 11-02-04 Date

IGC Signature 11-2-04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1916

JM Cummings, # 267450 LCI 0751-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

19/7

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

1918

AMENDMENT TO GRIEVANCE OF GLADSTONE CUMMINGS, #267450

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 464.92 hours in 2000 at $10.66 per hour; 1148.80 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 6048.69 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Cummings 2-4-06

(Grievant Signature) (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1038-1040; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1515

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | COHEN, WILLIE | 257033 | C B 41 | 1 | 10/1/99 | 3/28/01 |
| MI 3 | COLBERT, RASCHAUN | 299840 | E B 37 | 1 | 4/22/04 | 5/13/04 |
| | COLE, MAURICE | 236789 | C 0 | 1 | 3/21/00 | 5/1/00 |
| MI 3 | COLEMAN, ANTONIO | 298192 | C B 31 | 3 | | 3/17/04 |
| MI 3 | COLLIER, ROBERT | 182535 | C A 23 | 3 | 12/8/03 | 1/5/03 |
| | COLLINS, TIMOTHY | 196721 | S B 5 | 1 | 2/15/00 | 7/24/00 |
| MI 2 | COMMANDER, KEVIN | 280413 | C A 31 | 1 | 1/9/02 | 11/25/02 |
| | CONCEPCION, MARIO | 278285 | E A 30 | 2 | 11/26/01 | 3/1/02 |
| | CONSTANCE, WILLIAM | 110613 | C A 3 | 1 | 6/15/00 | 2/22/01 |
| | CONYERS, ANTHONY | 260100 | C 0 | 1 | 11/4/99 | 4/1/00 |
| | COOK, DARRELL | 228677 | E A 27 | 2 | 4/19/02 | 4/25/02 |
| MI 2 | COOPER, KAMATHENE | 145333 | C A 9 | 1 | 8/10/01 | 6/24/04 |
| | COOPER, MATTHEW | 258323 | C B 45 | 1 | 6/29/01 | 7/15/02 |
| | CORBITT, ROY | 197503 | C B 30 | 1 | 9/13/99 | 4/25/01 |
| MI 3 | CORLEY, FRANK | 292975 | C A 26 | 1 | 12/8/03 | 6/24/04 |
| | COUNCIL, THOMAS | 269534 | E B 13 | 1 | 6/7/01 | 6/19/01 |
| | COWARD, STANLEY | 243320 | C A 27 | 2 | 8/17/01 | 3/22/02 |
| | COWICK, RICHARD | 199122 | C B 11 | 1 | 9/22/00 | 5/24/01 |
| | COWLING, ANTHONY | 222026 | C B 36 | 1 | 3/21/00 | 6/20/00 |
| | CRAFT, DAVID | 226320 | C X 0 | 1 | 11/10/99 | 2/22/00 |
| | CRAIN, DONALD | 145253 | C 0 | 1 | 12/5/99 | 4/19/00 |
| | CRIPPEN, SHAWN | 280889 | S B 35 | 1 | 1/18/02 | 3/13/02 |
| MI 3 | CROCKER, TERRY | 296514 | S A 30 | 1 | 3/17/04 | 3/19/04 |
| | CROLLEY, MICHAEL | 259198 | C B 17 | 1 | 11/3/99 | 8/23/00 |
| MI 3 | CRUZ, G | 250136 | C A 0 | 0 | | 10/11/99 |
| | CUDD, JASON | 240049 | E A 6 | 2 | 3/22/02 | 4/1/02 |
| MI 3 | CUMMINGS, GLADSTONE | 267450 | C A 47 | 1 | 7/17/00 | 6/16/03 |
| MI 3 | CURTIS, CLIFTON | 252356 | S B 39 | 2 | 8/26/02 | 11/14/02 |
| | CURTIS, PATRICK | 175139 | C A 18 | 2 | 10/4/01 | 3/22/02 |
| | DAISE, BENJAMIN | 219089 | M X 0 | 2 | 1/12/00 | 12/18/01 |
| MI 2 | DALY, LORENZO | 120387 | C B 1 | 1 | 3/2/01 | 5/2/03 |
| | DANGERFIELD, HERMAN | 280334 | S B 60 | 1 | 1/14/02 | 3/12/02 |
| MI 3 | DANIELS, B | 253205 | C A 0 | 0 | | 12/20/99 |
| MI 2 | DANIELS, CECIL | 249013 | C B 29 | 1 | 6/1/01 | 9/30/02 |
| | DANIELS, DONELL | 235471 | A B 10 | 1 | 5/1/01 | 5/11/01 |
| MI 3 | DANIELS, J | 261493 | C A 0 | 0 | | 12/20/99 |
| MI 3 | DANIELS, QUINTIN | 196284 | C B 45 | 1 | 3/23/02 | 6/24/04 |
| MI 2 | DAVIS, BRUCE | 254740 | C B 33 | 2 | 3/29/00 | 10/7/02 |
| | DAVIS, CURTIS | 238776 | C B 64 | 1 | 10/17/00 | 6/19/02 |
| | DAVIS, FITZGERALD | 242856 | C 0 | 1 | 10/13/99 | 5/8/00 |
| | DAVIS, GARY | 106144 | A A 9 | 1 | 8/2/01 | 11/15/01 |
| | DAVIS, GREGORY | 235247 | M X 0 | 0 | 1/6/00 | 12/10/01 |
| | DAVIS, JOSEPH | 266394 | S B 54 | 1 | 6/27/00 | 9/13/00 |
| | DAVIS, LEON | 259350 | M X 0 | 2 | 7/28/00 | 12/8/00 |
| | DAVIS, SETH | 276961 | C B 27 | 2 | 8/17/01 | 3/26/02 |

PLAINTIFF'S EXHIBIT A

A - 0779
June 2004

1520

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PERGAD-Bergenfield, N. J.
PLAINTIFF'S EXHIBIT
C

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 280889 | CRIPPEN | SHAWN | | 20020311 | 0.50 | 51.24 | 25.62 |
| 280889 | CRIPPEN | SHAWN | | 20020325 | 0.50 | 12.86 | 6.43 |
| 259198 | CROLLEY | MICHAEL | | 20000117 | 0.55 | 7.50 | 4.12 |
| 259198 | CROLLEY | MICHAEL | | 20000117 | 0.50 | 75.00 | 37.50 |
| 259198 | CROLLEY | MICHAEL | | 20000117 | 0.55 | 20.52 | 11.28 |
| 259198 | CROLLEY | MICHAEL | | 20000117 | 0.50 | 15.00 | 7.50 |
| 259198 | CROLLEY | MICHAEL | | 20000117 | 0.55 | 4.00 | 2.20 |
| 259198 | CROLLEY | MICHAEL | | 20000131 | 0.50 | 72.97 | 36.48 |
| 259198 | CROLLEY | MICHAEL | | 20000131 | 0.55 | 15.32 | 8.42 |
| 259198 | CROLLEY | MICHAEL | | 20000214 | 0.50 | 75.00 | 37.50 |
| 259198 | CROLLEY | MICHAEL | | 20000214 | 0.80 | 6.50 | 5.20 |
| 259198 | CROLLEY | MICHAEL | | 20000214 | 0.55 | 26.52 | 14.58 |
| 259198 | CROLLEY | MICHAEL | | 20000214 | 0.55 | 5.50 | 3.02 |
| 259198 | CROLLEY | MICHAEL | | 20000228 | 0.50 | 67.50 | 33.75 |
| 259198 | CROLLEY | MICHAEL | | 20000228 | 0.55 | 31.87 | 17.52 |
| 259198 | CROLLEY | MICHAEL | | 20000228 | 1.05 | 15.00 | 15.75 |
| 259198 | CROLLEY | MICHAEL | | 20000313 | 0.50 | 75.00 | 37.50 |
| 259198 | CROLLEY | MICHAEL | | 20000313 | 0.55 | 17.81 | 9.79 |
| 259198 | CROLLEY | MICHAEL | | 20000313 | 0.55 | 6.50 | 3.57 |
| 259198 | CROLLEY | MICHAEL | | 20000327 | 0.50 | 75.00 | 37.50 |
| 259198 | CROLLEY | MICHAEL | | 20000327 | 0.55 | 20.58 | 11.31 |
| 259198 | CROLLEY | MICHAEL | | 20000327 | 0.80 | 7.50 | 6.00 |
| 259198 | CROLLEY | MICHAEL | | 20000410 | 0.50 | 75.00 | 37.50 |
| 259198 | CROLLEY | MICHAEL | | 20000410 | 0.80 | 15.00 | 12.00 |
| 259198 | CROLLEY | MICHAEL | | 20000424 | 0.50 | 75.00 | 37.50 |
| 259198 | CROLLEY | MICHAEL | | 20000424 | 0.55 | 30.53 | 16.79 |
| 259198 | CROLLEY | MICHAEL | | 20000424 | 0.25 | 12.87 | 3.21 |
| 259198 | CROLLEY | MICHAEL | | 20000508 | 0.50 | 75.00 | 37.50 |
| 259198 | CROLLEY | MICHAEL | | 20000508 | 0.55 | 31.48 | 17.31 |
| 259198 | CROLLEY | MICHAEL | | 20000508 | 0.25 | 15.00 | 3.75 |
| 259198 | CROLLEY | MICHAEL | | 20000522 | 0.50 | 67.50 | 33.75 |
| 259198 | CROLLEY | MICHAEL | | 20000522 | 0.55 | 42.60 | 23.43 |
| 259198 | CROLLEY | MICHAEL | | 20000522 | 0.25 | 23.97 | 5.99 |
| 259198 | CROLLEY | MICHAEL | | 20000605 | 0.50 | 67.50 | 33.75 |
| 259198 | CROLLEY | MICHAEL | | 20000605 | 0.55 | 28.13 | 15.47 |
| 259198 | CROLLEY | MICHAEL | | 20000605 | 0.25 | 14.74 | 3.68 |
| 259198 | CROLLEY | MICHAEL | | 20000703 | 0.65 | 60.00 | 39.00 |
| 259198 | CROLLEY | MICHAEL | | 20000703 | 0.75 | 55.92 | 41.94 |
| 259198 | CROLLEY | MICHAEL | | 20000703 | 0.25 | 23.90 | 5.97 |
| 259198 | CROLLEY | MICHAEL | | 20000717 | 0.50 | 123.66 | 61.83 |
| 259198 | CROLLEY | MICHAEL | | 20000731 | 0.50 | 197.22 | 98.61 |
| 259198 | CROLLEY | MICHAEL | | 20000814 | 0.50 | 117.63 | 58.81 |
| 187085 | CROSS | ELTON | | 20030825 | 0.50 | 125.10 | 62.55 |
| 250136 | CRUZ | GENARO | | 19990927 | 0.35 | 39.50 | 13.82 |
| 250136 | CRUZ | GENARO | | 19990927 | 0.55 | 13.50 | 7.42 |
| 250136 | CRUZ | GENARO | | 19991011 | 0.35 | 13.00 | 4.55 |
| 250136 | CRUZ | GENARO | | 19991011 | 0.55 | 1.50 | 0.82 |
| 240049 | CUDD | WOODROW | JASON | 20020422 | 0.50 | 31.50 | 15.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20001009 | 0.50 | 74.32 | 37.16 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20001023 | 0.50 | 74.97 | 37.48 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20001106 | 0.50 | 74.95 | 37.47 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20001120 | 0.50 | 72.12 | 36.06 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20001204 | 0.50 | 55.28 | 27.64 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20001218 | 0.50 | 77.50 | 38.75 |

PLAINTIFF'S EXHIBIT

1323

A - 1038
June 2004

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010101 | 0.50 | 35.78 | 17.89 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010115 | 0.50 | 59.88 | 29.94 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010129 | 0.50 | 67.30 | 33.65 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010212 | 0.50 | 100.92 | 50.46 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010226 | 0.50 | 94.80 | 47.40 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010312 | 0.50 | 97.50 | 48.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010326 | 0.50 | 96.36 | 48.18 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010409 | 0.50 | 81.55 | 40.77 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010423 | 0.50 | 98.25 | 49.12 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010507 | 0.50 | 95.39 | 47.69 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010521 | 0.50 | 85.02 | 42.51 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010604 | 0.50 | 87.72 | 43.86 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010618 | 0.50 | 96.36 | 48.18 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010702 | 0.50 | 87.75 | 43.87 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010716 | 0.50 | 83.33 | 41.66 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010730 | 0.50 | 108.12 | 54.06 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010813 | 0.50 | 135.95 | 67.97 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010827 | 0.50 | 126.86 | 63.43 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010910 | 0.50 | 113.99 | 56.99 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20010924 | 0.50 | 124.17 | 62.08 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20011008 | 0.50 | 126.28 | 63.14 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20011022 | 0.50 | 112.51 | 56.25 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20011105 | 0.50 | 119.12 | 59.56 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20011119 | 0.50 | 131.64 | 65.82 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20011203 | 0.50 | 97.29 | 48.64 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20011217 | 0.50 | 133.98 | 66.99 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20011231 | 0.50 | 46.61 | 23.30 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020114 | 0.50 | 88.40 | 44.20 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020128 | 0.50 | 102.00 | 51.00 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020211 | 0.50 | 133.80 | 66.90 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020225 | 0.50 | 114.58 | 57.29 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020311 | 0.50 | 125.80 | 62.90 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020325 | 0.50 | 113.90 | 56.95 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020408 | 0.50 | 113.87 | 56.93 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020422 | 0.50 | 124.07 | 62.03 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020506 | 0.50 | 116.14 | 58.07 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020520 | 0.50 | 113.51 | 56.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020603 | 0.50 | 113.85 | 56.92 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020617 | 0.50 | 115.63 | 57.81 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020701 | 0.50 | 127.47 | 63.73 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020715 | 0.50 | 109.53 | 54.76 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020729 | 0.50 | 119.65 | 59.82 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020812 | 0.50 | 132.16 | 66.08 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020826 | 0.50 | 127.12 | 63.56 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020909 | 0.50 | 120.60 | 60.30 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20020923 | 0.50 | 130.10 | 65.05 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20021007 | 0.50 | 130.09 | 65.04 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20021021 | 0.50 | 123.66 | 61.83 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20021104 | 0.50 | 131.98 | 65.99 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20021118 | 0.50 | 125.25 | 62.62 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20021202 | 0.50 | 104.26 | 52.13 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20021216 | 0.50 | 129.79 | 64.89 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20021230 | 0.50 | 64.04 | 32.02 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030113 | 0.50 | 93.15 | 46.57 |

1924

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030127 | 0.50 | 121.91 | 60.95 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030210 | 0.50 | 135.00 | 67.50 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030224 | 0.50 | 121.01 | 60.50 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030310 | 0.50 | 114.08 | 57.04 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030324 | 0.50 | 109.93 | 54.96 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030407 | 0.50 | 90.36 | 45.18 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030421 | 0.50 | 108.90 | 54.45 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030505 | 0.50 | 61.33 | 30.66 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030519 | 0.50 | 109.62 | 54.81 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030602 | 0.50 | 110.50 | 55.25 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030616 | 0.50 | 126.99 | 63.49 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030630 | 0.50 | 7.31 | 3.65 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030728 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030811 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030825 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030908 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030922 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031006 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031020 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031103 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031117 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031201 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031215 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031229 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20040112 | 0.50 | 17.50 | 8.75 |
| 252356 | CURTIS | CLIFTON | | 20000731 | 0.50 | 112.43 | 56.21 |
| 252356 | CURTIS | CLIFTON | | 20000731 | 0.50 | 43.62 | 21.81 |
| 252356 | CURTIS | CLIFTON | | 20000814 | 0.50 | 44.39 | 22.19 |
| 252356 | CURTIS | CLIFTON | | 20000828 | 0.50 | 76.21 | 38.10 |
| 252356 | CURTIS | CLIFTON | | 20000911 | 0.50 | 20.90 | 10.45 |
| 252356 | CURTIS | CLIFTON | | 20000925 | 0.50 | 10.26 | 5.13 |
| 252356 | CURTIS | CLIFTON | | 20001009 | 0.50 | 1.06 | 0.53 |
| 252356 | CURTIS | CLIFTON | | 20010212 | 0.50 | 33.82 | 16.91 |
| 252356 | CURTIS | CLIFTON | | 20010226 | 0.50 | 69.67 | 34.83 |
| 252356 | CURTIS | CLIFTON | | 20010312 | 0.50 | 60.76 | 30.38 |
| 252356 | CURTIS | CLIFTON | | 20010326 | 0.50 | 53.93 | 26.96 |
| 252356 | CURTIS | CLIFTON | | 20010423 | 0.50 | 76.71 | 38.35 |
| 252356 | CURTIS | CLIFTON | | 20010507 | 0.50 | 39.00 | 19.50 |
| 252356 | CURTIS | CLIFTON | | 20010521 | 0.50 | 133.38 | 66.69 |
| 252356 | CURTIS | CLIFTON | | 20010604 | 0.50 | 70.39 | 35.19 |
| 252356 | CURTIS | CLIFTON | | 20010618 | 0.50 | 61.63 | 30.81 |
| 252356 | CURTIS | CLIFTON | | 20010702 | 0.50 | 71.25 | 35.62 |
| 252356 | CURTIS | CLIFTON | | 20010716 | 0.50 | 78.76 | 39.38 |
| 252356 | CURTIS | CLIFTON | | 20010730 | 0.50 | 44.20 | 22.10 |
| 252356 | CURTIS | CLIFTON | | 20020520 | 0.50 | 15.97 | 7.98 |
| 252356 | CURTIS | CLIFTON | | 20020909 | 0.50 | 42.00 | 21.00 |
| 252356 | CURTIS | CLIFTON | | 20020923 | 0.50 | 52.28 | 26.14 |
| 252356 | CURTIS | CLIFTON | | 20021007 | 0.50 | 65.35 | 32.67 |
| 252356 | CURTIS | CLIFTON | | 20021021 | 0.50 | 51.08 | 25.54 |
| 252356 | CURTIS | CLIFTON | | 20021104 | 0.50 | 71.53 | 35.76 |
| 252356 | CURTIS | CLIFTON | | 20021118 | 0.50 | 38.54 | 19.27 |
| 175139 | CURTIS | PATRICK | WAYNE | 20011105 | 0.50 | 57.62 | 28.81 |
| 175139 | CURTIS | PATRICK | WAYNE | 20011119 | 0.50 | 59.25 | 29.62 |
| 175139 | CURTIS | PATRICK | WAYNE | 20011203 | 0.50 | 60.00 | 30.00 |

1925

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

1926

PLAINTIFF'S EXHIBIT H

# RESUME-3/03
# Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

1528

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 11-7-04
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: GLADSTONE L. CUMMINGS
SCDC NUMBER: 267450 NOV 08 2004
INSTITUTION: Lieber PP
HOUSING UNIT: Cooper A 47
WORK ASSIGNMENT: Cooper Dorm

Office Use Only
Grievance No. LCI 0751-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

(1) Adkins and Wicker do require payment of prevailing wages
(2) Inmates were employed by WTI, and SCDC was W agents in paying our wages
(3) Adkins and Wicker further allows this issue of payments of wages under 24-3-430 to be grieved pursuant to SCDC procedures.
(4) Grievant incorperates by reference all exhibits attached to grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04

Cummings 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Cummings 5-22-07
Grievant Signature Date

5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1929

CUMMINGS LCI-0751-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on July 17, 2000 and that your participation in this project ended on June 16, 2003.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over (4) years after SCDC first paid you for your participation in the project located at Lieber, over 15 months after your participation in the project at Lieber ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Gladstone Cummings, #267450, Appellant, | |
| vs. | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | DOCKET NO. _07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Gladstone Cummings does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Gladstone Cummings
Appellant's Name

Lieber C.I.
~~P.O. Box 205~~
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

5-30-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1933

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| GLADSTONE CUMMINGS, #267450 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

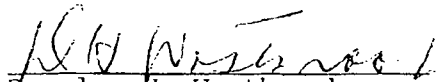
I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201


Douglas H. Westbrook

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Patrick Curtis
SCDC NUMBER: 175139
INSTITUTION: Lieber
HOUSING UNIT: E-B-10
WORK ASSIGNMENT: Maintenance

Office Use Only
Grievance No. Lieber 0002-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) The departemt is asked to review and determine whether I am entitled to recieve back wages which are do to me from working at Lieber Prison Industries Program when they only Paided me $.35 an hour and not Prevailing wage as under South Carolina Ann. Sec. 24-3-430(A-7) as well as fact they were getting $4.00 an hour and still did not give me my money from 1998-03 th denied me Prevailing wage.

ACTION REQUESTED: That all money due to me be Paid at Prevailing wage as well as overtime rate, Moreover, the Prevailing wage be Paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was Filed ordered to file grevaince by Court under Wicker v. S.C.D.C, Adkins v. S.C.D.C

Patrick Curtis 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlton 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

1935

Ackerman 5-6-11 1573

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Patrick Curtis 10-29-04
Grievant Signature Date

IGC Signature 10/29/04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1936

Inmate Q. Curtis, #175139 LC10062-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF PATRICK CURTIS, #175139

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 787.52 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1040-1041; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | COHEN, WILLIE | 257033 | C B 41 | 1 | 10/1/99 | 3/28/01 |
| MI 3 | COLBERT, RASCHAUN | 299840 | E B 37 | 1 | 4/22/04 | 5/13/04 |
| | COLE, MAURICE | 236789 | C 0 | 1 | 3/21/00 | 5/1/00 |
| MI 3 | COLEMAN, ANTONIO | 298192 | C B 31 | 3 | | 3/17/04 |
| MI 3 | COLLIER, ROBERT | 182535 | C A 23 | 3 | 12/8/03 | 1/5/03 |
| | COLLINS, TIMOTHY | 196721 | S B 5 | 1 | 2/15/00 | 7/24/00 |
| MI 2 | COMMANDER, KEVIN | 280413 | C A 31 | 1 | 1/9/02 | 11/25/02 |
| | CONCEPCION, MARIO | 278285 | E A 30 | 2 | 11/26/01 | 3/1/02 |
| | CONSTANCE, WILLIAM | 110613 | C A 3 | 1 | 6/15/00 | 2/22/01 |
| | CONYERS, ANTHONY | 260100 | C 0 | 1 | 11/4/99 | 4/1/00 |
| | COOK, DARRELL | 228677 | E A 27 | 2 | 4/19/02 | 4/25/02 |
| MI 2 | COOPER, KAMATHENE | 145333 | C A 9 | 1 | 8/10/01 | 6/24/04 |
| | COOPER, MATTHEW | 258323 | C B 45 | 1 | 6/29/01 | 7/15/02 |
| | CORBITT, ROY | 197503 | C B 30 | 1 | 9/13/99 | 4/25/01 |
| MI 3 | CORLEY, FRANK | 292975 | C A 26 | 1 | 12/8/03 | 6/24/04 |
| | COUNCIL, THOMAS | 269534 | E B 13 | 1 | 6/7/01 | 6/19/01 |
| | COWARD, STANLEY | 243320 | C A 27 | 2 | 8/17/01 | 3/22/02 |
| | COWICK, RICHARD | 199122 | C B 11 | 1 | 9/22/00 | 5/24/01 |
| | COWLING, ANTHONY | 222026 | C B 36 | 1 | 3/21/00 | 6/20/00 |
| | CRAFT, DAVID | 226320 | C X 0 | 1 | 11/10/99 | 2/22/00 |
| | CRAIN, DONALD | 145253 | C 0 | 1 | 12/5/99 | 4/19/00 |
| | CRIPPEN, SHAWN | 280889 | S B 35 | 1 | 1/18/02 | 3/13/02 |
| MI 3 | CROCKER, TERRY | 296514 | S A 30 | 1 | 3/17/04 | 3/19/04 |
| | CROLLEY, MICHAEL | 259198 | C B 17 | 1 | 11/3/99 | 8/23/00 |
| MI 3 | CRUZ, G | 250136 | C A 0 | 0 | | 10/11/99 |
| | CUDD, JASON | 240049 | E A 6 | 2 | 3/22/02 | 4/1/02 |
| MI 3 | CUMMINGS, GLADSTONE | 267450 | C A 47 | 1 | 7/17/00 | 6/16/03 |
| MI 3 | CURTIS, CLIFTON | 252356 | S B 39 | 2 | 8/26/02 | 11/14/02 |
| | CURTIS, PATRICK | 175139 | C A 18 | 2 | 10/4/01 | 3/22/02 |
| | DAISE, BENJAMIN | 219089 | M X 0 | 2 | 1/12/00 | 12/18/01 |
| MI 2 | DALY, LORENZO | 120387 | C B 1 | 1 | 3/2/01 | 5/2/03 |
| | DANGERFIELD, HERMAN | 280334 | S B 60 | 1 | 1/14/02 | 3/12/02 |
| MI 3 | DANIELS, B | 253205 | C A 0 | 0 | | 12/20/99 |
| MI 2 | DANIELS, CECIL | 249013 | C B 29 | 1 | 6/1/01 | 9/30/02 |
| | DANIELS, DONELL | 235471 | A B 10 | 1 | 5/1/01 | 5/11/01 |
| MI 3 | DANIELS, I | 261493 | C A 0 | 0 | | 12/20/99 |
| MI 3 | DANIELS, QUINTIN | 196284 | C B 45 | 1 | 3/23/02 | 6/24/04 |
| MI 2 | DAVIS, BRUCE | 254740 | C B 33 | 2 | 3/29/00 | 10/7/02 |
| | DAVIS, CURTIS | 238776 | C B 64 | 1 | 10/17/00 | 6/19/02 |
| | DAVIS, FITZGERALD | 242856 | C 0 | 1 | 10/13/99 | 5/8/00 |
| | DAVIS, GARY | 106144 | A A 9 | 1 | 8/2/01 | 11/15/01 |
| | DAVIS, GREGORY | 235247 | M X 0 | 0 | 1/6/00 | 12/10/01 |
| | DAVIS, JOSEPH | 266394 | S B 54 | 1 | 6/27/00 | 9/13/00 |
| | DAVIS, LEON | 259350 | M X 0 | 2 | 7/28/00 | 12/8/00 |
| | DAVIS, SETH | 276961 | C B 27 | 2 | 8/17/01 | 3/26/02 |

PLAINTIFF'S EXHIBIT A

A - 0779
June 2004

1940

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



A - 0081
June 2004

00021

PLAINTIFF'S EXHIBIT C

1941

Ackerman 5-6-11 1579

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

1982

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030127 | 0.50 | 121.91 | 60.95 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030210 | 0.50 | 135.00 | 67.50 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030224 | 0.50 | 121.01 | 60.50 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030310 | 0.50 | 114.08 | 57.04 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030324 | 0.50 | 109.93 | 54.96 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030407 | 0.50 | 90.36 | 45.18 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030421 | 0.50 | 108.90 | 54.45 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030505 | 0.50 | 61.33 | 30.66 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030519 | 0.50 | 109.62 | 54.81 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030602 | 0.50 | 110.50 | 55.25 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030616 | 0.50 | 126.99 | 63.49 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030630 | 0.50 | 7.31 | 3.65 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030728 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030811 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030825 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030908 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20030922 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031006 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031020 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031103 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031117 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031201 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031215 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20031229 | 0.50 | 17.50 | 8.75 |
| 267450 | CUMMINGS | GLADSTONE | LLOYD | 20040112 | 0.50 | 17.50 | 8.75 |
| 252356 | CURTIS | CLIFTON | | 20000731 | 0.50 | 112.43 | 56.21 |
| 252356 | CURTIS | CLIFTON | | 20000731 | 0.50 | 43.62 | 21.81 |
| 252356 | CURTIS | CLIFTON | | 20000814 | 0.50 | 44.39 | 22.19 |
| 252356 | CURTIS | CLIFTON | | 20000828 | 0.50 | 76.21 | 38.10 |
| 252356 | CURTIS | CLIFTON | | 20000911 | 0.50 | 20.90 | 10.45 |
| 252356 | CURTIS | CLIFTON | | 20000925 | 0.50 | 10.26 | 5.13 |
| 252356 | CURTIS | CLIFTON | | 20001009 | 0.50 | 1.06 | 0.53 |
| 252356 | CURTIS | CLIFTON | | 20010212 | 0.50 | 33.82 | 16.91 |
| 252356 | CURTIS | CLIFTON | | 20010226 | 0.50 | 69.67 | 34.83 |
| 252356 | CURTIS | CLIFTON | | 20010312 | 0.50 | 60.76 | 30.38 |
| 252356 | CURTIS | CLIFTON | | 20010326 | 0.50 | 53.93 | 26.96 |
| 252356 | CURTIS | CLIFTON | | 20010423 | 0.50 | 76.71 | 38.35 |
| 252356 | CURTIS | CLIFTON | | 20010507 | 0.50 | 39.00 | 19.50 |
| 252356 | CURTIS | CLIFTON | | 20010521 | 0.50 | 133.38 | 66.69 |
| 252356 | CURTIS | CLIFTON | | 20010604 | 0.50 | 70.39 | 35.19 |
| 252356 | CURTIS | CLIFTON | | 20010618 | 0.50 | 61.63 | 30.81 |
| 252356 | CURTIS | CLIFTON | | 20010702 | 0.50 | 71.25 | 35.62 |
| 252356 | CURTIS | CLIFTON | | 20010716 | 0.50 | 78.76 | 39.38 |
| 252356 | CURTIS | CLIFTON | | 20010730 | 0.50 | 44.20 | 22.10 |
| 252356 | CURTIS | CLIFTON | | 20020520 | 0.50 | 15.97 | 7.98 |
| 252356 | CURTIS | CLIFTON | | 20020909 | 0.50 | 42.00 | 21.00 |
| 252356 | CURTIS | CLIFTON | | 20020923 | 0.50 | 52.28 | 26.14 |
| 252356 | CURTIS | CLIFTON | | 20021007 | 0.50 | 65.35 | 32.67 |
| 252356 | CURTIS | CLIFTON | | 20021021 | 0.50 | 51.08 | 25.54 |
| 252356 | CURTIS | CLIFTON | | 20021104 | 0.50 | 71.53 | 35.76 |
| 252356 | CURTIS | CLIFTON | | 20021118 | 0.50 | 38.54 | 19.27 |
| 175139 | CURTIS | PATRICK | WAYNE | 20011105 | 0.50 | 57.62 | 28.81 |
| 175139 | CURTIS | PATRICK | WAYNE | 20011119 | 0.50 | 59.25 | 29.62 |
| 175139 | CURTIS | PATRICK | WAYNE | 20011203 | 0.50 | 60.00 | 30.00 |

PLAINTIFF'S EXHIBIT F

1943

A - 1040
June 2004

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 175139 | CURTIS | PATRICK | WAYNE | 20011217 | 0.50 | 75.00 | 37.50 |
| 175139 | CURTIS | PATRICK | WAYNE | 20011231 | 0.50 | 37.50 | 18.75 |
| 175139 | CURTIS | PATRICK | WAYNE | 20020114 | 0.50 | 52.50 | 26.25 |
| 175139 | CURTIS | PATRICK | WAYNE | 20020128 | 0.50 | 83.75 | 41.87 |
| 175139 | CURTIS | PATRICK | WAYNE | 20020211 | 0.50 | 90.00 | 45.00 |
| 175139 | CURTIS | PATRICK | WAYNE | 20020225 | 0.50 | 99.08 | 49.54 |
| 175139 | CURTIS | PATRICK | WAYNE | 20020311 | 0.50 | 90.00 | 45.00 |
| 175139 | CURTIS | PATRICK | WAYNE | 20020325 | 0.50 | 82.82 | 41.41 |
| 219089 | DAISE | BENJAMIN | | 20010115 | 0.50 | 53.20 | 26.60 |
| 219089 | DAISE | BENJAMIN | | 20010129 | 0.50 | 59.85 | 29.92 |
| 219089 | DAISE | BENJAMIN | | 20010212 | 0.50 | 53.20 | 26.60 |
| 219089 | DAISE | BENJAMIN | | 20010226 | 0.50 | 59.85 | 29.92 |
| 219089 | DAISE | BENJAMIN | | 20010312 | 0.50 | 80.10 | 40.05 |
| 219089 | DAISE | BENJAMIN | | 20010326 | 0.50 | 89.00 | 44.50 |
| 219089 | DAISE | BENJAMIN | | 20010409 | 0.50 | 102.40 | 51.20 |
| 219089 | DAISE | BENJAMIN | | 20010423 | 0.50 | 89.00 | 44.50 |
| 219089 | DAISE | BENJAMIN | | 20010507 | 0.50 | 89.00 | 44.50 |
| 219089 | DAISE | BENJAMIN | | 20010521 | 0.50 | 93.50 | 46.75 |
| 219089 | DAISE | BENJAMIN | | 20010604 | 0.50 | 113.85 | 56.92 |
| 219089 | DAISE | BENJAMIN | | 20010618 | 0.50 | 89.00 | 44.50 |
| 219089 | DAISE | BENJAMIN | | 20010702 | 0.50 | 119.10 | 59.55 |
| 219089 | DAISE | BENJAMIN | | 20010716 | 0.50 | 106.45 | 53.22 |
| 219089 | DAISE | BENJAMIN | | 20010730 | 0.50 | 126.50 | 63.25 |
| 219089 | DAISE | BENJAMIN | | 20010813 | 0.50 | 126.50 | 63.25 |
| 219089 | DAISE | BENJAMIN | | 20010827 | 0.50 | 126.50 | 63.25 |
| 219089 | DAISE | BENJAMIN | | 20010910 | 0.50 | 127.35 | 63.67 |
| 219089 | DAISE | BENJAMIN | | 20010924 | 0.50 | 141.50 | 70.75 |
| 219089 | DAISE | BENJAMIN | | 20011008 | 0.50 | 141.50 | 70.75 |
| 219089 | DAISE | BENJAMIN | | 20011022 | 0.50 | 141.50 | 70.75 |
| 219089 | DAISE | BENJAMIN | | 20011105 | 0.50 | 414.50 | 207.25 |
| 219089 | DAISE | BENJAMIN | | 20011119 | 0.50 | 146.00 | 73.00 |
| 219089 | DAISE | BENJAMIN | | 20011203 | 0.50 | 113.20 | 56.60 |
| 219089 | DAISE | BENJAMIN | | 20011217 | 0.50 | 124.80 | 62.40 |
| 120387 | DALY | LORENZO | C. | 20010312 | 0.50 | 21.00 | 10.50 |
| 120387 | DALY | LORENZO | C. | 20010326 | 0.50 | 80.31 | 40.15 |
| 120387 | DALY | LORENZO | C. | 20010409 | 0.50 | 92.73 | 46.36 |
| 120387 | DALY | LORENZO | C. | 20010423 | 0.50 | 50.13 | 25.06 |
| 120387 | DALY | LORENZO | C. | 20010507 | 0.50 | 70.60 | 35.30 |
| 120387 | DALY | LORENZO | C. | 20010521 | 0.50 | 88.85 | 44.42 |
| 120387 | DALY | LORENZO | C. | 20010604 | 0.50 | 34.87 | 17.43 |
| 120387 | DALY | LORENZO | C. | 20010618 | 0.50 | 68.13 | 34.06 |
| 120387 | DALY | LORENZO | C. | 20010702 | 0.50 | 68.21 | 34.10 |
| 120387 | DALY | LORENZO | C. | 20010716 | 0.50 | 77.27 | 38.63 |
| 120387 | DALY | LORENZO | C. | 20010730 | 0.50 | 69.98 | 34.99 |
| 120387 | DALY | LORENZO | C. | 20010813 | 0.50 | 74.45 | 37.22 |
| 120387 | DALY | LORENZO | C. | 20010827 | 0.50 | 78.63 | 39.31 |
| 120387 | DALY | LORENZO | C. | 20010910 | 0.50 | 102.39 | 51.19 |
| 120387 | DALY | LORENZO | C. | 20010924 | 0.50 | 113.93 | 56.96 |
| 120387 | DALY | LORENZO | C. | 20011008 | 0.50 | 138.82 | 69.41 |
| 120387 | DALY | LORENZO | C. | 20011022 | 0.50 | 131.47 | 65.73 |
| 120387 | DALY | LORENZO | C. | 20011105 | 0.50 | 98.81 | 49.40 |
| 120387 | DALY | LORENZO | C. | 20011119 | 0.50 | 118.38 | 59.19 |
| 120387 | DALY | LORENZO | C. | 20011203 | 0.50 | 90.67 | 45.33 |
| 120387 | DALY | LORENZO | C. | 20011217 | 0.50 | 108.73 | 54.36 |

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PLAINTIFF'S EXHIBIT H

1995

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

1946

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

1947

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Patrick Curtis
SCDC NUMBER: 175139 NOV 04 2004
INSTITUTION: ~~Tieber~~ TCI
HOUSING UNIT: E-B-10
WORK ASSIGNMENT: Maintenance

Office Use Only
Grievance No. LCI 0662-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins & Wicker do Require Payment of Prevailing wages. Grievants were employed by WTI. And S.C.D.C was WTI's "Agent" in Paying our Wages. Adkins & Wicker forther allow this issue of Payment of wages under S.C. Code 24-3-430 to be grieved Pursant To S.C.D.C.'s grievance Procedure. Grievant incorporates by Referran all exhibits attached to grievances filled by Darrell Williams and Attorney Dougles Westbrook on 9-22-04.

Patrick Curtis 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Patrick Curtis 5/17/07 TCI 5/17/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1948

CURTIS LCI-0662-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 4, 2001 and that your participation in this project ended on March 22, 2002.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly three (3) years after SCDC first paid you for your participation in the project located at Lieber, 2 ½ years after your participation in the project at Lieber ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Patrick Curtis, #175139, Appellant, vs. South Carolina Department of Corrections, Respondent. | **NOTICE OF APPEAL**<br>DOCKET NO. 07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Patrick Curtis does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-17-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Patrick Curtis
Appellant's Name
Turbeville C.I.
P.O. Box 252
Mailing Address
Turbeville, SC 29162
City, State, Zip Code
none
Telephone Number

D H Westbrook
Signed
5-30-07
Dated
Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1952

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| PATRICK CURTIS, #175139 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

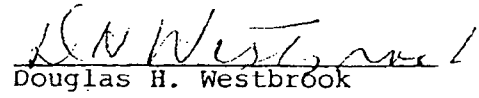
I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201


Douglas H. Westbrook

1953

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: QUINTIN DANIELS
SCDC NUMBER: 196284
INSTITUTION: LIEBER CORRECTIONS INST.
HOUSING UNIT: COOPER UNIT B-45
WORK ASSIGNMENT: PRISON INDUSTRIES #2

NOV 04 2004
PP

Office Use Only
Grievance No. Lieber 0652-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

THE DEPARTMENT IS ASKED, TO REVIEW AND DETERMINE WHETHER I AM ENTITLED TO RECEIVE BACK WAGES DUE TO MYSELF FROM WORKING AT LIEBER'S PRISON INDUSTRY PROGRAM WHEN THEY ONLY PAID ME THIRTY-FIVE (.35) CENTS AN HOUR AND NOT PREVAILING WAGES AS REQUIRED UNDER SOUTH CAROLINA CODE ANN. SECTION 24-3-430 (A)(1) AS WELL AS FACT THAT FROM 1998-2003 THEY DENIED ME PREVAILING WAGES.

ACTION REQUESTED:

ALL MONEY DUE TO ME PAID AT PREVAILING WAGE AND OVERTIME RATE AND PREVAILING WAGE BE PAID, NOW.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

LAWSUIT WAS FILED, ORDERED TO FILE GRIEVANCE BY COURT PURSUANT TO WICKER V. SCDC, ADKINS V. SCDC.

Quintin Daniels 12 Sep 04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

1954

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11/02/04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1555

Inmate D. Daniels, #196284 LC10652-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

1956

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

1957

AMENDMENT TO GRIEVANCE OF QUINTIN DANIELS, #196284

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 6595.17 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Quintin Daniels 04FEB06
(Grievant Signature) (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1043-1044; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1958

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | COHEN, WILLIE | 257033 | C B 41 | 1 | 10/1/99 | 3/28/01 |
| MI 3 | COLBERT, RASCHAUN | 299840 | E B 37 | 1 | 4/22/04 | 5/13/04 |
| | COLE, MAURICE | 236789 | C 0 | 1 | 3/21/00 | 5/1/00 |
| MI 3 | COLEMAN, ANTONIO | 298192 | C B 31 | 3 | | 3/17/04 |
| MI 3 | COLLIER, ROBERT | 182535 | C A 23 | 3 | 12/8/03 | 1/5/03 |
| | COLLINS, TIMOTHY | 196721 | S B 5 | 1 | 2/15/00 | 7/24/00 |
| MI 2 | COMMANDER, KEVIN | 280413 | C A 31 | 1 | 1/9/02 | 11/25/02 |
| | CONCEPCION, MARIO | 278285 | E A 30 | 2 | 11/26/01 | 3/1/02 |
| | CONSTANCE, WILLIAM | 110613 | C A 3 | 1 | 6/15/00 | 2/22/01 |
| | CONYERS, ANTHONY | 260100 | C 0 | 1 | 11/4/99 | 4/1/00 |
| | COOK, DARRELL | 228677 | E A 27 | 2 | 4/19/02 | 4/25/02 |
| MI 2 | COOPER, KAMATHENE | 145333 | C A 9 | 1 | 8/10/01 | 6/24/04 |
| | COOPER, MATTHEW | 258323 | C B 45 | 1 | 6/29/01 | 7/15/02 |
| | CORBITT, ROY | 197503 | C B 30 | 1 | 9/13/99 | 4/25/01 |
| MI 3 | CORLEY, FRANK | 292975 | C A 26 | 1 | 12/8/03 | 6/24/04 |
| | COUNCIL, THOMAS | 269534 | E B 13 | 1 | 6/7/01 | 6/19/01 |
| | COWARD, STANLEY | 243320 | C A 27 | 2 | 8/17/01 | 3/22/02 |
| | COWICK, RICHARD | 199122 | C B 11 | 1 | 9/22/00 | 5/24/01 |
| | COWLING, ANTHONY | 222026 | C B 36 | 1 | 3/21/00 | 6/20/00 |
| | CRAFT, DAVID | 226320 | C X 0 | 1 | 11/10/99 | 2/22/00 |
| | CRAIN, DONALD | 145253 | C 0 | 1 | 12/5/99 | 4/19/00 |
| | CRIPPEN, SHAWN | 280889 | S B 35 | 1 | 1/18/02 | 3/13/02 |
| MI 3 | CROCKER, TERRY | 296514 | S A 30 | 1 | 3/17/04 | 3/19/04 |
| | CROLLEY, MICHAEL | 259198 | C B 17 | 1 | 11/3/99 | 8/23/00 |
| MI 3 | CRUZ, G | 250136 | C A 0 | 0 | | 10/11/99 |
| | CUDD, JASON | 240049 | E A 6 | 2 | 3/22/02 | 4/1/02 |
| MI 3 | CUMMINGS, GLADSTONE | 267450 | C A 47 | 1 | 7/17/00 | 6/16/03 |
| MI 3 | CURTIS, CLIFTON | 252356 | S B 39 | 2 | 8/26/02 | 11/14/02 |
| | CURTIS, PATRICK | 175139 | C A 18 | 2 | 10/4/01 | 3/22/02 |
| | DAISE, BENJAMIN | 219089 | M X 0 | 2 | 1/12/00 | 12/18/01 |
| MI 2 | DALY, LORENZO | 120387 | C B 1 | 1 | 3/2/01 | 5/2/03 |
| | DANGERFIELD, HERMAN | 280334 | S B 60 | 1 | 1/14/02 | 3/12/02 |
| MI 3 | DANIELS, B | 253205 | C A 0 | 0 | | 12/20/99 |
| MI 2 | DANIELS, CECIL | 249013 | C B 29 | 1 | 6/1/01 | 9/30/02 |
| | DANIELS, DONELL | 235471 | A B 10 | 1 | 5/1/01 | 5/11/01 |
| MI 3 | DANIELS, J | 261493 | C A 0 | 0 | | 12/20/99 |
| MI 3 | DANIELS, QUINTIN | 196284 | C B 45 | 1 | 3/23/02 | 6/24/04 |
| MI 2 | DAVIS, BRUCE | 254740 | C B 33 | 2 | 3/29/00 | 10/7/02 |
| | DAVIS, CURTIS | 238776 | C B 64 | 1 | 10/17/00 | 6/19/02 |
| | DAVIS, FITZGERALD | 242856 | C 0 | 1 | 10/13/99 | 5/8/00 |
| | DAVIS, GARY | 106144 | A A 9 | 1 | 8/2/01 | 11/15/01 |
| | DAVIS, GREGORY | 235247 | M X 0 | 0 | 1/6/00 | 12/10/01 |
| | DAVIS, JOSEPH | 266394 | S B 54 | 1 | 6/27/00 | 9/13/00 |
| | DAVIS, LEON | 259350 | M X 0 | 2 | 7/28/00 | 12/8/00 |
| | DAVIS, SETH | 276961 | C B 27 | 2 | 8/17/01 | 3/26/02 |

PLAINTIFF'S EXHIBIT 4

A - 0779
June 2004

1559

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 [illegible]. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

1360

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PLAINTIFF'S EXHIBIT C

1961

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 253205 | DANIELS | BRIAN | | 19991220 | 0.35 | 67.30 | 23.55 |
| 253205 | DANIELS | BRIAN | | 19991220 | 2.50 | 2.00 | 5.00 |
| 249013 | DANIELS | CECIL | BERNARD | 20010618 | 0.50 | 47.83 | 23.91 |
| 249013 | DANIELS | CECIL | BERNARD | 20010702 | 0.50 | 52.50 | 26.25 |
| 249013 | DANIELS | CECIL | BERNARD | 20010716 | 0.50 | 43.48 | 21.74 |
| 249013 | DANIELS | CECIL | BERNARD | 20010730 | 0.50 | 101.91 | 50.95 |
| 249013 | DANIELS | CECIL | BERNARD | 20010813 | 0.50 | 108.51 | 54.25 |
| 249013 | DANIELS | CECIL | BERNARD | 20010827 | 0.50 | 107.80 | 53.90 |
| 249013 | DANIELS | CECIL | BERNARD | 20010910 | 0.50 | 84.77 | 42.38 |
| 249013 | DANIELS | CECIL | BERNARD | 20010924 | 0.50 | 90.00 | 45.00 |
| 249013 | DANIELS | CECIL | BERNARD | 20011008 | 0.50 | 119.58 | 59.79 |
| 249013 | DANIELS | CECIL | BERNARD | 20011022 | 0.50 | 98.08 | 49.04 |
| 249013 | DANIELS | CECIL | BERNARD | 20011105 | 0.50 | 44.27 | 22.13 |
| 249013 | DANIELS | CECIL | BERNARD | 20011119 | 0.50 | 92.75 | 46.37 |
| 249013 | DANIELS | CECIL | BERNARD | 20011203 | 0.50 | 71.52 | 35.76 |
| 249013 | DANIELS | CECIL | BERNARD | 20011217 | 0.50 | 132.67 | 66.33 |
| 249013 | DANIELS | CECIL | BERNARD | 20011231 | 0.50 | 58.42 | 29.21 |
| 249013 | DANIELS | CECIL | BERNARD | 20020114 | 0.50 | 83.20 | 41.60 |
| 249013 | DANIELS | CECIL | BERNARD | 20020128 | 0.50 | 115.50 | 57.75 |
| 249013 | DANIELS | CECIL | BERNARD | 20020211 | 0.50 | 106.77 | 53.38 |
| 249013 | DANIELS | CECIL | BERNARD | 20020225 | 0.50 | 131.76 | 65.88 |
| 249013 | DANIELS | CECIL | BERNARD | 20020311 | 0.50 | 106.95 | 53.47 |
| 249013 | DANIELS | CECIL | BERNARD | 20020325 | 0.50 | 98.67 | 49.33 |
| 249013 | DANIELS | CECIL | BERNARD | 20020408 | 0.50 | 103.61 | 51.80 |
| 249013 | DANIELS | CECIL | BERNARD | 20020422 | 0.50 | 129.48 | 64.74 |
| 249013 | DANIELS | CECIL | BERNARD | 20020506 | 0.50 | 90.71 | 45.35 |
| 249013 | DANIELS | CECIL | BERNARD | 20020520 | 0.50 | 100.15 | 50.07 |
| 249013 | DANIELS | CECIL | BERNARD | 20020603 | 0.50 | 95.28 | 47.64 |
| 249013 | DANIELS | CECIL | BERNARD | 20020617 | 0.50 | 108.53 | 54.26 |
| 249013 | DANIELS | CECIL | BERNARD | 20020701 | 0.50 | 125.60 | 62.80 |
| 249013 | DANIELS | CECIL | BERNARD | 20020715 | 0.50 | 93.16 | 46.58 |
| 249013 | DANIELS | CECIL | BERNARD | 20020729 | 0.50 | 157.88 | 78.94 |
| 249013 | DANIELS | CECIL | BERNARD | 20020812 | 0.50 | 198.91 | 99.45 |
| 249013 | DANIELS | CECIL | BERNARD | 20020826 | 0.50 | 191.99 | 95.99 |
| 249013 | DANIELS | CECIL | BERNARD | 20020909 | 0.50 | 108.29 | 54.14 |
| 249013 | DANIELS | CECIL | BERNARD | 20020923 | 0.50 | 145.42 | 72.71 |
| 249013 | DANIELS | CECIL | BERNARD | 20021007 | 0.50 | 68.14 | 34.07 |
| 235471 | DANIELS | DONELL | ANTONIO | 20010507 | 0.50 | 12.39 | 6.19 |
| 235471 | DANIELS | DONELL | ANTONIO | 20010521 | 0.50 | 6.15 | 3.07 |
| 196284 | DANIELS | QUINTIN | | 20011217 | 0.50 | 103.90 | 51.95 |
| 196284 | DANIELS | QUINTIN | | 20011231 | 0.50 | 45.80 | 22.90 |
| 196284 | DANIELS | QUINTIN | | 20020114 | 0.50 | 51.98 | 25.99 |
| 196284 | DANIELS | QUINTIN | | 20020128 | 0.50 | 85.81 | 42.90 |
| 196284 | DANIELS | QUINTIN | | 20020211 | 0.50 | 92.33 | 46.16 |
| 196284 | DANIELS | QUINTIN | | 20020225 | 0.50 | 5.25 | 2.62 |
| 196284 | DANIELS | QUINTIN | | 20020408 | 0.50 | 88.06 | 44.03 |
| 196284 | DANIELS | QUINTIN | | 20020422 | 0.50 | 112.50 | 56.25 |
| 196284 | DANIELS | QUINTIN | | 20020506 | 0.50 | 133.38 | 66.69 |
| 196284 | DANIELS | QUINTIN | | 20020520 | 0.50 | 116.25 | 58.12 |
| 196284 | DANIELS | QUINTIN | | 20020603 | 0.50 | 110.96 | 55.48 |
| 196284 | DANIELS | QUINTIN | | 20020617 | 0.50 | 108.26 | 54.13 |
| 196284 | DANIELS | QUINTIN | | 20020701 | 0.50 | 118.80 | 59.40 |
| 196284 | DANIELS | QUINTIN | | 20020715 | 0.50 | 90.00 | 45.00 |
| 196284 | DANIELS | QUINTIN | | 20020729 | 0.50 | 111.50 | 55.75 |

PLAINTIFF'S EXHIBIT
E

1962

A - 1043
June 2004

Ackerman 5-6-11 1600

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 196284 | DANIELS | QUINTIN | | 20020812 | 0.50 | 109.61 | 54.80 |
| 196284 | DANIELS | QUINTIN | | 20020826 | 0.50 | 111.18 | 55.59 |
| 196284 | DANIELS | QUINTIN | | 20020909 | 0.50 | 101.25 | 50.62 |
| 196284 | DANIELS | QUINTIN | | 20020923 | 0.50 | 109.76 | 54.88 |
| 196284 | DANIELS | QUINTIN | | 20021007 | 0.50 | 128.54 | 64.27 |
| 196284 | DANIELS | QUINTIN | | 20021021 | 0.50 | 128.36 | 64.18 |
| 196284 | DANIELS | QUINTIN | | 20021104 | 0.50 | 127.50 | 63.75 |
| 196284 | DANIELS | QUINTIN | | 20021118 | 0.50 | 125.88 | 62.94 |
| 196284 | DANIELS | QUINTIN | | 20021202 | 0.50 | 87.84 | 43.92 |
| 196284 | DANIELS | QUINTIN | | 20021216 | 0.50 | 120.54 | 60.27 |
| 196284 | DANIELS | QUINTIN | | 20021230 | 0.50 | 63.75 | 31.87 |
| 196284 | DANIELS | QUINTIN | | 20030113 | 0.50 | 84.58 | 42.29 |
| 196284 | DANIELS | QUINTIN | | 20030127 | 0.50 | 85.12 | 42.56 |
| 196284 | DANIELS | QUINTIN | | 20030210 | 0.50 | 87.13 | 43.56 |
| 196284 | DANIELS | QUINTIN | | 20030224 | 0.50 | 89.87 | 44.93 |
| 196284 | DANIELS | QUINTIN | | 20030310 | 0.50 | 89.28 | 44.64 |
| 196284 | DANIELS | QUINTIN | | 20030324 | 0.50 | 93.76 | 46.88 |
| 196284 | DANIELS | QUINTIN | | 20030407 | 0.50 | 68.60 | 34.30 |
| 196284 | DANIELS | QUINTIN | | 20030421 | 0.50 | 92.48 | 46.24 |
| 196284 | DANIELS | QUINTIN | | 20030505 | 0.50 | 58.87 | 29.43 |
| 196284 | DANIELS | QUINTIN | | 20030519 | 0.50 | 122.25 | 61.12 |
| 196284 | DANIELS | QUINTIN | | 20030602 | 0.50 | 96.93 | 48.46 |
| 196284 | DANIELS | QUINTIN | | 20030616 | 0.50 | 129.90 | 64.95 |
| 196284 | DANIELS | QUINTIN | | 20030630 | 0.50 | 137.79 | 68.89 |
| 196284 | DANIELS | QUINTIN | | 20030714 | 0.50 | 140.56 | 70.28 |
| 196284 | DANIELS | QUINTIN | | 20030728 | 0.50 | 119.85 | 59.92 |
| 196284 | DANIELS | QUINTIN | | 20030811 | 0.50 | 119.64 | 59.82 |
| 196284 | DANIELS | QUINTIN | | 20030825 | 0.50 | 127.59 | 63.79 |
| 196284 | DANIELS | QUINTIN | | 20030908 | 0.50 | 88.41 | 44.20 |
| 196284 | DANIELS | QUINTIN | | 20030922 | 0.50 | 104.08 | 52.04 |
| 196284 | DANIELS | QUINTIN | | 20031006 | 0.50 | 95.95 | 47.97 |
| 196284 | DANIELS | QUINTIN | | 20031020 | 0.50 | 103.10 | 51.55 |
| 196284 | DANIELS | QUINTIN | | 20031103 | 0.50 | 93.26 | 46.63 |
| 196284 | DANIELS | QUINTIN | | 20031117 | 0.50 | 99.20 | 49.60 |
| 196284 | DANIELS | QUINTIN | | 20031201 | 0.50 | 79.10 | 39.55 |
| 196284 | DANIELS | QUINTIN | | 20031215 | 0.50 | 110.26 | 55.13 |
| 196284 | DANIELS | QUINTIN | | 20031229 | 0.50 | 115.36 | 57.68 |
| 196284 | DANIELS | QUINTIN | | 20040112 | 0.50 | 59.96 | 29.98 |
| 196284 | DANIELS | QUINTIN | | 20040126 | 0.50 | 122.06 | 61.03 |
| 196284 | DANIELS | QUINTIN | | 20040209 | 0.50 | 129.34 | 64.67 |
| 196284 | DANIELS | QUINTIN | | 20040223 | 0.50 | 149.91 | 74.95 |
| 196284 | DANIELS | QUINTIN | | 20040308 | 0.50 | 138.56 | 69.28 |
| 196284 | DANIELS | QUINTIN | | 20040322 | 0.50 | 146.46 | 73.23 |
| 196284 | DANIELS | QUINTIN | | 20040405 | 0.50 | 123.90 | 61.95 |
| 196284 | DANIELS | QUINTIN | | 20040419 | 0.50 | 122.20 | 61.10 |
| 196284 | DANIELS | QUINTIN | | 20040503 | 0.50 | 132.66 | 66.33 |
| 196284 | DANIELS | QUINTIN | | 20040517 | 0.50 | 138.25 | 69.12 |
| 196284 | DANIELS | QUINTIN | | 20040531 | 0.50 | 109.96 | 54.98 |
| 254740 | DAVIS | BRUCE | | 20000424 | 0.35 | 75.00 | 26.25 |
| 254740 | DAVIS | BRUCE | | 20000424 | 0.35 | 59.55 | 20.84 |
| 254740 | DAVIS | BRUCE | | 20000508 | 0.35 | 75.00 | 26.25 |
| 254740 | DAVIS | BRUCE | | 20000522 | 0.35 | 59.50 | 20.82 |
| 254740 | DAVIS | BRUCE | | 20000605 | 0.50 | 63.47 | 31.73 |
| 254740 | DAVIS | BRUCE | | 20000619 | 0.50 | 75.00 | 37.50 |

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

1964

PLAINTIFF'S EXHIBIT H

# RESUME-3/03
# Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

1965

**NON-ACADEMIC EXPERIENCE**

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

**PUBLICATIONS**

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

1966

11-7-04

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
### STEP 2

INMATE NAME: Daniels, Quintin

SCDC NUMBER: 196254 NOV 08 2004

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Cooper B-45

WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. LCI 0652-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C.Code Ann.§24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9/22/04.

Quintin Daniels 03/Nov/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Quintin Daniels 22 May 07
Grievant Signature Date

Sandra S Bowie 5-22-0
~~IGC~~ IGA Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1967

Ackerman 5-6-11 1605

DANIELS LCI-0652-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 23, 2002 and that, as of the date of this response, you are still participating in this project.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance 2 ½ years after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

1570

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Quintin Daniels, #196284, Appellant, | ) | |
| vs. | ) | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | ) | DOCKET NO. _07___-ALJ-04-_____-____ GRIEVANCE NO.: _____ |

Notice is hereby given that Quintin Daniels does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Quintin Daniels
Appellant's Name

Lieber C.I.
P.O. Box 205
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

5-31-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1971

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| QUINTIN DANIELS, #196284 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D. H. Westbrook
Douglas H. Westbrook

1972

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Curtis L. Davis
SCDC NUMBER: 238776
INSTITUTION: Lieber
HOUSING UNIT: ~~Cooper-A-23~~ E A19
WORK ASSIGNMENT: Dormworker

Office Use Only
Grievance No. Lieber 0685-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
The department is asked to review and determine whether I am entitled to recieve back wages due to me, from working at Lieber Prison Industry program when they only paid me. 35 cents an hour and not prevailing wage as required under South Carolina Code Ann. Sec. 24-3-430 (A7) as well as fact that from 1998-03 they denied me prevailing wage.

ACTION REQUESTED: All money due to me, to be paid at prevailing wage and overtime rate and prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed ordered to file grievance by court Wicker V. S.C.D.C., Adkins V. S.C.D.C.

Curtis L. Davis 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carfano 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Oct. 28, 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 11-2-04
Date

IGC Signature 11-2-04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1974

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Curtis L. Davis INMATE GRIEVANCE FORM

STEP 1

individually, and on behalf of all inmate employees (IE's)

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 238776

INSTITUTION: Lieber

HOUSING UNIT: Cooper-A-23

WORK ASSIGNMENT: Dorm

Office Use Only

Grievance No. ____

Code: General ____

Policy ____

Disc. Hear. ____

Class. ____

Date Received SEP 30 2004

IGC Initials ____

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Curtis L. Davis 9/27/04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

See LCI 0685-04.

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

1975

Grievant Signature Date

Ackerman 5-6-11 1613

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1976

Jack C. Davis #238776 LCI 0085-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

1977

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF CURTIS L. DAVIS, #238776

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference). * Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 395.56 hours in 2000 at $10.66 per hour; 1496.16 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 3665.76 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Curtis L. Davis 2/13/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1046; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1979

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | COHEN, WILLIE | 257033 | C B 41 | 1 | 10/1/99 | 3/28/01 |
| MI 3 | COLBERT, RASCHAUN | 299840 | E B 37 | 1 | 4/22/04 | 5/13/04 |
| | COLE, MAURICE | 236789 | C 0 | 1 | 3/21/00 | 5/1/00 |
| MI 3 | COLEMAN, ANTONIO | 298192 | C B 31 | 3 | | 3/17/04 |
| MI 3 | COLLIER, ROBERT | 182535 | C A 23 | 3 | 12/8/03 | 1/5/03 |
| | COLLINS, TIMOTHY | 196721 | S B 5 | 1 | 2/15/00 | 7/24/00 |
| MI 2 | COMMANDER, KEVIN | 280413 | C A 31 | 1 | 1/9/02 | 11/25/02 |
| | CONCEPCION, MARIO | 278285 | E A 30 | 2 | 11/26/01 | 3/1/02 |
| | CONSTANCE, WILLIAM | 110613 | C A 3 | 1 | 6/15/00 | 2/22/01 |
| | CONYERS, ANTHONY | 260100 | C 0 | 1 | 11/4/99 | 4/1/00 |
| | COOK, DARRELL | 228677 | E A 27 | 2 | 4/19/02 | 4/25/02 |
| MI 2 | COOPER, KAMATHENE | 145333 | C A 9 | 1 | 8/10/01 | 6/24/04 |
| | COOPER, MATTHEW | 258323 | C B 45 | 1 | 6/29/01 | 7/15/02 |
| | CORBITT, ROY | 197503 | C B 30 | 1 | 9/13/99 | 4/25/01 |
| MI 3 | CORLEY, FRANK | 292975 | C A 26 | 1 | 12/8/03 | 6/24/04 |
| | COUNCIL, THOMAS | 269534 | E B 13 | 1 | 6/7/01 | 6/19/01 |
| | COWARD, STANLEY | 243320 | C A 27 | 2 | 8/17/01 | 3/22/02 |
| | COWICK, RICHARD | 199122 | C B 11 | 1 | 9/22/00 | 5/24/01 |
| | COWLING, ANTHONY | 222026 | C B 36 | 1 | 3/21/00 | 6/20/00 |
| | CRAFT, DAVID | 226320 | C X 0 | 1 | 11/10/99 | 2/22/00 |
| | CRAIN, DONALD | 145253 | C 0 | 1 | 12/5/99 | 4/19/00 |
| | CRIPPEN, SHAWN | 280889 | S B 35 | 1 | 1/18/02 | 3/13/02 |
| MI 3 | CROCKER, TERRY | 296514 | S A 30 | 1 | 3/17/04 | 3/19/04 |
| | CROLLEY, MICHAEL | 259198 | C B 17 | 1 | 11/3/99 | 8/23/00 |
| MI 3 | CRUZ, G | 250136 | C A 0 | 0 | | 10/11/99 |
| | CUDD, JASON | 240049 | E A 6 | 2 | 3/22/02 | 4/1/02 |
| MI 3 | CUMMINGS, GLADSTONE | 267450 | C A 47 | 1 | 7/17/00 | 6/16/03 |
| MI 3 | CURTIS, CLIFTON | 252356 | S B 39 | 2 | 8/26/02 | 11/14/02 |
| | CURTIS, PATRICK | 175139 | C A 18 | 2 | 10/4/01 | 3/22/02 |
| | DAISE, BENJAMIN | 219089 | M X 0 | 2 | 1/12/00 | 12/18/01 |
| MI 2 | DALY, LORENZO | 120387 | C B 1 | 1 | 3/2/01 | 5/2/03 |
| | DANGERFIELD, HERMAN | 280334 | S B 60 | 1 | 1/14/02 | 3/12/02 |
| MI 3 | DANIELS, B | 253205 | C A 0 | 0 | | 12/20/99 |
| MI 2 | DANIELS, CECIL | 249013 | C B 29 | 1 | 6/1/01 | 9/30/02 |
| | DANIELS, DONELL | 235471 | A B 10 | 1 | 5/1/01 | 5/11/01 |
| MI 3 | DANIELS, J | 261493 | C A 0 | 0 | | 12/20/99 |
| MI 3 | DANIELS, QUINTIN | 196284 | C B 45 | 1 | 3/23/02 | 6/24/04 |
| MI 2 | DAVIS, BRUCE | 254740 | C B 33 | 2 | 3/29/00 | 10/7/02 |
| | DAVIS, CURTIS | 238776 | C B 64 | 1 | 10/17/00 | 6/19/02 |
| | DAVIS, FITZGERALD | 242856 | C 0 | 1 | 10/13/99 | 5/8/00 |
| | DAVIS, GARY | 106144 | A A 9 | 1 | 8/2/01 | 11/15/01 |
| | DAVIS, GREGORY | 235247 | M X 0 | 0 | 1/6/00 | 12/10/01 |
| | DAVIS, JOSEPH | 266394 | S B 54 | 1 | 6/27/00 | 9/13/00 |
| | DAVIS, LEON | 259350 | M X 0 | 2 | 7/28/00 | 12/8/00 |
| | DAVIS, SETH | 276961 | C B 27 | 2 | 8/17/01 | 3/26/02 |

PLAINTIFF'S EXHIBIT A

A - 0779
June 2004

1980

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 [illegible]. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C
1981

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

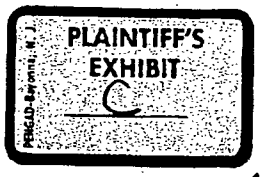
2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner





| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 254740 | DAVIS | BRUCE | | 20020701 | 0.50 | 116.73 | 58.36 |
| 254740 | DAVIS | BRUCE | | 20020715 | 0.50 | 82.80 | 41.40 |
| 254740 | DAVIS | BRUCE | | 20020729 | 0.50 | 90.68 | 45.34 |
| 254740 | DAVIS | BRUCE | | 20020812 | 0.50 | 105.52 | 52.76 |
| 254740 | DAVIS | BRUCE | | 20020826 | 0.50 | 136.80 | 68.40 |
| 254740 | DAVIS | BRUCE | | 20020909 | 0.20 | 119.20 | 23.84 |
| 254740 | DAVIS | BRUCE | | 20020923 | 0.50 | 135.00 | 67.50 |
| 254740 | DAVIS | BRUCE | | 20021007 | 0.50 | 81.00 | 40.50 |
| 238776 | DAVIS | CURTIS | | 20001023 | 0.50 | 14.70 | 7.35 |
| 238776 | DAVIS | CURTIS | | 20001106 | 0.50 | 101.55 | 50.77 |
| 238776 | DAVIS | CURTIS | | 20001120 | 0.50 | 83.40 | 41.70 |
| 238776 | DAVIS | CURTIS | | 20001204 | 0.50 | 60.45 | 30.22 |
| 238776 | DAVIS | CURTIS | | 20001218 | 0.50 | 101.99 | 50.99 |
| 238776 | DAVIS | CURTIS | | 20010101 | 0.50 | 33.47 | 16.73 |
| 238776 | DAVIS | CURTIS | | 20010115 | 0.50 | 57.60 | 28.80 |
| 238776 | DAVIS | CURTIS | | 20010129 | 0.50 | 63.77 | 31.88 |
| 238776 | DAVIS | CURTIS | | 20010212 | 0.50 | 85.73 | 42.86 |
| 238776 | DAVIS | CURTIS | | 20010226 | 0.50 | 105.96 | 52.98 |
| 238776 | DAVIS | CURTIS | | 20010312 | 0.50 | 104.68 | 52.34 |
| 238776 | DAVIS | CURTIS | | 20010326 | 0.50 | 111.43 | 55.71 |
| 238776 | DAVIS | CURTIS | | 20010409 | 0.50 | 145.40 | 72.70 |
| 238776 | DAVIS | CURTIS | | 20010423 | 0.50 | 130.25 | 65.12 |
| 238776 | DAVIS | CURTIS | | 20010507 | 0.50 | 144.90 | 72.45 |
| 238776 | DAVIS | CURTIS | | 20010521 | 0.50 | 174.10 | 87.05 |
| 238776 | DAVIS | CURTIS | | 20010604 | 0.50 | 121.35 | 60.67 |
| 238776 | DAVIS | CURTIS | | 20010618 | 0.50 | 121.31 | 60.65 |
| 238776 | DAVIS | CURTIS | | 20010702 | 0.50 | 129.68 | 64.84 |
| 238776 | DAVIS | CURTIS | | 20010716 | 0.50 | 118.20 | 59.10 |
| 238776 | DAVIS | CURTIS | | 20010730 | 0.50 | 133.02 | 66.51 |
| 238776 | DAVIS | CURTIS | | 20010813 | 0.50 | 174.04 | 87.02 |
| 238776 | DAVIS | CURTIS | | 20010827 | 0.50 | 141.18 | 70.59 |
| 238776 | DAVIS | CURTIS | | 20010910 | 0.50 | 125.93 | 62.96 |
| 238776 | DAVIS | CURTIS | | 20010924 | 0.50 | 136.35 | 68.17 |
| 238776 | DAVIS | CURTIS | | 20011008 | 0.50 | 191.63 | 95.81 |
| 238776 | DAVIS | CURTIS | | 20011022 | 0.50 | 154.98 | 77.49 |
| 238776 | DAVIS | CURTIS | | 20011105 | 0.50 | 141.53 | 70.76 |
| 238776 | DAVIS | CURTIS | | 20011119 | 0.50 | 165.80 | 82.90 |
| 238776 | DAVIS | CURTIS | | 20011203 | 0.50 | 136.93 | 68.46 |
| 238776 | DAVIS | CURTIS | | 20011217 | 0.50 | 145.29 | 72.64 |
| 238776 | DAVIS | CURTIS | | 20011231 | 0.50 | 73.36 | 36.68 |
| 238776 | DAVIS | CURTIS | | 20020114 | 0.50 | 88.03 | 44.01 |
| 238776 | DAVIS | CURTIS | | 20020128 | 0.50 | 133.29 | 66.64 |
| 238776 | DAVIS | CURTIS | | 20020211 | 0.50 | 193.29 | 96.64 |
| 238776 | DAVIS | CURTIS | | 20020225 | 0.50 | 204.08 | 102.04 |
| 238776 | DAVIS | CURTIS | | 20020311 | 0.50 | 169.67 | 84.83 |
| 238776 | DAVIS | CURTIS | | 20020325 | 0.50 | 148.15 | 74.07 |
| 238776 | DAVIS | CURTIS | | 20020408 | 0.50 | 119.25 | 59.62 |
| 238776 | DAVIS | CURTIS | | 20020422 | 0.50 | 145.19 | 72.59 |
| 238776 | DAVIS | CURTIS | | 20020506 | 0.50 | 143.65 | 71.82 |
| 238776 | DAVIS | CURTIS | | 20020520 | 0.50 | 155.25 | 77.62 |
| 238776 | DAVIS | CURTIS | | 20020603 | 0.50 | 146.97 | 73.48 |
| 238776 | DAVIS | CURTIS | | 20020617 | 0.50 | 128.90 | 64.45 |
| 238776 | DAVIS | CURTIS | | 20020701 | 0.50 | 51.80 | 25.90 |
| 242856 | DAVIS | FITZGERALD | | 19991025 | 0.35 | 49.00 | 17.15 |

PLAINTIFF'S EXHIBIT F

1983

A - 1046
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PLAINTIFF'S EXHIBIT H

1984

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

1985

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Curtis L. Davis
SCDC NUMBER: 238776
INSTITUTION: ~~Lieber~~ TCI NOV 04 2004
HOUSING UNIT: E-A-19
WORK ASSIGNMENT: SMU "Worker"

Office Use Only
Grievance No. TCI 0685-04
Code: General MU
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins & Wicker do require payment of prevailing wages. Grievants were employed by WTI, and SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker further allow this issue of payment of wages under SC Code 24-3-430 to be grieved, pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievance filed by Darrell Williams and Attorney, Douglas Westbrook on 9-22-04.

Curtis L. Davis 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Curtis L. Davis 5/16/7
Grievant Signature Date

TCI K. Lamont 5/16/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

1987

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 17, 2000 and that your participation in this project ended on June 19, 2002.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly four (4) years after SCDC first paid you for your participation in the project located at Lieber, over two (2) years after your participation in the project at Lieber ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

1990

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Curtis Davis, #238776, Appellant, vs. South Carolina Department of Corrections, Respondent. | **NOTICE OF APPEAL**<br>DOCKET NO. 07 -ALJ-04- -<br>GRIEVANCE NO.: |

Notice is hereby given that Curtis Davis does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-16-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Curtis Davis
Appellant's Name
Turbeville C.I.
P.O. Box 252
Mailing Address
Turbeville, SC 29162
City, State, Zip Code
none
Telephone Number

Signed
5-30-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

1551

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| CURTIS DAVIS, #238776, | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Mr. Garry E Davis
SCDC NUMBER: 106144
INSTITUTION: Lieber
HOUSING UNIT: EDisto - A - 60
WORK ASSIGNMENT: Kitchen

Office Use Only
Grievance No. _____
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received [illegible]
IGC Initials _____

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The department is asked to review and determine, whether I am entitled to receive back wages which are due to me from working at Lieber Prison industries Program when they only paid me .35 cent an hour and not Prevailing wage as under South Carolina Code Ann. Sec 24-3-430-A-7 as well as fact they were getting $4.00 an hour and still did not give me my money from 8-14-01 to 11-6-01 they denied me Prevailing wage.

ACTION REQUESTED:

That all money due to me be paid at Prevailing wage as well as overtime late, Moreover the Prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Specify How and when informal resolution was Attempted by Grievant: Law suit was filed ordered to file grievance by Court Wicker -v- S.C.D.C. Adkins -v- S.C.D.C

Mr Garry E Davis 9-21-04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Davis: Current court decision addressing wages does not apply to Lieber Prison Industries Service Program; therefore, this is being returned to you unprocessed.

L Carrington 9-22-04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

1993

N/A
Grievant Signature Date

Ackerman 5-6-11 1631

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Garry Davis
SCDC NUMBER: 106144
INSTITUTION: LIEBER
HOUSING UNIT: Edisto - A-60
WORK ASSIGNMENT: Kitchen

Office Use Only
Grievance No. Lieber 0829-04
Code: General RN
Policy
Disc. Hear.
Class.
Date Received OCT 15 2004
IGC Initials LC
11/24/04

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
This is the Second time I am on doing this STEP-one form this first was unprocessed. The department is asking to review and determine, whether I am entitled to recieve back wages which are due to me from working at Lieber prison industries program when they only paid me, .35 Cent an hour and not prevailing wage as under South Carolina Code Ann. Sec, 24-3-430-A-7 as well as fact they were getting *4.00 an hour and still did not give me my money from 8-14-01 to 11-6-01 they denied me Prevailing wage.

ACTION REQUESTED: That all Money due to me be paid at prevailing wage as well as overtime, late, moreover the prevailing wage be paid now,

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Specify. how and when informal resolution was attempted by grievant: Lowsuit was filed ordered to file grievance by Court Wicker-v- SCDC Adkins-v- SCDC

Mr Garry E. Davis 10-12-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carofore 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☑ I do not accept the action taken and wish to appeal. 1994

N/A
Grievant Signature Date

Ackerman 5-6-11 1632

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 10-29-04

IGC Signature Date 10/29/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

1995

Dr. D. David, #106444 LC10829-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

1996

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

1957

AMENDMENT TO GRIEVANCE OF GARY DAVIS, #106144

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 322.95 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0779; C, 0081,0086; F, 1047; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

1998

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED
MAY 23 2007
INMATE GRIEVANCE

INMATE NAME: Mr Garry E. Davis
SCDC NUMBER: 106144
INSTITUTION: ~~Lieber~~ EVANS
HOUSING UNIT: [illegible]
WORK ASSIGNMENT: Kitchen 2B138

Nov. 2, 04
P.8

Office Use Only
Grievance No. LCI-0829-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 02 2004
IGC Initials CC

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I am Appealing this to the Responsible official at S.C.D.C. Headquarters. First, I disagree with the warden's Response and believe it to be inaccurate as a Matter of Law and policy. secondly, Since this issue involves questions of policy and Law which are beyond the scope of the wardens position and authority, I Respectfully Request that this appeal be forwarded directly to the person Responsible at Headquarters for answering this issue.

Mr. Garry E. Davis 10-30-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

5-16-07
Grievant Signature Date

S. Stoppe 5.16.07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

1999

Ackerman 5-6-11 1637

Lieber PI Back Wage Claim Step 2 Reply

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Davis, Garry | 106144 | LCI-0829-04 |

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated October 30, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated October 12, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 2, 2001 and that your participation in this project ended on November 16, 2001.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Davis, Garry | 106144 | LCI-0829-04 |

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over three (3) years after SCDC first paid you for your participation in the project located at Lieber, just less than three (3) years after your participation in the project at Lieber ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Davis, Garry | 106144 | LCI-0829-04 |

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Davis, Garry | 106144 | LCI-0829-04 |

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Gary Davis, #106144, Appellant, vs. South Carolina Department of Corrections, Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that Gary Davis does hereb appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of th grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thu due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period( worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Gary Davis
Appellant's Name

Evans C.I.
Mailing Address

610 Hwy. 9 West

Bennettsville, SC 29512-2130
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2004

Ackerman 5-6-11 1642

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| | ) | |
| GARY DAVIS, #106144 | ) | |
| | ) | |
| Grievant/Appellant, | ) | |
| | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| | ) | |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| | ) | |
| Respondent/Appellee. | ) | |
| | ) | |
| | ) | |

I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D H Westbrook
Douglas H. Westbrook

2005

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Heyward C. Dempsey
SCDC NUMBER: 4134171
INSTITUTION: Lieber Corr.Inst.
HOUSING UNIT: Cooper B-51
WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. Lieber 0657-04
Code: General MY
Nelson
Adj. Com.
Class.
Date Received SEP 22 2004
IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy; if Nelson Decree, specify which section of decree)

The Department is asked to review and determine whether I am entitled to receive back wages due to me from working at Lieber Prison Industry Program when they paid me only $.35/hr. and not prevailing wage as required under South Carolina Code Ann. §24-3-430(A),(B) as well as fact that from 1998-2003 they denied me prevailing wage.

ACTION REQUESTED:

All money due to me be paid at prevailing wage and overtime rate and prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit has been filed, court order to file a grievance by the court; Wicker v. SCDC and Adkins v. SCDC.

Heyward C Dempsey 9/23/04
Grievant Signature Date

INFORMAL RESOLUTION BY IGC:

See Warden's response.

L Carlson 10/28/04
IGC Signature Date

☐ I accept the informal resolution and consider the matter closed.
☐ I do not accept the informal resolution. I wish to appeal to the Warden.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. April 1996)

2006 (CONTINUED ON REVERSE SIDE)

Ackerman 5-6-11 1644

WARDEN'S DECISION AND REASON:

See attachment.

☒ I do not accept.

Warden Signature Date Oct. 28, 04

I hereby acknowledge receipt of the Warden's response. My signature in no way indicates my acceptance of the decision.

Grievant Signature Date 11-2-04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within seven (7) days of an alleged incident; Policy or Nelson at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the Regional Director within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2007

J/M H. Dempsey, #134171 L010657-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2008

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2009

AMENDMENT TO GRIEVANCE OF HEYWARD DEMPSEY, III, #134171

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 296.92 hours in 2000 at $10.66 per hour; 940.13 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 5602.73 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Heyward C Dempsey 2/3/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1051-1052; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | M X 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 8 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | M X 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | W A 120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT
A
2011

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

20/2

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PERGAD-Bayonne, N.J.
PLAINTIFF'S EXHIBIT
C
20/3

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 246857 | DAWKINS | EZACHIAS | EUGENE | 20010730 | 0.50 | 55.90 | 27.95 |
| 211860 | DEAS | RUSSELL | | 20010924 | 0.50 | 52.50 | 26.25 |
| 211860 | DEAS | RUSSELL | | 20011008 | 0.50 | 80.37 | 40.18 |
| 211860 | DEAS | RUSSELL | | 20011022 | 0.50 | 74.52 | 37.26 |
| 211860 | DEAS | RUSSELL | | 20011105 | 0.50 | 72.68 | 36.34 |
| 211860 | DEAS | RUSSELL | | 20011119 | 0.50 | 79.04 | 39.52 |
| 211860 | DEAS | RUSSELL | | 20011203 | 0.50 | 20.84 | 10.42 |
| 211860 | DEAS | RUSSELL | | 20011217 | 0.50 | 95.96 | 47.98 |
| 211860 | DEAS | RUSSELL | | 20011231 | 0.50 | 44.30 | 22.15 |
| 211860 | DEAS | RUSSELL | | 20020114 | 0.50 | 62.12 | 31.06 |
| 211860 | DEAS | RUSSELL | | 20020128 | 0.50 | 80.26 | 40.13 |
| 211860 | DEAS | RUSSELL | | 20020211 | 0.50 | 83.85 | 41.92 |
| 211860 | DEAS | RUSSELL | | 20020225 | 0.50 | 97.38 | 48.69 |
| 211860 | DEAS | RUSSELL | | 20020311 | 0.50 | 108.53 | 54.26 |
| 211860 | DEAS | RUSSELL | | 20020325 | 0.50 | 111.03 | 55.51 |
| 211860 | DEAS | RUSSELL | | 20020408 | 0.50 | 89.13 | 44.56 |
| 211860 | DEAS | RUSSELL | | 20020422 | 0.50 | 111.53 | 55.76 |
| 211860 | DEAS | RUSSELL | | 20020506 | 0.50 | 105.59 | 52.79 |
| 211860 | DEAS | RUSSELL | | 20020520 | 0.50 | 94.62 | 47.31 |
| 211860 | DEAS | RUSSELL | | 20020603 | 0.50 | 100.38 | 50.19 |
| 211860 | DEAS | RUSSELL | | 20020617 | 0.50 | 106.85 | 53.42 |
| 211860 | DEAS | RUSSELL | | 20020701 | 0.50 | 108.23 | 54.11 |
| 211860 | DEAS | RUSSELL | | 20020715 | 0.50 | 94.05 | 47.02 |
| 211860 | DEAS | RUSSELL | | 20020729 | 0.50 | 93.35 | 46.67 |
| 211860 | DEAS | RUSSELL | | 20020812 | 0.50 | 94.35 | 47.17 |
| 211860 | DEAS | RUSSELL | | 20020826 | 0.50 | 90.00 | 45.00 |
| 134171 | DEMPSEY | HEYWARD | C. | 20001023 | 0.50 | 27.90 | 13.95 |
| 134171 | DEMPSEY | HEYWARD | C. | 20001023 | 0.50 | 68.05 | 34.02 |
| 134171 | DEMPSEY | HEYWARD | C. | 20001106 | 0.50 | 44.49 | 22.24 |
| 134171 | DEMPSEY | HEYWARD | C. | 20001120 | 0.50 | 64.72 | 32.36 |
| 134171 | DEMPSEY | HEYWARD | C. | 20001204 | 0.50 | 54.90 | 27.45 |
| 134171 | DEMPSEY | HEYWARD | C. | 20001218 | 0.50 | 31.78 | 15.89 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010101 | 0.50 | 5.08 | 2.54 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010115 | 0.50 | 35.30 | 17.65 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010129 | 0.50 | 60.13 | 30.06 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010212 | 0.50 | 37.75 | 18.87 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010226 | 0.50 | 54.89 | 27.44 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010312 | 0.50 | 52.50 | 26.25 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010326 | 0.50 | 94.64 | 47.32 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010409 | 0.50 | 86.15 | 43.07 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010423 | 0.50 | 92.34 | 46.17 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010507 | 0.50 | 88.36 | 44.18 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010521 | 0.50 | 97.05 | 48.52 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010604 | 0.50 | 84.83 | 42.41 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010618 | 0.50 | 57.72 | 28.86 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010702 | 0.50 | 98.47 | 49.23 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010716 | 0.50 | 85.37 | 42.68 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010730 | 0.50 | 88.79 | 44.39 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010813 | 0.50 | 105.57 | 52.78 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010827 | 0.50 | 103.95 | 51.97 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010910 | 0.50 | 104.67 | 52.33 |
| 134171 | DEMPSEY | HEYWARD | C. | 20010924 | 0.50 | 125.53 | 62.76 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011008 | 0.50 | 144.71 | 72.35 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011022 | 0.50 | 144.57 | 72.28 |

PLAINTIFF'S EXHIBIT
F
2014

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 134171 | DEMPSEY | HEYWARD | C. | 20011105 | 0.50 | 122.74 | 61.37 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011119 | 0.50 | 113.17 | 56.58 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011203 | 0.50 | 52.34 | 26.17 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011217 | 0.50 | 129.71 | 64.85 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011231 | 0.50 | 61.42 | 30.71 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020114 | 0.50 | 85.22 | 42.61 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020128 | 0.50 | 112.06 | 56.03 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020211 | 0.50 | 120.05 | 60.02 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020225 | 0.50 | 68.76 | 34.38 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020311 | 0.50 | 125.46 | 62.73 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020325 | 0.50 | 141.68 | 70.84 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020408 | 0.50 | 125.65 | 62.82 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020422 | 0.50 | 128.38 | 64.19 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020506 | 0.50 | 130.32 | 65.16 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020520 | 0.50 | 127.53 | 63.76 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020603 | 0.50 | 96.40 | 48.20 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020617 | 0.50 | 73.68 | 36.84 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020701 | 0.50 | 119.89 | 59.94 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020715 | 0.50 | 102.98 | 51.49 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020729 | 0.50 | 115.46 | 57.73 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020812 | 0.50 | 112.96 | 56.48 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020826 | 0.50 | 139.00 | 69.50 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020909 | 0.50 | 115.94 | 57.97 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020923 | 0.50 | 130.74 | 65.37 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021007 | 0.50 | 146.10 | 73.05 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021021 | 0.50 | 112.74 | 56.37 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021104 | 0.50 | 120.24 | 60.12 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021118 | 0.50 | 138.99 | 69.49 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021202 | 0.50 | 113.90 | 56.95 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021216 | 0.50 | 122.77 | 61.38 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021230 | 0.50 | 64.93 | 32.46 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030113 | 0.50 | 61.61 | 30.80 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030127 | 0.50 | 97.97 | 48.98 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030210 | 0.50 | 119.34 | 59.67 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030224 | 0.50 | 112.91 | 56.45 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030310 | 0.50 | 91.75 | 45.87 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030324 | 0.50 | 88.11 | 44.05 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030407 | 0.50 | 117.36 | 58.68 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030421 | 0.50 | 95.09 | 47.54 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030505 | 0.50 | 52.65 | 26.32 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030519 | 0.50 | 114.11 | 57.05 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030602 | 0.50 | 99.86 | 49.93 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030616 | 0.50 | 109.62 | 54.81 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030630 | 0.50 | 67.95 | 33.97 |
| 258310 | DEMPSEY | JOHN. | ERIC | 20020826 | 0.50 | 11.90 | 5.95 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040405 | 0.50 | 18.63 | 9.31 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040419 | 0.50 | 30.92 | 15.46 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040503 | 0.50 | 50.94 | 25.47 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040517 | 0.50 | 69.72 | 34.86 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040531 | 0.50 | 72.40 | 36.20 |
| 232691 | DERAM | PHILLIP | | 20010730 | 0.50 | 73.68 | 36.84 |
| 232691 | DERAM | PHILLIP | | 20010813 | 0.50 | 72.62 | 36.31 |
| 232691 | DERAM | PHILLIP | | 20010827 | 0.50 | 71.12 | 35.56 |
| 232691 | DERAM | PHILLIP | | 20010910 | 0.50 | 90.05 | 45.02 |

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PERGAD-Bergen, N. J.
PLAINTIFF'S EXHIBIT
H

20/6

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 11-2-04
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Dempsey, Heyward C.
SCDC NUMBER: #134171
INSTITUTION: Lieber Corr.Inst.
HOUSING UNIT: Cooper B-51
WORK ASSIGNMENT: PI-2

NOV 08 2004
PP

Office Use Only
Grievance No. LCI 0057-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker do require payment of prevailing wages. Grievants were employed by PTI and SCDC was PTI's "Agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C.Code Ann.§24-3-430 to be grieved purusant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9/22/04.

Heyward Dempsey 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature 5/22/07 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2019

Ackerman 5-6-11 1657

DEMPSEY LCI-0657-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on July 11, 2000 and that your participation in this project ended on June 26, 2003.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over four (4) years after SCDC first paid you for your participation in the project located at Lieber, nearly 15 months after your participation in the project at Lieber ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Heyward Dempsey, #134171, Appellant, | ) | |
| vs. | ) | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | ) | DOCKET NO. _07___-ALJ-04-_____-___ GRIEVANCE NO.: _____ |

Notice is hereby given that Heyward Dempsey does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Heyward Dempsey
Appellant's Name

Lieber C.I.
P.O. Box 205
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

5-31-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29472
(843) 853-9600
Attorney for Appellant

2023

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| HEYWARD DEMPSEY, #134171 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D H Westbrook
Douglas H. Westbrook

2024

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

Phillip A Denney individually, and on behalf of all inmate employees (IE's) listed on attached Exh. A *

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 240678

INSTITUTION: Lieber Corr. Inst

HOUSING UNIT: C-A-7

WORK ASSIGNMENT: Mazda Station I

Office Use Only

Grievance No. Lieber 0716-04

Code: General MI

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-43C to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 f 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits docume a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 3 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and empl ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F)

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate f 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the fu ture; all as determined from Exhibits A-H; and the time cards, pay stubs, ar other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, cost ~~and attorney fees.~~

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's hav verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which wa dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willi et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifi a class action representing the class identified in Exh. A. On August 23, 20 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Phillip A Denney

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carter 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

N/A

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

2025

WARDEN'S DECISION AND REASON:

See Attachment.

Oct. 28, 04
Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Phillip A. Denny 11-2-04
Grievant Signature Date

11-2-04
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2026

Jim B. Berry, #240678 LCI 0716-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF PHILLIP DENNEY, #240678

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 242.61 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Phillip A Denney 2/3/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1052; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2029

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | MX 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 8 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | MX 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | W A 120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT
A
2030

A - 0780
June 2004

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 WSW. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT
C
2031



Ackerman 5-6-11 1669

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
C

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 134171 | DEMPSEY | HEYWARD | C. | 20011105 | 0.50 | 122.74 | 61.37 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011119 | 0.50 | 113.17 | 56.58 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011203 | 0.50 | 52.34 | 26.17 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011217 | 0.50 | 129.71 | 64.85 |
| 134171 | DEMPSEY | HEYWARD | C. | 20011231 | 0.50 | 61.42 | 30.71 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020114 | 0.50 | 85.22 | 42.61 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020128 | 0.50 | 112.06 | 56.03 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020211 | 0.50 | 120.05 | 60.02 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020225 | 0.50 | 68.76 | 34.38 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020311 | 0.50 | 125.46 | 62.73 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020325 | 0.50 | 141.68 | 70.84 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020408 | 0.50 | 125.65 | 62.82 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020422 | 0.50 | 128.38 | 64.19 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020506 | 0.50 | 130.32 | 65.16 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020520 | 0.50 | 127.53 | 63.76 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020603 | 0.50 | 96.40 | 48.20 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020617 | 0.50 | 73.68 | 36.84 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020701 | 0.50 | 119.89 | 59.94 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020715 | 0.50 | 102.98 | 51.49 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020729 | 0.50 | 115.46 | 57.73 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020812 | 0.50 | 112.96 | 56.48 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020826 | 0.50 | 139.00 | 69.50 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020909 | 0.50 | 115.94 | 57.97 |
| 134171 | DEMPSEY | HEYWARD | C. | 20020923 | 0.50 | 130.74 | 65.37 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021007 | 0.50 | 146.10 | 73.05 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021021 | 0.50 | 112.74 | 56.37 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021104 | 0.50 | 120.24 | 60.12 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021118 | 0.50 | 138.99 | 69.49 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021202 | 0.50 | 113.90 | 56.95 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021216 | 0.50 | 122.77 | 61.38 |
| 134171 | DEMPSEY | HEYWARD | C. | 20021230 | 0.50 | 64.93 | 32.46 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030113 | 0.50 | 61.61 | 30.80 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030127 | 0.50 | 97.97 | 48.98 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030210 | 0.50 | 119.34 | 59.67 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030224 | 0.50 | 112.91 | 56.45 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030310 | 0.50 | 91.75 | 45.87 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030324 | 0.50 | 88.11 | 44.05 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030407 | 0.50 | 117.36 | 58.68 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030421 | 0.50 | 95.09 | 47.54 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030505 | 0.50 | 52.65 | 26.32 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030519 | 0.50 | 114.11 | 57.05 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030602 | 0.50 | 99.86 | 49.93 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030616 | 0.50 | 109.62 | 54.81 |
| 134171 | DEMPSEY | HEYWARD | C. | 20030630 | 0.50 | 67.95 | 33.97 |
| 258310 | DEMPSEY | JOHN | ERIC | 20020826 | 0.50 | 11.90 | 5.95 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040405 | 0.50 | 18.63 | 9.31 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040419 | 0.50 | 30.92 | 15.46 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040503 | 0.50 | 50.94 | 25.47 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040517 | 0.50 | 69.72 | 34.86 |
| 240678 | DENNEY | PHILLIP | ALLEN | 20040531 | 0.50 | 72.40 | 36.20 |
| 232691 | DERAM | PHILLIP | | 20010730 | 0.50 | 73.68 | 36.84 |
| 232691 | DERAM | PHILLIP | | 20010813 | 0.50 | 72.62 | 36.31 |
| 232691 | DERAM | PHILLIP | | 20010827 | 0.50 | 71.12 | 35.56 |
| 232691 | DERAM | PHILLIP | | 20010910 | 0.50 | 90.05 | 45.02 |

PLAINTIFF'S EXHIBIT
F
2033

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers—Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PLAINTIFF'S EXHIBIT H

2034

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-7-04

INMATE NAME: Phillip A Denney
SCDC NUMBER: 240679
INSTITUTION: Lieber Corr. INST.
HOUSING UNIT: Cooper A-7
WORK ASSIGNMENT: PI-2

NOV 08 2004
PP

Office Use Only
Grievance No. LCI 0716-04
Code: General MY
Policy
Disc. Hear.
Class. NOV 03 2004
Date Received
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
ADKINS + Wicker Require Payment of Prevaling Wages. Grievants were Employed by WTI and SCDC was WTI's "Agent in paying our Wages. ADKINS + Wicker Further Allowed This Issue of payment of Wages Under SC code 24-3-430 To be Griveved Pursuant to SCDC's Grievance Procedure. Grievant Incorporates by Reference all Exhibits attached to Grievances filed By Darrell Willia and Attorney Douglas Westbrook on 9-22-04

Phillip A Denney 2-11-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Phillip Denney 5-22-07
Grievant Signature Date

A Hardin 5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2035

DENNY LCI-0716-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 30, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 30, 2004 and that your participation in this project ended on March 7, 2007.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing. .

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

2036

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance six (6) months after SCDC first paid you for your participation in the project located at Lieber and more than 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Phillip Denney, #240678, Appellant, | ) | |
| vs. | ) | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | ) | DOCKET NO. _07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Phillip Denney does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 _____ and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Phillip Denney
Appellant's Name
Kershaw C.I.
4848 Goldmine Hy
Mailing Address
Kershaw, SC 29067
City, State, Zip Code
none
Telephone Number

D H Westbrook
Signed
5-30-07
Dated
Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2039

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| PHILLIP DENNEY, # 240678 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

2040

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

Office Use Only 645-07
Grievance No. LCI
Code: General MY
Policy
Disc. Hear.
Class.
Date Received 5-17-07
IGC Initials

INMATE NAME: Perry Dewease
SCDC NUMBER: 109601
INSTITUTION: Lieber C. I
HOUSING UNIT: BA 20 ABW
WORK ASSIGNMENT: N/A

JUN 07 2007
INMATE GRIEVANCE

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) Grievant was/is employed in the WTI/Lieber service work program. From 1999/July 2001, S.C. Code 24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G,H).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hr (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of approx. $1/hr, and usually less. Exhibits document a .35/hr base rate (Exh. B,D,E), maximum of $1/hr (Exh E), the 9-30-98 contract specifying a $4/hr wage (Exh B,C), employee roster (Exh A), and pay dates, rates, hours, and pay for Grievant (Exh F).

* Exhibits A-H attached to two grievances filed by Darrell Williams #219730 and counsel on 9-22-04 are incorporated herein by reference. Attached in part are Exhibits A,C,F, & H.

ACTION REQUESTED: Back wages for hrs in 1999 at 9.68/hr; hrs in 2000 at 10.66/hr; hrs in 1-1-01/6-30-01 at 11.08/hr; and hrs * 7-1-01/present at $4/hr; less wages paid, §24-3-40 deductions, and soc. sec/medicare; plus interest, costs, and atty fees.

* Hours "plus" indicates possible work past latest date in Exh F, June 2004.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Workers have requested WTI/Lieber to pay prevailing wages, and Darrell Williams in 2001 grieved improper wages which was dismissed for want of jurisdiction. In 2002, Williams brought a class action for improper wages. On Aug. 23, 2004, the SC Sup. Court in Adkins and Wicker held the prevailing wage provision was mandatory and workers could file a grievance for back wages.

Perry Dewease 5/15/07
Grievant Signature Date

ACTION TAKEN BY IGC:

SEE WARDEN'S RESPONSE

Ann Hallman 7-11-07
IGC Signature Date
IGA

☒ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

2041

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

SEE ATTACHED

Inmate refused to come to site.

Fred B Thompson 2/13/07
Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

2/13/07
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2042

DEVEAUX LCI-0645-07

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 1 grievance form dated May 15, 2007 as well as any and all documents you submitted in support of your Step 1 grievance form.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your voluntary participation in the prison industries project at Lieber began on November 3, 2000 and ended August 12, 2004.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and,

2043

DEVEAUX LCI-0645-07

specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of your Step 1 grievance clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004 throughout your Step 1 grievance.

Contrary to the claims you made in your Step 1 grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your Step 1 grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "inmate/employee" within your Step 1 grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

DEVEAUX LCI-0645-07

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your grievance in its entirety.

If you wish to appeal my decision you have 5 days to file you Step 2 appeal in accordance with procedure #5 listed below.

2045

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Perry Deveaux, #109601, Appellant, vs. South Carolina Department of Corrections, Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that Perry Deveaux does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Perry Deveaux
Appellant's Name

Perry C.I.
Mailing Address

430 Oak Lawn Rd.

Pelzer, SC 29669
City, State, Zip Code

none
Telephone Number

Signed

4-6-04
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2046

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| PERRY DEVEAUX, #109601 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

2047

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

DANIEL DEWEY INMATE GRIEVANCE FORM

individually, and on STEP 1
behalf of all inmate employees (IE's)

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 276678

INSTITUTION: LIEBER

HOUSING UNIT: COOPER - A-39 ✓

WORK ASSIGNMENT: P.I.V

Office Use Only

Grievance No. Lieber0771-04

Code: General MU

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Daniel Dewey 9-27-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

L. Caughman 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

2048

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

SEE ATTACHED

Warden Signature 5-15-07 Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 5/22/07 Date

~~IGC~~ IGA Signature 5-15-07 Date

Served by: 5-22-07

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2049

Jim D. Dewey #276678 LC10771-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2050

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

205/

DEWEY LCI-0771-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 1 grievance form dated September 27, 2004 as well as any and all documents you submitted in support of your Step 1 grievance form.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 10, 2001 and that you concluded your participation in this project on December 10, 2002.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and,

specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of your Step 1 grievance clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004 throughout your Step 1 grievance.

Contrary to the claims you made in your Step 1 grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your Step 1 grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "inmate/employee" within your Step 1 grievance to describe your position, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your grievance in its entirety.

AMENDMENT TO GRIEVANCE OF DANIEL DEWEY, #276678

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 3322.04 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Daniel Dewey 2/5/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1053-1054; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2051

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | M X 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 8 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | M X 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | W A 120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT A

A - 0780
June 2004

2056

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 [illegible] Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

2057

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
C

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 232691 | DERAM | PHILLIP | | 20010924 | 0.50 | 31.09 | 15.54 |
| 109601 | DEVEAUX | PERRY | - | 20001120 | 0.50 | 44.46 | 22.23 |
| 109601 | DEVEAUX | PERRY | - | 20001204 | 0.50 | 37.73 | 18.86 |
| 109601 | DEVEAUX | PERRY | - | 20001218 | 0.50 | 56.79 | 28.39 |
| 109601 | DEVEAUX | PERRY | - | 20010101 | 0.50 | 37.23 | 18.61 |
| 109601 | DEVEAUX | PERRY | - | 20010115 | 0.50 | 59.95 | 29.97 |
| 109601 | DEVEAUX | PERRY | - | 20010129 | 0.50 | 65.53 | 32.76 |
| 109601 | DEVEAUX | PERRY | - | 20010212 | 0.50 | 67.50 | 33.75 |
| 109601 | DEVEAUX | PERRY | - | 20010226 | 0.50 | 75.21 | 37.60 |
| 109601 | DEVEAUX | PERRY | - | 20010312 | 0.50 | 67.50 | 33.75 |
| 109601 | DEVEAUX | PERRY | - | 20010409 | 0.50 | 27.38 | 13.69 |
| 109601 | DEVEAUX | PERRY | - | 20010507 | 0.50 | 15.75 | 7.87 |
| 109601 | DEVEAUX | PERRY | - | 20010521 | 0.50 | 70.26 | 35.13 |
| 109601 | DEVEAUX | PERRY | - | 20010604 | 0.50 | 81.22 | 40.61 |
| 109601 | DEVEAUX | PERRY | - | 20010618 | 0.50 | 69.33 | 34.66 |
| 109601 | DEVEAUX | PERRY | - | 20010702 | 0.50 | 95.45 | 47.72 |
| 109601 | DEVEAUX | PERRY | - | 20010716 | 0.50 | 59.63 | 29.81 |
| 109601 | DEVEAUX | PERRY | - | 20010730 | 0.50 | 96.72 | 48.36 |
| 109601 | DEVEAUX | PERRY | - | 20010813 | 0.50 | 93.77 | 46.88 |
| 109601 | DEVEAUX | PERRY | - | 20010827 | 0.50 | 22.15 | 11.07 |
| 109601 | DEVEAUX | PERRY | - | 20020603 | 0.50 | 47.25 | 23.62 |
| 109601 | DEVEAUX | PERRY | - | 20020617 | 0.50 | 15.75 | 7.87 |
| 268959 | DEVLIN | JAMES | LAMAR | 20001023 | 0.50 | 17.08 | 8.54 |
| 268959 | DEVLIN | JAMES | LAMAR | 20001106 | 0.50 | 78.46 | 39.23 |
| 268959 | DEVLIN | JAMES | LAMAR | 20001120 | 0.50 | 46.33 | 23.16 |
| 268959 | DEVLIN | JAMES | LAMAR | 20001204 | 0.50 | 34.07 | 17.03 |
| 268959 | DEVLIN | JAMES | LAMAR | 20001218 | 0.50 | 113.41 | 56.70 |
| 268959 | DEVLIN | JAMES | LAMAR | 20010101 | 0.50 | 36.85 | 18.42 |
| 268959 | DEVLIN | JAMES | LAMAR | 20010115 | 0.50 | 63.06 | 31.53 |
| 268959 | DEVLIN | JAMES | LAMAR | 20010129 | 0.50 | 68.64 | 34.32 |
| 268959 | DEVLIN | JAMES | LAMAR | 20010212 | 0.50 | 44.37 | 22.18 |
| 268959 | DEVLIN | JAMES | LAMAR | 20010226 | 0.50 | 63.18 | 31.59 |
| 268959 | DEVLIN | JAMES | LAMAR | 20010312 | 0.50 | 5.84 | 2.92 |
| 191307 | DEWEES | MELVIN | | 19991108 | 0.35 | 15.00 | 5.25 |
| 191307 | DEWEES | MELVIN | | 19991122 | 0.35 | 62.92 | 22.02 |
| 191307 | DEWEES | MELVIN | | 19991206 | 0.35 | 26.30 | 9.20 |
| 191307 | DEWEES | MELVIN | | 19991220 | 0.35 | 67.15 | 23.50 |
| 191307 | DEWEES | MELVIN | | 19991220 | 2.50 | 2.00 | 5.00 |
| 191307 | DEWEES | MELVIN | | 20000103 | 0.35 | 16.22 | 5.67 |
| 191307 | DEWEES | MELVIN | | 20000117 | 0.35 | 64.47 | 22.56 |
| 191307 | DEWEES | MELVIN | | 20000131 | 0.35 | 59.00 | 20.65 |
| 191307 | DEWEES | MELVIN | | 20000131 | 0.15 | 64.47 | 9.67 |
| 191307 | DEWEES | MELVIN | | 20000214 | 0.35 | 59.58 | 20.85 |
| 276678 | DEWEY | DANIEL | | 20010827 | 0.50 | 52.36 | 26.18 |
| 276678 | DEWEY | DANIEL | | 20010910 | 0.50 | 47.25 | 23.62 |
| 276678 | DEWEY | DANIEL | | 20010924 | 0.50 | 52.50 | 26.25 |
| 276678 | DEWEY | DANIEL | | 20011008 | 0.50 | 75.00 | 37.50 |
| 276678 | DEWEY | DANIEL | | 20011022 | 0.50 | 75.00 | 37.50 |
| 276678 | DEWEY | DANIEL | | 20011105 | 0.50 | 75.00 | 37.50 |
| 276678 | DEWEY | DANIEL | | 20011119 | 0.50 | 79.50 | 39.75 |
| 276678 | DEWEY | DANIEL | | 20011203 | 0.50 | 63.68 | 31.84 |
| 276678 | DEWEY | DANIEL | | 20011217 | 0.50 | 100.00 | 50.00 |
| 276678 | DEWEY | DANIEL | | 20011231 | 0.50 | 45.00 | 22.50 |
| 276678 | DEWEY | DANIEL | | 20020114 | 0.50 | 63.00 | 31.50 |

HGAD-Bayonne, N. J.

PLAINTIFF'S EXHIBIT F

2059

A - 1053
June 2004

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 276678 | DEWEY | DANIEL | | 20020128 | 0.50 | 75.00 | 37.50 |
| 276678 | DEWEY | DANIEL | | 20020211 | 0.50 | 87.86 | 43.93 |
| 276678 | DEWEY | DANIEL | | 20020225 | 0.50 | 116.25 | 58.12 |
| 276678 | DEWEY | DANIEL | | 20020311 | 0.50 | 112.50 | 56.25 |
| 276678 | DEWEY | DANIEL | | 20020325 | 0.50 | 112.50 | 56.25 |
| 276678 | DEWEY | DANIEL | | 20020408 | 0.50 | 94.55 | 47.27 |
| 276678 | DEWEY | DANIEL | | 20020422 | 0.50 | 101.25 | 50.62 |
| 276678 | DEWEY | DANIEL | | 20020506 | 0.50 | 118.76 | 59.38 |
| 276678 | DEWEY | DANIEL | | 20020520 | 0.50 | 111.67 | 55.83 |
| 276678 | DEWEY | DANIEL | | 20020603 | 0.50 | 104.64 | 52.32 |
| 276678 | DEWEY | DANIEL | | 20020617 | 0.50 | 117.47 | 58.73 |
| 276678 | DEWEY | DANIEL | | 20020701 | 0.50 | 87.04 | 43.52 |
| 276678 | DEWEY | DANIEL | | 20020715 | 0.50 | 81.55 | 40.77 |
| 276678 | DEWEY | DANIEL | | 20020729 | 0.50 | 120.70 | 60.35 |
| 276678 | DEWEY | DANIEL | | 20020812 | 0.50 | 115.80 | 57.90 |
| 276678 | DEWEY | DANIEL | | 20020826 | 0.50 | 104.84 | 52.42 |
| 276678 | DEWEY | DANIEL | | 20020909 | 0.50 | 111.09 | 55.54 |
| 276678 | DEWEY | DANIEL | | 20020923 | 0.50 | 115.58 | 57.79 |
| 276678 | DEWEY | DANIEL | | 20021007 | 0.50 | 138.64 | 69.32 |
| 276678 | DEWEY | DANIEL | | 20021021 | 0.50 | 142.50 | 71.25 |
| 276678 | DEWEY | DANIEL | | 20021104 | 0.50 | 99.75 | 49.87 |
| 276678 | DEWEY | DANIEL | | 20021118 | 0.50 | 144.24 | 72.12 |
| 276678 | DEWEY | DANIEL | | 20021202 | 0.50 | 117.17 | 58.58 |
| 276678 | DEWEY | DANIEL | | 20021216 | 0.50 | 44.90 | 22.45 |
| 276678 | DEWEY | DANIEL | | 20021230 | 0.50 | 17.50 | 8.75 |
| 276602 | DIAZ | FAUSTO | | 20010827 | 0.50 | 35.41 | 17.70 |
| 276602 | DIAZ | FAUSTO | | 20010910 | 0.50 | 47.09 | 23.54 |
| 276602 | DIAZ | FAUSTO | | 20010924 | 0.50 | 52.50 | 26.25 |
| 276602 | DIAZ | FAUSTO | | 20011008 | 0.50 | 78.06 | 39.03 |
| 276602 | DIAZ | FAUSTO | | 20011022 | 0.50 | 80.60 | 40.30 |
| 276602 | DIAZ | FAUSTO | | 20011105 | 0.50 | 72.98 | 36.49 |
| 276602 | DIAZ | FAUSTO | | 20011119 | 0.50 | 91.50 | 45.75 |
| 276602 | DIAZ | FAUSTO | | 20011203 | 0.50 | 72.00 | 36.00 |
| 276602 | DIAZ | FAUSTO | | 20011217 | 0.50 | 99.24 | 49.62 |
| 276602 | DIAZ | FAUSTO | | 20011231 | 0.50 | 43.74 | 21.87 |
| 276602 | DIAZ | FAUSTO | | 20020114 | 0.50 | 26.09 | 13.04 |
| 198244 | DIAZ | IVAN | | 19990816 | 0.35 | 24.00 | 8.40 |
| 198244 | DIAZ | IVAN | | 19990816 | 0.55 | 6.00 | 3.30 |
| 198244 | DIAZ | IVAN | | 19990830 | 0.35 | 79.25 | 27.73 |
| 198244 | DIAZ | IVAN | | 19990830 | 0.55 | 4.50 | 2.47 |
| 198244 | DIAZ | IVAN | | 19990913 | 0.35 | 19.00 | 6.65 |
| 198244 | DIAZ | IVAN | | 19990913 | 0.55 | 3.25 | 1.78 |
| 219609 | DICKEY | JASON | BRIAN | 20000731 | 0.50 | 89.90 | 44.95 |
| 219609 | DICKEY | JASON | BRIAN | 20000814 | 0.50 | 77.39 | 38.69 |
| 219609 | DICKEY | JASON | BRIAN | 20000828 | 0.50 | 68.81 | 34.40 |
| 219609 | DICKEY | JASON | BRIAN | 20000911 | 0.50 | 39.04 | 19.52 |
| 219609 | DICKEY | JASON | BRIAN | 20000925 | 0.50 | 87.55 | 43.77 |
| 219609 | DICKEY | JASON | BRIAN | 20001009 | 0.50 | 79.62 | 39.81 |
| 219609 | DICKEY | JASON | BRIAN | 20001023 | 0.50 | 75.55 | 37.77 |
| 219609 | DICKEY | JASON | BRIAN | 20001106 | 0.50 | 46.40 | 23.20 |
| 219609 | DICKEY | JASON | BRIAN | 20001120 | 0.50 | 35.54 | 17.77 |
| 219609 | DICKEY | JASON | BRIAN | 20001204 | 0.50 | 52.47 | 26.23 |
| 219609 | DICKEY | JASON | BRIAN | 20001204 | 0.35 | 2.72 | 0.95 |
| 219609 | DICKEY | JASON | BRIAN | 20001218 | 0.50 | 1.47 | 0.73 |

2060

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

2061

PLAINTIFF'S EXHIBIT H

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

**NON-ACADEMIC EXPERIENCE**

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

**PUBLICATIONS**

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Daniel Dewey
SCDC NUMBER: 276678
INSTITUTION: Lieber Correctional Inst.
HOUSING UNIT: Wando C-175
WORK ASSIGNMENT: P.I. #1

5-23-07
RECEIVED
JUN 0 4 2007
INMATE GRIEVANCE

Office Use Only
Grievance No. LCI-0771-04
Code: General
Policy
Disc. Hear.
Class.
Date Received 5/24
IGC Initials
✓ IGA - ABH 7-13-07

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker held that §24-3-430's wage provisions were "mandatory," and created a "statutory right to the payment of a prevailing wage." These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under §24-3-430, with review by the ALJ.

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4.00 per hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was no correct, and back wages are owed.

Grievant incorporates by reference Exhibits A-H attached to grievances filed by Darrell Williams and counsel on September 22, 2004.

Daniel Dewey 5/22/07
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Daniel Dewey 8/8/07 Lomeau 8/8/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2064

Ackerman 5-6-11 1702

## INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

2065

DEWEY LCI-0771-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 22, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 10, 2001 and that your participation in this project ended on December 10, 2002.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.
Moreover, you filed your Step 1 grievance over three (3) years after SCDC first paid you for your participation in the project located at Lieber, nearly 22 months after your participation in this project ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step 1 grievance.

Moreover, I specifically conclude that the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Therefore, I deny your Step 2 appeal in its entirety.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Daniel Dewey, #276678, Appellant, | ) | |
| vs. | ) | NOTICE OF APPEAL |
| South Carolina Department of Corrections, Respondent. | ) | DOCKET NO. 07 -ALJ-04- - <br> GRIEVANCE NO.: |

Notice is hereby given that Daniel Dewey does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 8-8-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy
8. Appellant claims pre/post judgment interest, costs and attorney fees

Daniel Dewey
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

DHWestbrook
Signed
8-20-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2067

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| DANIEL DEWEY, #276678 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

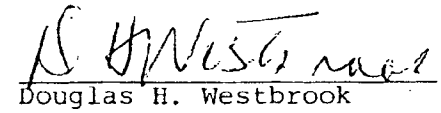
I certify that on the 24th day of August, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201



Douglas H. Westbrook



Ackerman 5-6-11 1706

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Cathil Drummond INMATE GRIEVANCE FORM

STEP 1

individually, and on behalf of all inmate employees (IE's)

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: #0236300

INSTITUTION: Lieber

HOUSING UNIT: Chapel B38 ✓

WORK ASSIGNMENT: Ward Keeper / Clerk

Office Use Only

Grievance No. Lieber 0757-04

Code: General MY

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 837.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Cathil Drummond 9-27-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlton 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

N/A

Grievant Signature Date

2069

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 2 Nov 04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance

2070

J/M C. Drummond, # 236322 CC10757-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF CALVIN DRUMMOND, #236322

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 3397.43 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1059; H, 1-3.

* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
|---|---|---|---|---|---|---|---|
| 257934 | DREW | SHERMAN | | 20000605 | 0.35 | 66.38 | 23.23 |
| 257934 | DREW | SHERMAN | | 20000703 | 0.50 | 60.00 | 30.00 |
| 257934 | DREW | SHERMAN | | 20000703 | 0.55 | 1.70 | 0.93 |
| 257934 | DREW | SHERMAN | | 20000703 | 0.35 | 10.50 | 3.67 |
| 257934 | DREW | SHERMAN | | 20000703 | 0.25 | 2.00 | 0.50 |
| 257934 | DREW | SHERMAN | | 20000717 | 0.50 | 60.00 | 30.00 |
| 257934 | DREW | SHERMAN | | 20000731 | 0.50 | 87.00 | 43.50 |
| 257934 | DREW | SHERMAN | | 20000814 | 0.50 | 67.50 | 33.75 |
| 257934 | DREW | SHERMAN | | 20000828 | 0.50 | 75.00 | 37.50 |
| 257934 | DREW | SHERMAN | | 20000911 | 0.50 | 33.68 | 16.84 |
| 236322 | DRUMMOND | CALVIN | | 20010730 | 0.50 | 47.72 | 23.86 |
| 236322 | DRUMMOND | CALVIN | | 20010813 | 0.50 | 73.27 | 36.63 |
| 236322 | DRUMMOND | CALVIN | | 20010827 | 0.50 | 73.02 | 36.51 |
| 236322 | DRUMMOND | CALVIN | | 20010910 | 0.50 | 41.24 | 20.62 |
| 236322 | DRUMMOND | CALVIN | | 20010924 | 0.50 | 80.75 | 40.37 |
| 236322 | DRUMMOND | CALVIN | | 20011008 | 0.50 | 101.98 | 50.99 |
| 236322 | DRUMMOND | CALVIN | | 20011022 | 0.50 | 82.38 | 41.19 |
| 236322 | DRUMMOND | CALVIN | | 20011105 | 0.50 | 76.82 | 38.41 |
| 236322 | DRUMMOND | CALVIN | | 20011119 | 0.50 | 71.98 | 35.99 |
| 236322 | DRUMMOND | CALVIN | | 20011203 | 0.50 | 24.50 | 12.25 |
| 236322 | DRUMMOND | CALVIN | | 20011217 | 0.50 | 55.13 | 27.56 |
| 236322 | DRUMMOND | CALVIN | | 20011231 | 0.50 | 11.00 | 5.50 |
| 236322 | DRUMMOND | CALVIN | | 20020114 | 0.50 | 62.02 | 31.01 |
| 236322 | DRUMMOND | CALVIN | | 20020128 | 0.50 | 99.12 | 49.56 |
| 236322 | DRUMMOND | CALVIN | | 20020211 | 0.50 | 115.25 | 57.62 |
| 236322 | DRUMMOND | CALVIN | | 20020225 | 0.50 | 98.55 | 49.27 |
| 236322 | DRUMMOND | CALVIN | | 20020311 | 0.50 | 108.12 | 54.06 |
| 236322 | DRUMMOND | CALVIN | | 20020325 | 0.50 | 114.68 | 57.34 |
| 236322 | DRUMMOND | CALVIN | | 20020408 | 0.50 | 95.96 | 47.98 |
| 236322 | DRUMMOND | CALVIN | | 20020422 | 0.50 | 101.60 | 50.80 |
| 236322 | DRUMMOND | CALVIN | | 20020506 | 0.50 | 55.72 | 27.86 |
| 236322 | DRUMMOND | CALVIN | | 20020520 | 0.50 | 103.52 | 51.76 |
| 236322 | DRUMMOND | CALVIN | | 20020603 | 0.50 | 91.70 | 45.85 |
| 236322 | DRUMMOND | CALVIN | | 20020617 | 0.50 | 89.78 | 44.89 |
| 236322 | DRUMMOND | CALVIN | | 20020701 | 0.50 | 59.14 | 29.57 |
| 236322 | DRUMMOND | CALVIN | | 20020715 | 0.50 | 83.56 | 41.78 |
| 236322 | DRUMMOND | CALVIN | | 20020729 | 0.50 | 144.91 | 72.45 |
| 236322 | DRUMMOND | CALVIN | | 20020812 | 0.50 | 122.45 | 61.22 |
| 236322 | DRUMMOND | CALVIN | | 20020826 | 0.50 | 119.31 | 59.65 |
| 236322 | DRUMMOND | CALVIN | | 20020909 | 0.50 | 103.24 | 51.62 |
| 236322 | DRUMMOND | CALVIN | | 20020923 | 0.50 | 92.48 | 46.24 |
| 236322 | DRUMMOND | CALVIN | | 20021007 | 0.50 | 93.96 | 46.98 |
| 236322 | DRUMMOND | CALVIN | | 20021021 | 0.50 | 187.22 | 93.61 |
| 236322 | DRUMMOND | CALVIN | | 20021104 | 0.50 | 96.05 | 48.02 |
| 236322 | DRUMMOND | CALVIN | | 20031229 | 0.50 | 17.50 | 8.75 |
| 236322 | DRUMMOND | CALVIN | | 20040112 | 0.50 | 17.50 | 8.75 |
| 236322 | DRUMMOND | CALVIN | | 20040126 | 0.50 | 17.50 | 8.75 |
| 236322 | DRUMMOND | CALVIN | | 20040209 | 0.50 | 17.50 | 8.75 |
| 236322 | DRUMMOND | CALVIN | | 20040223 | 0.50 | 117.96 | 58.98 |
| 236322 | DRUMMOND | CALVIN | | 20040308 | 0.50 | 114.84 | 57.42 |
| 236322 | DRUMMOND | CALVIN | | 20040322 | 0.50 | 116.50 | 58.25 |
| 257406 | DUGGINS | DENNIS | | 20010910 | 0.50 | 11.62 | 5.81 |
| 257406 | DUGGINS | DENNIS | | 20010924 | 0.50 | 52.26 | 26.13 |
| 257406 | DUGGINS | DENNIS | | 20011008 | 0.50 | 57.35 | 28.67 |

PLAINTIFF'S EXHIBIT F

2074

A - 1059
June 2004

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 11-7-04
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Calvin Drummond
SCDC NUMBER: #D231322
INSTITUTION: Lieber NOV 0 8 2004
HOUSING UNIT: Cooper B3B
WORK ASSIGNMENT: WardKeeper / Clerk

Office Use Only
Grievance No. LCI 0757-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 0 8 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Atkins & Wicker do require payment of prevailing wages. Grievants were employed by W.T.I, and S.C.D.C was W.T.I. "Agent" in paying our wages. Atkins & Wicker further allow this issue of payment of wages under S.C Code 41-3-430 to be grieved pursuant to S.C.D.C grievance procedures. Grievants incorporates by reference all Exhibits attached to grievances filed by DARRELL WILLIAMS and ATTORNEY, DOUGLAS WESTBROOK on 9-22-04

Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Released 6-6-06

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2075

Ackerman 5-6-11 1713

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

MCI-151-04

Office Use Only
Grievance No. ~~MCI-06-06~~
Code: General
Policy
Disc. Hear.
Class.
Date Received 1-24-06
IGC Initials

INMATE NAME: Calvin Drummond
SCDC NUMBER: #236322
INSTITUTION: Manning
HOUSING UNIT: W2DORMT
WORK ASSIGNMENT: WARDKEEPER / W2

JAN 19 2006

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker held that §24-3-430's wage provisions were "mandatory", and created a "statutory right to the payment of a prevailing wage". These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under §24-3-430, with review by the ALJ.

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4/hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct, and back wages are owed.

Grievant incorporates by reference Exhibits A-H attached to grievances filed by Darrell Williams and counsel on September 22, 2004.

Grievant Signature Date 03 Jan 06

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS) 2076

Ackerman 5-6-11 1714

Lieber PI Back Wage Claim Step 2 Reply

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Drummond, Calvin | 236322<br>RELEASED 6/6/06 | LCI-0757-04 |

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 4, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your participation in the prison industries project at Lieber first started on July 30, 2001 and ended November 4, 2002. Additionally, your pay records show that you again participated in this project from December 29, 2003 through March 22, 2004.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Drummond, Calvin | 236322<br>RELEASED 6/6/06 | LCI-0757-04 |

The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over three (3) years after SCDC first paid you for your participation in the project located at Lieber, over six (6) months after concluded your participation in this project, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Drummond, Calvin | 236322<br>RELEASED 6/6/06 | LCI-0757-04 |

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Drummond, Calvin | 236322<br>RELEASED 6/6/06 | LCI-0757-04 |

other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Calvin Drummond, #236322<br>Appellant,<br>vs.<br>South Carolina Department of Corrections,<br>Respondent | NOTICE OF APPEAL<br>Docket No. 00-ALJ-04-_____-AP |

Notice is hereby given that Calvin Drummond does hereby appeal the final decision of the South Carolina Department of Corrections dated 2-28-08 and received on 2-1-08, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): Grievant seeks back wages contesting SCDC policy/procedure of paying below prevailing/negotiated wages and under §13.9 there was no time limit to file. Grievant had reasonable cause under §13.9 as right to grieve did not accrue until Adkins/Wicker and he filed within reasonable time. Applying §13.1 denied grievant reasonable time to file and thus due process. SCDC failed to plead §13.1 in step 1 and filed/considered Amendments/Exhibits on the merits and thus waived §13.1. Grievant proved all elements of claim and disputes work period(s) alleged by SCDC. Dr. Benich's report is the only evidence of prevailing wages in record and grievant is entitled to prevailing/negotiated wages. To extent grievant worked OT he is entitled to it under SCDC policy. Grievant claims pre/post judgment interest, costs and attorney fees. Darrell Williams' 9-22-04 grievance, and many others, was filed individually and on behalf of all inmates and SCDC should process grievance for all who worked in program regardless of filic

Calvin Drummond
Appellant's Name
c/o Mrs. Mary Frances Drummond
14 Crofton Drive
Mailing Address

Greenville, SC 29605
City, State, Zip Code

none available
Telephone Number

Signed

2-6-08
Dated:

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2081 (See reverse side for instructions)

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| CALVIN DRUMMOND, #236322 | ) | |
| GRIEVANT/APPELLANT, | ) | |
| VS. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| RESPONDENT/APPELLEE. | ) | |

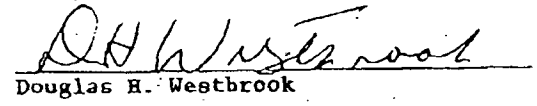
I certify that on the 22nd day of Feb., 2008, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to Directive to SCDC Policy GA-01.12, §4.3, effective Jan. 30, 2008, to:

South Carolina Department of Corrections
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221-1787



Douglas H. Westbrook

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Jerome Durham
SCDC NUMBER: 270393
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper B-35
WORK ASSIGNMENT: Dor P.I. - 2

Office Use Only
Grievance No. Lieber 0688-04
Code: General MU
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The department is asked to review and determined whether I am entitled to receive back wages due from me working at Lieber Prison Industry Program when they paid me only $.35/hr. and not prevailing wage as required under South Carolina Code Ann. ~~24-3~~ 24-3-430(A), (7) as well as fact that from ~~2000~~ 1998 - 2003 they denied me prevailing wage.

ACTION REQUESTED: All money due to me be paid at prevailing wage and overtime rate and prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit has been filed, court order to file a grievance by court; Wicker v. SCDC and Atkins v. SCDC.

Jerome Durham 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carr 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

2083

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11/2/04

IGO Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM:

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2084

Mr J Durham #270393 LCI 0688-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2085

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF JEROME DURHAM, #270393

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 82.66 hours in 2000 at $10.66 per hour; 760.52 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 3602.66 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Jerome Durham 2/03/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1061-1062; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | MX 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 8 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | MX 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | WA120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT A

A - 0780
June 2004

2088

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



A:\SCDC FINAL CONTRACT.doc
August 17, 1998

A - 0081
June 2004

00021

PLAINTIFF'S EXHIBIT C

2089

Ackerman 5-6-11 1727

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PLAINTIFF'S EXHIBIT C
2090

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 277563 | DUNCAN | JOHN | W. | 20021216 | 0.50 | 96.50 | 48.25 |
| 277563 | DUNCAN | JOHN | W. | 20021230 | 0.50 | 48.65 | 24.32 |
| 277563 | DUNCAN | JOHN | W. | 20030113 | 0.50 | 73.64 | 36.82 |
| 291392 | DUNN | COREY | | 20030728 | 0.50 | 5.25 | 2.62 |
| 257513 | DURANT | DONTREIA | | 20001218 | 0.50 | 1.33 | 0.66 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20001218 | 0.50 | 56.69 | 28.34 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010101 | 0.50 | 25.97 | 12.98 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010115 | 0.50 | 49.61 | 24.80 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010129 | 0.50 | 50.22 | 25.11 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010212 | 0.50 | 67.35 | 33.67 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010226 | 0.50 | 67.30 | 33.65 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010312 | 0.50 | 91.48 | 45.74 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010326 | 0.50 | 61.67 | 30.83 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010409 | 0.50 | 76.04 | 38.02 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010423 | 0.50 | 81.03 | 40.51 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010507 | 0.50 | 97.23 | 48.61 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010521 | 0.50 | 78.09 | 39.04 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20010604 | 0.50 | 40.50 | 20.25 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020128 | 0.50 | 24.38 | 12.19 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020211 | 0.50 | 47.69 | 23.84 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020225 | 0.50 | 42.93 | 21.46 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020325 | 0.50 | 66.60 | 33.30 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020408 | 0.50 | 90.00 | 45.00 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020422 | 0.50 | 111.78 | 55.89 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020506 | 0.50 | 105.00 | 52.50 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020520 | 0.50 | 118.91 | 59.45 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020603 | 0.50 | 54.33 | 27.16 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020617 | 0.50 | 119.40 | 59.70 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020701 | 0.50 | 108.30 | 54.15 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020715 | 0.50 | 92.78 | 46.39 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020729 | 0.50 | 104.97 | 52.48 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020812 | 0.50 | 112.66 | 56.33 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020826 | 0.50 | 121.75 | 60.87 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020909 | 0.50 | 111.37 | 55.68 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20020923 | 0.50 | 127.50 | 63.75 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20021007 | 0.50 | 119.95 | 59.97 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20021021 | 0.50 | 127.50 | 63.75 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20021104 | 0.50 | 127.50 | 63.75 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20021118 | 0.50 | 83.60 | 41.80 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20021202 | 0.50 | 75.60 | 37.80 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20021216 | 0.50 | 70.56 | 35.28 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20021230 | 0.50 | 64.60 | 32.30 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030113 | 0.50 | 104.14 | 52.07 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030127 | 0.50 | 111.44 | 55.72 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030210 | 0.50 | 126.68 | 63.34 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030224 | 0.50 | 118.26 | 59.13 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030310 | 0.50 | 95.06 | 47.53 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030324 | 0.50 | 124.75 | 62.37 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030407 | 0.50 | 119.48 | 59.74 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030421 | 0.50 | 95.51 | 47.75 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030505 | 0.50 | 72.42 | 36.21 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030519 | 0.50 | 111.57 | 55.78 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030602 | 0.50 | 102.40 | 51.20 |
| 270393 | DURHAM | JEROME | ROSEBORO | 20030616 | 0.50 | 116.71 | 58.35 |

PLAINTIFF'S EXHIBIT
E
2091

A - 1061
June 2004

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 270393 | DURHAM | JEROME | ROSEBORO | 20030630 | 0.50 | 74.58 | 37.29 |
| 219573 | DURHAM | PAUL | | 20040419 | 0.50 | 51.29 | 25.64 |
| 219573 | DURHAM | PAUL | | 20040503 | 0.50 | 46.89 | 23.44 |
| 219573 | DURHAM | PAUL | | 20040517 | 0.50 | 58.72 | 29.36 |
| 219573 | DURHAM | PAUL | | 20040531 | 0.50 | 49.20 | 24.60 |
| 118625 | EADY | JOHNNY | JAMES | 20030714 | 0.50 | 22.80 | 11.40 |
| 249361 | EDENFIELD | CHARLES | M. | 20000731 | 0.50 | 109.50 | 54.75 |
| 249361 | EDENFIELD | CHARLES | M. | 20000731 | 0.50 | 74.54 | 37.27 |
| 249361 | EDENFIELD | CHARLES | M. | 20000814 | 0.50 | 97.81 | 48.90 |
| 249361 | EDENFIELD | CHARLES | M. | 20000828 | 0.50 | 79.67 | 39.83 |
| 249361 | EDENFIELD | CHARLES | M. | 20000911 | 0.50 | 71.72 | 35.86 |
| 249361 | EDENFIELD | CHARLES | M. | 20000925 | 0.50 | 70.34 | 35.17 |
| 249361 | EDENFIELD | CHARLES | M. | 20001009 | 0.50 | 27.98 | 13.99 |
| 249361 | EDENFIELD | CHARLES | M. | 20001023 | 0.50 | 93.30 | 46.65 |
| 249361 | EDENFIELD | CHARLES | M. | 20001106 | 0.50 | 85.47 | 42.73 |
| 249361 | EDENFIELD | CHARLES | M. | 20001120 | 0.50 | 10.78 | 5.39 |
| 249361 | EDENFIELD | CHARLES | M. | 20001204 | 0.50 | 15.56 | 7.78 |
| 261866 | EDGAR | HARLON | EUGENE | 20001023 | 0.50 | 15.41 | 7.70 |
| 261866 | EDGAR | HARLON | EUGENE | 20001106 | 0.50 | 50.19 | 25.09 |
| 261866 | EDGAR | HARLON | EUGENE | 20001120 | 0.50 | 53.00 | 26.50 |
| 261866 | EDGAR | HARLON | EUGENE | 20001204 | 0.50 | 39.55 | 19.77 |
| 261866 | EDGAR | HARLON | EUGENE | 20001204 | 0.35 | 6.70 | 2.34 |
| 261866 | EDGAR | HARLON | EUGENE | 20001218 | 0.50 | 84.56 | 42.28 |
| 261866 | EDGAR | HARLON | EUGENE | 20010101 | 0.50 | 54.62 | 27.31 |
| 261866 | EDGAR | HARLON | EUGENE | 20010115 | 0.50 | 81.98 | 40.99 |
| 261866 | EDGAR | HARLON | EUGENE | 20010129 | 0.50 | 93.92 | 46.96 |
| 261866 | EDGAR | HARLON | EUGENE | 20010212 | 0.50 | 44.17 | 22.08 |
| 261866 | EDGAR | HARLON | EUGENE | 20010226 | 0.50 | 90.81 | 45.40 |
| 261866 | EDGAR | HARLON | EUGENE | 20010312 | 0.50 | 95.31 | 47.65 |
| 261866 | EDGAR | HARLON | EUGENE | 20010326 | 0.50 | 72.87 | 36.43 |
| 261866 | EDGAR | HARLON | EUGENE | 20010409 | 0.50 | 98.66 | 49.33 |
| 261866 | EDGAR | HARLON | EUGENE | 20010423 | 0.50 | 78.87 | 39.43 |
| 261866 | EDGAR | HARLON | EUGENE | 20010507 | 0.50 | 104.15 | 52.07 |
| 261866 | EDGAR | HARLON | EUGENE | 20010521 | 0.50 | 97.91 | 48.95 |
| 261866 | EDGAR | HARLON | EUGENE | 20010604 | 0.50 | 84.33 | 42.16 |
| 261866 | EDGAR | HARLON | EUGENE | 20010618 | 0.50 | 88.14 | 44.07 |
| 261866 | EDGAR | HARLON | EUGENE | 20010702 | 0.50 | 103.20 | 51.60 |
| 261866 | EDGAR | HARLON | EUGENE | 20010716 | 0.50 | 87.30 | 43.65 |
| 261866 | EDGAR | HARLON | EUGENE | 20010730 | 0.50 | 103.10 | 51.55 |
| 261866 | EDGAR | HARLON | EUGENE | 20010813 | 0.50 | 97.50 | 48.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20010827 | 0.50 | 93.12 | 46.56 |
| 261866 | EDGAR | HARLON | EUGENE | 20010910 | 0.50 | 59.88 | 29.94 |
| 261866 | EDGAR | HARLON | EUGENE | 20010924 | 0.50 | 111.05 | 55.52 |
| 261866 | EDGAR | HARLON | EUGENE | 20011008 | 0.50 | 127.50 | 63.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20011022 | 0.50 | 127.50 | 63.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20011105 | 0.50 | 114.75 | 57.37 |
| 261866 | EDGAR | HARLON | EUGENE | 20011119 | 0.50 | 135.00 | 67.50 |
| 261866 | EDGAR | HARLON | EUGENE | 20011203 | 0.50 | 104.60 | 52.30 |
| 261866 | EDGAR | HARLON | EUGENE | 20011217 | 0.50 | 152.50 | 76.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20011231 | 0.50 | 61.75 | 30.87 |
| 261866 | EDGAR | HARLON | EUGENE | 20020114 | 0.50 | 91.25 | 45.62 |
| 261866 | EDGAR | HARLON | EUGENE | 20020128 | 0.50 | 100.75 | 50.37 |
| 261866 | EDGAR | HARLON | EUGENE | 20020211 | 0.50 | 144.52 | 72.26 |
| 261866 | EDGAR | HARLON | EUGENE | 20020225 | 0.50 | 145.50 | 72.75 |

PLAINTIFF'S EXHIBIT

2092

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PLAINTIFF'S EXHIBIT H

2093

# RESUME-3/03
# Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

2095

11-7-04

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
### STEP 2

INMATE NAME: Jerome R. Durham
SCDC NUMBER: 270395 NOV 04 2004 PP
INSTITUTION: Tuber Corr. Inst
HOUSING UNIT: Cooper B-35
WORK ASSIGNMENT: P.L-2

Office Use Only
Grievance No. LCI0688-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Atkins & Wicker do require payment of prevailing wages. Grievants were employed by WT L and SCDC was WT L's "Agent" in paying our wages. Atkin & Wicker further allow this issue of payment of wages under S.C. Code 24-3-430 to be grieved pursuant to SCDC's grievance procedures. Grievant Incorporated by reference all exhibits attached to grievance filed by Darrell Williams and Attorney Douglass Westbrook on 9-22-04

Jerome R. Durham 11/2/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Jerome Durham 5/27/07
Grievant Signature Date

Jon Hallman 5-22-07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2056

DURHAM LCI-0688-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on December 4, 2000 and that your participation in this project ended on June 26, 2003.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly four (4) years after SCDC first paid you for your participation in the project located at Lieber, nearly 15 months after your participation in the project at Lieber ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Jerome Durham, #270393, Appellant, | ) | |
| vs. | ) | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | ) | DOCKET NO. _07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Jerome Durham does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Jerome Durham
Appellant's Name

Lieber C.I.
P.O. Box 205
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

5-31-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2100

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| JEROME DURHAM, #270393 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of Jun, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

2101

Paul Durham SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
individually, and on STEP 1
behalf of all inmate employees (IE's)

INMATE NAME: listed on attached Exh. A *
SCDC NUMBER: 219573
INSTITUTION: Lieber CI
HOUSING UNIT: C-B-36 ✓
WORK ASSIGNMENT: PI #2

Office Use Only
Grievance No. Lieber 0727-0
Code: General rM
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work pr gram. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-4 to pay IE's the "prevailing wage" for work of a similar nature in the priva sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieb were required to pay IE's the negotiated wage of $4.00 per hour (Statutes a Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits docu a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and em ment periods of all 1000 plus class members, and the pay dates, rates, hour and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the f ture; all as determined from Exhibits A-H; and the time cards, pay stubs, a other records for class members shown to IE's counsel July 20, 2004 at Liebe in Jack Staudt's custody. IE's also request pre/post judgment interest, cos and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's ha verbally requested WTI/Lieber to pay them prevailing wages. Darrell William in 2001 formally protested the improper wages, and filed a grievance which w dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Will et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certif a class action representing the class identified in Exh. A. On August 23, 2 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Paul Durham 9-27-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlone 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

2102

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See attachment.

Oct. 28, 04
Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Paul Dunham 11-2-04
Grievant Signature Date

11-2-04
IGO Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2103

Mr. G. Durham, # 219573 LC10727-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2/04

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2/05

AMENDMENT TO GRIEVANCE OF PAUL DURHAM, #219573

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 206.10 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Paul Durham #219573 2-3-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1062; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | M X 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 8 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | M X 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | W A 120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT 4

2/07

A - 0780
June 2004

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

2108

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
C

2109

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 270393 | DURHAM | JEROME | ROSEBORO | 20030630 | 0.50 | 74.58 | 37.29 |
| 219573 | DURHAM | PAUL | | 20040419 | 0.50 | 51.29 | 25.64 |
| 219573 | DURHAM | PAUL | | 20040503 | 0.50 | 46.89 | 23.44 |
| 219573 | DURHAM | PAUL | | 20040517 | 0.50 | 58.72 | 29.36 |
| 219573 | DURHAM | PAUL | | 20040531 | 0.50 | 49.20 | 24.60 |
| 118625 | EADY | JOHNNY | JAMES | 20030714 | 0.50 | 22.80 | 11.40 |
| 249361 | EDENFIELD | CHARLES | M. | 20000731 | 0.50 | 109.50 | 54.75 |
| 249361 | EDENFIELD | CHARLES | M. | 20000731 | 0.50 | 74.54 | 37.27 |
| 249361 | EDENFIELD | CHARLES | M. | 20000814 | 0.50 | 97.81 | 48.90 |
| 249361 | EDENFIELD | CHARLES | M. | 20000828 | 0.50 | 79.67 | 39.83 |
| 249361 | EDENFIELD | CHARLES | M. | 20000911 | 0.50 | 71.72 | 35.86 |
| 249361 | EDENFIELD | CHARLES | M. | 20000925 | 0.50 | 70.34 | 35.17 |
| 249361 | EDENFIELD | CHARLES | M. | 20001009 | 0.50 | 27.98 | 13.99 |
| 249361 | EDENFIELD | CHARLES | M. | 20001023 | 0.50 | 93.30 | 46.65 |
| 249361 | EDENFIELD | CHARLES | M. | 20001106 | 0.50 | 85.47 | 42.73 |
| 249361 | EDENFIELD | CHARLES | M. | 20001120 | 0.50 | 10.78 | 5.39 |
| 249361 | EDENFIELD | CHARLES | M. | 20001204 | 0.50 | 15.56 | 7.78 |
| 261866 | EDGAR | HARLON | EUGENE | 20001023 | 0.50 | 15.41 | 7.70 |
| 261866 | EDGAR | HARLON | EUGENE | 20001106 | 0.50 | 50.19 | 25.09 |
| 261866 | EDGAR | HARLON | EUGENE | 20001120 | 0.50 | 53.00 | 26.50 |
| 261866 | EDGAR | HARLON | EUGENE | 20001204 | 0.50 | 39.55 | 19.77 |
| 261866 | EDGAR | HARLON | EUGENE | 20001204 | 0.35 | 6.70 | 2.34 |
| 261866 | EDGAR | HARLON | EUGENE | 20001218 | 0.50 | 84.56 | 42.28 |
| 261866 | EDGAR | HARLON | EUGENE | 20010101 | 0.50 | 54.62 | 27.31 |
| 261866 | EDGAR | HARLON | EUGENE | 20010115 | 0.50 | 81.98 | 40.99 |
| 261866 | EDGAR | HARLON | EUGENE | 20010129 | 0.50 | 93.92 | 46.96 |
| 261866 | EDGAR | HARLON | EUGENE | 20010212 | 0.50 | 44.17 | 22.08 |
| 261866 | EDGAR | HARLON | EUGENE | 20010226 | 0.50 | 90.81 | 45.40 |
| 261866 | EDGAR | HARLON | EUGENE | 20010312 | 0.50 | 95.31 | 47.65 |
| 261866 | EDGAR | HARLON | EUGENE | 20010326 | 0.50 | 72.87 | 36.43 |
| 261866 | EDGAR | HARLON | EUGENE | 20010409 | 0.50 | 98.66 | 49.33 |
| 261866 | EDGAR | HARLON | EUGENE | 20010423 | 0.50 | 78.87 | 39.43 |
| 261866 | EDGAR | HARLON | EUGENE | 20010507 | 0.50 | 104.15 | 52.07 |
| 261866 | EDGAR | HARLON | EUGENE | 20010521 | 0.50 | 97.91 | 48.95 |
| 261866 | EDGAR | HARLON | EUGENE | 20010604 | 0.50 | 84.33 | 42.16 |
| 261866 | EDGAR | HARLON | EUGENE | 20010618 | 0.50 | 88.14 | 44.07 |
| 261866 | EDGAR | HARLON | EUGENE | 20010702 | 0.50 | 103.20 | 51.60 |
| 261866 | EDGAR | HARLON | EUGENE | 20010716 | 0.50 | 87.30 | 43.65 |
| 261866 | EDGAR | HARLON | EUGENE | 20010730 | 0.50 | 103.10 | 51.55 |
| 261866 | EDGAR | HARLON | EUGENE | 20010813 | 0.50 | 97.50 | 48.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20010827 | 0.50 | 93.12 | 46.56 |
| 261866 | EDGAR | HARLON | EUGENE | 20010910 | 0.50 | 59.88 | 29.94 |
| 261866 | EDGAR | HARLON | EUGENE | 20010924 | 0.50 | 111.05 | 55.52 |
| 261866 | EDGAR | HARLON | EUGENE | 20011008 | 0.50 | 127.50 | 63.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20011022 | 0.50 | 127.50 | 63.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20011105 | 0.50 | 114.75 | 57.37 |
| 261866 | EDGAR | HARLON | EUGENE | 20011119 | 0.50 | 135.00 | 67.50 |
| 261866 | EDGAR | HARLON | EUGENE | 20011203 | 0.50 | 104.60 | 52.30 |
| 261866 | EDGAR | HARLON | EUGENE | 20011217 | 0.50 | 152.50 | 76.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20011231 | 0.50 | 61.75 | 30.87 |
| 261866 | EDGAR | HARLON | EUGENE | 20020114 | 0.50 | 91.25 | 45.62 |
| 261866 | EDGAR | HARLON | EUGENE | 20020128 | 0.50 | 100.75 | 50.37 |
| 261866 | EDGAR | HARLON | EUGENE | 20020211 | 0.50 | 144.52 | 72.26 |
| 261866 | EDGAR | HARLON | EUGENE | 20020225 | 0.50 | 145.50 | 72.75 |

PLAINTIFF'S EXHIBIT F

2/10

A - 1062
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PLAINTIFF'S EXHIBIT H

2 / / /

# RESUME-3/03
# Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

11-2-04

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
### STEP 2

INMATE NAME: paul Durham

SCDC NUMBER: 219573 NOV 08 2004

INSTITUTION: Lieber PP

HOUSING UNIT: Cooper B-36

WORK ASSIGNMENT: PI #2

Office Use Only
Grievance No. CU 0727-1
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins & Wicker do requires payment of prevailing wages. Grievants were employed by WTI, And SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker further allow this issue of payment of wages under S.C. Code 24-3-430 to be grieve pursuant to SCDC's grievance proceedures. Grievants incorporates by reference all exhibits attached to grievances filed by Darrell willia. And Attorney, Douglas westbrook on 9-22-04.

Paul Durham #219573 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Paul Durham 5-18-07
Grievant Signature Date

M. E. Montgomery 5/18/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2/14

Ackerman 5-6-11 1752

DURHAM LCI-0727-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 15, 2004 and that your participation in this project ended on August 25, 2006.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

2115

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 30 days after you first started participating in the project located at Lieber and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Paul Durham, #219573, Appellant, | |
| vs. | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | DOCKET NO. _07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Paul Durham does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-18-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Paul Durham
Appellant's Name
Ridgeland C.I.
P.O. Box 2039
Mailing Address
Ridgeland, SC 29936
City, State, Zip Code
none
Telephone Number

Signed
5-31-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2/18

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| PAUL DURHAM, #219573 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D.H. Westbrook
Douglas H. Westbrook

2119

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

---

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

---

| | | |
|---|---|---|
| Francis Ackerman, #266928, et al., | ) | Docket Nos. 07-ALJ-04-00444 through 00449-AP |
| | ) | Docket Nos. 07-ALJ-04-00500 through 00548-AP |
| | ) | 0549-IJ, 0550 through 07-00559-AP |
| | ) | Docket Nos. 07-ALJ-04-00623 through 00632-AP |
| Appellants, | ) | Docket Nos. 07-ALJ-04-00671 through 00677-AP |
| | ) | Docket Nos. 07-ALJ-04-00691, 0752, 0826, 0856 |
| vs. | ) | through 0867-AP |
| | ) | Docket Nos. 07-ALJ-04-00869 through 00872-AP |
| | ) | Docket Nos. 07-ALJ-04-00444, 0876, 0885 |
| | ) | Docket Nos. 07-ALJ-04-00141 through 00149-AP |
| South Carolina Department of | ) | Docket Nos. 07-ALJ-04-00169 through 00171-AP |
| Corrections, | ) | Docket Nos. 07-ALJ-04-00966 through 01021-IJ |
| | ) | Docket Nos. 07-ALJ-04-01023 through 01045-IJ |
| Respondent. | ) | Docket No. 09-ALJ-04-00304-IJ |
| | ) | |

---

**1st SUPPLEMENTAL**
**RECORD ON APPEAL**

**VOLUME 3**

---


Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401
(843) 853-9600 – Office
(843) 577-2241 – Fax

FOR THE APPELLANTS

Lake E. Summers, Esquire
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
(803) 254-3300 – Office
(803) 254-0309 – Fax

FOR THE DEPARTMENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Harlon Edger INMATE GRIEVANCE FORM

STEP 1

individually, and on behalf of all inmate employees (IE's) listed on attached Exh. A *

INMATE NAME:

SCDC NUMBER: 261866

INSTITUTION: Lieber

HOUSING UNIT: C-A-33

WORK ASSIGNMENT: P-I-2

Office Use Only

Grievance No. Lieber 0712-04

Code: General MV

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 f 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits docume a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 3 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and empl ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F)

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate f 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the fu ture; all as determined from Exhibits A-H; and the time cards, pay stubs, an other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, cost and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's hav verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which wa dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willi et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifi a class action representing the class identified in Exh. A. On August 23, 20 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Harlon Edger 9-27-0

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carston 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

Grievant Signature Date

2/2

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11-3-04

IGC Signature Date 11/3/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

J/M H. Edger, #261846 LCI 0712-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF HARLON EDGAR, #261866

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 304.03 hours in 2000 at $10.66 per hour; 1134.32 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 7836.33 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Harlon E. Edgar 2-4-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1062-1063; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2125

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | M X. 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 8 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | M X 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | W A 120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT
A
2/26

A - 0780
June 2004

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

2/27

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

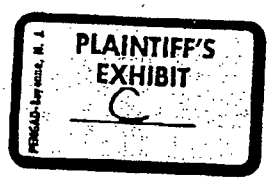
2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner






2128

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 270393 | DURHAM | JEROME | ROSEBORO | 20030630 | 0.50 | 74.58 | 37.29 |
| 219573 | DURHAM | PAUL | | 20040419 | 0.50 | 51.29 | 25.64 |
| 219573 | DURHAM | PAUL | | 20040503 | 0.50 | 46.89 | 23.44 |
| 219573 | DURHAM | PAUL | | 20040517 | 0.50 | 58.72 | 29.36 |
| 219573 | DURHAM | PAUL | | 20040531 | 0.50 | 49.20 | 24.60 |
| 118625 | EADY | JOHNNY | JAMES | 20030714 | 0.50 | 22.80 | 11.40 |
| 249361 | EDENFIELD | CHARLES | M. | 20000731 | 0.50 | 109.50 | 54.75 |
| 249361 | EDENFIELD | CHARLES | M. | 20000731 | 0.50 | 74.54 | 37.27 |
| 249361 | EDENFIELD | CHARLES | M. | 20000814 | 0.50 | 97.81 | 48.90 |
| 249361 | EDENFIELD | CHARLES | M. | 20000828 | 0.50 | 79.67 | 39.83 |
| 249361 | EDENFIELD | CHARLES | M. | 20000911 | 0.50 | 71.72 | 35.86 |
| 249361 | EDENFIELD | CHARLES | M. | 20000925 | 0.50 | 70.34 | 35.17 |
| 249361 | EDENFIELD | CHARLES | M. | 20001009 | 0.50 | 27.98 | 13.99 |
| 249361 | EDENFIELD | CHARLES | M. | 20001023 | 0.50 | 93.30 | 46.65 |
| 249361 | EDENFIELD | CHARLES | M. | 20001106 | 0.50 | 85.47 | 42.73 |
| 249361 | EDENFIELD | CHARLES | M. | 20001120 | 0.50 | 10.78 | 5.39 |
| 249361 | EDENFIELD | CHARLES | M. | 20001204 | 0.50 | 15.56 | 7.78 |
| 261866 | EDGAR | HARLON | EUGENE | 20001023 | 0.50 | 15.41 | 7.70 |
| 261866 | EDGAR | HARLON | EUGENE | 20001106 | 0.50 | 50.19 | 25.09 |
| 261866 | EDGAR | HARLON | EUGENE | 20001120 | 0.50 | 53.00 | 26.50 |
| 261866 | EDGAR | HARLON | EUGENE | 20001204 | 0.50 | 39.55 | 19.77 |
| 261866 | EDGAR | HARLON | EUGENE | 20001204 | 0.35 | 6.70 | 2.34 |
| 261866 | EDGAR | HARLON | EUGENE | 20001218 | 0.50 | 84.56 | 42.28 |
| 261866 | EDGAR | HARLON | EUGENE | 20010101 | 0.50 | 54.62 | 27.31 |
| 261866 | EDGAR | HARLON | EUGENE | 20010115 | 0.50 | 81.98 | 40.99 |
| 261866 | EDGAR | HARLON | EUGENE | 20010129 | 0.50 | 93.92 | 46.96 |
| 261866 | EDGAR | HARLON | EUGENE | 20010212 | 0.50 | 44.17 | 22.08 |
| 261866 | EDGAR | HARLON | EUGENE | 20010226 | 0.50 | 90.81 | 45.40 |
| 261866 | EDGAR | HARLON | EUGENE | 20010312 | 0.50 | 95.31 | 47.65 |
| 261866 | EDGAR | HARLON | EUGENE | 20010326 | 0.50 | 72.87 | 36.43 |
| 261866 | EDGAR | HARLON | EUGENE | 20010409 | 0.50 | 98.66 | 49.33 |
| 261866 | EDGAR | HARLON | EUGENE | 20010423 | 0.50 | 78.87 | 39.43 |
| 261866 | EDGAR | HARLON | EUGENE | 20010507 | 0.50 | 104.15 | 52.07 |
| 261866 | EDGAR | HARLON | EUGENE | 20010521 | 0.50 | 97.91 | 48.95 |
| 261866 | EDGAR | HARLON | EUGENE | 20010604 | 0.50 | 84.33 | 42.16 |
| 261866 | EDGAR | HARLON | EUGENE | 20010618 | 0.50 | 88.14 | 44.07 |
| 261866 | EDGAR | HARLON | EUGENE | 20010702 | 0.50 | 103.20 | 51.60 |
| 261866 | EDGAR | HARLON | EUGENE | 20010716 | 0.50 | 87.30 | 43.65 |
| 261866 | EDGAR | HARLON | EUGENE | 20010730 | 0.50 | 103.10 | 51.55 |
| 261866 | EDGAR | HARLON | EUGENE | 20010813 | 0.50 | 97.50 | 48.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20010827 | 0.50 | 93.12 | 46.56 |
| 261866 | EDGAR | HARLON | EUGENE | 20010910 | 0.50 | 59.88 | 29.94 |
| 261866 | EDGAR | HARLON | EUGENE | 20010924 | 0.50 | 111.05 | 55.52 |
| 261866 | EDGAR | HARLON | EUGENE | 20011008 | 0.50 | 127.50 | 63.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20011022 | 0.50 | 127.50 | 63.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20011105 | 0.50 | 114.75 | 57.37 |
| 261866 | EDGAR | HARLON | EUGENE | 20011119 | 0.50 | 135.00 | 67.50 |
| 261866 | EDGAR | HARLON | EUGENE | 20011203 | 0.50 | 104.60 | 52.30 |
| 261866 | EDGAR | HARLON | EUGENE | 20011217 | 0.50 | 152.50 | 76.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20011231 | 0.50 | 61.75 | 30.87 |
| 261866 | EDGAR | HARLON | EUGENE | 20020114 | 0.50 | 91.25 | 45.62 |
| 261866 | EDGAR | HARLON | EUGENE | 20020128 | 0.50 | 100.75 | 50.37 |
| 261866 | EDGAR | HARLON | EUGENE | 20020211 | 0.50 | 144.52 | 72.26 |
| 261866 | EDGAR | HARLON | EUGENE | 20020225 | 0.50 | 145.50 | 72.75 |

PLAINTIFF'S EXHIBIT
F

2/29

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 261866 | EDGAR | HARLON | EUGENE | 20020311 | 0.50 | 129.24 | 64.62 |
| 261866 | EDGAR | HARLON | EUGENE | 20020325 | 0.50 | 130.38 | 65.19 |
| 261866 | EDGAR | HARLON | EUGENE | 20020408 | 0.50 | 128.25 | 64.12 |
| 261866 | EDGAR | HARLON | EUGENE | 20020422 | 0.50 | 142.50 | 71.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20020506 | 0.50 | 142.50 | 71.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20020520 | 0.50 | 145.50 | 72.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20020603 | 0.50 | 180.40 | 90.20 |
| 261866 | EDGAR | HARLON | EUGENE | 20020617 | 0.50 | 127.30 | 63.65 |
| 261866 | EDGAR | HARLON | EUGENE | 20020701 | 0.50 | 129.93 | 64.96 |
| 261866 | EDGAR | HARLON | EUGENE | 20020715 | 0.50 | 97.15 | 48.57 |
| 261866 | EDGAR | HARLON | EUGENE | 20020729 | 0.50 | 140.60 | 70.30 |
| 261866 | EDGAR | HARLON | EUGENE | 20020812 | 0.50 | 142.50 | 71.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20020826 | 0.50 | 145.42 | 72.71 |
| 261866 | EDGAR | HARLON | EUGENE | 20020909 | 0.50 | 142.79 | 71.39 |
| 261866 | EDGAR | HARLON | EUGENE | 20020923 | 0.50 | 172.97 | 86.48 |
| 261866 | EDGAR | HARLON | EUGENE | 20021007 | 0.50 | 170.13 | 85.06 |
| 261866 | EDGAR | HARLON | EUGENE | 20021021 | 0.50 | 218.59 | 109.29 |
| 261866 | EDGAR | HARLON | EUGENE | 20021104 | 0.50 | 159.20 | 79.60 |
| 261866 | EDGAR | HARLON | EUGENE | 20021118 | 0.50 | 140.09 | 70.04 |
| 261866 | EDGAR | HARLON | EUGENE | 20021202 | 0.50 | 115.16 | 57.58 |
| 261866 | EDGAR | HARLON | EUGENE | 20021216 | 0.50 | 136.94 | 68.47 |
| 261866 | EDGAR | HARLON | EUGENE | 20021230 | 0.50 | 68.06 | 34.03 |
| 261866 | EDGAR | HARLON | EUGENE | 20030113 | 0.50 | 73.96 | 36.98 |
| 261866 | EDGAR | HARLON | EUGENE | 20030127 | 0.50 | 112.30 | 56.15 |
| 261866 | EDGAR | HARLON | EUGENE | 20030210 | 0.50 | 130.46 | 65.23 |
| 261866 | EDGAR | HARLON | EUGENE | 20030224 | 0.50 | 118.26 | 59.13 |
| 261866 | EDGAR | HARLON | EUGENE | 20030310 | 0.50 | 118.26 | 59.13 |
| 261866 | EDGAR | HARLON | EUGENE | 20030324 | 0.50 | 97.10 | 48.55 |
| 261866 | EDGAR | HARLON | EUGENE | 20030407 | 0.50 | 120.50 | 60.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20030421 | 0.50 | 95.74 | 47.87 |
| 261866 | EDGAR | HARLON | EUGENE | 20030505 | 0.50 | 57.56 | 28.78 |
| 261866 | EDGAR | HARLON | EUGENE | 20030519 | 0.50 | 123.33 | 61.66 |
| 261866 | EDGAR | HARLON | EUGENE | 20030602 | 0.50 | 102.64 | 51.32 |
| 261866 | EDGAR | HARLON | EUGENE | 20030616 | 0.50 | 111.34 | 55.67 |
| 261866 | EDGAR | HARLON | EUGENE | 20030630 | 0.50 | 126.14 | 63.07 |
| 261866 | EDGAR | HARLON | EUGENE | 20030714 | 0.50 | 146.02 | 73.01 |
| 261866 | EDGAR | HARLON | EUGENE | 20030728 | 0.50 | 138.84 | 69.42 |
| 261866 | EDGAR | HARLON | EUGENE | 20030811 | 0.50 | 127.20 | 63.60 |
| 261866 | EDGAR | HARLON | EUGENE | 20030825 | 0.50 | 141.36 | 70.68 |
| 261866 | EDGAR | HARLON | EUGENE | 20030908 | 0.50 | 102.60 | 51.30 |
| 261866 | EDGAR | HARLON | EUGENE | 20030922 | 0.50 | 105.26 | 52.63 |
| 261866 | EDGAR | HARLON | EUGENE | 20031006 | 0.50 | 124.50 | 62.25 |
| 261866 | EDGAR | HARLON | EUGENE | 20031020 | 0.50 | 116.80 | 58.40 |
| 261866 | EDGAR | HARLON | EUGENE | 20031103 | 0.50 | 123.90 | 61.95 |
| 261866 | EDGAR | HARLON | EUGENE | 20031117 | 0.50 | 125.74 | 62.87 |
| 261866 | EDGAR | HARLON | EUGENE | 20031201 | 0.50 | 111.51 | 55.75 |
| 261866 | EDGAR | HARLON | EUGENE | 20031215 | 0.50 | 103.64 | 51.82 |
| 261866 | EDGAR | HARLON | EUGENE | 20031229 | 0.50 | 18.40 | 9.20 |
| 196188 | EDWARDS | GREGORY | | 20000228 | 0.50 | 40.30 | 20.15 |
| 196188 | EDWARDS | GREGORY | | 20000228 | 1.05 | 15.00 | 15.75 |
| 229563 | EGLETON | MAURICE | | 19991025 | 0.35 | 7.00 | 2.45 |
| 229563 | EGLETON | MAURICE | | 19991108 | 0.35 | 70.00 | 24.50 |
| 229563 | EGLETON | MAURICE | | 19991108 | 351.00 | 14.00 | 350.99 |
| 229563 | EGLETON | MAURICE | | 19991122 | 0.35 | 56.03 | 19.61 |

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

2/31

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 11-8-04
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Harlon Edger
SCDC NUMBER: 261866 NOV 08 2004
INSTITUTION: Lieber PP
HOUSING UNIT: C-A-33
WORK ASSIGNMENT: P-I-2

Office Use Only
Grievance No. LCI 0712-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Adkins & Wicker do Require Payment of Prevailing wages. Grievant's were employed by WTI, and SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker Further allow this issue of payment of wages under SC Code 24-3-430 to be grieved Pursuant to SCDC's grievance Procedures. Grievants incorporates by reference all exhibits attached to grievances filed by Darrell Williams and Attorney, Douglas Westbrook on 9-22-04.

Harlon Edger 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Harlon Edger 5-22-07
Grievant Signature Date

Jean Landrum 5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2134

Ackerman 5-6-11 1771

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

EDGER LCI-0712-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on June 7, 2004 and that, as of the date of this response, you are still participating in this project.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 90 days after you first started participating in the project located at Lieber and more than 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Harlon Edger, #261866, Appellant, vs. South Carolina Department of Corrections, Respondent. | **NOTICE OF APPEAL** DOCKET NO. _07___-ALJ-04-_____-____ GRIEVANCE NO.: _____ |

Notice is hereby given that Harlon Edger does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy
8. Appellant claims pre/post judgment interest, costs and attorney fees

Harlon Edger
Appellant's Name

Lieber C.I.
P.O. Box 205
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

D H Westbrook
Signed

6-6-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| HARLON EDGER, #261866 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 7th day of Jun, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

2140

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

Office Use Only

Grievance No. Lieber0792-04

Code: General TKY

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

INMATE NAME: Keith Eaman individually, and on behalf of all inmate employees (IE's) listed on attached Exh. A *

SCDC NUMBER: 299153

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Cooper B-57 ✓

WORK ASSIGNMENT: PII

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Keith Eaman Sept. 27, 200

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carson 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal. 2141

N/A

Grievant Signature Date

SCDC 10.5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Oct. 27, 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 11-2-04
Date

IGC Signature 11-2-04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2142

Jack K. Eagier, #299153 LCI 0792-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2143

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2144

AMENDMENT TO GRIEVANCE OF KEITH EIGNER, #299153

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 123.01 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Keith Eigner Feb 8, 2006
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1064; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2145

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | M X 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 8 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | M X 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | W A 120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT
A
2146

A - 0780
June 2004

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 [illegible]. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

2147

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PLAINTIFF'S EXHIBIT C
POHLAD-Bayonne, N.J.

2/48

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 229563 | EGLETON | MAURICE | | 19991122 | 351.00 | 14.00 | 350.99 |
| 229563 | EGLETON | MAURICE | | 19991206 | 351.00 | 14.00 | 350.99 |
| 229563 | EGLETON | MAURICE | | 19991220 | 0.50 | 68.97 | 34.48 |
| 229563 | EGLETON | MAURICE | | 19991220 | 0.55 | 7.72 | 4.24 |
| 229563 | EGLETON | MAURICE | | 19991220 | 2.50 | 2.00 | 5.00 |
| 229563 | EGLETON | MAURICE | | 20000103 | 0.50 | 36.12 | 18.06 |
| 229563 | EGLETON | MAURICE | | 20000103 | 0.55 | 2.02 | 1.11 |
| 229563 | EGLETON | MAURICE | | 20000117 | 0.50 | 73.12 | 36.56 |
| 229563 | EGLETON | MAURICE | | 20000117 | 0.50 | 7.50 | 3.75 |
| 229563 | EGLETON | MAURICE | | 20000117 | 0.55 | 2.00 | 1.10 |
| 229563 | EGLETON | MAURICE | | 20000131 | 0.50 | 64.80 | 32.40 |
| 229563 | EGLETON | MAURICE | | 20000131 | 0.55 | 5.50 | 3.02 |
| 229563 | EGLETON | MAURICE | | 20000214 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000214 | 0.80 | 6.50 | 5.20 |
| 229563 | EGLETON | MAURICE | | 20000214 | 0.55 | 7.50 | 4.12 |
| 229563 | EGLETON | MAURICE | | 20000228 | 0.50 | 67.50 | 33.75 |
| 229563 | EGLETON | MAURICE | | 20000228 | 1.05 | 15.00 | 15.75 |
| 229563 | EGLETON | MAURICE | | 20000313 | 0.50 | 74.31 | 37.15 |
| 229563 | EGLETON | MAURICE | | 20000313 | 0.55 | 6.50 | 3.57 |
| 229563 | EGLETON | MAURICE | | 20000327 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000327 | 0.80 | 4.00 | 3.20 |
| 229563 | EGLETON | MAURICE | | 20000410 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000410 | 0.55 | 18.39 | 10.11 |
| 229563 | EGLETON | MAURICE | | 20000410 | 0.80 | 15.00 | 12.00 |
| 229563 | EGLETON | MAURICE | | 20000424 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000424 | 0.55 | 42.55 | 23.40 |
| 229563 | EGLETON | MAURICE | | 20000424 | 0.25 | 5.88 | 1.47 |
| 229563 | EGLETON | MAURICE | | 20000508 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000508 | 0.55 | 42.60 | 23.43 |
| 229563 | EGLETON | MAURICE | | 20000508 | 0.25 | 14.22 | 3.55 |
| 229563 | EGLETON | MAURICE | | 20000522 | 0.65 | 67.50 | 43.87 |
| 229563 | EGLETON | MAURICE | | 20000522 | 0.25 | 20.98 | 5.24 |
| 229563 | EGLETON | MAURICE | | 20000522 | 0.75 | 44.80 | 33.60 |
| 229563 | EGLETON | MAURICE | | 20000605 | 0.65 | 67.50 | 43.87 |
| 229563 | EGLETON | MAURICE | | 20000605 | 0.75 | 34.92 | 26.19 |
| 229563 | EGLETON | MAURICE | | 20000605 | 0.25 | 11.30 | 2.82 |
| 229563 | EGLETON | MAURICE | | 20000703 | 0.65 | 60.00 | 39.00 |
| 229563 | EGLETON | MAURICE | | 20000703 | 0.75 | 64.77 | 48.57 |
| 229563 | EGLETON | MAURICE | | 20000703 | 0.25 | 23.55 | 5.88 |
| 229563 | EGLETON | MAURICE | | 20000717 | 0.50 | 153.77 | 76.88 |
| 229563 | EGLETON | MAURICE | | 20000731 | 0.50 | 192.40 | 96.20 |
| 229563 | EGLETON | MAURICE | | 20000814 | 0.50 | 126.56 | 63.28 |
| 229563 | EGLETON | MAURICE | | 20000828 | 0.50 | 160.28 | 80.14 |
| 229563 | EGLETON | MAURICE | | 20000911 | 0.50 | 104.55 | 52.27 |
| 299153 | EIGNER | KEITH | | 20040419 | 0.50 | 38.38 | 19.19 |
| 299153 | EIGNER | KEITH | | 20040503 | 0.50 | 50.80 | 25.40 |
| 299153 | EIGNER | KEITH | | 20040517 | 0.50 | 33.83 | 16.91 |
| 246208 | ELDER, JR. | WILLIE | H | 20020408 | 0.50 | 67.50 | 33.75 |
| 246208 | ELDER, JR. | WILLIE | H | 20020422 | 0.50 | 75.00 | 37.50 |
| 246208 | ELDER, JR. | WILLIE | H | 20020506 | 0.50 | 89.32 | 44.66 |
| 246208 | ELDER, JR. | WILLIE | H | 20020520 | 0.50 | 93.00 | 46.50 |
| 246208 | ELDER, JR. | WILLIE | H | 20020603 | 0.50 | 81.00 | 40.50 |
| 246208 | ELDER, JR. | WILLIE | H | 20020617 | 0.50 | 90.00 | 45.00 |
| 246208 | ELDER, JR. | WILLIE | H | 20020701 | 0.50 | 90.00 | 45.00 |

PLAINTIFF'S EXHIBIT
E

2149

A - 1064
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PENGAD-Bayonne, N. J.
PLAINTIFF'S EXHIBIT
H

2150

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

**NON-ACADEMIC EXPERIENCE**

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

**PUBLICATIONS**

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 11-7-04
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Keith Eigner
SCDC NUMBER: 299153
INSTITUTION: Lieber Corr. Inst. NOV 04 2004 PP
HOUSING UNIT: Cooper B-57
WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. LCI 0792-04
Code: General MY
Policy
Disc. Hear.
Class
Date Received: NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Adkins and Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in Paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C. Code Ann. § 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by refrence all exhibits attached to grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9/22/04.

Keith Eigner #299153 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 5-14-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Keith Eigner May 22, 2007 Jean Rhodes 5/22/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2153

Ackerman 5-6-11 1790

## INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

2154

EIGNER LCI-0792-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 30, 2004 and that your participation in this project ended on May 14, 2004.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly six (6) months after SCDC first paid you for your participation in the project located at Lieber, over four (4) months after your participation in the project at Lieber ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

2157

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Keith Eigner, #299153, Appellant, vs. South Carolina Department of Corrections, Respondent. | **NOTICE OF APPEAL**<br>DOCKET NO. _07___-ALJ-04-_____-____<br>GRIEVANCE NO.: _____ |

Notice is hereby given that Keith Eigner does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Keith Eigner
Appellant's Name

Lieber C.I.
P.O. Box 205
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

DH Westbrook
Signed

5-30-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2158

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| KEITH EIGNER, # 299153 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D. H. Westbrook
Douglas H. Westbrook

2159

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Willie H Elder Jr.
SCDC NUMBER: 246208
INSTITUTION: Lieber Corr I
HOUSING UNIT: Cooper C-B-12 ✓
WORK ASSIGNMENT: P-I-2

Office Use Only
Grievance No. Lieber 0642-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The department is asked to Review and determine whether I am entitled to Receive back wages due to me from working at Lieber Prison Industry Program when They only paid me 35¢ an hour and not Prevailing Wage as Required under South Carolina Code Ann. Sec. 24-3-430 (A-7) as well as fact that from 1998-03 They denied me Prevailing Wage.

ACTION REQUESTED: All Money due to me. Be paid at Prevailing wage and overtime Rate and Prevailing be Paid Now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
LawSuit was filed ordered to file Grievance By Court Wicker V. SCDC; Adkins V. SCDC.

Willie H Elder Jr. 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlton 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2160

Grievant Signature Date

SCDC 10 S (Rev. November 1997)

Ackerman 5-6-11 1797

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2/6/

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

RECEIVED OCT 11 2005 INMATE GRIEVANCE

INMATE NAME: Willie Elder
SCDC NUMBER: 216208
INSTITUTION: Walden
HOUSING UNIT: Building I C 18 Bottom
WORK ASSIGNMENT: Construction

Office Use Only
Grievance No. WCI 00-27-05
Code: General
Policy
Disc. Hear.
Class.
Date Received
IGC Initials

Unprocessed

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

I am grieving the lack of proper wages haveing been paid me by SCDC and WTI. Adkins and Wicker further allow this issue to be grieved pursuant to SCDC's grievance policy and payment of wages under S.C. Code Ann. § 24-3-430. Under agreement SCDC was to pay workers 4 (Four) dollars an hour starting July 2001.

ACTION REQUESTED: I am requesting back wages be paid me in full.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Willie H Elder Jr. 10-9-05
Grievant Signature Date

ACTION TAKEN BY IGC:

Duplicate LCI-0642-04

Ann Hallman 10-13-05
~~IGC~~ IGA Signature Date

☒ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev November 1997)

2162

(CONTINUED ON REVERSE SIDE)

Inmate W. Elder, # 246208 2C10642-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2163

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2164

AMENDMENT TO GRIEVANCE OF WILLIE ELDER, #246208

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 6040.85 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1064-1065; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| | DAVIS, STANLEY | 256626 | C A 18 | 1 | 8/29/01 | 4/30/02 |
| | DAVIS, TYRELL | 170219 | M X 0 | 2 | 1/4/00 | 4/20/01 |
| | DAWKINS, EZACHINS | 246857 | C A 25 | 1 | 10/18/00 | 7/25/01 |
| | DEAS, RUSSELL | 211860 | C A 18 | 1 | 8/24/01 | 8/20/02 |
| MI 3 | DEMPSEY, HEYWARD | 134171 | C B 51 | 1 | 7/11/00 | 6/26/03 |
| MI 2 | DEMPSEY, JOHN | 258310 | S B 46 | 2 | 8/12/02 | 8/26/02 |
| MI 3 | DENNEY, PHILLIP | 240678 | C A 3 | 1 | 3/30/04 | 6/24/04 |
| MI 3 | DENNIS, MATTHEW C. | 301578 | E B 32 | 3 | 6/2/04 | 6/14/04 |
| | DERAM, PHILIP | 232691 | C A 10 | 1 | 4/18/01 | 9/19/01 |
| | DEVEAUX, PERRY | 109601 | C A 17 | 3 | 7/29/02 | 7/30/02 |
| | DEVLIN, JAMES | 268959 | C B 36 | 1 | 10/16/00 | 3/5/01 |
| | DEWEES, MELVIN | 191307 | C 0 | 1 | 11/4/99 | 2/10/00 |
| MI 3 | DEWEY, DANIEL | 276678 | C A 39 | 2 | 8/10/01 | 12/10/02 |
| | DIAZ, FAUSTO | 276602 | C B 19 | 1 | 8/14/01 | 1/8/02 |
| MI 3 | DIAZ, I | 198244 | C A 0 | 0 | | 9/13/99 |
| | DICKEY, JASON | 219609 | C B 23 | 1 | 7/21/00 | 12/1/00 |
| | DIFFENDERFER, WILLIAM | 191912 | E B 29 | 2 | 10/22/01 | 10/31/01 |
| | DINKINS, JOSEPH | 259116 | C 0 | 1 | 11/4/99 | 3/15/00 |
| | DIXON, WILLIAM | 258356 | C 0 | 1 | 8/5/99 | 2/9/00 |
| ME 3 | DOBY, ROBERT | 229457 | E B 30 | 2 | 2/8/02 | 2/8/02 |
| | DOCTOR, TREVOR | 255228 | M X 0 | 2 | 1/6/00 | 12/18/01 |
| | DOE, VERDELL | 262814 | C A 36 | 1 | 1/24/00 | 6/14/00 |
| | DORNBUSCH, MICHAEL | 259873 | C B 6 | 1 | 10/4/99 | 5/31/00 |
| MI 2 | DORSEY, HERBERT | 219809 | C A 55 | 1 | 1/2/00 | 11/5/03 |
| | DOYLE, KEVIN | 282833 | C A 30 | 1 | 4/29/02 | 5/2/02 |
| | DRAGOO, TIMOTHY | 271960 | C A 27 | 2 | 3/5/01 | 4/5/01 |
| | DREW, SHERMAN | 257934 | C B 55 | 1 | 5/1/00 | 9/29/00 |
| MI 1B | DRUMMOND, CALVIN | 236322 | C B 38 | 1 | 2/6/04 | 3/23/04 |
| | DUGGINS, DENNIS | 257406 | C B 9 | 1 | 8/17/01 | 7/1/02 |
| | DUKES, ALFONSO | 235546 | A B 64 | 1 | 5/31/00 | 6/7/00 |
| MI 3 | DUNCAN, JOHN | 277563 | S B 13 | 1 | 9/14/01 | 1/9/03 |
| MI 3 | DUNN, COREY | 291392 | E B 33 | 1 | 7/10/03 | 7/14/03 |
| | DURANT, DONTREIA | 257513 | C A 14 | 1 | 12/7/00 | 1/2/01 |
| MI 3 | DURHAM, JEROME | 270393 | C B 35 | 1 | 12/4/00 | 6/26/03 |
| MI 3 | DURHAM, PAUL | 219573 | C B 36 | 1 | 3/15/04 | 6/24/04 |
| MI 3 | EADY, JOHNNY | 118625 | WA120 | 1 | 6/26/03 | 7/2/03 |
| | EATON, RICHARD | 259168 | C 0 | 1 | 5/1/00 | 5/8/00 |
| | EDENFIELD, CHARLES | 249361 | C B 22 | 1 | 5/15/00 | 11/27/00 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 10/13/00 | 12/16/03 |
| MI 3 | EDGAR, HARLON | 261866 | C A 33 | 1 | 6/7/04 | 6/24/04 |
| | EDWARDS, GREGORY | 196188 | C 0 | 1 | 2/15/00 | 2/23/00 |
| | EGLETON, MAURICE | 229563 | C A 55 | 1 | 10/22/99 | 9/7/00 |
| MI 3 | EIGNER, KEITH | 299153 | C B 57 | 1 | 3/30/04 | 5/14/04 |
| MI 1B | ELDER, WILLIE | 246208 | C B 12 | 1 | 1/9/02 | 6/24/04 |
| | ELLIOTT, RODNEY | 251337 | C 0 | 1 | 11/4/99 | 2/1/00 |
| | ELLIS, BARRY | 285034 | S B 63 | 2 | 8/19/02 | 8/22/02 |

PLAINTIFF'S EXHIBIT

A - 0780
June 2004

2166

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT 6

2167

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

| Inmate | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 229563 | EGLETON | MAURICE | | 19991122 | 351.00 | 14.00 | 350.99 |
| 229563 | EGLETON | MAURICE | | 19991206 | 351.00 | 14.00 | 350.99 |
| 229563 | EGLETON | MAURICE | | 19991220 | 0.50 | 68.97 | 34.48 |
| 229563 | EGLETON | MAURICE | | 19991220 | 0.55 | 7.72 | 4.24 |
| 229563 | EGLETON | MAURICE | | 19991220 | 2.50 | 2.00 | 5.00 |
| 229563 | EGLETON | MAURICE | | 20000103 | 0.50 | 36.12 | 18.06 |
| 229563 | EGLETON | MAURICE | | 20000103 | 0.55 | 2.02 | 1.11 |
| 229563 | EGLETON | MAURICE | | 20000117 | 0.50 | 73.12 | 36.56 |
| 229563 | EGLETON | MAURICE | | 20000117 | 0.50 | 7.50 | 3.75 |
| 229563 | EGLETON | MAURICE | | 20000117 | 0.55 | 2.00 | 1.10 |
| 229563 | EGLETON | MAURICE | | 20000131 | 0.50 | 64.80 | 32.40 |
| 229563 | EGLETON | MAURICE | | 20000131 | 0.55 | 5.50 | 3.02 |
| 229563 | EGLETON | MAURICE | | 20000214 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000214 | 0.80 | 6.50 | 5.20 |
| 229563 | EGLETON | MAURICE | | 20000214 | 0.55 | 7.50 | 4.12 |
| 229563 | EGLETON | MAURICE | | 20000228 | 0.50 | 67.50 | 33.75 |
| 229563 | EGLETON | MAURICE | | 20000228 | 1.05 | 15.00 | 15.75 |
| 229563 | EGLETON | MAURICE | | 20000313 | 0.50 | 74.31 | 37.15 |
| 229563 | EGLETON | MAURICE | | 20000313 | 0.55 | 6.50 | 3.57 |
| 229563 | EGLETON | MAURICE | | 20000327 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000327 | 0.80 | 4.00 | 3.20 |
| 229563 | EGLETON | MAURICE | | 20000410 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000410 | 0.55 | 18.39 | 10.11 |
| 229563 | EGLETON | MAURICE | | 20000410 | 0.80 | 15.00 | 12.00 |
| 229563 | EGLETON | MAURICE | | 20000424 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000424 | 0.55 | 42.55 | 23.40 |
| 229563 | EGLETON | MAURICE | | 20000424 | 0.25 | 5.88 | 1.47 |
| 229563 | EGLETON | MAURICE | | 20000508 | 0.50 | 75.00 | 37.50 |
| 229563 | EGLETON | MAURICE | | 20000508 | 0.55 | 42.60 | 23.43 |
| 229563 | EGLETON | MAURICE | | 20000508 | 0.25 | 14.22 | 3.55 |
| 229563 | EGLETON | MAURICE | | 20000522 | 0.65 | 67.50 | 43.87 |
| 229563 | EGLETON | MAURICE | | 20000522 | 0.25 | 20.98 | 5.24 |
| 229563 | EGLETON | MAURICE | | 20000522 | 0.75 | 44.80 | 33.60 |
| 229563 | EGLETON | MAURICE | | 20000605 | 0.65 | 67.50 | 43.87 |
| 229563 | EGLETON | MAURICE | | 20000605 | 0.75 | 34.92 | 26.19 |
| 229563 | EGLETON | MAURICE | | 20000605 | 0.25 | 11.30 | 2.82 |
| 229563 | EGLETON | MAURICE | | 20000703 | 0.65 | 60.00 | 39.00 |
| 229563 | EGLETON | MAURICE | | 20000703 | 0.75 | 64.77 | 48.57 |
| 229563 | EGLETON | MAURICE | | 20000703 | 0.25 | 23.55 | 5.88 |
| 229563 | EGLETON | MAURICE | | 20000717 | 0.50 | 153.77 | 76.88 |
| 229563 | EGLETON | MAURICE | | 20000731 | 0.50 | 192.40 | 96.20 |
| 229563 | EGLETON | MAURICE | | 20000814 | 0.50 | 126.56 | 63.28 |
| 229563 | EGLETON | MAURICE | | 20000828 | 0.50 | 160.28 | 80.14 |
| 229563 | EGLETON | MAURICE | | 20000911 | 0.50 | 104.55 | 52.27 |
| 299153 | EIGNER | KEITH | | 20040419 | 0.50 | 38.38 | 19.19 |
| 299153 | EIGNER | KEITH | | 20040503 | 0.50 | 50.80 | 25.40 |
| 299153 | EIGNER | KEITH | | 20040517 | 0.50 | 33.83 | 16.91 |
| 246208 | ELDER, JR. | WILLIE | H | 20020408 | 0.50 | 67.50 | 33.75 |
| 246208 | ELDER, JR. | WILLIE | H | 20020422 | 0.50 | 75.00 | 37.50 |
| 246208 | ELDER, JR. | WILLIE | H | 20020506 | 0.50 | 89.32 | 44.66 |
| 246208 | ELDER, JR. | WILLIE | H | 20020520 | 0.50 | 93.00 | 46.50 |
| 246208 | ELDER, JR. | WILLIE | H | 20020603 | 0.50 | 81.00 | 40.50 |
| 246208 | ELDER, JR. | WILLIE | H | 20020617 | 0.50 | 90.00 | 45.00 |
| 246208 | ELDER, JR. | WILLIE | H | 20020701 | 0.50 | 90.00 | 45.00 |

PLAINTIFF'S EXHIBIT

2/69

A - 1064
June 2004

| Inmate # | Last Name | First Name | Middle Name | Payroll Date | Hours | Gross | Deduct |
|---|---|---|---|---|---|---|---|
| 246208 | ELDER, JR. | WILLIE | H | 20020715 | 0.50 | 84.00 | 42.00 |
| 246208 | ELDER, JR. | WILLIE | H | 20020729 | 0.50 | 26.86 | 13.43 |
| 246208 | ELDER, JR. | WILLIE | H | 20020812 | 0.50 | 114.75 | 57.37 |
| 246208 | ELDER, JR. | WILLIE | H | 20020826 | 0.50 | 125.51 | 62.75 |
| 246208 | ELDER, JR. | WILLIE | H | 20020909 | 0.50 | 113.22 | 56.61 |
| 246208 | ELDER, JR. | WILLIE | H | 20020923 | 0.50 | 164.36 | 82.18 |
| 246208 | ELDER, JR. | WILLIE | H | 20021007 | 0.50 | 150.46 | 75.23 |
| 246208 | ELDER, JR. | WILLIE | H | 20021021 | 0.50 | 135.38 | 67.69 |
| 246208 | ELDER, JR. | WILLIE | H | 20021104 | 0.50 | 132.87 | 66.43 |
| 246208 | ELDER, JR. | WILLIE | H | 20021118 | 0.50 | 125.45 | 62.72 |
| 246208 | ELDER, JR. | WILLIE | H | 20021202 | 0.50 | 109.96 | 54.98 |
| 246208 | ELDER, JR. | WILLIE | H | 20021216 | 0.50 | 108.28 | 54.14 |
| 246208 | ELDER, JR. | WILLIE | H | 20021230 | 0.50 | 48.15 | 24.07 |
| 246208 | ELDER, JR. | WILLIE | H | 20030113 | 0.50 | 63.80 | 31.90 |
| 246208 | ELDER, JR. | WILLIE | H | 20030127 | 0.50 | 95.32 | 47.66 |
| 246208 | ELDER, JR. | WILLIE | H | 20030210 | 0.50 | 106.11 | 53.05 |
| 246208 | ELDER, JR. | WILLIE | H | 20030224 | 0.50 | 92.94 | 46.47 |
| 246208 | ELDER, JR. | WILLIE | H | 20030310 | 0.50 | 102.31 | 51.15 |
| 246208 | ELDER, JR. | WILLIE | H | 20030324 | 0.50 | 113.85 | 56.92 |
| 246208 | ELDER, JR. | WILLIE | H | 20030407 | 0.50 | 87.50 | 43.75 |
| 246208 | ELDER, JR. | WILLIE | H | 20030421 | 0.50 | 96.87 | 48.43 |
| 246208 | ELDER, JR. | WILLIE | H | 20030505 | 0.50 | 83.33 | 41.66 |
| 246208 | ELDER, JR. | WILLIE | H | 20030519 | 0.50 | 126.89 | 63.44 |
| 246208 | ELDER, JR. | WILLIE | H | 20030602 | 0.50 | 103.04 | 51.52 |
| 246208 | ELDER, JR. | WILLIE | H | 20030616 | 0.50 | 136.05 | 68.02 |
| 246208 | ELDER, JR. | WILLIE | H | 20030630 | 0.50 | 126.74 | 63.37 |
| 246208 | ELDER, JR. | WILLIE | H | 20030714 | 0.50 | 133.04 | 66.52 |
| 246208 | ELDER, JR. | WILLIE | H | 20030728 | 0.50 | 113.25 | 56.62 |
| 246208 | ELDER, JR. | WILLIE | H | 20030811 | 0.50 | 108.09 | 54.04 |
| 246208 | ELDER, JR. | WILLIE | H | 20030825 | 0.50 | 125.92 | 62.96 |
| 246208 | ELDER, JR. | WILLIE | H | 20030908 | 0.50 | 94.35 | 47.17 |
| 246208 | ELDER, JR. | WILLIE | H | 20030922 | 0.50 | 113.78 | 56.89 |
| 246208 | ELDER, JR. | WILLIE | H | 20031006 | 0.50 | 100.64 | 50.32 |
| 246208 | ELDER, JR. | WILLIE | H | 20031020 | 0.50 | 95.57 | 47.78 |
| 246208 | ELDER, JR. | WILLIE | H | 20031103 | 0.50 | 95.17 | 47.58 |
| 246208 | ELDER, JR. | WILLIE | H | 20031117 | 0.50 | 101.76 | 50.88 |
| 246208 | ELDER, JR. | WILLIE | H | 20031201 | 0.50 | 73.49 | 36.74 |
| 246208 | ELDER, JR. | WILLIE | H | 20031215 | 0.50 | 93.76 | 46.88 |
| 246208 | ELDER, JR. | WILLIE | H | 20031229 | 0.50 | 103.16 | 51.58 |
| 246208 | ELDER, JR. | WILLIE | H | 20040112 | 0.50 | 68.88 | 34.44 |
| 246208 | ELDER, JR. | WILLIE | H | 20040126 | 0.50 | 119.02 | 59.51 |
| 246208 | ELDER, JR. | WILLIE | H | 20040209 | 0.50 | 119.83 | 59.91 |
| 246208 | ELDER, JR. | WILLIE | H | 20040223 | 0.50 | 129.85 | 64.92 |
| 246208 | ELDER, JR. | WILLIE | H | 20040308 | 0.50 | 137.70 | 68.85 |
| 246208 | ELDER, JR. | WILLIE | H | 20040322 | 0.50 | 134.41 | 67.20 |
| 246208 | ELDER, JR. | WILLIE | H | 20040405 | 0.50 | 134.64 | 67.32 |
| 246208 | ELDER, JR. | WILLIE | H | 20040419 | 0.50 | 131.20 | 65.60 |
| 246208 | ELDER, JR. | WILLIE | H | 20040503 | 0.50 | 137.54 | 68.77 |
| 246208 | ELDER, JR. | WILLIE | H | 20040517 | 0.50 | 118.31 | 59.15 |
| 246208 | ELDER, JR. | WILLIE | H | 20040531 | 0.50 | 97.68 | 48.84 |
| 251337 | ELLIOTT | RODNEY | | 19991108 | 0.35 | 15.00 | 5.25 |
| 251337 | ELLIOTT | RODNEY | | 19991122 | 0.35 | 66.50 | 23.27 |
| 251337 | ELLIOTT | RODNEY | | 19991122 | 0.55 | 14.55 | 8.00 |
| 251337 | ELLIOTT | RODNEY | | 19991206 | 0.35 | 53.15 | 18.60 |

A - 1065
June 2004

2 / 70

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

2171

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Willie H Elder Jr.
SCDC NUMBER: 246208
INSTITUTION: Walden C. I.
HOUSING UNIT: B-1-C-18-B
WORK ASSIGNMENT: STRUCTION

RECEIVED JUN 19 2007 JUN 21 2007 SN INMATE GRIEVANCE

Office Use Only
Grievance No. Lieber 0642-04
Code: General
Policy
Disc. Hear.
Class.
Date Received 6-19-07
IGC Initials TL
✓ IGA - ABH 7-13-07

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

The department is asked To Review and determine whether I am entitled to Receive back wages due to Me from working at Lieber Prison Industry Program when They only Paid Me 35¢ an hour and not Prevailing Wage as Required Under South Carolina Code Ann. SEC. 24-3-430 (A-7) as well as fact That from 1998-03 They deried me Prevailing wage.

Willie H Elder Jr. 6-18-07
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

X Willie H Elder 7-27-07 [signature] 7-27-07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2/72

Ackerman 5-6-11 1809

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

ELDER LCI-0642-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated June 18, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on January 9, 2002 and that your participation in this project ended on May 4, 2005.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.
Moreover, you filed your Step 1 grievance over 20 months after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step 1 grievance.

Moreover, I specifically conclude that the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Therefore, I deny your Step 2 appeal in its entirety.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Willie Elder, Jr., #246208<br>Appellant,<br>vs.<br>South Carolina Department of Corrections,<br>Respondent. | NOTICE OF APPEAL<br>DOCKET NO. 07 -ALJ-04- -<br>GRIEVANCE NO.: |

Notice is hereby given that Willie Elder, Jr. does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 7-27-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy
8. Appellant claims pre/post judgment interest, costs and attorney fees

Willie Elder, Jr.
Appellant's Name
Walden C.I.
4340 Broad River Rd.
Mailing Address
Columbia, SC 29210
City, State, Zip Code
none
Telephone Number

Signed
8-6-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2175

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| WILLIE ELDER, JR., # 246208 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 24th day of August, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

DHWestbrook
Douglas H. Westbrook



Ackerman 5-6-11 1813

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

Office Use Only LCI 1242-07
Grievance No. ~~ACI-0626-07~~
Code: General J M
Policy
Disc. Hear.
Class.
Date Received 5-21-07 7/31/07
IGC Initials

INMATE NAME: Rodney Elliott Ridgeland
SCDC NUMBER: 251337
INSTITUTION: ACI
HOUSING UNIT: E3-B1 SA-138
WORK ASSIGNMENT: Dorm

MAY 21 2007
RECEIVED
AUG 03 2007
JUN 08 2007
INMATE GRIEVANCE

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) Grievant was/is employed in the WTI/Lieber service work program. From 1999/July 2001, S.C. Code 24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G,H).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hr (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of approx. $1/hr, and usually less. Exhibits document a .35/hr base rate (Exh. B,D,E), maximum of $1/hr (Exh E), the 9-30-98 contract specifying a $4/hr wage (Exh B,C), employee roster (Exh A), and pay dates, rates, hours, and pay for Grievant (Exh F).

* Exhibits A-H attached to two grievances filed by Darrell Williams #219730 and counsel on 9-22-04 are incorporated herein by reference. Attached in part are Exhibits A,C,F, & H.

ACTION REQUESTED: Back wages for hrs in 1999 at 9.68/hr; hrs in 2000 at 10.66/hr; hrs in 1-1-01/6-30-01 at 11.08/hr; and hrs * 7-1-01/present at $4/hr; less wages paid §24-3-40 deductions, and soc. sec/medicare; plus interest, costs, and atty fees.

* Hours "plus" indicates possible work past latest date in Exh F, June 2004.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: Workers have requested WTI/Lieber to pay prevailing wages, and Darrell Williams in 2001 grieved improper wages which was dismissed for want of jurisdiction. In 2002, Williams brought a class action for improper wages. On Aug. 23, 2004, the SC Sup. Court in Adkins and Wicker held the prevailing wage provision was mandatory and workers could file a grievance for back wages.

Grievant Signature Date 5-20-07

ACTION TAKEN BY IGC:
This grievance is being closed out as an ACI grievance and is forwarded to Lieber CI to be processed as the incident happened at that location. 5-21-07

FWD to Ann Hallman 7/30/07

SEE WARDEN'S RESPONSE

IGA - Ann Hallman 1-28-08

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

2/77

Ackerman 5-6-11 1814

WARDEN'S DECISION AND REASON:

**SEE ATTACHED**

Warden Signature Date 1/30/08

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 2/11/08 Date

~~IGC~~ IGA Signature 1-31-08 Date

Served by M.E. Nordfelt 5/11/08

INSTRUCTIONS FOR COMPLETING STEP I GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2/78

ELLIOTT, RODNEY #251337 LCI-1242-07

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of the documents submitted in support of your Step 1 grievance form clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004.

Contrary to the claims you made in these supporting documents, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your supporting documents, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work

ELLIOTT, RODNEY #251337 LCI-1242-07

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 1 grievance form dated May 20, 2007 as well as any and all documents you submitted in support of your Step 1 grievance form.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your participation in the prison industries project at Lieber first began on November 8, 1999 and ended January 31, 2000. Additionally, your pay records show that you again participated in this project on October 8, 2001 and from September 17, 2007 through October 1, 2007.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

2/80

of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your supporting documents the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your grievance in its entirety.

AMENDMENT TO GRIEVANCE OF RODNEY ELLIOTT, #251337

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference). * Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for 250.06 hours in 1999 at $9.68 per hour; 134.16 hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 87.60 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Rodney Elliott 2/8/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0780; C, 0081,0086; F, 1065-1066; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2182

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Due 2/18/08

INMATE GRIEVANCE FORM

STEP 2

Office Use Only

Grievance No. LCI-1242-07

Code: General MY

Policy

Disc. Hear.

Class.

Date Received 2/21/08

IGC Initials

INMATE NAME: Elliott, Rodney

SCDC NUMBER: 251337

INSTITUTION: Ridgeland

HOUSING UNIT: SRV. A-50

WORK ASSIGNMENT: Dorm

RECEIVED FEB 25 2008 INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I am dissatisfied with the decision of step one conclusion based on the Warden's decision and appeal that according to the process of a hire deposition in authority. That my appeal is ruled on according to such due process of law in accordance with its decisions and power to exercise that.

Grievant Signature 2/13/08 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2183

Ackerman 5-6-11 1820

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Rodney Elliott, #251337<br>Appellant,<br>vs.<br>South Carolina Department of Corrections,<br>Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that Rodney Elliott does hereb appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Rodney Elliott
Appellant's Name

Ridgeland C.I.
Mailing Address

P.O. Box 2039

Ridgeland, SC 29936-2039
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2184

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| RODNEY ELLIOTT, #251337 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 7th day of Nov, 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D H Westbrook
Douglas H. Westbrook

2185

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Anthony English
SCDC NUMBER: 238474
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Edisto B-35
WORK ASSIGNMENT: None

Office Use Only
Grievance No. Lieber-0605-04
Code: General my
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials EC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The Department Is Asked to Review And Determine Whether Iam Entitled to receive back wages which Are due to me from working At Lieber Prison Industries Program when they only Paid 35¢ An Hour And Not Prevailing wage under South Carolina Code Ann Sec 24-3-430 § A-7 § As well As fact they were getting $4.00 An hour and Still did not give me my money from June 1 2000-03 they denied me Prevailing wage

ACTION REQUESTED: That All money due to me be paid At Prevailing wage As well As overtime Rate moreover the Prevailing wage be paid Now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed ordered to file grievance By Court Wicker V. SCDC & Adkins V. SCDC

Anthony English 9-8-04 12:30 pm
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate English: See Warden's response.

G Carrione 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

Grievant Signature Date

SCDC 10.5 (Rev. November 1997)

2/86

Ackerman 5-6-11 1823

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 10/29/04

IGC Signature Date 10/29/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2/87

Inmate Anthony English, #238474 LC10605-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2188

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2189

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
### STEP 2

RECEIVED
NOV 05 2004
INMATE GRIEVANCE

INMATE NAME: Anthony T. Englisht
SCDC NUMBER: 38494
INSTITUTION: Ridgeland Nov. 1, 04
HOUSING UNIT: ~~B-35~~ GB-02 P.P.
WORK ASSIGNMENT: Kitchen

Office Use Only
Grievance No. LCI 0605-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received NOV 01 2004
IGC Initials CC

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

In the Adkins c[illegible]ision, the court held that inmates may file a grievance to [illegible] the Department's failure to pay in accordance with the "mandatory" [illegible]ory Provi[illegible] one. One of the Five Justices (J. Thomas) held in his concurr[illegible] Opinion that 2[illegible]-3-430 was intended for inmates benefit and that they could sue under 41-10-10 et seq. The payment of wages that is [illegible] case such as wicker where the court upheld that the Department [illegible] was not allowed to pay inmates less than prevailing wage. We also who work at Kirkman's Prison Industries should be paid not less [illegible] Time 12:50 Friday

Anthony Englisht 10/29/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 6-19-07
Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature 6/22/07 Date
IGC Signature M. E. Monroe 6/22/07 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-8A (November 1997)

2150

Lieber PI Back Wage Claim Step 2 Reply

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| English, Anthony | 238474 | LCI-0605-04 |

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated October 29, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 8, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on January 14, 2004 and ended January 17, 2004 and that your second voluntary work assignment in this project began and, for that matter, ended on November 24, 2004.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| English, Anthony | 238474 | LCI-0605-04 |

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly eight (8) months after SCDC began paying you for your participation in the project located at Lieber during your first work assignment there and over 15 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| English, Anthony | 238474 | LCI-0605-04 |

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that the South Carolina Payment of Wages Act does not apply to the monies SCDC paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| English, Anthony | 238474 | LCI-0605-04 |

other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Anthony English, #238474<br>Appellant,<br>vs.<br>South Carolina Department of Corrections,<br>Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that Anthony English does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

| | |
|---|---|
| Anthony English<br>Appellant's Name | Signed |
| Ridgeland C.I.<br>Mailing Address | 11-6-08<br>Dated |
| P.O. Box 2039 | Douglas H. Westbrook<br>23 Broad St.<br>Chas, SC 29401<br>(843) 853-9600<br>Attorney for Appellant |
| Ridgeland, SC 29936-2039<br>City, State, Zip Code | |
| none<br>Telephone Number | |

(See reverse side for instructions)

2/95

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>ANTHONY ENGLISH, #238474<br><br>Grievant/Appellant,<br><br>vs.<br><br>SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,<br><br>Respondent/Appellee. | ) | IN THE ADMINISTRATIVE LAW COURT<br><br>CERTIFICATE OF SERVICE |

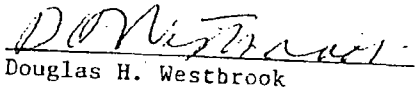
I certify that on the 7th day of Nov, 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201


Douglas H. Westbrook

2196

11/9/4

CAROLINA DEPARTMENT OF CORRECTIONS

James Enriquez INMATE GRIEVANCE FORM

individually, and on STEP 1

behalf of all inmate employees (IE's)

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 215539

INSTITUTION: Lieber

HOUSING UNIT: ~~AA 16~~ SMU A1/2

WORK ASSIGNMENT: Dorm

Office Use Only

Grievance No. Lieber 0250-04

Code: General MU

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-43( to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 f 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits docume a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 3 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and empl ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F)

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate f 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, an other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs ~~and attorney fees.~~

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

James Enriquez 9-26-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

J. Carlton 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

N/A

Grievant Signature Date

SCDC 10-3 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

2197

Ackerman 5-6-11 1834

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

LIEBER CORRECTIONAL INSTITUTION
GRIEVANCE NOTIFICATION SLIP

I/M NAME: J Enriquez

DATE 10-29-04

SCDC NO.: 215539

GRIEVANCE NO. CC10750-

UNIT: SMU

TO INMATE: THE ATTACHED ENVELOPE CONTAINS THE ABOVE-NOTED GRIEVANCE. PLEASE FOLLOW TI DIRECTIONS ON THE ENCLOSED GRIEVANCE PROCEDURE RESPONSE SHEET.

**GRIEVANCE NOTIFICATION SLIPS WILL BE SIGNED/DATED BY BOTH INMATE AND STAFF WITNESS UNIT STAFF MEMBER WILL RETURN SLIPS TO THE IGC NO LATER THAN THE NEXT WORKDAY AFTE SERVICE OF GRIEVANCE ENVELOPES (MAILROOM WILL BE OK).

James Enriquez 11-9-04
I/M SIGNATURE DATE

Ofc. J. Wright 11-9-0
STAFF WITNESS DATI

2199

Ackerman 5-6-11 1836

AMENDMENT TO GRIEVANCE OF JAMES ENRIQUEZ, #215539

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 168.54 hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0781; C, 0081,0086; F, 1068; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| James Enriquez, #215539, Appellant, vs. South Carolina Department of Corrections, Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that James Enriquez does hereb appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

James Enriquez
Appellant's Name

Allendale C.I.
Mailing Address

Hwy 47, P.O. Box 1151

Fairfax, SC 29827
City, State, Zip Code

none
Telephone Number

Signed

11-6-04
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2201

Ackerman 5-6-11 1838

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>JAMES ENRIQUEZ, #215539<br><br>Grievant/Appellant,<br><br>vs.<br><br>SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,<br><br>Respondent/Appellee. | ) | IN THE ADMINISTRATIVE LAW COURT<br><br>CERTIFICATE OF SERVICE |

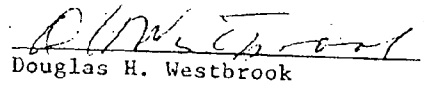
I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201


Douglas H. Westbrook

2202

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Kerlan Etheredge
SCDC NUMBER: #236635 NOV 04 2004
INSTITUTION: Lieber PP
HOUSING UNIT: AA36 ✓
WORK ASSIGNMENT: N/A

Office Use Only
Grievance No. Lieber 0692-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials

STATE GRIEVANCE (Include documentation, and date of incident; if SCDC Policy, indicate which policy)
The department is asked to review and determine whether I am entitled to receive back wages which are due to me from working at Lieber Prison Industries Program when they only Paid me .35 cents an hour and not Prevailing wage as stated under South Carolina Code Ann. Sec. 24-3-430(A-7) as well as fact they are Getting 4.00 an hour and still not Pay me from 1998-03 they denied me Prevailing wages.

ACTION REQUESTED: That all money due to me be Paid at Prevailing Wage as well as overtime and Prevailing wage be Paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed and ordered to file Grievance by Court Adkins v. SCDC
Wickee v. SCDC

Kerlan Etheredge 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L. Carpenter 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2203

N/A

Ackerman 5-6-11 1840

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 10/28/04 Date

IGC Signature 10/29/04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2204

Mr. K. Etheredge, #236635 LCI 0692-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2205

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2206

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI 0692-04
Code: General nep
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: Kerlan Etheredge
SCDC NUMBER: 236635 NOV 08 2004
INSTITUTION: Lieber PP
HOUSING UNIT: 4A36
WORK ASSIGNMENT: N/A (CB20)

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins and Wicker do require payment of prevailing wages. Grievant's were employed by WTI, and SCDC as WTI's "agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under SC code 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell William and Attorney Douglas Westbrook on 9-22-04

Kerlan Etheredge 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

6-19-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date

IGC Signature 7/13/07 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-6A (November 1997)

2207

Rec. 6/22/07

Ackerman 5-6-11 1844

Lieber PI Back Wage Claim Step 2 Reply

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Etheredge, Kerlan | 236635 | LCI-0692-04 |

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on March 19, 2002 and ended July 27, 2002 and that your second voluntary work assignment in this project began on April 27, 2005 and ended June 14, 2005.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Etheredge, Kerlan | 236635 | LCI-0692-04 |

21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 2 ½ years after SCDC began paying you for your participation in the project located at Lieber during your first work assignment there, over two (2) years after your first work assignment in this project ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Etheredge, Kerlan | 236635 | LCI-0692-04 |

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Etheredge, Kerlan | 236635 | LCI-0692-04 |

South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Kerlan Etheredge, #236635

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Kerlan Etheredge does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy, procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Kerlan Etheredge
Appellant's Name

Allendale C.I.
Mailing Address

Hwy 47, P.O. Box 1151

Fairfax, SC 29827
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2212

Ackerman 5-6-11 1849

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| | ) | |
| KERLAN ETHEREDGE, #236635 | ) | |
| | ) | |
| Grievant/Appellant, | ) | |
| | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| | ) | |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| | ) | |
| Respondent/Appellee. | ) | |
| | ) | |
| | ) | |

I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

2213

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Keith Eugine, # not known; released ?, Appellant, vs. South Carolina Department of Corrections, Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that Keith Eugine does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Keith Eugine
Appellant's Name

address not known
Mailing Address

City, State, Zip Code

not known
Telephone Number

D H Westbrook
Signed

11-6-04
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions) 2214

Ackerman 5-6-11 1851

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| KEITH EUGINE, #not known | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

I certify that on the 17 day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

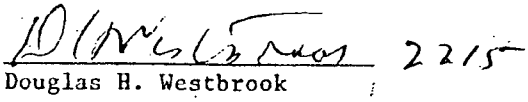
The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

(3) One copy was mailed pursuant to Directive to SCDC Policy GA-01.12 to:

South Carolina Department of Corrections
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221-1787



Douglas H. Westbrook

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: James Evans Jr.
SCDC NUMBER: 267837
INSTITUTION: Lieber
HOUSING UNIT: Wando B 138 ✓
WORK ASSIGNMENT: Dorm worker

Office Use Only
Grievance No. Lieber 0657-04
Code: General my
Nelson
Adj. Com.
Class.
Date Received SEP 23 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy; if Nelson Decree, specify which section of decree) The Department is asked to review and determine, whether I am titled to recieve back wages which, by law, are due me from working at prison Industries program when ey only paid .35¢ per hour, and not under the prevailing wage Statute, South Carolina Code Ann. Sec. 24-3-430 -F). which is the basis of my grievance, applys and likewise Note: that under law the department is asked > pay at prevailing wage; NOT $4.00 per hour, currently getting now from Williams Technologies as well as overtime rate of pay under law.

ACTION REQUESTED: That, the inmate be paid prevailing wage and overtime rate of pay under Law and that prevailing wage be paid.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed, and by court order, to file grievance.

James Evans Jr. 9/23/04
Grievant Signature Date

INFORMAL RESOLUTION BY IGC:

See Warden's response.

2216 L Carsfox 10/28/04
IGC Signature Date

☐ I accept the informal resolution and consider the matter closed.
☐ I do not accept the informal resolution. I wish to appeal to the Warden.

N/A
Grievant Signature Date

Ackerman 5-6-11 1853

WARDEN'S DECISION AND REASON:

See attachment.

☐ I accept.
☒ I do not accept

Warden Signature Date Oct. 28, 04

I hereby acknowledge receipt of the Warden's response. My signature in no way indicates my acceptance of the decision.

Grievant Signature Date 10/29/04

IGC Signature Date 10/29/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within seven (7) days of an alleged incident; Policy or Nelson at any time. Do not write in the space provided for the Warden's response.

2 2/7

5. If you are not satisfied with the Warden's decision, you may appeal to the Regional Director within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

Inmate J. Evans, #267837 LCI 0657-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

22/8

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2219

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: James Evans Jr.
SCDC NUMBER: 267837
INSTITUTION: Lieber
HOUSING UNIT: Wando B 138
WORK ASSIGNMENT: Dorm Worker

NOV 04 2004
RECEIVED
MAY 29 2007
INMATE GRIEVANCE

Office Use Only
Grievance No. CCI 0657-04
Code: General NY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): In refference to Warden Burtt's response to prior grievance, Mr. Burtt relied on Misinformation in conductin diligent investigation into this matter, and based his findings on conjecture rather that FACTS, as a matter of Fact And LAW: Adkins & WICKER Unquestionably DES Require payment of prevailing wages. Grievants "Were Employed" By W.T.I nd SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker further allow his issue of payment of wages under SC Code 24-3-430 to be grieved pursuant SCDC's grievance procedure. Grievant incorporates by refference, ALL Exhibits attach grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04 Therefore, Grievant appeals wardens findings of step 1 in this grievance

James Evans Jr. 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

James Evans Jr. 5/22/07
Grievant Signature Date

Jean Rankin 5/22/07
IGC Signature Date

SCDC 10-5A (November 1997)

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2220

Ackerman 5-6-11 1857

Lieber PI Back Wage Claim Step 2 Reply

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Evans, James | 267837 | LCI-0651-04 |

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 30, 2001 and that your participation in this project ended on May 29, 2001.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Evans, James | 267837 | LCI-0651-04 |

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly 3 ½ years after SCDC first paid you for your participation in the project located at Lieber, over three (3) years after your participation in the project at Lieber ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Evans, James | 267837 | LCI-0651-04 |

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Evans, James | 267837 | LCI-0651-04 |

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| James Evans, #267837<br>Appellant,<br>vs.<br>South Carolina Department of Corrections,<br>Respondent. | NOTICE OF APPEAL<br>Docket No. 0 -ALJ-04-_____-AP<br>Grievance No. _____ |

Notice is hereby given that James Evans does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

| | |
|---|---|
| James Evans<br>Appellant's Name | Signed |
| Lieber C.I.<br>Mailing Address | 11-6-08<br>Dated |
| P.O. Box 205 | Douglas H. Westbrook<br>23 Broad St.<br>Chas, SC 29401<br>(843) 853-9600<br>Attorney for Appellant |
| Ridgeville, SC 29472<br>City, State, Zip Code | |
| none<br>Telephone Number | |

(See reverse side for instructions)

2225

Ackerman 5-6-11 1862

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>JAMES EVANS, #267837<br><br>Grievant/Appellant,<br><br>vs.<br><br>SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,<br><br>Respondent/Appellee. | ) | IN THE ADMINISTRATIVE LAW COURT<br><br>CERTIFICATE OF SERVICE |

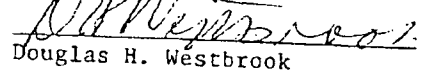
I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201


Douglas H. Westbrook

2226

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

David Feggins INMATE GRIEVANCE FORM

STEP I

individually, and on behalf of all inmate employees (IE's)

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 287157

INSTITUTION: Lieber

HOUSING UNIT: Cooper B-20

WORK ASSIGNMENT: P.I 2

Office Use Only

Grievance No. Lieber 0741-04

Code: General MY

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits document a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate for 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 2004 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Darrell Feggins 09-27-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

2227

N/A

Grievant Signature Date

Ackerman 5-6-11 1864

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11-02-04

IGC Signature Date 11.2.04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2228

Jim D. Higgins, #287157 LC10741-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2229

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2230

AMENDMENT TO GRIEVANCE OF DAVID FEGGINS, #287157

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 377.10 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

David Feggins 02-03-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0781; C, 0081,0086; F, 1072; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

11-2-04

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
### STEP 2

INMATE NAME: Feggins, David

SCDC NUMBER: #287157 NOV 08 2004

INSTITUTION: Lieber Corr. Inst. PP

HOUSING UNIT: Cooper B-20

WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. LCI 0741-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C.Code Ann.§24-3-430 to be grieved purusant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrock on 9/22/04..

David Feggins 11-03-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2232

Ackerman 5-6-11 1869

Lieber PI Back Wage Claim Step 2 Response

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Feggins, David | 287157 | LCI-0741-04 |

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on March 1, 2004 and ended July 5, 2006. Additionally, these records reflect that you returned to this project for a second work assignment that began February 8, 2007 and, as of the date of this response, your participation continues.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings.



Ackerman 5-6-11 1870

| | | |
|---|---|---|
| Feggins, David | 287157 | LCI-0741-04 |

The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over six (6) months after SCDC first paid you for the labor you provided to the project located at Lieber during your first work assignment there and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Feggins, David | 287157 | LCI-0741-04 |

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Feggins, David | 287157 | LCI-0741-04 |

hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| David Feggins, #287157, Appellant, vs. South Carolina Department of Corrections, Respondent. | NOTICE OF APPEAL<br>Docket No. 00-ALJ-04-_____-AP |

Notice is hereby given that David Feggins does hereby appeal the final decision of the South Carolina Department of Corrections dated 6-19-07 and received on 2-1-08, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): Grievant seeks back wages contesting SCDC policy/procedure of paying below prevailing/negotiated wages and under §13.9 there was no time limit to file. Grievant had reasonable cause under §13.9 as right to grieve did not accrue until Adkins/Wicker and he filed within reasonable time. Applying §13.1 denied grievant reasonable time to file and thus due process. SCDC failed to plead §13.1 in step 1 and filed/considered Amendments/Exhibits on the merits and thus waived §13.1. Grievant proved all elements of claim and disputes work period(s) alleged by SCDC. Dr. Benich's report is the only evidence of prevailing wages in record and grievant is entitled to prevailing/negotiated wages. To extent grievant worked OT he is entitled to it under SCDC policy. Grievant claims pre/post judgment interest, costs and attorney fees. Darrell Williams' 9-22-04 grievance, and many others, was filed individually and on behalf of all inmates and SCDC should process grievance for all who worked in program regardless of filin

David Feggins
Appellant's Name
c/o Ms. Evelyn Jackson
301 West 39th St.
Mailing Address

Savannah, GA
City, State, Zip Code
none available
Telephone Number

Signed
2-6-08
Dated:
Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2237

(See reverse side for instructions)

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| DAVID FEGGINS, #287157 | ) | |
| GRIEVANT/APPELLANT, | ) | |
| VS. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| RESPONDENT/APPELLEE. | ) | |

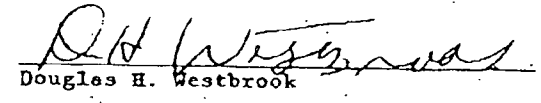
I certify that on the 22nd day of ~~Feb~~ Feb., 2008, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to Directive to SCDC Policy GA-01.12, §4.3, effective Jan. 30, 2008, to:

South Carolina Department of Corrections
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221-1787



Douglas H. Westbrook

2238

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Bernard Felder
SCDC NUMBER: 122099
INSTITUTION: Lieber C.I.
HOUSING UNIT: STONO B-12
WORK ASSIGNMENT: Dorm Worker

Office Use Only
Grievance No. Lieber 059404
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 23 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
the Department is Asked to review and Determine whether I Am entitled to recieve back wages, which are due to me from working at Lieber Prison Industries program, when they only paid me .35¢ an hour and not Prevailing wages as under South Carolina Code Ann. Sec 24-3-430 {A-7} as well as the fact they were getting $4.00 an hour and still did not give me my money from 1998-2003. They Denied me Prevailing Wage.

ACTION REQUESTED:
That all money due to me be paid at Prevailing wage as well as overtime rate, moreover the prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed, ordered to file a grievance by Court under Wicker V. SCDC and Adkins VS. SCDC

Bernard Felder 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Felder: See Warden's response.

L Carter 10/27/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev November 1997)

2239

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Bernard Fetter 11-2-04
Grievant Signature Date

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2240

Inmate Bernard Fulder, #122099 LC10594-09

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2241

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2242

AMENDMENT TO GRIEVANCE OF BERNARD FELDER, #122099

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference). * Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for 92.95 hours in 1999 at $9.68 per hour; 1168.49 hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Bernard Felder 2-9-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0781; C, 0081,0086; F, 1072-1073; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2243

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| MI 3 | ENGLISH, ANTHONY | 238474 | C B 48 | 1 | 9/19/03 | 1/20/04 |
| | ENOCH, JC | 270837 | E B 31 | 1 | 4/4/01 | 8/24/01 |
| | ENRIQUEZ, JAMES | 215539 | C B 33 | 1 | 9/13/00 | 10/27/00 |
| | EPPS, CLEMON | 170059 | A A 52 | 2 | 3/7/02 | 3/25/02 |
| | ERVIN, WILLIE | 236907 | S A 11 | 1 | 11/27/00 | 1/9/01 |
| | ESPIRIT, ANTHONY | 216061 | C B 2 | 1 | 2/15/00 | 3/1/02 |
| | ESTRICH, TOMMY | 256707 | C A 54 | 1 | 9/13/99 | 2/22/00 |
| | ETHERIDGE, KIRLAN | 236635 | C A 36 | 1 | 3/15/02 | 7/29/02 |
| | EVANS, JAMES | 267837 | C B 31 | 1 | 3/30/01 | 5/29/01 |
| | FAIN, RANDALL | 257916 | C B 51 | 1 | 4/14/00 | 7/31/00 |
| MI 2 | FAIR, TONY | 276917 | C B 16 | 2 | 8/22/01 | 12/11/02 |
| MI 3 | FAUBEL, G | 143027 | C A 0 | 0 | | 12/20/99 |
| | FAULLING, WILLIAM | 262121 | S B 55 | 1 | 10/29/01 | 2/4/02 |
| | FEASTER, QUINTON | 279613 | A A 36 | 1 | 12/20/01 | 1/18/02 |
| MI 3 | FEGGINS, DAVID | 287157 | C B 20 | 1 | 3/1/04 | 6/24/04 |
| | FELDER, BERNARD | 122099 | C A 51 | 1 | 12/10/99 | 7/24/00 |
| | FELDER, EDDY | 278505 | E B 26 | 2 | 10/26/01 | 12/20/01 |
| MI 2 | FENO, JAMES | 214758 | C A 27 | 1 | 10/25/01 | 9/20/02 |
| | FERGUSON, ANTOINE | 216062 | A A 39 | 1 | 12/20/01 | 1/18/02 |
| | FERGUSON, TERRY | 211141 | C A 40 | 1 | 9/11/00 | 5/29/01 |
| | FICKENS, ALFRED | 127392 | S B 19 | 1 | 4/26/02 | 7/29/02 |
| MI 2 | FIELDS, JAMES | 257168 | C B 47 | 1 | 8/17/01 | 1/3/03 |
| | FIELDS, WINSTON | 184660 | C A 18 | 1 | 3/21/00 | 7/5/01 |
| MI 3 | FLORES, JOSE | 240563 | C A 18 | 1 | 1/15/03 | 5/2/03 |
| | FLOYD, JAMELLS | 242830 | C A 22 | 1 | 10/13/99 | 2/2/00 |
| | FLOYD, JAMIE | 196928 | C A 10 | 1 | 5/17/00 | 2/15/01 |
| MI 2 | FLOYD, MICHAEL | 210602 | C A 7 | 1 | 5/21/01 | 5/2/03 |
| | FOLK, COURTNEY | 261360 | A B 3 | 1 | 4/19/02 | 4/29/02 |
| | FORD, CHRIS | 245774 | C A 23 | 1 | 8/11/99 | 2/2/00 |
| | FORD, DAVID | 71974 | C A 45 | 1 | 9/13/99 | 4/13/00 |
| | FORD, FRANK | 199818 | C 0 | 1 | 9/9/99 | 3/28/00 |
| | FORD, JAMES | 265454 | S A 15 | 1 | 3/26/01 | 3/27/01 |
| MI 1B | FORREST, GARY | 219537 | C A 18 | 1 | 5/1/01 | 9/6/02 |
| MI 3 | FORTUANATO, J. | 261367 | C A 0 | 0 | | 11/22/99 |
| MI 3 | FOSTER, R | 257182 | C A 0 | 0 | | 11/8/99 |
| | FOWLER, DAVID | 248557 | A B 4 | 1 | 3/22/01 | 5/2/01 |
| | FOYE, JAMES | 211523 | C 0 | 1 | 3/27/00 | 4/6/00 |
| | FRANKLIN, BILLY | 241188 | C A 20 | 2 | 4/6/00 | 7/27/00 |
| | FRAZIER, ANTHONY | 262001 | M X 0 | 2 | 1/4/00 | 11/30/00 |
| | FRAZIER, BERNARD | 187976 | M X 0 | 2 | 1/6/00 | 12/20/01 |
| | FRAZIER, WILLIE | 244002 | A B 61 | 1 | 6/27/00 | 8/21/00 |
| | FREEMAN, BEN | 228904 | C A 33 | 2 | 9/26/01 | 12/20/01 |
| MI 3 | FREYTA, CHARLES | 240008 | C B 56 | 1 | 8/6/99 | 12/17/02 |
| MI 2 | FRYSON, TONEY | 177454 | E A 21 | 1 | 11/10/03 | 1/7/04 |
| | FULLER, TERRY | 190338 | C B 5 | 1 | 4/12/00 | 9/7/00 |
| | FULLER, TRACY | 234653 | C A 25 | 1 | 3/2/01 | 12/20/01 |

PLAINTIFF'S EXHIBIT A

2244

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

2245

A - 0081
June 2004

00021

Ackerman 5-6-11 1882

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



PLAINTIFF'S EXHIBIT C
PENGAD-Bayonne, N. J.

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 276917 | FAIR | TONY | | 20020729 | 0.50 | 113.63 | 56.81 |
| 276917 | FAIR | TONY | | 20020812 | 0.50 | 116.25 | 58.12 |
| 276917 | FAIR | TONY | | 20020826 | 0.50 | 124.70 | 62.35 |
| 276917 | FAIR | TONY | | 20020909 | 0.50 | 102.85 | 51.42 |
| 276917 | FAIR | TONY | | 20020923 | 0.50 | 112.83 | 56.41 |
| 276917 | FAIR | TONY | | 20021007 | 0.50 | 127.50 | 63.75 |
| 276917 | FAIR | TONY | | 20021021 | 0.50 | 127.50 | 63.75 |
| 276917 | FAIR | TONY | | 20021104 | 0.50 | 127.50 | 63.75 |
| 276917 | FAIR | TONY | | 20021118 | 0.50 | 130.16 | 65.08 |
| 276917 | FAIR | TONY | | 20021202 | 0.50 | 100.73 | 50.36 |
| 276917 | FAIR | TONY | | 20021216 | 0.50 | 82.30 | 41.15 |
| 143027 | FAUBEL | GREGORY | | 19990913 | 0.35 | 72.00 | 25.20 |
| 143027 | FAUBEL | GREGORY | | 19990913 | 0.55 | 5.50 | 3.02 |
| 143027 | FAUBEL | GREGORY | | 19990927 | 0.35 | 46.50 | 16.27 |
| 143027 | FAUBEL | GREGORY | | 19991011 | 0.35 | 9.25 | 3.23 |
| 143027 | FAUBEL | GREGORY | | 19991206 | 0.40 | 22.38 | 8.95 |
| 143027 | FAUBEL | GREGORY | | 19991220 | 0.40 | 12.42 | 4.96 |
| 262121 | FAULLING | WILLIAM | NEMIRE | 20011217 | 0.50 | 16.70 | 8.35 |
| 262121 | FAULLING | WILLIAM | NEMIRE | 20011231 | 0.50 | 26.73 | 13.36 |
| 262121 | FAULLING | WILLIAM | NEMIRE | 20020114 | 0.50 | 49.11 | 24.55 |
| 262121 | FAULLING | WILLIAM | NEMIRE | 20020128 | 0.50 | 72.76 | 36.38 |
| 262121 | FAULLING | WILLIAM | NEMIRE | 20020211 | 0.50 | 14.18 | 7.09 |
| 279613 | FEASTER, JR. | QUINTON | HOSEA | 20020128 | 0.50 | 20.88 | 10.44 |
| 287157 | FEGGINS | DAVID | | 20040308 | 0.50 | 17.76 | 8.88 |
| 287157 | FEGGINS | DAVID | | 20040322 | 0.50 | 48.34 | 24.17 |
| 287157 | FEGGINS | DAVID | | 20040405 | 0.50 | 46.48 | 23.24 |
| 287157 | FEGGINS | DAVID | | 20040419 | 0.50 | 43.46 | 21.73 |
| 287157 | FEGGINS | DAVID | | 20040503 | 0.50 | 71.87 | 35.93 |
| 287157 | FEGGINS | DAVID | | 20040517 | 0.50 | 87.22 | 43.61 |
| 287157 | FEGGINS | DAVID | | 20040531 | 0.50 | 61.97 | 30.98 |
| 122099 | FELDER | BERNARD | - | 19991220 | 2.50 | 2.00 | 5.00 |
| 122099 | FELDER | BERNARD | - | 19991220 | 0.35 | 44.53 | 15.58 |
| 122099 | FELDER | BERNARD | - | 20000103 | 0.35 | 37.50 | 13.12 |
| 122099 | FELDER | BERNARD | - | 20000103 | 0.55 | 8.92 | 4.90 |
| 122099 | FELDER | BERNARD | - | 20000117 | 0.35 | 72.55 | 25.39 |
| 122099 | FELDER | BERNARD | - | 20000117 | 0.55 | 13.37 | 7.35 |
| 122099 | FELDER | BERNARD | - | 20000117 | 0.50 | 15.00 | 7.50 |
| 122099 | FELDER | BERNARD | - | 20000117 | 0.55 | 4.00 | 2.20 |
| 122099 | FELDER | BERNARD | - | 20000131 | 0.35 | 60.85 | 21.29 |
| 122099 | FELDER | BERNARD | - | 20000214 | 0.50 | 75.00 | 37.50 |
| 122099 | FELDER | BERNARD | - | 20000214 | 0.55 | 3.68 | 2.02 |
| 122099 | FELDER | BERNARD | - | 20000214 | 0.80 | 6.50 | 5.20 |
| 122099 | FELDER | BERNARD | - | 20000228 | 0.50 | 66.98 | 33.49 |
| 122099 | FELDER | BERNARD | - | 20000228 | 1.05 | 15.00 | 15.75 |
| 122099 | FELDER | BERNARD | - | 20000313 | 0.50 | 67.25 | 33.62 |
| 122099 | FELDER | BERNARD | - | 20000327 | 0.50 | 75.00 | 37.50 |
| 122099 | FELDER | BERNARD | - | 20000327 | 0.55 | 2.05 | 1.12 |
| 122099 | FELDER | BERNARD | - | 20000410 | 0.35 | 56.20 | 19.67 |
| 122099 | FELDER | BERNARD | - | 20000424 | 0.50 | 74.75 | 37.37 |
| 122099 | FELDER | BERNARD | - | 20000508 | 0.50 | 75.00 | 37.50 |
| 122099 | FELDER | BERNARD | - | 20000522 | 0.50 | 67.50 | 33.75 |
| 122099 | FELDER | BERNARD | - | 20000522 | 0.55 | 7.27 | 3.99 |
| 122099 | FELDER | BERNARD | - | 20000522 | 0.25 | 7.50 | 1.87 |
| 122099 | FELDER | BERNARD | - | 20000605 | 0.50 | 67.07 | 33.53 |

PLAINTIFF'S EXHIBIT

2247

A - 1072
June 2004

| Inmate # | Last Name | First Name | Middle Name | Pay Date | Pay Rate | Hours | Pay Amount |
|---|---|---|---|---|---|---|---|
| 122099 | FELDER | BERNARD | - | 20000619 | 0.50 | 75.00 | 37.50 |
| 122099 | FELDER | BERNARD | - | 20000703 | 0.50 | 60.00 | 30.00 |
| 122099 | FELDER | BERNARD | - | 20000703 | 0.55 | 29.45 | 16.19 |
| 122099 | FELDER | BERNARD | - | 20000703 | 0.35 | 4.72 | 1.65 |
| 122099 | FELDER | BERNARD | - | 20000717 | 0.50 | 115.88 | 57.94 |
| 122099 | FELDER | BERNARD | - | 20000731 | 0.50 | 50.92 | 25.46 |
| 278505 | FELDER | EDDY | ALBERT | 20011231 | 0.50 | 27.98 | 13.99 |
| 214758 | FENO | JAMES | | 20011231 | 0.50 | 32.08 | 16.04 |
| 214758 | FENO | JAMES | | 20020114 | 0.50 | 50.98 | 25.49 |
| 214758 | FENO | JAMES | | 20020128 | 0.50 | 62.17 | 31.08 |
| 214758 | FENO | JAMES | | 20020211 | 0.50 | 90.75 | 45.37 |
| 214758 | FENO | JAMES | | 20020225 | 0.50 | 80.52 | 40.26 |
| 214758 | FENO | JAMES | | 20020311 | 0.50 | 78.06 | 39.03 |
| 214758 | FENO | JAMES | | 20020325 | 0.50 | 75.44 | 37.72 |
| 214758 | FENO | JAMES | | 20020408 | 0.50 | 38.06 | 19.03 |
| 214758 | FENO | JAMES | | 20020422 | 0.50 | 92.29 | 46.14 |
| 214758 | FENO | JAMES | | 20020506 | 0.50 | 98.55 | 49.27 |
| 214758 | FENO | JAMES | | 20020520 | 0.50 | 107.59 | 53.79 |
| 214758 | FENO | JAMES | | 20020603 | 0.50 | 106.42 | 53.21 |
| 214758 | FENO | JAMES | | 20020617 | 0.50 | 101.59 | 50.79 |
| 214758 | FENO | JAMES | | 20020701 | 0.50 | 86.07 | 43.03 |
| 214758 | FENO | JAMES | | 20020715 | 0.50 | 20.23 | 10.11 |
| 214758 | FENO | JAMES | | 20020729 | 0.50 | 79.35 | 39.67 |
| 214758 | FENO | JAMES | | 20020812 | 0.50 | 91.55 | 45.77 |
| 214758 | FENO | JAMES | | 20020826 | 0.50 | 90.50 | 45.25 |
| 214758 | FENO | JAMES | | 20020909 | 0.50 | 73.78 | 36.89 |
| 214758 | FENO | JAMES | | 20020923 | 0.50 | 97.23 | 48.61 |
| 216062 | FERGUSON | ANTOINE | | 20020129 | 0.50 | 20.29 | 10.14 |
| 211141 | FERGUSON | TERRY | | 20001023 | 0.50 | 43.94 | 21.97 |
| 211141 | FERGUSON | TERRY | | 20001023 | 0.50 | 43.35 | 21.67 |
| 211141 | FERGUSON | TERRY | | 20001106 | 0.50 | 51.79 | 25.89 |
| 211141 | FERGUSON | TERRY | | 20001120 | 0.50 | 69.50 | 34.75 |
| 211141 | FERGUSON | TERRY | | 20001204 | 0.50 | 70.06 | 35.03 |
| 211141 | FERGUSON | TERRY | | 20001218 | 0.50 | 35.57 | 17.78 |
| 211141 | FERGUSON | TERRY | | 20010101 | 0.50 | 32.33 | 16.16 |
| 211141 | FERGUSON | TERRY | | 20010115 | 0.50 | 55.38 | 27.69 |
| 211141 | FERGUSON | TERRY | | 20010129 | 0.50 | 41.51 | 20.75 |
| 211141 | FERGUSON | TERRY | | 20010212 | 0.50 | 66.58 | 33.29 |
| 211141 | FERGUSON | TERRY | | 20010226 | 0.50 | 70.52 | 35.26 |
| 211141 | FERGUSON | TERRY | | 20010312 | 0.50 | 44.51 | 22.25 |
| 211141 | FERGUSON | TERRY | | 20010326 | 0.50 | 97.17 | 48.58 |
| 211141 | FERGUSON | TERRY | | 20010409 | 0.50 | 87.75 | 43.87 |
| 211141 | FERGUSON | TERRY | | 20010423 | 0.50 | 93.76 | 46.88 |
| 211141 | FERGUSON | TERRY | | 20010507 | 0.50 | 92.36 | 46.18 |
| 211141 | FERGUSON | TERRY | | 20010521 | 0.50 | 54.52 | 27.26 |
| 211141 | FERGUSON | TERRY | | 20010604 | 0.50 | 36.87 | 18.43 |
| 127392 | FICKENS | ALFRED | | 20020520 | 0.50 | 65.40 | 32.70 |
| 127392 | FICKENS | ALFRED | | 20020520 | 0.50 | 21.49 | 10.74 |
| 127392 | FICKENS | ALFRED | | 20020603 | 0.50 | 47.25 | 23.62 |
| 127392 | FICKENS | ALFRED | | 20020617 | 0.50 | 55.23 | 27.61 |
| 127392 | FICKENS | ALFRED | | 20020701 | 0.50 | 88.92 | 44.46 |
| 127392 | FICKENS | ALFRED | | 20020715 | 0.50 | 89.77 | 44.88 |
| 127392 | FICKENS | ALFRED | | 20020729 | 0.50 | 108.67 | 54.33 |
| 127392 | FICKENS | ALFRED | | 20020812 | 0.50 | 11.40 | 5.70 |

PLAINTIFF'S EXHIBIT F

2248

A - 1073
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

2249

PLAINTIFF'S EXHIBIT H

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

| | |
|---|---|
| 9/68 - 6/72 | Doctor of Business Administration<br>Majors: Production Management and Marketing<br>Kent State University, Kent, Ohio |
| 1/66 - 5/68 | Masters of Business Administration<br>Majors: Economics and Marketing<br>Case Western Reserve University, Cleveland, Ohio |
| 9/65 - 1/66 | Western Reserve University, Cleveland, Ohio<br>Major: Law |
| 9/61 - 6/65 | Bachelor of Science in Chemical Engineering<br>Case Institute of Technology, Cleveland, Ohio |

**ACADEMIC EXPERIENCE**

| | |
|---|---|
| 9/93 –2003 | Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/78 - 8/93 | Associate Professor of Business Administration<br>College of Charleston, Charleston, South Carolina |
| 9/76 - 9/78 | Associate Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/72 - 9/76 | Assistant Professor and Chair of the Business Administration & Economics Department<br>College of Charleston, Charleston, South Carolina |
| 9/69 - 6/72 | Full-time Instructor, Economics Department<br>Kent State University, Kent, Ohio |
| 1/69 - 6/69 | Teaching Fellow, Statistics<br>Kent State University |
| 9/68 - 12/68 | Graduate Assistant<br>Kent State University |

22-50

## NON-ACADEMIC EXPERIENCE

| | |
|---|---|
| 6/74 - | Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts |
| 7/78 - | Manager of Summertime Properties, Charleston, South Carolina |
| 6/73 - | Business Consulting, J. Benich and Associates, Charleston, South Carolina |
| 1/68 - 11/72 | Business Advisor to Director of American Screw Products, Warrensville, Ohio |
| 1/68 - 10/68 | Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio |
| 1/66 - 9/67 | Industrial Market Research, Harshaw Chemical, Cleveland, Ohio |
| 19/65 - 1/66 | Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school) |
| 6/65 - 9/65 | Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development). |

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Bernard Felder
SCDC NUMBER: 122 099
INSTITUTION: LIEBER
HOUSING UNIT: STOND B-12
WORK ASSIGNMENT: DOKM

Nov. 2, 04 PP

Office Use Only
Grievance No. CCI 0594-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 02 2004
IGC Initials CC

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins and Wicker do require payment of prevailing wages. Grievant's were employed by WTI, and SCDC was WTI's "Agent in paying our wages. Adkins & Wicker further allow this issue of payment of wages under SC Code 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference All Exhibits attached to grievances filed by Darrell Williams & Attorney Douglas Westbrook on 9-22-04 Bernard Felder 11-2-04

Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Bernard Felder 5-22-07
Grievant Signature Date

Sandra S. Bowie 5-22-07
~~IGC~~ IGA Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2252

Ackerman 5-6-11 1889

FELDER LCI-0594-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on December 19, 1999 and that your participation in this project ended on July 24, 2000.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly five (5) years after SCDC first paid you for your participation in the project located at Lieber, over four (4) years after your participation in the project at Lieber ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

2259

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

2255

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Bernard Felder, #122099, Appellant, | ) | |
| vs. | ) | **NOTICE OF APPEAL** |
| South Carolina Department of Corrections, Respondent. | ) | DOCKET NO. _07___-ALJ-04-_____-____ GRIEVANCE NO.: _____ |

Notice is hereby given that Bernard Felder does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Bernard Felder
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

Signed
5-30-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2256

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE ADMINISTRATIVE LAW COURT |
| BERNARD FELDER, #122099 | ) | |
| Grievant/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF SERVICE |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, | ) | |
| Respondent/Appellee. | ) | |

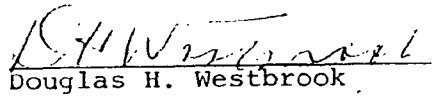
I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201


Douglas H. Westbrook

2257

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Terry Ferguson
SCDC NUMBER: 299580
INSTITUTION: Lieber Corr A
HOUSING UNIT: Cooper C-B-12 ✓
WORK ASSIGNMENT:

Office Use Only
Grievance No Lieber 0644-04
Code: General ny
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The department is asked to Review and determine whether I am entitled to Receive back wages due to Me from Working at Lieber Prison Industry Program When They only Paid Me 35¢ An-hour and not Prevailing Wage as Required under South Carolina Code Ann. Sec. 24-3-430 (A-7) as well as fact that from 1998-03 they denied me Prevailing Wage.

ACTION REQUESTED: All Money due to me be paid at Prevailing Wage and overtime Rate and Prevailing be Paid Now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed ordered to file Grievance by Court Wicker V. SCDC, Adkins V. SCDC.

Terry Ferguson 9-23-0
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carson 10/28/04
IGC Signature Date

N/A
Grievant Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2258

Ackerman 5-6-11 1895

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 14

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Terry Ferguson
Grievant Signature Date

IGC Signature Date 11/3/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2259

Inmate D. Ferguson # 299080 LCI 0644.04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2260

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

AMENDMENT TO GRIEVANCE OF TERRY FERGUSON, #211141 / TT 2550 F0

~~Grievant was/is employed in the Williams Tech/Lieber Prison~~ Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 346.54 hours in 2000 at $10.66 per hour; 740.93 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0781; C, 0081,0086; F, 1073; H, 1-3.

* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2262

AMENDMENT TO GRIEVANCE OF TERRY FERGUSON, ~~#211141~~ 299080 SCDC at your institution

Grievant was/is employed in the Williams Tech/Li Industries/Private Sector Program for the provision The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference). * Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 346.54 hours in 2000 at $10.66 per hour; 740.93 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Terry Ferguson
(Grievant Signature) (Date)

* Attached are Exh. A, 0781; C, 0081,0086; F, 1073; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

| | NAME | SCDC | DORM | SHIFT | HIRED | RELEASED |
|---|---|---|---|---|---|---|
| MI 3 | ENGLISH, ANTHONY | 238474 | C B 48 | 1 | 9/19/03 | 1/20/03 |
| | ENOCH, JC | 270837 | E B 31 | 1 | 4/4/01 | 8/24/01 |
| | ENRIQUEZ, JAMES | 215539 | C B 33 | 1 | 9/13/00 | 10/27/00 |
| | EPPS, CLEMON | 170059 | A A 52 | 2 | 3/7/02 | 3/25/02 |
| | ERVIN, WILLIE | 236907 | S A 11 | 1 | 11/27/00 | 1/9/01 |
| | ESPIRIT, ANTHONY | 216061 | C B 2 | 1 | 2/15/00 | 3/1/02 |
| | ESTRICH, TOMMY | 256707 | C A 54 | 1 | 9/13/99 | 2/22/00 |
| | ETHERIDGE, KIRLAN | 236635 | C A 36 | 1 | 3/13/02 | 7/29/02 |
| | EVANS, JAMES | 267837 | C B 31 | 1 | 3/30/01 | 5/29/01 |
| | FAIN, RANDALL | 257916 | C B 51 | 1 | 4/14/00 | 7/31/00 |
| MI 2 | FAIR, TONY | 276917 | C B 16 | 2 | 8/22/01 | 12/11/02 |
| MI 3 | FAUBEL, G | 143027 | C A 0 | 0 | | 12/20/99 |
| | FAULLING, WILLIAM | 262121 | S B 55 | 1 | 10/29/01 | 2/4/02 |
| | FEASTER, QUINTON | 279613 | A A 36 | 1 | 12/20/01 | 1/18/02 |
| MI 3 | FEGGINS, DAVID | 287157 | C B 20 | 1 | 3/1/04 | 6/24/04 |
| | FELDER, BERNARD | 122099 | C A 51 | 1 | 12/10/99 | 7/24/00 |
| | FELDER, EDDY | 278505 | E B 26 | 2 | 10/26/01 | 12/20/01 |
| MI 2 | FENO, JAMES | 214758 | C A 27 | 1 | 10/25/01 | 9/20/02 |
| | FERGUSON, ANTOINE | 216062 | A A 39 | 1 | 12/20/01 | 1/18/02 |
| | FERGUSON, TERRY | 211141 | C A 40 | 1 | 9/11/00 | 5/29/01 |
| | FICKENS, ALFRED | 127392 | S B 19 | 1 | 4/26/02 | 7/29/02 |
| MI 2 | FIELDS, JAMES | 257168 | C B 47 | 1 | 8/17/01 | 1/3/03 |
| | FIELDS, WINSTON | 184660 | C A 18 | 1 | 3/21/00 | 7/5/01 |
| MI 3 | FLORES, JOSE | 240563 | C A 18 | 1 | 1/15/03 | 5/2/03 |
| | FLOYD, JAMELLS | 242830 | C A 22 | 1 | 10/13/99 | 2/2/00 |
| | FLOYD, JAMIE | 196928 | C A 10 | 1 | 5/17/00 | 2/15/01 |
| MI 2 | FLOYD, MICHAEL | 210602 | C A 7 | 1 | 5/21/01 | 5/2/03 |
| | FOLK, COURTNEY | 261360 | A B 3 | 1 | 4/19/02 | 4/29/02 |
| | FORD, CHRIS | 245774 | C A 23 | 1 | 8/11/99 | 2/2/00 |
| | FORD, DAVID | 71974 | C A 45 | 1 | 9/13/99 | 4/13/00 |
| | FORD, FRANK | 199818 | C 0 | 1 | 9/9/99 | 3/28/00 |
| | FORD, JAMES | 265454 | S A 15 | 1 | 3/26/01 | 3/27/01 |
| MI 1B | FORREST, GARY | 219537 | C A 18 | 1 | 5/1/01 | 9/6/02 |
| MI 3 | FORTUANATO, J | 261367 | C A 0 | 0 | | 11/22/99 |
| MI 3 | FOSTER, R | 257182 | C A 0 | 0 | | 11/8/99 |
| | FOWLER, DAVID | 248557 | A B 4 | 1 | 3/22/01 | 5/2/01 |
| | FOYE, JAMES | 211523 | C 0 | 1 | 3/27/00 | 4/6/00 |
| | FRANKLIN, BILLY | 241188 | C A 20 | 2 | 4/6/00 | 7/27/00 |
| | FRAZIER, ANTHONY | 262001 | M X 0 | 2 | 1/4/00 | 11/30/00 |
| | FRAZIER, BERNARD | 187976 | M X 0 | 2 | 1/6/00 | 12/20/01 |
| | FRAZIER, WILLIE | 244002 | A B 61 | 1 | 6/27/00 | 8/21/00 |
| | FREEMAN, BEN | 228904 | C A 33 | 2 | 9/26/01 | 12/20/01 |
| MI 3 | FREYTA, CHARLES | 240008 | C B 56 | 1 | 8/6/99 | 12/17/02 |
| MI 2 | FRYSON, TONEY | 177454 | E A 21 | 1 | 11/10/03 | 1/7/04 |
| | FULLER, TERRY | 190338 | C B 5 | 1 | 4/12/00 | 9/7/00 |
| | FULLER, TRACY | 234653 | C A 25 | 1 | 3/2/01 | 12/20/01 |

PLAINTIFF'S EXHIBIT A

A - 0781
June 2004

2264

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND ) LEASE

THE AGREEMENT is entered into this 30th day of September, 199 8, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 [illegible]. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.



PLAINTIFF'S EXHIBIT C

2265

A - 0081
June 2004

00021

Ackerman 5-6-11 1902

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

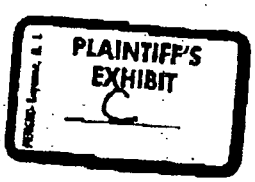
2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner





| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 122099 | FELDER | BERNARD | - | 20000619 | 0.50 | 75.00 | 37.50 |
| 122099 | FELDER | BERNARD | - | 20000703 | 0.50 | 60.00 | 30.00 |
| 122099 | FELDER | BERNARD | - | 20000703 | 0.55 | 29.45 | 16.19 |
| 122099 | FELDER | BERNARD | - | 20000703 | 0.35 | 4.72 | 1.65 |
| 122099 | FELDER | BERNARD | - | 20000717 | 0.50 | 115.88 | 57.94 |
| 122099 | FELDER | BERNARD | - | 20000731 | 0.50 | 50.92 | 25.46 |
| 278505 | FELDER | EDDY | ALBERT | 20011231 | 0.50 | 27.98 | 13.99 |
| 214758 | FENO | JAMES | | 20011231 | 0.50 | 32.08 | 16.04 |
| 214758 | FENO | JAMES | | 20020114 | 0.50 | 50.98 | 25.49 |
| 214758 | FENO | JAMES | | 20020128 | 0.50 | 62.17 | 31.08 |
| 214758 | FENO | JAMES | | 20020211 | 0.50 | 90.75 | 45.37 |
| 214758 | FENO | JAMES | | 20020225 | 0.50 | 80.52 | 40.26 |
| 214758 | FENO | JAMES | | 20020311 | 0.50 | 78.06 | 39.03 |
| 214758 | FENO | JAMES | | 20020325 | 0.50 | 75.44 | 37.72 |
| 214758 | FENO | JAMES | | 20020408 | 0.50 | 38.06 | 19.03 |
| 214758 | FENO | JAMES | | 20020422 | 0.50 | 92.29 | 46.14 |
| 214758 | FENO | JAMES | | 20020506 | 0.50 | 98.55 | 49.27 |
| 214758 | FENO | JAMES | | 20020520 | 0.50 | 107.59 | 53.79 |
| 214758 | FENO | JAMES | | 20020603 | 0.50 | 106.42 | 53.21 |
| 214758 | FENO | JAMES | | 20020617 | 0.50 | 101.59 | 50.79 |
| 214758 | FENO | JAMES | | 20020701 | 0.50 | 86.07 | 43.03 |
| 214758 | FENO | JAMES | | 20020715 | 0.50 | 20.23 | 10.11 |
| 214758 | FENO | JAMES | | 20020729 | 0.50 | 79.35 | 39.67 |
| 214758 | FENO | JAMES | | 20020812 | 0.50 | 91.55 | 45.77 |
| 214758 | FENO | JAMES | | 20020826 | 0.50 | 90.50 | 45.25 |
| 214758 | FENO | JAMES | | 20020909 | 0.50 | 73.78 | 36.89 |
| 214758 | FENO | JAMES | | 20020923 | 0.50 | 97.23 | 48.61 |
| 216062 | FERGUSON | ANTOINE | | 20020129 | 0.50 | 20.29 | 10.14 |
| 211141 | FERGUSON | TERRY | | 20001023 | 0.50 | 43.94 | 21.97 |
| 211141 | FERGUSON | TERRY | | 20001023 | 0.50 | 43.35 | 21.67 |
| 211141 | FERGUSON | TERRY | | 20001106 | 0.50 | 51.79 | 25.89 |
| 211141 | FERGUSON | TERRY | | 20001120 | 0.50 | 69.50 | 34.75 |
| 211141 | FERGUSON | TERRY | | 20001204 | 0.50 | 70.06 | 35.03 |
| 211141 | FERGUSON | TERRY | | 20001218 | 0.50 | 35.57 | 17.78 |
| 211141 | FERGUSON | TERRY | | 20010101 | 0.50 | 32.33 | 16.16 |
| 211141 | FERGUSON | TERRY | | 20010115 | 0.50 | 55.38 | 27.69 |
| 211141 | FERGUSON | TERRY | | 20010129 | 0.50 | 41.51 | 20.75 |
| 211141 | FERGUSON | TERRY | | 20010212 | 0.50 | 66.58 | 33.29 |
| 211141 | FERGUSON | TERRY | | 20010226 | 0.50 | 70.52 | 35.26 |
| 211141 | FERGUSON | TERRY | | 20010312 | 0.50 | 44.51 | 22.25 |
| 211141 | FERGUSON | TERRY | | 20010326 | 0.50 | 97.17 | 48.58 |
| 211141 | FERGUSON | TERRY | | 20010409 | 0.50 | 87.75 | 43.87 |
| 211141 | FERGUSON | TERRY | | 20010423 | 0.50 | 93.76 | 46.88 |
| 211141 | FERGUSON | TERRY | | 20010507 | 0.50 | 92.36 | 46.18 |
| 211141 | FERGUSON | TERRY | | 20010521 | 0.50 | 54.52 | 27.26 |
| 211141 | FERGUSON | TERRY | | 20010604 | 0.50 | 36.87 | 18.43 |
| 127392 | FICKENS | ALFRED | | 20020520 | 0.50 | 65.40 | 32.70 |
| 127392 | FICKENS | ALFRED | | 20020520 | 0.50 | 21.49 | 10.74 |
| 127392 | FICKENS | ALFRED | | 20020603 | 0.50 | 47.25 | 23.62 |
| 127392 | FICKENS | ALFRED | | 20020617 | 0.50 | 55.23 | 27.61 |
| 127392 | FICKENS | ALFRED | | 20020701 | 0.50 | 88.92 | 44.46 |
| 127392 | FICKENS | ALFRED | | 20020715 | 0.50 | 89.77 | 44.88 |
| 127392 | FICKENS | ALFRED | | 20020729 | 0.50 | 108.67 | 54.33 |
| 127392 | FICKENS | ALFRED | | 20020812 | 0.50 | 11.40 | 5.70 |

PLAINTIFF'S EXHIBIT
F

A - 1073
June 2004

2267

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

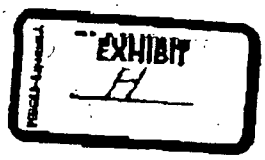
Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers—Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.




2268

## NON-ACADEMIC EXPERIENCE

6/74 - Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts

7/78 - Manager of Summertime Properties, Charleston, South Carolina

6/73 - Business Consulting, J. Benich and Associates, Charleston, South Carolina

1/68 - 11/72 - Business Advisor to Director of American Screw Products, Warrensville, Ohio

[illegible] Specialist (Systems [illegible]) [illegible] Hand Electric Instruments [illegible]

[illegible] Medical Research [illegible], Cleveland, OH

10/65 - 1/66 - Flowmeter Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)

6/65 - 9/65 Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

## PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol 20 Abstr 19

[illegible] Economic Review Company [illegible]

[illegible]

"Determining Tax Adjusted Discount Rates for Lost Income [illegible] 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost [illegible] *of Legal Economics*, July 1992

2269

# RESUME-3/03
## Dr. Joseph J. Benich

**FAMILY STATUS**
Wife - Roberta; two children - Kiersten and J.J.

**EDUCATION**

9/68 - 6/72 Doctor of Business Administration
Majors: Production Management and Marketing
Kent State University, Kent, Ohio

1/66 - 5/68 Masters of Business Administration
Majors: Economics and Marketing
Case Western Reserve University, Cleveland, Ohio

9/65 - 1/66 Western Reserve University, Cleveland, Ohio
Major: Law

9/61 - 6/65 Bachelor of Science in Chemical Engineering
Case Institute of Technology, Cleveland, Ohio

**ACADEMIC EXPERIENCE**

9/93 –2003 Professor of Business Administration
College of Charleston, Charleston, South Carolina

9/78 - 8/93 Associate Professor of Business Administration
College of Charleston, Charleston, South Carolina

9/76 - 9/78 Associate Professor and Chair of the Business Administration & Economics Department
College of Charleston, Charleston, South Carolina

9/72 - 9/76 Assistant Professor and Chair of the Business Administration & Economics Department
College of Charleston, Charleston, South Carolina

9/69 - 6/72 Full-time Instructor, Economics Department
Kent State University, Kent, Ohio

1/69 - 6/69 Teaching Fellow, Statistics
Kent State University

9/68 - 12/68 Graduate Assistant
Kent State University

2270

11-8-04

# SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
## INMATE GRIEVANCE FORM
### STEP 2

INMATE NAME: Ferguson, Terry

SCDC NUMBER: 299080

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Cooper B-12

WORK ASSIGNMENT:

NOV 08 2004

pf

Office Use Only

Grievance No. LCI 0644-04

Code: General MY

Policy

Disc. Hear.

Class.

Date Received NOV 08 2004

IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker do require payment of prevailing wages. Grievants were employed by NTI and SCDC was NTI's "agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C.Code Ann.§24-3-430 to be grieved purusant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9/22/04.

Terry Ferguson 11.3.04

Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Released 4-7-06 Refer GA-01.12

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS) 2271

Ackerman 5-6-11 1908

Lieber PI Back Wage Claim Step 2 Reply

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Ferguson, Terry | 299080<br>RELEASED 4/7/06 | LCI-0644-04 |

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your participation in the prison industries project at Lieber started on October 23, 2000 and ended on June 4, 2001.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Ferguson, Terry | 299080<br>RELEASED 4/7/06 | LCI-0644-04 |

21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly four (4) years after SCDC first paid you for your participation in the project located at Lieber, over three (3) years after your participation in this project concluded, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Ferguson, Terry | 299080<br>RELEASED 4/7/06 | LCI-0644-04 |

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or

| Inmate Name | SCDC # | Grievance # |
|---|---|---|
| Ferguson, Terry | 299080<br>RELEASED 4/7/06 | LCI-0644-04 |

other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

| | |
|---|---|
| Terry Ferguson, #299080, Appellant, vs. South Carolina Department of Corrections, Respondent. | NOTICE OF APPEAL<br>Docket No. 00-ALJ-04-_____-AP |

Notice is hereby given that Terry Ferguson does hereby appeal the final decision of the South Carolina Department of Corrections dated 1-28-08 and received on 2-1-08, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): Grievant seeks back wages contesting SCDC policy/procedure of paying below prevailing/negotiated wages and under §13.9 there was no time limit to file. Grievant had reasonable cause under §13.9 as right to grieve did not accrue until Adkins/Wicker and he filed within reasonable time. Applying §13.1 denied grievant reasonable time to file and thus due process. SCDC failed to plead §13.1 in step 1 and filed/considered Amendments/Exhibits on the merits and thus waived §13.1. Grievant proved all elements of claim and disputes work period(s) alleged by SCDC. Dr. Benich's report is the only evidence of prevailing wages in record and grievant is entitled to prevailing/negotiated wages. To extent grievant worked OT he is entitled to it under SCDC policy. Grievant claims pre/post judgment interest, costs and attorney fees. Darrell Williams' 9-22-04 grievance, and many others, was filed individually and on behalf of all inmates and SCDC should process grievance for all who worked in program regardless of filir

Terry Ferguson
Appellant's Name

(1) 344 Maple Wood Rd. (2) c/o Bertha Ferguson ~~344 Frederick~~ Doug
Mailing Address

(1) Moncks Corner, SC 29461 (2) Moncks Corner, SC 29461
City, State, Zip Code

(843) 899-4860
Telephone Number

Signed

2-6-08
Dated:

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

2276 (See reverse side for instructions)