THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James Randall Davis, Special Master/Referee

Case No. 2014-001819

Palmetto Mortuary Transport, Inc., ...Respondent,

v.

Knight Systems, Inc. and Robert L. Knight, ...Appellants.

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INDEX

Order of July 22, 2014 2

Supplemental Order of September 10, 2014 35

Amended Complaint, dated June 6, 2013 40

Amended Answer and Counterclaim, dated July 2, 2013 53

Reply to Counterclaim, dated July 25, 2013 61

Plaintiff's Proposed Order to Special Referee 66

Defendants' Proposed Order to Special Referee 83

Transcript of Testimony, dated December 18, 2013 (pages 1-267) 105
- Don J. Lintal
  - Direct 125
  - Cross 171
  - Re-Direct 239
  - Re-Cross 242
- Ellen Lintal
  - Direct 243
  - Cross 253
- Robert L. Knight
  - Direct 296
  - Cross 341
  - Re-Direct 358
  - Re-Cross 363

Plaintiff's Exhibits
- Exhibit 1, admitted for Don J. Lintal 372
- Exhibit 2, admitted for Don J. Lintal 408
- Exhibit 3, admitted for Don J. Lintal 447
- Exhibit 4, admitted for Don J. Lintal 449
- Exhibit 5, admitted for Don J. Lintal 456
- Exhibit 1, admitted for Ellen Lintal 502

Defendants' Exhibits
- Exhibit 1, admitted for Don J. Lintal 505

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COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

Palmetto Mortuary Transport, Inc.,) Civil Action No.: 2011-CP-32-04051

Plaintiff,) ORDER

v.)

Knight Systems, Inc. and Robert L. Knight,)

Defendants)

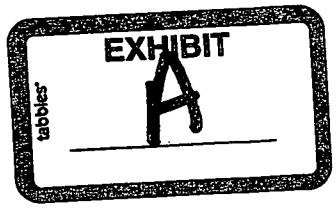
This matter comes before the court-appointed Special Referee (the "Court") by Consent Order signed by The Honorable Thomas A. Russo, Chief Administrative Judge for Lexington County on May 14, 2013.

PROCEDURAL BACKGROUND

This case was initiated by Plaintiff Palmetto Mortuary Transport, Inc. ("Palmetto Mortuary") on October 26, 2011 against Defendants Knight Systems, Inc. ("Knight Systems") and Robert L. Knight ("Knight") (collectively "Defendants").

The case was tried before the Court on December 18, 2013 at the offices of Davis Frawley LLC in Lexington, South Carolina. Palmetto Mortuary was represented by John J. Pringle, Jr. and Lyndey Ritz Zwing of Adams and Reese LLP. Present on behalf of Palmetto Mortuary were its principal owners Mr. Donald Lintal and Mrs. Ellen Lintal. Defendant Robert "Buddy" Knight was present on behalf of himself and Defendant Knight Systems. Both Defendants were represented by Reginald "Reggie" L. Lloyd of The Lloyd Law Firm, LLC and Todd Hagins of Hagins Law Firm.

The Court has carefully considered the testimony of Mr. and Mrs. Lintal on behalf of the Plaintiff and the testimony of Mr. Knight on behalf of Defendants as well as the arguments that have been made to the Court.



"A judge's findings of fact in an action at law tried without a jury have the force of a jury's findings of fact." *Southern Realty and Const. Co. v. Bryan*, 290 S.C. 302, 313, 350 S.E.2d 194, 200 (Ct. App. 1986) (*citing Doe v. Asbury*, 281 S.C. 191, 314 S.E.2d 849 (Ct. App. 1984); *Melton v. Williams*, 281 S.C. 182, 314 S.E.2d 612 (Ct. App. 1984)). "When findings are based on determinations regarding the credibility of witnesses, trial courts are given great deference. *See U.S. v. Hall*, 664 F.3d 546, 462 (4th Cir. 2012). As the special referee, I am charged with weighing the testimony of all witnesses and determining credibility. *See Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005) (holding appellate court should not disregard the findings of special referee, "who was in a better position to weigh the credibility of witnesses") (citation omitted).

Based on the evidence and law presented to the Court, the Court makes the following findings and conclusions:

FACTUAL BACKGROUND

1. This action arises out of an Asset Purchase Agreement ("APA" or "Agreement"), executed on or about January 5, 2007. *See* Plaintiff's Exhibit 1 (admitted for Donald J. Lintal) ("APA"). The Agreement involved Palmetto Mortuary, as the buyer, and Robert "Buddy" Knight and Knight Systems, as the sellers. *Id.*; *see also* Trial Tr. at 22:14-18. The transaction involved the sale of Defendants' mortuary transport business to Plaintiff.

2. Pursuant to the terms of the APA, Palmetto Mortuary purchased, among other assets specified in Section 1: tangible assets (defined in Section 1.1.1.1 of the Agreement), goodwill (defined in Section 1.1.1.6), customer lists (defined in Section 1.1.1.3). Palmetto Mortuary also obtained mutual covenants from Knight Systems, including a ten-year non-compete agreement which is set forth in Exhibit 3.2.6 to the APA ("Non-Compete Agreement").

3. In exchange for the assets and other contractual terms specified in the APA, including the covenant not to compete, Palmetto Mortuary was obligated to pay Knight Systems a purchase price of Five Hundred and Ninety Thousand Dollars ($590,000.00). Trial Tr. at 24:8-12.

4. Additionally, Palmetto Mortuary agreed to exclusively purchase four types of body bags from Knight Systems. The types of bags are identified in Section 3.4.8 of the APA (the "Exclusivity Provision") as: (1) heavy duty body bags, (2) lightweight body bags, (3) odor-proof body bags, and (4) water-retrieval body bags. Plaintiff agreed to purchase the four stated body bags from Defendants for the ten-year term of the Non-Compete Agreement. *See* APA at Section 3.4.8; *see also* Trial Tr. at pp. 27:18-22.

ISSUES PRESENTED TO THE COURT

I. Defendants claim that the Non-Compete Agreement at Exhibit 3.2.6 of the Agreement is unenforceable for lack of adequate consideration and because its duration and geographic scope are unreasonable.

II. Defendants claim that Plaintiff breached the Exclusivity Provision at Section 3.4.8 of the APA by purchasing body bags from sources other than Defendants. Defendants assert that Plaintiff's alleged breaches of the Exclusivity Provision entitled Defendants to repudiate the entire Agreement, including the Non-Compete Agreement.

III. Plaintiff claims that Defendants breached the Non-Compete Agreement at Exhibit 3.2.6 of the APA by submitting a competing bid against Plaintiff for mortuary transport on behalf of Richland County and winning said bid. Plaintiff also claims that Defendants materially breached the Exclusivity Provision of the Agreement by refusing to sell Plaintiff odor-proof body bags. Plaintiff asserts entitlement to monetary damages, injunctive relief, and attorney's fees as provided by the Agreement.

FINDINGS AND CONCLUSIONS

I. THE PARTIES' NON-COMPETE AGREEMENT IS ENFORCEABLE.

A. *The Non-Compete Agreement is supported by valuable consideration.*

1. Defendants allege that "the terms of the Non-Compete Agreement alleged by the Amended Complaint to be enforceable between these parties are unsupported by sufficient compensation, separate and apart from the purchase price of the assets set forth in the Asset Purchase Agreement." (Defendants' Answer to Plaintiff's Amended Complaint at ¶ 36). The Court disagrees.

2. The Non-Compete Agreement provides in relevant part: "NOW, THEREFORE, in consideration for the following premises, the promises set forth herein, the consideration of $1,000 specifically allocated to this Agreement in the Purchase Agreement." *See* APA at Exhibit 3.2.6.

3. In South Carolina, covenants not to compete arising out of the sale of a business "will, in conformity with the just and equitable principles of the common law, be generally upheld and enforced if (1) supported by a valuable consideration, (2) reasonably limited as to time, and (3) reasonably restricted as to the place of the territory, that is, where the time is not more extended or the territory more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930) (citations omitted).

4. Consideration is generally considered "a bargained for gain or advantage to the promise or a bargained for detriment or disadvantage to the promisor." *Weiner v. McGraw-Hill, Inc.*, 57 N.Y. 2d 458, 464 (N.Y. 1982). Consideration is present when the parties exchange something to which they attach value. Absent a claim of fraud or unconscionability, a court will not concern itself with whether there was adequate consideration. *Campbell v. Carr*, 361 S.C. 258, 265, 603 S.E.2d 625, 628 (Ct. App. 2004); *Spaulding v. Benenati*, 57 N.Y.2d 418, 423 (N.Y. 1982).

"Generally, a court will not inquire into the adequacy of consideration for a contract, inasmuch as consideration based on value of property or performance of a promise is a matter of personal judgment by parties to a contract." *Buckingham v. Wray*, 366 N.W.2d 753 (Neb. 1985).

5. In *Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947), the South Carolina Supreme Court stated: "When the consideration agreed upon . . . is something of value, the courts will generally, in the absence of fraud, coercion, and undue influence, and if the parties are competent, not avoid the [contract] on the ground of the inadequacy of the consideration . . . , for the contracting parties, and not the courts, must determine the quid pro quo." "The inadequacy of price is determined at the date the contract was entered." *Campbell v. Carr*, 361 S.C. at 264, 603 S.E.2d at 628 (citations omitted).

6. Even the slightest consideration will be deemed sufficient.[1] "The extent of the duty created by contract is not determined by the kind of consideration on which it is based; consideration consists of what is actually given or suffered and accepted for a promise." 17A Am. Jur. 2d Contracts § 115 (citations omitted). "Mutual promises . . . constitute a good consideration." *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013) (*quoting Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959)).

7. The consideration in the Non-Compete Agreement is unambiguously stated as $1,000. "If consideration is found at all to support a contract, inquiry into its adequacy is

[1] In *Whitefield v. McLeod*, 2 S.C.L. (2 Bay) 380, 384 (SC Const. Ct. App. 1802), the Constitutional Court of Appeals of South Carolina eloquently stated: "Every man was free to make a contract, and free to refuse it, but when once made, he was bound by it, where there was no fraud, concealment or latent defect. It was the sound policy of the law to support and uphold contracts, and not to destroy or render them uncertain. Inadequacy of consideration, is not alone any ground for setting aside a contract solemnly entered into. The adequacy or inadequacy of consideration, in every contract, depends so much upon the different ideas of men, in relation to the objects of their contracts, and the views and purposes with which they are entered into, that there is no fixing any general standard or rule by which it can be settled; for what one man might think a full and adequate consideration, another might think very inadequate, so that really it is so indefinite and uncertain in itself, that such a doctrine never could be reduced to practical use; as every contract might be impeached, where any advantage is gained on one side or the other, which had not equally been acquired by the opposite party."

forbidden." *Satellite Indus., Inc. v. Keeling*, 396 N.W.2d 635, 639 (Minn. Ct. App. 1986). This Court finds that $1,000 is not ambiguous, and therefore, this Court must enforce the terms of the Non-Compete Agreement as written.

8. Defendants seek to show that the events leading up to the execution of the Non-Compete Agreement demonstrate a lack of consideration for it. In considering the adequacy of consideration, the Court must look to the four corners of the document, and cannot consider parol evidence to construe the agreement unless its terms are ambiguous. *See Park Regency, LLC v. R&D Development of the Carolinas, LLC*, 402 S.C. 401, 741 S.E. 528 (Ct. App. 2012) ("the intention of the parties . . . [is] gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument") (citation omitted); *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999) (only if a contract is ambiguous will parol evidence be admissible to ascertain the true meaning and intent of the parties).

9. Defendants do not allege an ambiguity with respect to the language of the Non-Compete Agreement, but even if such an ambiguity existed, the negotiation of the Non-Compete Agreement before the document was executed does not demonstrate a lack of consideration.

10. In October of 2006, Donald and Ellen Lintal met with a broker regarding the purchase of Defendants' business. *See* Trial Tr. at 164:2-9. Shortly after meeting with their broker, in November of 2006, Mr. and Mrs. Lintal visited with Defendant Knight and looked at Knight System's business location for the purpose of informing Plaintiff's final valuation of Defendants' business. *Id.* at 164:17-24; 165:3-13. From November of 2006 to January 5, 2007, the parties and their agents, including brokers, accountants, and attorneys for both sides, negotiated the terms of the Agreement. *Id.* at 135:11-136:15; 140:4-141:14; 198:5-9; 200:16-201:5; 245:20-249:19.

11. Mrs. Lintal, Palmetto Mortuary's Chief Financial Officer, testified that one of the drafts of the Notice of Intent to Purchase submitted to Defendants and/or Defendants' agents, including their brokers or attorney, included a Non-Compete Agreement with a term of ten years and a one hundred and fifty mile radius. *Id.* at 139:25-140:3; 165:20-166:11; 167:19-168:10. Mrs. Lintal also testified that she had a discussion with her attorney about having a term of only seven years for the Non-Compete Agreement, but that term was ultimately increased to ten years in the final Agreement. *Id.* at 168:16-169:1. On December 14, 2006, Plaintiff's counsel sent a draft Non-Compete Agreement to Defendants' counsel which was intended by both parties to be included in the final APA. *Id.* at 156:9-12.

12. Closing took place on January 5, 2007. *See* APA. At the closing, the parties for the first time allocated dollar amounts to each of the Agreement's provisions. *Id.* at 98:5-13; 98:25-99:10. Mrs. Lintal testified that prior to closing, she "had discussions with our attorney and we were working with [Defendants' attorney] to get an allocation of assets, because that was never put in the document prior to closing. [I] wanted it in . . . because I wanted to review it. It never got accomplished until we sat down at closing." *Id.* at 157:3-8. There is no dispute that until closing no dollar figure was specifically assigned to the Non-Compete Agreement. *Id.* at 156:13-22.

13. Mrs. Lintal and Mr. Knight both testified that the $1,000 allocation ultimately attributed to the Non-Compete Agreement was primarily driven by Mr. Knight at the instruction of his accountant. *Id.* at 160:1-24; 161:4-19; 201:8-25. Both Mrs. Lintal and Mr. Knight testified that Mr. Knight wanted to allocate $1,000 to the Non-Compete Agreement in order to allow him and Knight Systems to minimize their potential capital gains tax. *Id.* at 162:20-163:2; 179:10-23; 201:6-25.[2] After collectively determining what allocation was best for the parties following the advice of

[2] Mrs. Lintal testified that part of Palmetto Mortuary's goal was to minimize the amount allocated to goodwill for the same reason. *Id.* at 179:10-181:1.

their agents, the parties executed the Agreement. *Id.* at 182:13-16 (Mrs. Lintal testified that negotiations were "a give and take"); 202:4-20 (Mr. Knight testified that "there was some discussion" regarding negotiating the amount allocated to the Non-Compete Agreement, but that he did not remember what it was). *See* Trial Tr. p. 250:1-13.

14. Mr. Knight testified that he "appeared at the closing [with his attorney] and . . . read the documents at closing." *See* Trial Tr. at 249:16-19; 246:1-6. Mr. Knight further testified that "after th[e] discussion about the $1,000 that's mentioned as the consideration for the covenant not to compete, [he] did[] [not] object to that provision or any provision of either agreement at the closing." *Id.* at 249:20-25.

15. Defendants did not assert that the Non-Compete Agreement was procured by fraud or that any of its terms were unconscionable. Accordingly, the Court can only consider the bargaining parity of the parties to determine whether there is some consideration exchanged or value placed on the Non-Compete Agreement. "It is not the business of courts to protect parties from the consequences of bad contracts, but to protect them from the consequences of either legal or moral fraud and imposition." *Jackson v. Carter*, 128 S.C. 79, 121 S.E. 559, 563 (1924) (*quoting Goree v. Wilson*, 17 S.C. L. 597 (S.C. Eq. 1830)).

16. The evidence in the record reveals that Defendants negotiated for a $1,000 consideration as stated in the Non-Compete Agreement. *See* Trial Tr. at 160:1-24; 161:4-19; 201:8-25; 162:20-163:2; 179:10-23; 201:6-25. This negotiation was done with the advice and consent of Defendants' accountant and attorney. *Id.* "Where a party gets all the consideration he voluntarily and knowingly contracts for, he will not be allowed to say he got no consideration." *Jackson v. Carter*, 128 S.C. 79, 121 S.E. at 563 (citation omitted).

17. Defendants' claim that $1,000 was an insufficient consideration for the ten-year and 150 mile radius Non-Compete Agreement is without merit. "The inadequacy must not be measured by grains, but it ought to be palpably disproportioned to the real and market value of the property, so as to constitute a hard, unreasonable, and unconscionable contract . . . ." *Campbell v. Carr*, 361 S.C. 258, 264, 603 S.E.2d 625, 628 (Ct. App. 2004) (*quoting Craven v. Williams*, 302 F.Supp. 885 (D.S.C. 1969)). The Court finds that all parties to the APA received mutual promises and consideration for those promises. Defendants' argument that $1,000 was insufficient amounts to a request that this court "measure grains," which is not something the Court is in a position to do. The undisputed evidence shows that the amount of consideration exchanged between the parties was determined after all parties received advice and consent of their agents.

18. Based on the facts presented at trial, the Court finds that the Non-Compete Agreement contained in the APA was supported by adequate consideration.

B. ***The Non-Compete Agreement is Reasonably Limited in Time and Geographic Scope.***

19. Defendants allege and argue that "[t]he territorial and limitations and length of term of the Non-Compete Agreement are unduly broad and expansive and, therefore, constitute an unenforceable restraint on trade and unenforceable agreement. (Defendants' Answer to Amended Complaint at ¶ 37). The Court disagrees.

20. The Non-Compete Agreement at issue in this case arises out of the sale of a business, and not an employment contract. As such, the Court will not apply the test applicable to covenants not to compete contained in employment contracts.[3] As the Fourth Circuit has recognized, "restrictive covenants not to compete in employment contracts . . . are scrutinized more

[3] Where an employment contract contains a non-compete agreement, the courts strictly construe the terms of the covenant not to compete against the employer. *See Team IA, Inc. v. Lucas*, 395 S.C. 237, 245, 717 S.E.2d 103, 107 (Ct. App. 2011) ("Restrictive covenants not to compete are generally disfavored and will be strictly construed against the employer.") (*quoting Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675-76, 301 S.E.2d 142, 143 (1983)).

rigorously than similar covenants incident to a sale of business." *American Hot Rod Ass'n, Inc. v. Carrier*, 500 F.2d 1269 (4th Cir. 1974) (noting that this is the "general trend of modern authority").[4]

21. In South Carolina, covenants not to compete arising out of the sale of a business "will, in conformity with the just and equitable principles of the common law, be generally upheld and enforced if (1) supported by a valuable consideration, (2) if reasonably limited as to time, and (3) if reasonably restricted as to the place of the territory, that is, where the time is not more extended or the territory more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930) (citations omitted). "[T]he restraint must be reasonable, not oppressive, or out of proportion to the benefits which the vendee may in reason expect to follow from the restrictive features of the contract, and not injurious to the interests of the public." *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184 (1942) (citations omitted).

22. "In determining whether a contract in partial restraint of trade is reasonable, the court will look to the whole subject matter of the contract, the kind and character of the business, its location, the purpose to be accomplished by the restriction, and all circumstances which show the intentions of the parties and which must have entered into the making of the contract." *Reeves*, 200 S.C. 494, 21 S.E.2d at 188 (emphasis added). "In determining whether a contract is reasonable in respect to the length of time during which the restriction is to run, as applied to a case like the one before us, it would seem that the fair and full protection of the business, good will and trade name

[4] In *also Alston Studios, Inc. v. Lloyd v. Gress and Associates*, 492 F.2d 279, 284 (4th Cir. 1974), the Fourth Circuit held: "In all events, the law applicable when the sale of a business is involved and that when only an employee is involved, as here, is different. 'The scope of permissible restraint is more limited between employer and employee than between seller and buyer, and the covenant is construed favorably to the employee.'" (*quoting Richardson v. Paxton Co.*, 127 S.E.2d 113 (Va. 1962)). "Conversely, greater latitude is allowed in determining the reasonableness of a restrictive covenant when the covenant relates to the sale of a business than in those ancillary to an employment contract." *Id.* (*citing Day Companies v. Patat*, 403 F.2d 792 (5th Cir. 1968).

from which the vendee has purchased and paid for, may well be accepted as the test. It naturally follows that each case must be governed in the main by its own facts." *Id.*

23. In *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930), the South Carolina Supreme Court upheld a covenant not to compete that was five years and extending to the territorial extent of the corporate limits of the City of Orangeburg. The Court held: "there is nothing to indicate that either the period . . . or the territorial extent . . . considered alone and without regard to surrounding facts and circumstances which might affect a reasonable protection of the rights of the purchasing party, imposes unreasonable limitations in regard to either." *Id.*

24. The South Carolina Supreme Court has also upheld a covenant not to compete which was unlimited in time, but limited in territory:

> We think the reasonableness of the restraint in the case at bar may be demonstrated. In the first place, we consider whether the restriction is more comprehensive than is necessary to secure to the plaintiff the benefits of his purchase. Is the protection afforded the plaintiff larger or wider than is necessary? In this case, the defendant entered into the covenant, not only for the sale of his property, but the contract included the sale of the good will and the use of his name. He realized a large sum of money, and presumably he considered it to his advantage to make the sale. One element of the value of the business transferred by him to the plaintiff was the almost certain probability that his customers would continue to trade with the plaintiff, and this probability was increased and the value of the purchase enhanced by the agreement of the defendant not to engage in the same business in the county of Richland **during his lifetime**. Such an agreement was a strong inducement to the plaintiff to make the purchase, and was based upon a good consideration. . . . . The contract as we view it was in no sense unreasonable or oppressive.

Reeves v. Sargeant, 200 S.C. 494, 21 S.E.2d 184, 188 (1942) (emphasis added).

25. Courts in other jurisdictions recognize that covenants not to compete arising out of the sale of a business are enforced more liberally than covenants arising out of the employer-employee relationship. *See Wells v. Wells*, 400 N.E.2d 1317 (Mass. App. 1980). "Among the considerations which favor more liberal enforcement of buyer-seller covenants are: that a seller of a business interest may not derogate from the value of the business as sold by competing with it; that

the buyer is entitled to the full value of the "benefit and advantages of his purchase"; and that the parties entered into the agreement with the assistance of counsel and without compulsion (an element frequently not present in the employer-employee context)." *Id.* at 1320.

26. The Court finds that the ten-year period and one hundred and fifty mile radius are reasonable and should be enforced. The Agreement at issue involved the complex and complicated sale of a business for a total price of $590,000.00 between two sophisticated businesses and parties.

27. In particular, Mr. Knight received $590,000 in exchange for the Non-Compete, as part of an APA he negotiated with the assistance of counsel and an account. Defendants assigned three (3) body removal contracts to Plaintiff as part of the Agreement, but specifically retained the right to conduct their body bag business. "[I]t is held that the restraint must be reasonable, not oppressive, or out of proportion to the benefits which the vendee may in reason expect to flow from the restrictive features of the contract, and not injurious to the interests of the public." *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184, 187 (1942) (*citing Beam v. Rutledge*, 9 S.E.2d 476 (N.C. 1940) and *Rakestraw v. Lanier*, 30 S.E. 735 (Ga. 1898)).

28. Similar to the seller in *Reeves v. Sargeant*, Knight entered into the covenant not to compete, not only for the sale of his business and his business's assets, but he also realized a large sum of money, and by his execution of the Agreement he considered it to his advantage to make the sale. *Reeves*, 200 S.C. 494, 21 S.E.2d 184, 188. Accordingly, the Court finds that the consideration exchanged for the entire contract together with the consideration exchanged for the Non-Compete Agreement was reasonable and justifies the terms of the Non-Compete in this case.

29. Additionally, the Plaintiff provided testimony regarding the importance of the Non-Compete Agreement to its decision to buy the business. Mr. Lintal testified that the ten-year term of the Non-Compete Agreement was significant to Palmetto Mortuary's decision to purchase Knight's

business. The ten year period was intended by both parties to protect Palmetto Mortuary from competition with Knight Systems for two five-year contract cycles with the University of South Carolina, and Richland and Lexington Counties' Coroners' Offices, contracts which were previously held by Knight Systems for more than fifteen years. See Trial Tr. at 74:25-75:12. The ten year period was selected so that Palmetto Mortuary would be able to get a second term with the Richland County Coroner's Office without the risk of competition by Knight. The Lintals wanted a ten year period to allow Palmetto Mortuary "to get through at least two cycles" of five-year contracts with the Richland and Lexington Coroner's Offices. *See* Trial Tr. at 103:16-25. "The contracts were the whole value to this business in regards to what types of guaranteed revenues that we were going to be able to generate. So we wanted at all costs to try to protect that for as long as we could." *See* Defendants' Exhibit 1 (Lintal Deposition) at 86:2-10. "[T]he value of th[e] contracts made up [the Lintals'] ultimate purchase price" of the business. *Id.* at 86:11-18. Mr. Lintal testified that the Non-Compete Agreement "was very important to [the Lintals' evaluation] because without the non-compete we wouldn't have bought the business." *Id.* at 88:6-10.

30. Mr. Lintal additionally testified that as to the geographic restriction, he believed Palmetto Mortuary would expand its business throughout other counties in the State of South Carolina. *See* Trial Tr. at 104:12-106:14 ("We did not know, but we did not want to limit our options if it was available to us. At the time it did not seem to be an issue on their part. I don't recall any objections to that.").

31. Given Mr. Knight's testimony that he did not intend to get back into the mortuary transport business both before and after the Agreement was executed by the parties (*see* Trial Tr. at 195:25-196:6; 204:1-8 (Mr. Knight testified that he "expressed [his] desire to [Mr. Lintal] how

much I wanted to get out of the business."))[5] and the significant value placed on the restrictions by Palmetto Mortuary, the Court finds that the time and geographic restrictions imposed by the Non-Compete Agreement were reasonable. The Court recognizes that the Non-Compete Agreement was a significant part of the consideration expected by Palmetto Mortuary in exchange for its agreement to purchase Defendants' mortuary transport business for $590,000. As a result of the foregoing evidence, the Court finds that the Non-Compete Agreement is enforceable.

II. DEFENDANTS BREACHED THE ASSET PURCHASE AGREEMENT BY REFUSING TO MAKE BAGS AVAILABLE TO PLAINTIFF AND BY VIOLATING THE NON-COMPETE AGREEMENT

32. Plaintiff alleges that Defendants breached the Non-Compete Agreement (Exhibit 3.2.6) by submitting a bid for mortuary transport services to the Richland County Coroner's Office on June 17, 2011. Plaintiff also alleges that Defendants breached the Exclusivity Provision (Section 3.4.8) by removing its odor-proof bags from the market.

33. To recover for a breach of contract, the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As stated more fully above (*see supra* Section I(A) and (B)), the Non-Compete Agreement is enforceable because it is supported by adequate consideration and is reasonable in time and geographic scope.

34. The Non-Compete Agreement provides in relevant part:

For a period of ten (10) years after the date hereof:

[5] This case can be distinguished from *Milliken & Co. v. Morin*, 399 S.C. 23, 32, 731 S.E.2d 288 (2012), where the South Carolina Supreme Court held that "noncompete agreements are viewed as restraints on trade which limit an employee's freedom of movement among employment opportunities." Here, Knight intended to get out of the mortuary transport business, and therefore, the parties' intention with the instant Non-Compete Agreement was not necessarily to restrain Knight's freedom of movement among employment opportunities.

A. **Customers, etc.** Seller shall not, directly or through Affiliate, (i) call upon or contact (or assist another person(s) or business entity to call upon or contact) any Customer for the purpose of furnishing the same or similar services provided or offered at any time by the Business to any Customer, or (ii) solicit or divert (or assist another person(s) or business entity to solicit or divert) any Customer from purchasing or using any of the Buyer's services, or (iii) provide or attempt to provide (or assist another person(s) or business entity to provide or attempt to provide) to any Customer the same or similar services provided or offered by the Business. For purposes of this Section 2(A), the term "Customer" shall mean any customer or client of the Business and shall include (without limitation) every such person(s) to which the Business or Seller has provided services prior to the date hereof.

B. **Territory.** In addition to (but not in limitation of) the restrictions of Section 2(A), Seller shall not, directly or through an Affiliate engage in, or assist another person or entity to engage in, providing services similar to those furnished by the Business or Seller at any time prior to Closing (as such term is defined in the Purchase Agreement) in competition with Buyer anywhere within 150 miles of the present location of the Business (the "Territory").

35. In early 2011, the Richland County Coroner's office issued a Request for Proposal ("RFP") seeking bids to provide mortuary transport services for a period of five years. At that time, Palmetto Mortuary held the mortuary transport services contract with Richland County as a result of the Agreement. *Id.* at 58:24-59:3; 61:18-62:5. The deadline for submission of bids was June 17, 2011 at 3:00pm. *Id.* at 58:12-22. Palmetto Mortuary prepared a bid and timely submitted it for Richland County's consideration. *Id.* at 59:4-5.

36. Defendants also submitted a bid to the Richland County Coroner's Office.

37. Additionally, after the RFP closed on June 17, 2011, Mr. Knight emailed Ms. Christie Swofford at the Richland County Procurement Office, seeking a determination that Knight Systems be chosen to provide mortuary transport services because Knight System is the "sole provider" of odor-proof body bags required by the RFP. *See* Trial Tr. at 62:6-64:13; 137:14-24; 242:14-243:25. There is no dispute that Richland County required odor-proof bags as part of the RFP. Mr. Knight stated in his email to Richland County that he was taking all of his odor-proof

bags off of the market, despite the Exclusivity Provision's requirement that Knight Systems provide "odor-proof body bags" to Palmetto Mortuary. According to Mr. Lintal, he "was [not] aware of" needing any alternative to an odor proof bag for his bid to Richland County "[b]ecause [he] still was under the existing contract . . . with Knight Systems." *Id.* at 136:24-137:1. That contract gave Palmetto Mortuary "the rights to buy th[e] odor proof bag [from Knight], as well as these other[] [types] of bags" in Section 3.4.8 of the Agreement. *Id.* at 137:2-5.

38. Despite the fact that Palmetto Mortuary submitted a bid with the lowest price for services and received the highest total of points from the Procurement Office as part of the review of the RFP, Richland County selected Knight Systems for the five-year contract. *Id.* at 122:1-14; 64:14-25; 137:2-24. There is evidence in the record supporting the contention that without Defendants' claim that they were the sole provider of odor-proof body bags, the Richland County contract would have been awarded to Palmetto Mortuary. *See* Trial Tr. at 122:1-14; 64:14-25; 137:2-24. (Q: "And if [Knight] hadn't [sent the letter], there wouldn't have been an issue?" A: "I should have won the contract.").

39. Defendants' suggestion that they were the sole providers of odor-proof body bags contradicts the clear language of Section 3.4.8 of the parties' Agreement which required Defendants to provide odor-proof body bags to Palmetto Mortuary for a price of $50.00 per bag.[6] *See* APA at Section 3.4.8. This Court concludes that the "shall provide" language in the Exclusivity Provision required Defendants to provide Palmetto Mortuary with odor-proof body bags at the time of the parties' submission of bids to Richland County. *Id.*[7]

[6] In 2011 Knight implemented a price increase of 10%, raising the cost of odor-proof disaster bags to $55.00 each.

[7] The Court rejects Defendants' counsel's arguments that the "shall provide" language in APA Section 3.4.8 refers only to the obligation that *if* Defendants provided body bags that they were required to provide them at the rates indicated below. The language of Section 3.4.8 requires that "Knight . . . shall provide to [Palmetto Mortuary] body bags at a discounted rate." The clause mandates two separate requirements: (1) that Knight shall provide bags to Palmetto Mortuary and (2) that Knight shall provide bags to Palmetto Mortuary at a discounted rate.

40. Defendants' bid submission and subsequent award of a mortuary transport contract with Richland County violates the terms of the Non-Compete Agreement as it represents "providing" body removal services to a "Customer" within the geographic territory and during the time period specified therein. Palmetto Mortuary's principal place of business is Lexington County, South Carolina and the contract at issue was for Richland County, South Carolina, a county within one hundred and fifty (150) miles of Palmetto Mortuary's business in Lexington County. Additionally, at the time Defendants submitted the bid to Richland County, there remained five years and seven months on the parties' ten-year Non-Compete Agreement.

41. In addition, the Court concludes that Defendants breached the APA's Exclusivity Provision by refusing to sell odor-proof body bags to Plaintiff as required by Section 3.4.8 of the Non-Compete Agreement and by claiming to Richland County that it was the "sole provider" of odor-proof body bags in order to increase its changes of receiving the Richland County Coroner's Office contract.

III. PLAINTIFF'S CONDUCT DID NOT CONSTITUTE A MATERIAL BREACH OF THE PARTIES' AGREEMENT SUCH THAT DEFENDANTS WERE EXCUSED FROM PERFORMANCE OF THEIR CONTRACTUAL OBLIGATIONS.

42. Defendants assert that "Plaintiff's breach of the agreement with Defendants negated all terms, conditions and responsibilities of the Defendants under the Asset Purchase Agreement and the Non-Compete Agreement." (Defendants' Answer to Amended Complaint, ¶ 42). The Court disagrees.

43. The Exclusivity Provision, Section 3.4.8 of the Agreement, provides:

> Knight, through his related body bag business (the "Related Business"), shall provide to Buyer body bags at a discounted rate and buyer shall for the term of the non-compete agreement buy all of their body bags from the Seller. Below are the current charges for different types of body bags. The prices cited below shall not be increased by more than ten percent (10%) in any calendar year.

Heavy Duty body bags:	$20.00
Lightweight body bags:	$8.00
Odor-Proof body bags:	$50.00
Water-Retreival body bags:	$30.00

44. In construing the Exclusivity Provision the Court is guided by South Carolina's contract law. "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958). "The parties' intention must, in the first instance, be derived from the language of the contract." *Schulmeyer v. State Farm Fire & Cas. Co.*, 323 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *C.A.N. Enters., Inc. v. S.C. Human & Health Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("In construing terms in contracts, this Court must first look at the language of the contract to determine the intention of the parties."). Contractual interpretation requires the Court to look at the language of the entire contract "and not . . . isolated portions" thereof. *See Buice v. WMA Securities, Inc.*, 380 S.C. 149, 156, 668 S.E.2d 430, 434 (Ct. App. 2008) (*citing Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975)). "Further, in determining the intent of the contracting parties, the court should . . . read together different provisions dealing with the same subject matter." *Id.* (citations omitted).

45. Plaintiff claims that the Exclusivity Provision obligated Plaintiff to buy those categories of bags listed in Section 3.4.8 of the Agreement from the Defendants (including heavy duty bags, lightweight bags, odor-proof bags, and water-retrieval bags only). Contrarily, Defendants assert that the Exclusivity Provision prevented Plaintiff from buying any body bag from any source other than Defendants. The Court agrees with Plaintiff's interpretation of Section 3.4.8.

46. Defendants are correct that the Exclusivity Provision states that Plaintiff "shall for the term of the non-compete agreement buy all of their body bags from the Seller." However, Defendants' focus on such language in isolation overlooks provisions providing context for that

phrase. Significantly, preceding language in that same sentence requiring Defendants to "provide to Buyer body bags at a discounted rate . . ." would be meaningless without all of those discounted rates being enumerated within the Agreement. Accordingly, the Exclusivity Provision subsequently lists the types of bags actually offered by Defendants and the prices at which Plaintiff could purchase those bags.

47. Reading the Exclusivity Provision as a whole and considering all of its provisions demonstrates that the parties intended the term "all of their body bags" to mean "all" bags in the listed categories and priced accordingly. "Documents will be interpreted so as to give effect to all of their provisions, if practical." *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997) (citation omitted).

48. While Defendants allege that they were "at all relevant times, capable and willing to manufacture and/or provide Plaintiff with any desired or needed body bags," (Defendants' Answer to Plaintiff's Amended Complaint at ¶ 41), that reading of the Exclusivity Provision could lead to unreasonable results not intended by the parties. "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail." *C.A.N. Enters., Inc. v. S.C. Health & Human Serv. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (citation omitted). For example, the Exclusivity Provision as construed by Defendants is silent with respect to how a type of bag not specifically listed therein would be priced. The Plaintiff's reading, on the other hand, memorializes both the Plaintiff's obligation to buy certain bags, and the Defendant's obligation to sell those bags at specific, discounted prices.

A. *Bag Purchases by Plaintiff*

49. Palmetto Mortuary purchased one infant body bag from Southland Medical Corporation on or about April 3, 2008 for the purchase price of $5.25, and on April 9, 2008 purchased one case containing thirty infant bags for a total price of $187.50. *Id.* at 45:22-46:12; *see also* Plaintiff's Exhibit 4 (admitted through Donald J. Lintal) at p. 1. Mr. Lintal testified that after receipt of the first infant body bag (a "pediatric" size bag) and demonstration to the Lexington County Coroner, he purchased thirty of the larger sized infant bags. "[W]e, being Randy Martin and myself, [determined] that the larger size would be more versatile for [our] use." *Id.* at 49:7-13.

50. On March 6, 2009, Palmetto Mortuary additionally purchased six water-retrieval bags from Evident at a purchase price of $45.00 a piece, for a total of $270.00. *See* Trial Tr. at 49:25-50:5; 50:24-51:23. The price paid by Palmetto Mortuary for the water retrieval bags from Evident was fifty percent more than the guaranteed discounted rate in the Exclusivity Provision of the Agreement, Section 3.4.8. *Id.* at 50:24-51:22; *see also* APA at Section 3.4.8 ("Water-Retreival [sic] body bags: $30.00").

51. On July 14, 2010, Palmetto Mortuary purchased a total of ten body bags from Medical Products Limited, including four extra-large body bags, and six heavy-duty body bags. *See* Trial Tr. at 52:2-11. Extra-large body bags are not included in the list of "different types of body bags" required by the Exclusivity Provision to be purchased by Palmetto Mortuary, but "Heavy Duty body bags" are included. *Id.* at 52:12-24; *see also* APA Section 3.4.8. The total purchase price for the bags from Medical Products Limited was $208.50. *See* Trial Tr. at 53:21-54:1. Palmetto Mortuary paid more for the heavy duty bags purchased from Medical Products Limited ($34.75 per bag) than the $20.00 per heavy duty bag set out in the Exclusivity Provision. *Id.* at 54:2-9; *see also* APA at Section 3.4.8.

52. This Court finds that the total amount of bags purchased by Palmetto Mortuary from sources other than Knight Systems totaled Eight Hundred and Eighty-Four Dollars and Ninety-Seven Cents ($884.97). *See* Trial Tr. at 54:9-17. This total amount includes thirty-one (31) infant bags at a total price of 192.75, four (4) extra-large body bags at a price of $213.72, six (6) heavy duty body bags at a total price of $208.50, and six (6) water-retrieval bags at a total price of $270.00. *Id.* at 48:5-25; 49:21-50:10; 52:4-23.

53. Infant body bags and extra-large body bags are not within the types of bags Palmetto Mortuary was required to purchase from Knight pursuant to Section 3.4.8. Therefore, the Court does not consider Plaintiff's purchases of such bags from manufacturers other than Defendants to be a breach of the APA. However, heavy-duty body bags and water-retrieval bags are included in the type of bags subject to the Exclusivity Provision of the APA. The total amount Palmetto Mortuary paid for bags that were included in the Exclusivity Provision was Four Hundred Seventy Eight Dollars and Fifty Cents ($478.50). *See* Trial Tr. at 49:21-50:10; 52:4-23.

B. Plaintiff's Breaches of the Exclusivity Provision Were Not Material

54. Plaintiff's acts of purchasing body bags from other sources do not constitute *material* breaches of the Agreement which would excuse Defendants' performance under the Agreement. Rather, Defendants are only entitled to monetary damages which are proximately caused by Plaintiff's breach, a total damages amount of $478.50.[8] *See* Trial Tr. at 49:21-50:10; 52:4-23.

55. A breach of contract by nonperformance gives rise to merely a cause of action for damages. Monetary damages in a breach of contract action are intended to place the non-breaching

[8] Defendants have put forth no testimony or documentary evidence of any other damages amount and therefore this court relies on the testimony of Mr. Lintal regarding the total amount paid to manufacturers other than Defendants from 2008 to 2011. *See also* Trial Tr. 255:20-24 (Q: "And your knowledge of how many bags he's purchased from sources other than you is limited to what's produced in this case; is that right?" A: "That's correct.").

party in the position he would have been in had there been no breach and the contract was performed. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 493 S.E.2d 875, 879 (Ct. App. 1997). The proper measure of compensation is the loss actually incurred as the result of the breach. *Willms Trucking Co., Inc. v. JW Construction Co., Inc.*, 314 S.C. 170, 442 S.E.2d 197, 202 (Ct. App. 1994) (*citing In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890, 897 (1937)).

56. Typically the non-breaching party is not automatically excused from the future performance of contract obligations every time the other party commits a breach. Rescission or repudiation may only be granted when there is a breach which is so fundamental and substantial that it defeats the purpose of the contract. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004). If the breach is relatively minor and not of the essence, the non-breaching party is still bound by the contract and may not abandon performance and obtain damages for a total breach by the defendant. *Williston on Contracts* 63:3. "Otherwise stated, a nonperforming party is liable for any breach of contract, but the other party is discharged from further performance, and is entitled to substantial damages only when there is a material breach." *Id.* (*citing In re Krueger*, 192 F.3d 733 (7th Cir. 1999)). The determination of whether a material breach has occurred is generally a question of fact.

57. Under South Carolina law, "[i]n order to warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract." *Ackerman v. McMillan*, 314 S.C. 268, 442 S.E.2d 618 (Ct. App. 1994) (*citing Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 427 S.E.2d 701 (Ct. App. 1993)). "Where the breach is not so material as to defeat the purpose of the contract, the non-breaching party is compensated by damages." *Ackerman* at 271, 442 S.E.2d at 620 (citing *Childress v. C.W. Myers Trading Post, Inc.*, 247 N.C. 150, 100 S.E.2d 391 (1957)). Similarly, "[a] breach of contract warranting rescission of the contract must be so substantial and fundamental as to

defeat the purpose of the contract." *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009) (*citing Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 143, 382 S.E.2d 915, 917 (1989)). "Thus, a rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties." *Id.*

58. The Restatement (Second) of Contracts sets forth "circumstances significant in determining whether a failure is material" in Section 241. In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

> (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
>
> (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
>
> (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
>
> (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and
>
> (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Restatement (Second) of Contracts § 241 (1981) (adopted by South Carolina Supreme Court in *Kiriakides v. United Artists Comm'n*, 312 S.C. 271, 440 S.E.2d 364 (1994), in the context of breach of a commercial lease); *see also Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004).

59. The first element regards ensuring the parties' reasonable expectation of an exchange of performances. In determining whether a failure is material, the Court must consider the extent to which the non-breaching party (Defendants) will be deprived of the benefit which was

reasonably expected from the exchange. Defendants' obtained their reasonable expectations from the contract, including the total purchase price ($590,000.00).

60. Additionally, it is undisputed that from January 2008 to June 2011, Palmetto Mortuary purchased more than forty five thousand dollars' worth of body bags from Knight Systems pursuant to Section 3.4.8 of the Agreement. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3. These purchases from Knight Systems occurred both before and after Palmetto Mortuary's purchases of body bags from sources other than Knight Systems. *Id.* at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

61. Under the second element, Defendants can be adequately compensated by the receipt of the monetary damages described above, as they are entitled only to the monetary benefit of the body bags Palmetto Mortuary purchased from other vendors but should have purchased from Defendants.

62. The third Restatement element is the extent to which the party failing to perform or make an offer to perform (Plaintiff) will suffer forfeiture if the failure is treated as material. The South Carolina Supreme Court has made abundantly clear that "in the liberally related rule of contracts . . . the law abhors a forfeiture and . . . contractual provisions of forfeiture are looked upon with disfavor by the Courts." *See Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 701 S.E.2d 742 (2010) (citation omitted). For this reason a failure is less likely to be regarded as material if it occurs late, after substantial preparation or performance, and more likely to be regarded as material if it occurs early, before such reliance.

63. In this case, Palmetto Mortuary will suffer a significant forfeiture if Defendants are able to repudiate the remaining five years and seven months of the Non-Compete Agreement. Under the terms of the Non-Compete Agreement, Defendants were prohibited from competing

against Palmetto Mortuary for a period of ten years that began on January5, 2007. *See* APA. At the time of Knight System's breach in June of 2011, five years and seven months remained on the Non-Compete Agreement. Additionally, at that time Palmetto Mortuary had significantly complied with the terms of the parties' Agreement, by paying the full purchase price, $590,000.00, and purchasing significantly all of its body bags from Knight Systems pursuant to the Exclusivity Provision, a total amount of more than $45,000.00. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

64. A material failure by one party gives the other party the right to withhold further performance as a means of securing his expectation of an exchange of performances. *See* 14 Williston on Contracts § 43:5 (4th ed.). To the extent that the expectation is already reasonably secure, in spite of the failure, there is less reason to conclude that the failure is material. Here, Defendants already had security for Palmetto Mortuary's performance; in fact, Defendants were already paid the full purchase price for their mortuary transport business. *See* Trial Tr. at 237:9-20.

65. Additionally, Defendants had reasonable assurances of performance given by Palmetto Mortuary after its non-performance. On June 16, 2011, one day before the Richland County Coroner's bid was due, Mr. Knight tape-recorded a conversation between he and Mr. Lintal ("Tape Recording"). *Id.* at 59:8-60:2; 211:18-212:15. At the time of the conversation, Mr. Lintal was not aware that he was being recorded.[9] *Id.* at 59:17. Throughout the tape-recorded discussion,

[9] The Court finds that the South Carolina Homeland Security Act ("SC Wiretap Act"), S.C. Code Ann. 17-30-10, *et seq.* (Supp. 2010) applies to the determination of whether the recording is admissible evidence in this lawsuit. *See* Trial tr. at 219:2-7 (ruling from the Court admitting the Tape Recording into evidence).

The SC Wiretap Act was enacted in 2002 and was modeled significantly after the Omnibus Crime Control and Safe Streets Act of 1968 ("Federal Wiretap Act"), 18 U.S.C. 2210-2522, *et seq.* (Supp. 2006). Under Section 17-30-30(C), when one party to a communication gives consent for the communication to be intercepted, such recording does not violate the law. Therefore, because Mr. Knight, one of the parties to the communication, consented to the recording of the conversation, the recording does not violate the SC Wiretap or Federal Wiretap Act, even though the recording was "surreptitiously" performed as Plaintiff's counsel argued. Based on this Court's review of the SC Wiretap Act, *State v. Andrews*, 324 S.C. 516, 479 S.E.2d 808,811 (Ct. App. 1996) (holding "where one party to a conversation consents to the call being taped, there is no violation of the Fourth Amendment"), and *State v. Whitner*, 339 S.C. 547, 732 S.E.2d 861 (2012), this Court finds that the recording is admissible evidence.

Mr. Knight repeatedly references infant body bags Palmetto Mortuary purchased from another vendor in 2008, nearly three years prior to the conversation. *See* Trial Tr. at 60:14-61:5; *see also* Defendant's Exhibit 1 (admitted for Robert L. Knight) ("Tape Recording"); *see* Trial Tr. at 220:14-221:12. In response to the allegations, Mr. Lintal stated that he did not believe his purchases of body bags from other manufacturers were "significant," specifically stating that he was "not trying to breach" the parties' Agreement. *See* Tape Recording; *see also* Trial Tr. at 221:11-14; 221:19; 222:22; 223:5-9; 223:19-224:9; 225:4-9; 225:18-24.

66. Mr. Lintal assured Mr. Knight during the tape recorded conversation in July of 2011: "If you're willing to make them, I'm going to order them." *Id.* Mr. Knight responded: "I can make them." *Id.* After Palmetto Mortuary purchased body bags from other manufacturers, Palmetto Mortuary continued to purchase body bags from Knight Systems. It is undisputed that from January 2007 to June 2011, Palmetto Mortuary purchased more than $45,000.00 dollars' worth of body bags from Knight Systems pursuant to Section 3.4.8 of the Agreement. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

67. Moreover, "[a] party's adherence to standards of good faith and fair dealing will not prevent his failure to perform a duty from amounting to a breach" entitling the non-breaching party to damages, but "[t]he extent to which [his] behavior . . . comports with standards of good faith and fair dealing is a significant circumstance in determining whether the failure is material." Restatement (Second) of Contracts § 241, cmt. f. Here, Palmetto Mortuary adhered to standards of good faith and fair dealing. There is testimony in the record that before each occasion when Palmetto Mortuary purchased bags from other sources, Mr. Lintal spoke with Mr. Knight about Knight System's ability to sell certain bags when it needed them for business. *See* Trial Tr. at 46:25-48:9; 50:9-23; 53:1-20.

68. Moreover, considering the context in which the Tape Recording took place and the timing of the Richland County Coroner's contract bid, the Court accepts Mr. Lintal's testimony that Mr. Knight knew or should have known that Palmetto Mortuary previously purchased body bags from other manufacturers. However, instead of bringing the breaches to Mr. Lintal's attention when he was aware of such allegations[10], Knight held onto the information until a time that was beneficial to him.[11] *Id.* at 239:9-240:21. Additionally, Mr. Knight's conduct on June 16, 2011, including surreptitiously tape-recording Mr. Lintal, bringing up Palmetto Mortuary's purchases of body bags from other manufacturers after more than three years after the purchases, and immediately placing a bid for the Richland County contract one day following the parties' discussion, evidences something less than good faith with respect to adhering to the terms of the APA.

69. Rescission and restitution are equitable remedies which will not be provided when another party has acted in bad faith. A court of equity, in applying the principle of "unclean hands," will not lend its aid to a litigant who has been guilty of any reprehensible conduct directly connected with the subject-matter of the litigation before the court. *See Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943); *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000); *Aaron v. Mahl*, 381 S.C. 585, 674 S.E.2d 482 (2009); *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 746 S.E.2d 35 (2013). In this case, Defendants are requesting the right of rescission and/or repudiation of their obligations under the Non-Compete Agreement and Exclusivity Clause as a result of Plaintiff's alleged wrongful purchases of bags from other manufacturers. This court finds that Defendants are not entitled to any equitable relief as a result of their actions.

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[10] Mr. Knight admitted at trial that he heard from at least one other person as early as 2009 or 2010 that Plaintiff was purchasing body bags from other sources, but did not bring the rumors to Plaintiff's attention until June of 2011. *See* Trial Tr. at 239:9-22; 257:23-258:25; 259:11-261:6.

[11] Mr. Knight testified that sometime in 2009 and 2010 he was informed by a competitor that Palmetto Mortuary had purchased body bags from another source. *See* Trial Tr. at 210:12-210:17. Mr. Knight testified that he did not take any action or discuss the allegations with Mr. Lintal, despite the fact that he may have believed such purchase would have been in violation of the parties Agreement. *Id.*

70. Based on the evidence presented, the Court finds that Plaintiff's purchases of certain bags from sources other than the Defendants do not constitute material breaches of the APA. As a result, Defendants were not excused from performance under the Agreement, including the Non-Compete Agreement. Defendants are only entitled to monetary damages that naturally flow from Plaintiff's breaches.

IV. PLAINTIFF IS ENTITLED TO MONETARY DAMAGES, INJUNCTIVE RELIEF, AND AN AWARD OF ATTORNEY'S FEES AS A RESULT OF DEFENDANTS' BREACH OF THE NON-COMPETE AGREEMENT

71. The remedies provided in Section 3 of the Non-Compete Agreement provide for an accounting of lost profits *and* injunctive relief. *See* APA at Exhibit 3.2.6 at Section 2. These two potential remedies are not exclusive of one another. *Id.* The Non-Compete Agreement also provides for an award of attorneys' fees to the prevailing party in the event of litigation. *See* Exhibit 3.2.6, Section 5(L); *see also* Trial Tr. at 148:6-16.

A. *Plaintiff is Entitled to Lost Profit Damages*

72. Defendants' breach of the Non-Compete Agreement entitles Plaintiff to monetary damages, pursuant to Section 3(A) of Exhibit 3.2.6 to the Agreement:

> Accounting for Lost Profits. If Seller shall violate any of the provisions of Sections 1 or 2, Buyer shall be entitled to recover any non-speculative profits incurred by Buyer as a result of, growing out of, or in connection with, any such violation by Seller. This remedy shall be in addition to, and not in limitation of, any injunctive relief or other rights, remedies, or damages, to which Buyer is or may be entitled as a result of this Agreement.

73. "Under current South Carolina law, the standard of admissibility for evidence of future damages is 'any evidence which tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant's acts . . . if otherwise competent." *Burroughs v. Worsham*, 352 S.C. 382, 396, 574 S.E.2d 215, 222 (Ct. App. 2002) (*quoting Pearson v. Bridges*, 344 S.C. 366, 372, 544 S.E.2d 617, 620 (2001) (*quoting Martin v.*

Mobley, 253 S.C. 103, 109, 169 S.E.2d 278, 281-82 (1969))). "Whether future damages are 'reasonable certain to occur is the standard of proof for future damages, not the standard of admissibility.'" *Id.* (*quoting Pearson v. Bridges*, 344 S.C. at 371-72, 544 S.E.2d at 619) (emphasis omitted). *See also Western Insulation, LP v. Moore*, 242 Fed. Appx. 112 (4th Cir. 2007) (*citing Saks Fifth Ave., Inc. v. James, Ltd.*, 630 S.E.2d 304, 311 (Va. 2006) (explaining that to prove entitlement to damages, "a plaintiff must prove the amount of those damages by using a proper method and factual foundation for calculating damages.")).

74. This Court finds that Mrs. Lintal, as Palmetto Mortuary's CFO, is competent to testify as to Palmetto Mortuary's future damages from Defendants' breach as a result of their competition with Palmetto Mortuary in violation of the Non-Compete Agreement. *See* Rule 602, SCRE (lay testimony must be based on personal knowledge) and Rule 701, SCRE (lay opinions must be formed as a result of the witness' rational perception). Additionally, the Court finds that Mrs. Lintal's testimony is admissible because it "tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant's acts." *See Burroughs v. Worsham*, 352 S.C. at 397, 574 S.E.2d at 222. Finally, the Court finds that the damages of Palmetto Mortuary, as introduced through Mrs. Lintal were "reasonably certain to occur" and were not challenged by Defendants. Therefore, the Court accepts Mrs. Lintal's testimony and finds that Palmetto Mortuary adequately submitted proof of damages under the *Burroughs* test.

75. Mrs. Lintal testified that Plaintiff's damages included "the overall profit that [the company] lost due to the fact of not having this business, with [the Richland County] contract." *See* Trial Tr. at 142:10-17. This amount represents the revenue Palmetto Mortuary would have received if it had won the Richland County contract in 2011 and performed that contract for a five-year term.

If Palmetto Mortuary had been awarded the Richland County contract, Palmetto Mortuary's total revenue over the five year cycle would have been $437,900.00. *Id.* at 144:17-145:6.

76. Mrs. Lintal also testified that Palmetto Mortuary's total expenses, if it would have won the Richland County contract and performed it for five years, equaled $64,635.54. *Id.* at 145:7-147:6 (explaining calculation of expenses). The estimate of expenses calculated by Mrs. Lintal was based on the last contract year Palmetto Mortuary had with Richland County." *Id.* at 184:13-185:13.

77. Accordingly, Palmetto Mortuary's total lost profits for the five-year period "using [Palmetto Mortuary's] revenues" and expenses equal total revenues less total expenses, or $373,264.54. *Id.* at 147:10-12.

78. However, as more fully discussed above, Defendants are entitled to a set-off of the total amount of body bags purchased by Palmetto Mortuary which should have been purchased from Knight Systems pursuant to Section 3.4.8 of the Agreement ($478.50).

B. *Plaintiff is Entitled to Injunctive Relief*

79. Plaintiff has also requested a permanent injunction against Defendants.[12] Injunctive relief is available under Section 3 of the Non-Compete Agreement. *See* APA at Exhibit 3.2.6. Plaintiff seeks an injunction prohibiting Defendants from competing against Plaintiff pursuant to the terms of the parties' Non-Compete Agreement, and specifically to prevent a breach by Defendants. The injunction Plaintiff seeks would last for five year and seven months, the length of time

[12] Defendants allege that Plaintiff's failure to file a request for injunctive relief with the Court prior to filing the instant lawsuit precludes it from seeking injunctive relief now. Plaintiff requested injunctive relief in its Complaint. *See* Prayer for Relief at (2). Plaintiff is entitled to injunctive relief as a remedy as specified by the Non-Compete Agreement. *See* APA § 3.2.6 at ¶ 3(B). Plaintiff's ability to recover monetary damages is "in addition to, and not in limitation of any injunctive relief or other rights, remedies, or damages, to which [Palmetto Mortuary] is or may be entitled as a result of this Agreement." *Id.* at ¶ 3(A). This Court finds that Plaintiff timely requested injunctive relief and that its request for monetary damages does not stand in the place of or in any way limit Plaintiff's request for injunctive relief under the Non-Compete Agreement.

remaining on the parties' Non-Compete Agreement at the time Defendants submitted the competing bid to Richland County.[13]

80. "A covenant not to compete is enforceable if it is not detrimental to the public interest, is ancillary to the sale of a business or profession, is reasonably limited as to time and territory, and is supported by a valuable consideration." *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 71, 119 S.E.2d 533, 542 (1961) (*citing* 36 Am.Jur., Monopolies, Combinations, and Restraints of Trade, Sections 52, 53, 54, 55, 56; *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 734; *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184; *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344). In this case, the award of a permanent injunction is necessary to give the Plaintiff the benefit of its bargain and to ensure Defendants' compliance with the Non-Compete Agreement. Although monetary damages are sufficient to put Plaintiff in the position it would have been in had Plaintiff held the Richland County contract for a five-year term, enforcement of the restrictive covenant is necessary to enforce the remaining term of the Non-Compete Agreement and to avoid a forfeiture of the contract as a whole.

81. The Court is not ordering specific relief with respect to the remaining terms of the APA, including the exclusive purchase clause in Section 3.4.8 of the APA. "Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Campbell v.* Carr, 361 S.C. 258, 263, 603 S.E.2d 625, 628 (Ct. App. 2004) (*quoting Ingram v. Kasey's Assocs.*, 340 S.C. 98, 104, 531 S.E.2d 287, 291 (2000)). The Court finds that the Non-Compete Agreement was a separately executed contract

[13] The APA, including the Non-Compete Agreement was executed on January 5, 2007 and was to last until January 5, 2017 (ten years). *See* APA. On June 17, 2011, Defendants' breached the Non-Compete Agreement by submitting a competing bid on a contract held by Palmetto Mortuary on behalf of the Richland County Coroner's Office. At the time of Defendants' breach, the parties were into the term of the non-compete agreement by 4 years, five months, and seven days. Accordingly, there remained on the contract period a term of five years, and seven months at the time of the alleged breach.

which is supported by adequate consideration. Plaintiff is only seeking specific performance of the parties' Non-Compete Agreement and no one is seeking specific performance of the entire APA.

82. Additionally, specific performance of the APA, including Section 3.4.8, would not be equitable as between these parties. Requiring Palmetto Mortuary to purchase the types of body bags stated would be unjust, especially considering evidence that Defendants have removed at least one type of bag, the odor-proof disaster bag, from the market and refuses to sell the odor-proof disaster bags to Palmetto Mortuary. "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Campbell v. Carr*, supra (*citing Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct. App. 1985)).

83. The Non-Compete Agreement is enforceable and the Court finds as a matter of fact that there are five years and seven months remaining on the original ten-year term. Accordingly, Plaintiff is entitled to an injunction enforcing the remainder of the Non-Compete Agreement. The injunction will begin as of the date of this order and will continue for five years and seven months.

84. However, because the Court has awarded monetary damages to the Plaintiff for the five-year term of the Richland County contract, the Defendants' performance of its contract with the Richland County Coroner for that time period does not violate the permanent injunction ordered by the Court.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

(1) (A) Defendants are ordered to pay Palmetto Mortuary Three Hundred Seventy Three Thousand, Two Hundred Sixty Four Dollars and Fifty Four Cents ($373,264.54), which constitutes Plaintiff's lost profits as a result of Defendants' wrongful competition in Richland County over the five-year term of the Defendants' contract with Richland County;

(B) Plaintiff is ordered to pay Four Hundred Seventy Eight Dollars and Fifty Cents ($478.50) in damages proximately caused by Plaintiff's breaches of Section 3.4.8 of the Agreement by purchasing body bags from sources other than Defendants. This amount may be set-off from the amount owed by Defendants for their breach of the Non-Compete Agreement;

(2) The Court finds that the Non-Compete Agreement is a separately executed contract for which adequate consideration was exchanged. The Court additionally finds that the term and scope of the Non-Compete Agreement is reasonable. Defendants are required to comply with the terms of the parties' Non-Compete Agreement in Exhibit 3.2.6 of the parties' Agreement for a term of five-years and seven months, beginning from the date of this Order, with the exception of their performance of the Richland County contract described above; and

(3) Defendants are ordered to pay Plaintiff's attorneys' fees and direct costs of litigation pursuant to Exhibit 3.2.6, Section 5(L) of the Agreement as Plaintiff is the prevailing party in this action. Plaintiff's counsel is to submit an affidavit of attorneys' fees and costs to the Court within ten (10) days of the date of this Order for the Court's consideration and the Court will issue a supplemental Order awarding attorneys' fees as reasonable and appropriate.

AND IT IS SO ORDERED.

James Randall Davis, Special Master/Referee

July 22, 2014
Lexington, South Carolina.

0000035

COPY

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2014 SEP 10 A 9:41
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

Palmetto Mortuary Transport, Inc.,) Civil Action No.: 2011-CP-32-04051
)
Plaintiff,)
)
v.) SUPPLEMENTAL ORDER
)
Knight Systems, Inc. and Robert L. Knight,)
)
Defendants.)
)

This Supplemental Order is being issued by the undersigned as Special Referee to make a decision regarding what attorney's fees and costs will be allowed for the prevailing party in the above matter. I have reviewed the Affidavit submitted by John J. Pringle, Jr. dated August 29, 2014 and have considered the six factors that are utilized to determine reasonableness of attorney's fees which are set forth in Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990). Based on the attorney's years of experience in litigation, the issues involved in this matter, the disclosure as to the preparation of pleadings, motions and documents in this matter and what the undersigned believes to be appropriate hourly rates for attorneys representing parties in this matters as well as the beneficial results that have been obtained:

I FIND, CONCLUDE AND ORDER that the fees and costs requested by the attorney, shown on the attached Affidavit, are approved by the Court.

I SO ORDER.

James Randall Davis, Special Master/Referee

September 5, 2014
Lexington, South Carolina

EXHIBIT
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SETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	) IN THE COURT OF COMMON PLEAS) FOR THE ELEVENTH JUDICIAL CIRCUIT)	
Palmetto Mortuary Transport, Inc., Plaintiff, v. Knight Systems, Inc. and Robert L. Knight, Defendants.	) CIVIL ACTION NO.: 2011-CP-32-04052)))) AFFIDAVIT OF JOHN J. PRINGLE, JR.)))))	

I, John J. Pringle, Jr., after being duly sworn, do hereby state as follows:

1. I am a partner with the law firm of Adams and Reese LLP in Columbia, South Carolina, and I am counsel for the Plaintiff in the above-referenced case.

2. I am licensed to practice law in the State of South Carolina, and have been a member of the South Carolina Bar since 1996.

3. I have more than 17 years of experience in a variety of litigation, transactional, and regulatory matters.

4. I earned a Bachelor of Arts in European History from Washington and Lee University in 1990. I earned a Juris Doctor from the University of South Carolina in 1996.

5. I was asked to represent Plaintiff in this matter involving an alleged violation of a Non-Compete Agreement contained in an Asset Purchase Agreement entered into by the parties to this action, due to my experience litigating these matters throughout my career.

6. My hourly rate is $295 per hour. The hourly rate for my associates, Shaun Blake and Lyndey Zwing, is $225 per hour. The hourly rate for my paralegals involved with this case (Lisa Sharpe, Carol Roof, and Susan Bennett) is $100 per hour. The hourly rate for my law clerk is $90 per hour.

7. The commencement of this action began with the filing of the Summons and Complaint on October 26, 2011.

8. Subsequent to the filing of the Complaint, the parties engaged in discovery and amended their pleadings as described below. In addition, Defendants' initial counsel withdrew from the case.

9. On December 18, 2013, the case was tried, and the Court requested proposed orders from both sides.

10. On July 22, 2014, the Court issued an order a) concluding that the Non-Compete Agreement was enforceable, b) concluding that Defendants breached the Asset Purchase Agreement and violated the Non-Compete Agreement; c) concluding that Plaintiff's conduct did not excuse Defendants from their performance of their contractual obligations; and d) concluding that Plaintiff is entitled to monetary damages, injunctive relief, and an award of attorney's fees.

11. My firm has been responsible for the preparation of the following pleadings, motions, documents, and actions in this matter:

a. Summons and Complaint;

b. Reply to Defendants' Counterclaims;

c. Responses to Defendants' First Interrogatories and Requests for Production;

d. Review Discovery Responses of Defendants throughout the case;

e. First Set of Interrogatories, Requests for Production, and Requests to Admit to both Defendants;

f. Consultation Letter to Counsel for Defendants regarding Discovery Responses;

g. Consultation Letter to Counsel for Defendants regarding Notice of Deposition;

h. Motion for Protective Order regarding Notice of Deposition;

i. Motion to Compel Discovery Responses;

j. Argue Motion to Compel;

k. Meet with Counsel for Defendants to discuss various issues in case;

l. Amended Complaint and letter to Defendants' Counsel enclosing same;

m. Consent Order of Substitution of Counsel;

n. Consent Order for Leave to Amend Complaint;

o. Consent Order of Reference;

p. Second Interrogatories and Requests for Production;

q. Reply to Defendants' Counterclaim in Response to Plaintiff's Amended Complaint;

r. Respond to Defendants' Second Interrogatories and Requests for Production;

s. Deposition of Robert L. Knight

t. Defend Depositions of Don Lintal and Ellen Lintal;

u. Preparation for and Conduct of Trial;

v. Preparation of Proposed Order.

12. I have expended 125 hours working on this matter. My associates Shaun Blake and Lyndey Zwing have expended 34.1 hours and 48.5 hours respectively, both in the capacity of an associate and previously as a law clerk. My paralegals have expended 110.3 hours. The collective value of our time spent prosecuting this case to a conclusion is Sixty Five Thousand Five Hundred Thirty-Nine and 50/100 ($65,539.50) Dollars.

13. The costs incurred by Plaintiff in this litigation are Six Thousand Five Hundred Thirty-Seven and 88/100 ($6,537.88) Dollars. Costs incurred include Plaintiff's $1,500.00 share of the Special Referee fees.

14. I personally reviewed all of the legal fees generated by Adams and Reese attorneys and our legal staff and represent that all of these litigation expenses were reasonable and necessary for the prosecution of this action.

15. I am informed and believe that the attorneys' fees and costs incurred by Plaintiff in this action are justified considering (i) the nature, extent, and difficulty of the case; (ii) the time necessarily devoted to the case; and (iii) the beneficial results that were obtained.

By: _____
John J. Pringle, Jr.

Sworn to and Subscribed before me
This 29th day of August, 2014

_____
Notary Public for South Carolina
My Commission expires 02/17/19

0000040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO.: 2011-CP-32-04051
Palmetto Mortuary Transport, Inc.,	)	
	)	
Plaintiff,	)	
v.	)	**AMENDED SUMMONS**
	)	
Knight Systems, Inc. and Robert L. Knight,	)	
	)	
Defendants.	)	

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CAROLYN G. DOG
CLERK OF COURT
LEXINGTON, SC

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to said Complaint upon the subscribers at their offices, 1501 Main Street, 5th Floor, Columbia, SC 29201 or Post Office Box 2285, Columbia, SC 29202, within fifteen (15) days after the service hereof, exclusive of the day of service, and if you fail to answer the Amended Complaint within the time aforesaid, Plaintiff will apply to the court for judgment by default for the relief demanded in the Amended Complaint.

ADAMS AND REESE, LLP

John J. Pringle, Jr.
Shaun C. Blake
1501 Main Street, 5th Floor (29201)
Post Office Box 2285
Columbia, South Carolina 29202
Telephone: (803) 254-4190
Facsimile: (803) 799-8479

ATTORNEYS FOR PLAINTIFF

June 5, 2013
Columbia, South Carolina

0000041

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENT JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
		CIVIL ACTION NO.: 2011-CP-32-04051
Palmetto Mortuary Transport, Inc.,	)	
	)	
Plaintiff,	)	
	)	**AMENDED COMPLAINT**
v.	)	(Non-Jury)
	)	
Knight Systems, Inc. and Robert L. Knight,	)	
	)	
Defendants.	)	

Palmetto Mortuary Transport, Inc. ("Plaintiff"), complaining of the Defendants Knight Systems, Inc. ("Knight Systems") and Robert L. "Buddy" Knight (collectively "Defendants"), would respectfully show unto this Court the following:

The Parties

1. Plaintiff is a domestic corporation duly organized and in good standing under the laws of the State of South Carolina.

2. Upon information and belief, Knight Systems is a domestic corporation duly organized and in good standing under the laws of the State of South Carolina.

3. Upon information and belief, Buddy Knight is a citizen and resident of Lexington County, South Carolina

Jurisdiction and Venue

4. Knight Systems' principal place of business is in Lexington County, South Carolina.

5. This court possesses personal jurisdiction over Buddy Knight as a citizen and resident of South Carolina.

6. This court possesses personal jurisdiction over Knight Systems as a resident corporation regularly conducting business in South Carolina, including the conduct alleged in this action.

7. This court possesses subject matter jurisdiction over this dispute pursuant to Article V, § 11 of the South Carolina Constitution.

8. Venue is proper in Lexington County, South Carolina pursuant to S.C. Code Ann. 15-7-30.

For a First Cause of Action
(Breach of Contract)

9. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint with the same force and effect as if fully set forth herein.

10. Plaintiff, Buddy Knight, and Knight Systems entered into an Asset Purchase Agreement ("Agreement") dated January 5, 2007 that is attached hereto and is incorporated by reference. [Ex. A.]

11. Pursuant to Section 3.4.8 of the Agreement, Buddy Knight and Knight Systems contracted as follows: "Knight, through his related body bag business (the "Related Business"), shall provide to [Plaintiff] body bags at a discounted rate and [Plaintiff] shall for the term of the non-compete agreement buy all their body bags from the [Defendants]."

12. The non-compete agreement ("Non-Compete") is attached as Exhibit 3.2.6 to the Agreement and was entered into on January 5, 2007.

13. The term of the Non-Compete is ten (10) years, ending January 5, 2017.

14. Accordingly, Buddy Knight and Knight Systems have a current and ongoing contractual obligation to supply Plaintiff with body bags at a fixed price.

15. Plaintiff has performed all of its obligations under the Agreement and has not breached the Agreement or repudiated the Agreement.

16. Buddy Knight and Knight Systems have breached this contractual obligation and have refused to supply Plaintiff and fill Plaintiff's order(s) for body bags.

17. Paragraph 2 of the the Non-Compete provides the following:

> 2. Covenants against Competition. For a period of ten (10) years after the date hereof:
>
> A. Customers, Etc. Seller shall not, directly or through an Affiliate, (i) call upon or contact (or assist another person(s) or business entity to call upon or contact) any Customer for the purpose of furnishing the same or similar services provided or offered at any time by the Business to any Customer, or (ii) solicit or divert (or assist another person(s) or business entity to solicit or divert) any Customer from purchasing or using any of the Buyer's services, or (iii) provide or attempt to provide (or assist another person(s) or business entity to provide or attempt to provide) to any Customer the same or similar services provided or offered by the Business. For purposes of this Section 2(A), the term "Customer" shall mean any customer or client of the Business and shall include (without limitation) every such person(s) to which the Business or Seller has provided services prior to the date hereof.
>
> B. Territory. In addition to (but not in limitation of) the restrictions of Section 2(A), Seller shall not, directly or through an Affiliate engage in, or assist another person or entity to engage in, providing services similar to those furnished by the Business or Seller at any time prior to Closing (as such term is defined in the Purchase Agreement) in competition with Buyer anywhere within 150 miles of the present location of the Business (the "Territory").

18. In direct violation of the Non-Compete, Knight and Knight Systems have provided body removal services on numerous occasions within the territorial restrictions set out in the Non-Compete. The Defendants' breaches are continuing.

19. As a result of Buddy Knight and Knight Systems' breaches of the Agreement, Plaintiff has experienced substantial actual and consequential damages and is entitled to recover the same from Knight and Knight Systems. Plaintiff is also entitled to

all of the remedies set out in the Agreement and the Non-Compete, including but not limited to damages and injunctive relief.

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For a Second Cause of Action
(Breach of Contract accompanied by a Fraudulent Act)

20. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint with the same force and effect as if fully set forth herein.

21. Buddy Knight and Knight Systems have breached the Agreement with fraudulent intent and have committed fraudulent acts associated with the breach.

22. Specifically, Buddy Knight and Knight Systems have intentionally made false representations to third parties, including representations to Richland County, South Carolina through a letter dated July 4, 2011, that Knight Systems has the exclusive ability to provide Richland County, South Carolina, with body bags that Buddy Knight and Knight Systems have contracted to provide Plaintiff pursuant to the Agreement.

23. As a result of this conduct, Plaintiff has been damaged and is entitled to recover tort damages from Buddy Knight and Knight Systems, including punitive damages.

For a Third Cause of Action
(Intentional Interference with Prospective Contractual Relations)

24. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint with the same force and effect as if fully set forth herein.

25. Richland County, South Carolina issued an RFP, RC-025-P-1011-Body Removal Services, and Plaintiff received the highest score - 254 out of a possible 300 points - of any offeror in response to that RFP.

26. As such, Plaintiff had an identifiable expectation of obtaining a contract to provide body removal services for Richland County, South Carolina.

27. Buddy Knight and Knight Systems have intentionally interfered with this

expectation using improper methods. 0000045

28. On July 4, 2011, and after the June 17, 2011 deadline for all proposals to be submitted in response to the RFP as amended, Buddy Knight and Knight Systems, Inc. submitted a letter to both Richland County and the County Coroner claiming that only Knight Systems could provide its odor-proof body bag.

29. Buddy Knight and Knight Systems' communications and involvement throughout the RFP have been false, misleading, and improper, as Buddy Knight and Knight Systems owe a ten-year contractual obligation under the Agreement to provide these same bags to Plaintiff, as well as a ten-year contractual obligation not to compete with the Plaintiff.

30. As a result, Buddy Knight and Knight Systems have frustrated Plaintiff's ability to receive the award of the contract from Richland County, has required Plaintiff to incur the time and expense of protest, and has otherwise caused Plaintiff ascertainable losses.

31. As a result, Plaintiff is entitled to recover tort damages from Buddy Knight and Knight Systems, including punitive damages.

Prayer for Relief

WHEREFORE, Plaintiff, having complained of the Defendants herein, prays for:

(1) the entry of a judgment against Buddy Knight and Knight Systems for actual damages and consequential damages in an amount to be proven at trial;

(2) injunctive relief as provided in the Agreement and the Non-Compete;

(2) along with an award of punitive damages, pre-judgment interest, reasonable attorneys' fees, the costs of the action, and such other relief in law or equity that this Court may find is just and proper.

0000046

Respectfully submitted,

ADAMS AND REESE LLP

John J. Pringle, Jr.
Shaun C. Blake
1501 Main Street, 5th Floor (29201)
Post Office Box 2285
Columbia, South Carolina 29202
Telephone: (803) 254-4190
Facsimile: (803) 799-8479

ATTORNEYS FOR PLAINTIFF

June 5, 2013
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENT JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
Palmetto Mortuary Transport, Inc.,	)	CIVIL ACTION NO.: 2011-CP-32-04051
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**CERTIFICATE OF SERVICE**
Knight Systems, Inc. and Robert L. Knight,	)	
	)	
	)	
Defendants.	)	
	)	

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2013 JUN -6 P 12:16
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

This is to certify that I have caused to be served this day, one (1) copy of **Plaintiff's Amended Complaint** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Reginald I. Lloyd, Esquire
The Lloyd Law Firm, LLC
715 West DeKalb Street
Post Office Box 1555
Camden, SC 29021

Lisa Sharpe
Lisa Sharpe, Paralegal

Columbia, South Carolina
June 5, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENT JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
		2013 JUL 25 A 11:12
Palmetto Mortuary Transport, Inc.,	)	CIVIL ACTION NO.: 2011-CP-32-04051
	)	BETH A. CARRIGG CLERK OF COURT LEXINGTON, SC
Plaintiff,	)	
	)	**REPLY TO COUNTERCLAIM TO**
v.	)	**PLAINTIFF'S AMENDED COMPLAINT**
	)	
Knight Systems, Inc. and Robert L. Knight,	)	
	)	
Defendants.	)	

COPY

Palmetto Mortuary Transport, Inc. ("Plaintiff"), replying to the Ninth Affirmative Defense by Way of Counterclaim ("Counterclaim") and defenses of the Defendants Knight Systems, Inc. and Robert L. "Buddy" Knight ("Defendants"), would respectfully show unto this Court the following:

FOR A FIRST DEFENSE
(Rule 12(b)(6), SCRCP)

1. Defendants have failed to state facts sufficient to constitute a cause of action whereby relief can be granted or to support an affirmative defense against the Plaintiff's claims. Therefore, Plaintiff is entitled to have Defendants counterclaim and defenses dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE
(Qualified General Denial)

2. To the extent that Defendants' Counterclaim is inconsistent with Plaintiff's Amended Complaint or the specific allegations are not specifically admitted, qualified or explained by Plaintiff, the Defendant's Counterclaim is denied. Each

"paragraph" identified below refers to the numerical paragraph contained in the Counterclaim.

3. Paragraph 39 does not require a response.

4. With respect to Paragraph 40, Plaintiff craves reference to the Asset Purchase Agreement, and denies the characterizations of same contained in Defendants' Counterclaim.

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5. With respect to Paragraph 41, Plaintiff denies that it breached the Asset Purchase Agreement with Defendants, and further denies the additional allegations of Paragraph 41.

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BETH A. CRIGLER
CLERK OF COURT
FAYETTE COUNTY, KY
LEXINGTON

6. With respect to Paragraph 42, Plaintiff craves reference to the documents in question, the Asset Purchase Agreement and the Non-Compete Agreement, and denies the characterizations of same contained in Defendants' Counterclaim.

7. With respect to Paragraph 43, Plaintiff denies that Defendants have been damaged or that they are entitled to an award of any type in this case.

FOR A THIRD DEFENSE
(Waiver)

8. In the alternative, Defendants had actual knowledge that Plaintiff had purchased body bags from other sources and the reason for those purchases.

9. Knight Systems, acting through Buddy Knight, and Buddy Knight expressly, knowingly and voluntarily waived any alleged or potential breach of the Agreement associated with Plaintiff's purchases of body bags from other suppliers and continue to operate, along with Plaintiff, under the agreements.

10. Therefore, Defendants' Counterclaim is precluded by the doctrine of waiver.

FOR A FOURTH DEFENSE
(Estoppel)

COPY

11. In the alternative, Defendants knowingly represented that they had no intention to assert a breach of the Agreement or accept any remuneration for Plaintiff's limited transactions with other providers of body bags.

12. Defendants intended for Plaintiff to rely on those assertions as Defendants maintained a pecuniary interest in continuing to operate under the Agreement.

13. Plaintiff lacked knowledge, and the means to learn, that Defendants in fact intended to assert Plaintiff's conduct at some point in the future to try and avoid their contractual obligations under the Agreement.

14. Plaintiff relied on Defendants' representation and so continued to operate in accordance with the Agreement and forego its rights to pursue other profitable business activities.

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BETTY A. CANEGG
CLERK OF COURT
LEXINGTON, SC

15. Therefore, Defendants' Counterclaim is precluded by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE
(Failure to Mitigate)

16. In the alternative, Defendants failed to take reasonable and timely efforts to mitigate their damages, and therefore Defendants' Counterclaim should be either barred or reduced to the extent that Defendants could have taken prompt and reasonable action to avoid the occurrence of the alleged damages.

Prayer for Relief

WHEREFORE, Plaintiff, having complained of the Defendants and responded to Defendants' Counterclaim, prays for:

(1) the dismissal of Defendants' Counterclaim;

(2) the dismissal of Defendants' affirmative defenses;

(3) the entry of a judgment against Buddy Knight and Knight Systems for actual damages and consequential damages in an amount to be proven at trial;

(4) in the alternative, the entry of a judgment requiring specific performance by Buddy Knight and Knight Systems under the Agreement and injunctive relief;

along with an award of punitive damages, pre-judgment interest, reasonable attorneys' fees, the costs of the action, and such other relief in law or equity that this Court may find is just and proper.

Respectfully submitted,

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Attorneys for Plaintiff

July 24, 2013
Columbia, South Carolina

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RICHLAND COUNTY
CLERK OF COURT

COPY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	FOR THE ELEVENT JUDICIAL CIRCUIT
Palmetto Mortuary Transport, Inc.,	CIVIL ACTION NO.: 2011-CP-32-04051
Plaintiff,	
v.	**CERTIFICATE OF SERVICE**
Knight Systems, Inc. and Robert L. Knight,	
Defendants.	

2013 JUL 25 A 11:12
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

This is to certify that I have caused to be served this day, one (1) copy of **Plaintiff's Reply to Defendants' Counterclaim** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Reginald I. Lloyd, Esquire
The Lloyd Law Firm, LLC
715 West DeKalb Street
Post Office Box 1555
Camden, SC 29021

Lisa Sharpe
Lisa Sharpe, Paralegal

Columbia, South Carolina
July 24, 2013

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Palmetto Mortuary Transport, Inc., Plaintiff, vs. Knight Systems, Inc. and Robert L. Knight, Defendants.	)	CIVIL ACTION NO: 2011-CP-32-04051 **DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

The Defendants Knight Systems, Inc. ("Knight Systems") and Robert L. Knight ("Knight") (collectively the "Defendants"), by and through the undersigned counsel, answer the Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every paragraph of the Plaintiff's Amended Complaint not specifically admitted, qualified, or explained is denied.

2. Upon information and belief, Defendants admit the allegations in Paragraph 1 of the Amended Complaint.

3. Defendants admit the allegations in Paragraphs 2 and 3 of the Amended Complaint.

4. Upon information and belief, Defendants admit the allegations in Paragraphs 4, 5, 6, 7, and 8 of the Amended Complaint.

5. The reallegations of Paragraph 9 are answered hereinabove and those answers are repeated herein as fully as if repeated verbatim.

6. Defendants admit the allegations in Paragraph 10.

7. Defendants crave reference to the specific Agreement referred to in Paragraph 10 of the Amended Complaint and deny any allegation inconsistent with the express terms and lawful interpretation of that Agreement.

8. Defendants admit the allegations in Paragraphs 12 and 13 of the Amended Complaint.

9. Defendants deny the allegations in Paragraphs 14, 15, and 16.

10. Defendants crave reference to the the specific non-compete agreement entered into by and between these parties, and referenced in Paragraph 17, and deny any allegation inconsistent with the express terms and lawful interpretation of that agreement.

11. Defendants deny the allegations in Paragraphs 18 and 19 of the Amended Complaint.

FOR A SECOND CAUSE OF ACTION AGAINST THE DEFENDANTS
(Breach of Contract Accompanied by a Fraudulent Act)

12. The reallegations of Paragraph 20 are answered hereinabove and those answers are repeated herein as fully as if repeated verbatim.

13. Defendants deny the allegations in Paragraphs 21, 22, and 23 of the Amended Complaint.

FOR A THIRD CAUSE OF ACTION AGAINST THE DEFENDANTS
(Intentional Interference with Prospective Contractual Relations)

14. The reallegations of Paragraph 24 are answered hereinabove and those answers are repeated herein as fully as if repeated verbatim.

15. Upon information and belief, Defendants admit the allegations in Paragraph 25.

16. The allegations in Paragraph 26 require speculation on the part of the Defendants as to Plaintiff's expectations and, therefore, are denied.

17. The allegations of Paragraph 27 are denied.

18. Defendants admit that they submitted a letter to Richland County and the Richland County Coroner after June 17, 2011, but crave specific reference to the express wording of that letter. Defendants deny any other characterization of the referenced letter in Paragraph 28 of the Amended Complaint.

19. Defendants deny the allegations in Paragraphs 29, 30, and 31 of the Amended Complaint.

PLAINTIFF'S PRAYER FOR RELIEF

20. The reallegations of Paragraphs 1 through 31 of the Amended Complaint, to the extent they are incorporated in the Prayer for Relief, are answered hereinabove and those answers are repeated herein as fully as if repeated verbatim.

21. Responding the the Paragraph beginning with "WHEREFORE," Defendants deny the allegations and requests for relief set forth in this Paragraph.

FOR A SECOND AFFIRMATIVE DEFENSE
(Reservation)

22. The allegations of the preceding defenses are realleged and incorporated by reference insofar as they are consistent herein.

23. Defendants expressly reserve any and all defenses and/or counterclaims that mature after the filing of this Answer to the Amended Complaint.

FOR A THIRD AFFIRMATIVE DEFENSE
(Punitive Damages)

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24. The allegations of the preceding defenses are realleged and incorporated by reference insofar as they are consistent herein.

25. Defendants assert that punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and the South Carolina Constitution, as well as the holding in State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003), and the cases upon which that decision is based.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Waiver and Estoppel)

26. The allegations of the preceding defenses are realleged and incorporated by reference insofar as they are consistent herein.

27. By and through its conduct prior to and after bringing this lawsuit, Plaintiff waived its rights against the Defendants and/or should be estopped from asserting its claims against the Defendants. Therefore, to the extent applicable, Defendants plead the doctrines of waiver and estoppel as a complete bar to this action.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Unclean Hands and Misrepresentation)

28. The allegations of the preceding defenses are realleged and incorporated by reference insofar as they are consistent herein.

29. By and through its conduct prior to and after bringing this lawsuit, Defendants assert that Plaintiff's acts and omissions constitute unclean hands and misrepresentation. Therefore, to the extent applicable, Defendants plead the doctrine of unclean hands and misrepresentation as a complete bar to this action.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to State Causes of Action)

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30. The allegations of the preceding defenses are realleged and incorporated by reference insofar as they are consistent herein.

31. The allegations set forth in the Amended Complaint and each and every cause of action therein fail to state causes of action upon which relief may be granted.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Breach of Covenant of Good Faith and Fair Dealing)

32. The allegations of the preceding defenses are realleged and incorporated by reference insofar as they are consistent herein.

33. Defendants assert that implied in the Asset Purchase Agreement and Non-Compete Agreement, as well as all written and oral agreements, entered into by and between these parties, was a covenant of good faith and fair dealing.

34. Plaintiff's actions prior to bringing this lawsuit constitute a violation of the covenant of good faith and fair dealing and, therefore, constitutes a complete bar to this action.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(The Non-Compete Agreement was Invalid under the Terms of the Agreement)

35. The allegations of the preceding defenses are realleged and incorporated by reference insofar as they are consistent herein.

36. The terms of the Non-Compete Agreement alleged by the Amended Complaint to be enforceable between these parties are unsupported by sufficient compensation, separate and apart from the purchase price of the assets set forth in the Asset Purchase Agreement.

37. The territorial and limitations and length of term of the Non-Compete Agreement are unduly broad and expansive and, therefore, constitute an unenforceable restraint on trade and unenforceable agreement.

38. The Non-Compete Agreement referenced in the Amended Complaint is void and unenforceable as a matter of law.

FOR A NINTH AFFIRMATIVE DEFENSE BY WAY OF COUNTERCLAIM
(Breach of Contract)

39. Defendants incorporate their prior responses by reference as if repeated verbatim herein.

40. The parties hereto had an agreement requiring the Plaintiff to purchase all of their body bags from the Defendants.

41. Plaintiff breached that agreement with Defendants by purchasing body bags from a source other than the Defendants even though Defendants were, at all relevant times, capable and willing to manufacture and/or provide Plaintiff with any desired or needed body bags.

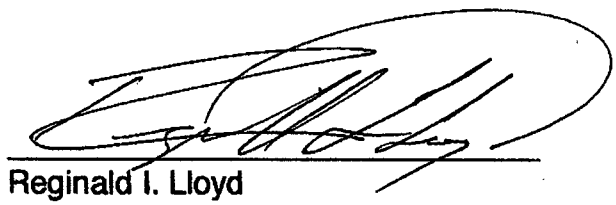
42. Plaintiff's breach of the agreement with Defendants negated all terms, conditions and responsibilities of the Defendants under the Asset Purchase Agreement and the Non-Compete Agreement.

43. As a direct and proximate result of Plaintiff's breach of contract, the Defendants suffered damages and are entitled to an award of actual and consequential damages, as well as an award of attorney's fees and other legal costs.

WHEREFORE, Defendants having answered the Amended Complaint of Plaintiff and complained of Plaintiff prays that this Court dismiss the Plaintiff's Amended Complaint with prejudice; award Defendants actual and consequential damages; award

Defendants all costs and fees incurred as a result of this action, including attorney's fees against Plaintiff; and award Defendants such other and further relief as is just and equitable.

Respectfully submitted,



Reginald I. Lloyd

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Camden, South Carolina

July 2nd, 2013.

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Palmetto Mortuary Transport, Inc., Plaintiff, vs. Knight Systems, Inc. and Robert L. Knight, Defendants.	)	CIVIL ACTION NO: 2011-CP-32-04051 **CERTIFICATE OF SERVICE**

I, the undersigned counsel, certify that a copy of the foregoing Defendants' Answer to the Plaintiff's Amended Complaint has been served upon the following counsel of record, by hand-delivering a copy to them at their offices as shown below, this 2nd day of July, 2013:

John J. Pringle, Jr., Esquire
Shaun C. Blake, Esquire
Adams and Reese, LLP
1501 Main Street, 5th Floor (29201)
Post Office Box 2285
Columbia, South Carolina 29202

Reginald I. Lloyd, Esq.

THE LLOYD LAW FIRM, LLC
715 West DeKalb Street
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Camden, South Carolina 29021
(803) 432-0004

Attorneys for the Defendants.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENT JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
		2013 JUL 25 A 11:12
Palmetto Mortuary Transport, Inc.,	)	CIVIL ACTION NO.: 2011-CP-32-04051
	)	BETH A. CARRIGG CLERK OF COURT LEXINGTON, SC
Plaintiff,	)	
	)	**REPLY TO COUNTERCLAIM TO**
v.	)	**PLAINTIFF'S AMENDED COMPLAINT**
	)	
Knight Systems, Inc. and Robert L. Knight,	)	
	)	
Defendants.	)	

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Palmetto Mortuary Transport, Inc. ("Plaintiff"), replying to the Ninth Affirmative Defense by Way of Counterclaim ("Counterclaim") and defenses of the Defendants Knight Systems, Inc. and Robert L. "Buddy" Knight ("Defendants"), would respectfully show unto this Court the following:

FOR A FIRST DEFENSE
(Rule 12(b)(6), SCRCP)

1. Defendants have failed to state facts sufficient to constitute a cause of action whereby relief can be granted or to support an affirmative defense against the Plaintiff's claims. Therefore, Plaintiff is entitled to have Defendants counterclaim and defenses dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE
(Qualified General Denial)

2. To the extent that Defendants' Counterclaim is inconsistent with Plaintiff's Amended Complaint or the specific allegations are not specifically admitted, qualified or explained by Plaintiff, the Defendant's Counterclaim is denied. Each

"paragraph" identified below refers to the numerical paragraph contained in the Counterclaim.

3. Paragraph 39 does not require a response.

4. With respect to Paragraph 40, Plaintiff craves reference to the Asset Purchase Agreement, and denies the characterizations of same contained in Defendants' Counterclaim.

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5. With respect to Paragraph 41, Plaintiff denies that it breached the Asset Purchase Agreement with Defendants, and further denies the additional allegations of Paragraph 41.

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CLERK OF COURT
FAYETTE COUNTY, KY
LEXINGTON

6. With respect to Paragraph 42, Plaintiff craves reference to the documents in question, the Asset Purchase Agreement and the Non-Compete Agreement, and denies the characterizations of same contained in Defendants' Counterclaim.

7. With respect to Paragraph 43, Plaintiff denies that Defendants have been damaged or that they are entitled to an award of any type in this case.

FOR A THIRD DEFENSE
(Waiver)

8. In the alternative, Defendants had actual knowledge that Plaintiff had purchased body bags from other sources and the reason for those purchases.

9. Knight Systems, acting through Buddy Knight, and Buddy Knight expressly, knowingly and voluntarily waived any alleged or potential breach of the Agreement associated with Plaintiff's purchases of body bags from other suppliers and continue to operate, along with Plaintiff, under the agreements.

10. Therefore, Defendants' Counterclaim is precluded by the doctrine of waiver.

FOR A FOURTH DEFENSE
(Estoppel)

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11. In the alternative, Defendants knowingly represented that they had no intention to assert a breach of the Agreement or accept any remuneration for Plaintiff's limited transactions with other providers of body bags.

12. Defendants intended for Plaintiff to rely on those assertions as Defendants maintained a pecuniary interest in continuing to operate under the Agreement.

13. Plaintiff lacked knowledge, and the means to learn, that Defendants in fact intended to assert Plaintiff's conduct at some point in the future to try and avoid their contractual obligations under the Agreement.

14. Plaintiff relied on Defendants' representation and so continued to operate in accordance with the Agreement and forego its rights to pursue other profitable business activities.

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CLERK OF COURT
LEXINGTON, SC

15. Therefore, Defendants' Counterclaim is precluded by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE
(Failure to Mitigate)

16. In the alternative, Defendants failed to take reasonable and timely efforts to mitigate their damages, and therefore Defendants' Counterclaim should be either barred or reduced to the extent that Defendants could have taken prompt and reasonable action to avoid the occurrence of the alleged damages.

Prayer for Relief

WHEREFORE, Plaintiff, having complained of the Defendants and responded to Defendants' Counterclaim, prays for:

(1) the dismissal of Defendants' Counterclaim;

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(2) the dismissal of Defendants' affirmative defenses;

(3) the entry of a judgment against Buddy Knight and Knight Systems for actual damages and consequential damages in an amount to be proven at trial;

(4) in the alternative, the entry of a judgment requiring specific performance by Buddy Knight and Knight Systems under the Agreement and injunctive relief;

along with an award of punitive damages, pre-judgment interest, reasonable attorneys' fees, the costs of the action, and such other relief in law or equity that this Court may find is just and proper.

Respectfully submitted,

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Attorneys for Plaintiff

July 24, 2013
Columbia, South Carolina

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2013 JUL 25 A 11:11
RICHLAND COUNTY
CLERK OF COURT

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	FOR THE ELEVENT JUDICIAL CIRCUIT
Palmetto Mortuary Transport, Inc.,	CIVIL ACTION NO.: 2011-CP-32-04051
Plaintiff,	
v.	**CERTIFICATE OF SERVICE**
Knight Systems, Inc. and Robert L. Knight,	
Defendants.	

2013 JUL 25 A 11:19
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

This is to certify that I have caused to be served this day, one (1) copy of **Plaintiff's Reply to Defendants' Counterclaim** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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715 West DeKalb Street
Post Office Box 1555
Camden, SC 29021

Lisa Sharpe
Lisa Sharpe, Paralegal

Columbia, South Carolina
July 24, 2013

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)
	Civil Action No.: 2011-CP-32-04051
Palmetto Mortuary Transport, Inc.,	)
	)
Plaintiff,	) **ORDER**
v.	)
	)
Knight Systems, Inc. and Robert L. Knight,	)
	)
Defendants	)
	)

This matter comes before the court-appointed Special Referee (the "Court") by Consent Order signed by The Honorable Thomas A. Russo, Chief Administrative Judge for Lexington County on May 14, 2013.

PROCEDURAL BACKGROUND

This case was initiated by Plaintiff Palmetto Mortuary Transport, Inc. ("Palmetto Mortuary") on October 26, 2011 against Defendants Knight Systems, Inc. ("Knight Systems") and Robert L. Knight ("Knight") (collectively "Defendants").

The case was tried before the Court on December 18, 2013 at the offices of Davis Frawley LLC in Lexington, South Carolina. Palmetto Mortuary was represented by John J. Pringle, Jr. and Lyndey Ritz Zwing of Adams and Reese LLP. Present on behalf of Palmetto Mortuary were its principal owners Mr. Donald Lintal and Mrs. Ellen Lintal. Defendant Robert "Buddy" Knight was present on behalf of himself and Defendant Knight Systems. Both Defendants were represented by Reginald "Reggie" L. Lloyd of The Lloyd Law Firm, LLC and Todd Hagins of Hagins Law Firm.

The Court has carefully considered the testimony of Mr. and Mrs. Lintal on behalf of the Plaintiff and the testimony of Mr. Knight on behalf of Defendants as well as the arguments that have been made to the Court.

"A judge's findings of fact in an action at law tried without a jury have the force of a jury's findings of fact." *Southern Realty and Const. Co. v. Bryan*, 290 S.C. 302, 313, 350 S.E.2d 194, 200 (Ct. App. 1986) (*citing Doe v. Asbury*, 281 S.C. 191, 314 S.E.2d 849 (Ct. App. 1984); *Melton v. Williams*, 281 S.C. 182, 314 S.E.2d 612 (Ct. App. 1984)). "When findings are based on determinations regarding the credibility of witnesses, trial courts are given great deference. *See U.S. v. Hall*, 664 F.3d 546, 462 (4th Cir. 2012). As the special referee, I am charged with weighing the testimony of all witnesses and determining credibility. *See Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005) (holding appellate court should not disregard the findings of special referee, "who was in a better position to weigh the credibility of witnesses") (citation omitted).

Based on the evidence and law presented to the Court, the Court makes the following findings and conclusions:

FACTUAL BACKGROUND

1. This action arises out of an Asset Purchase Agreement ("APA" or "Agreement"), executed on or about January 5, 2007. *See* Plaintiff's Exhibit 1 (admitted for Donald J. Lintal) ("APA"). The Agreement involved Palmetto Mortuary, as the buyer, and Robert "Buddy" Knight and Knight Systems, as the sellers. *Id.*; *see also* Trial Tr. at 22:14-18.

The transaction involved the sale of Defendants' mortuary transport business to Plaintiff.

2. Pursuant to the terms of the APA, Palmetto Mortuary purchased, among other assets specified in Section 1: tangible assets (defined in Section 1.1.1.1 of the Agreement), goodwill (defined in Section 1.1.1.6), customer lists (defined in Section 1.1.1.3). Palmetto Mortuary also obtained mutual covenants from Knight Systems, including a ten-year non-compete agreement which is set forth in Exhibit 3.2.6 to the APA ("Non-Compete Agreement").

3. In exchange for the assets and other contractual terms specified in the APA, including the covenant not to compete, Palmetto Mortuary was obligated to pay Knight Systems a purchase price of Five Hundred and Ninety Thousand Dollars ($590,000.00). Trial Tr. at 24:8-12.

4. Additionally, Palmetto Mortuary agreed to exclusively purchase four types of body bags from Knight Systems. The types of bags are identified in Section 3.4.8 of the APA (the "Exclusivity Provision") as: (1) heavy duty body bags, (2) lightweight body bags, (3) odor-proof body bags, and (4) water-retrieval body bags. Plaintiff agreed to purchase the four stated body bags from Defendants for the ten-year term of the Non-Compete Agreement. *See* APA at Section 3.4.8; *see also* Trial Tr. at pp. 27:18-22.

ISSUES PRESENTED TO THE COURT

Defendants claim that the Non-Compete Agreement at Exhibit 3.2.6 of the Agreement is unenforceable for lack of adequate consideration and because its duration and geographic scope are unreasonable.

Defendants claim that Plaintiff breached the Exclusivity Provision at Section 3.4.8 of the APA by purchasing body bags from sources other than Defendants. Defendants assert that Plaintiff's alleged breaches of the Exclusivity Provision entitled Defendants to repudiate the entire Agreement, including the Non-Compete Agreement.

Plaintiff claims that Defendants breached the Non-Compete Agreement at Exhibit 3.2.6 of the APA by submitting a competing bid against Plaintiff for mortuary transport on behalf of Richland County and winning said bid. Plaintiff also claims that Defendants materially breached the Exclusivity Provision of the Agreement by refusing to sell Plaintiff odor-proof body bags. Plaintiff asserts entitlement to monetary damages, injunctive relief, and attorney's fees as provided by the Agreement.

FINDINGS AND CONCLUSIONS

THE PARTIES' NON-COMPETE AGREEMENT IS ENFORCEABLE.

The Non-Compete Agreement is supported by valuable consideration.

1. Defendants allege that "the terms of the Non-Compete Agreement alleged by the Amended Complaint to be enforceable between these parties are unsupported by sufficient compensation, separate and apart from the purchase price of the assets set forth in the Asset Purchase Agreement." (Defendants' Answer to Plaintiff's Amended Complaint at ¶ 36). The Court disagrees.

2. The Non-Compete Agreement provides in relevant part: "NOW, THEREFORE, in consideration for the following premises, the promises set forth herein, the consideration of $1,000 specifically allocated to this Agreement in the Purchase Agreement." *See* APA at Exhibit 3.2.6.

3. In South Carolina, covenants not to compete arising out of the sale of a business "will, in conformity with the just and equitable principles of the common law, be generally upheld and enforced if (1) supported by a valuable consideration, (2) reasonably limited as to time, and (3) reasonably restricted as to the place of the territory, that is, where the time is not more extended or the territory more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930) (citations omitted).

4. Consideration is generally considered "a bargained for gain or advantage to the promise or a bargained for detriment or disadvantage to the promisor." *Weiner v. McGraw-Hill, Inc.*, 57 N.Y. 2d 458, 464 (N.Y. 1982). Consideration is present when the parties exchange something to which they attach value. Absent a claim of fraud or unconscionability, a court will not concern itself with whether there was adequate consideration. *Campbell v. Carr*, 361 S.C. 258, 265, 603 S.E.2d 625, 628 (Ct. App. 2004); *Spaulding v. Benenati*, 57 N.Y.2d 418, 423 (N.Y. 1982). "Generally, a court will not inquire into the adequacy of consideration for a contract, inasmuch as consideration based on value of property or performance of a promise is a matter of personal judgment by parties to a contract." *Buckingham v. Wray*, 366 N.W.2d 753 (Neb. 1985).

5. In *Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947), the South Carolina Supreme Court stated: "When the consideration agreed upon . . . is something of value, the courts will generally, in the absence of fraud, coercion, and undue influence, and if the parties are competent, not avoid the [contract] on the ground of the inadequacy of the consideration . . . , for the contracting parties, and not the courts, must determine the quid pro quo." "The inadequacy of price is determined at the date the contract was entered." *Campbell v. Carr*, 361 S.C. at 264, 603 S.E.2d at 628 (citations omitted).

6. Even the slightest consideration will be deemed sufficient. "The extent of the duty created by contract is not determined by the kind of consideration on which it is based; consideration consists of what is actually given or suffered and accepted for a promise." 17A Am. Jur. 2d Contracts § 115 (citations omitted). "Mutual promises . . . constitute a good consideration." *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013) (*quoting Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959)).

7. The consideration in the Non-Compete Agreement is unambiguously stated as $1,000. "If consideration is found at all to support a contract, inquiry into its adequacy is forbidden." *Satellite Indus., Inc. v. Keeling*, 396 N.W.2d 635, 639 (Minn. Ct. App. 1986). This Court finds that $1,000 is not ambiguous, and therefore, this Court must enforce the terms of the Non-Compete Agreement as written.

8. Defendants seek to show that the events leading up to the execution of the Non-Compete Agreement demonstrate a lack of consideration for it. In considering the adequacy of consideration, the Court must look to the four corners of the document, and cannot

consider parol evidence to construe the agreement unless its terms are ambiguous. *See Park Regency, LLC v. R&D Development of the Carolinas, LLC*, 402 S.C. 401, 741 S.E. 528 (Ct. App. 2012) ("the intention of the parties . . . [is] gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument") (citation omitted); *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999) (only if a contract is ambiguous will parol evidence be admissible to ascertain the true meaning and intent of the parties).

9. Defendants do not allege an ambiguity with respect to the language of the Non-Compete Agreement, but even if such an ambiguity existed, the negotiation of the Non-Compete Agreement before the document was executed does not demonstrate a lack of consideration.

10. In October of 2006, Donald and Ellen Lintal met with a broker regarding the purchase of Defendants' business. *See* Trial Tr. at 164:2-9. Shortly after meeting with their broker, in November of 2006, Mr. and Mrs. Lintal visited with Defendant Knight and looked at Knight System's business location for the purpose of informing Plaintiff's final valuation of Defendants' business. *Id.* at 164:17-24; 165:3-13. From November of 2006 to January 5, 2007, the parties and their agents, including brokers, accountants, and attorneys for both sides, negotiated the terms of the Agreement. *Id.* at 135:11-136:15; 140:4-141:14; 198:5-9; 200:16-201:5; 245:20-249:19.

11. Mrs. Lintal, Palmetto Mortuary's Chief Financial Officer, testified that one of the drafts of the Notice of Intent to Purchase submitted to Defendants and/or Defendants' agents, including their brokers or attorney, included a Non-Compete Agreement with a term of ten years and a one hundred and fifty mile radius. *Id.* at 139:25-140:3; 165:20-166:11; 167:19-168:10. Mrs. Lintal also testified that she had a discussion with her attorney about having a term of only seven years for the Non-Compete Agreement, but that term was ultimately increased to ten years in the final Agreement. *Id.* at 168:16-169:1. On December 14, 2006, Plaintiff's counsel sent a draft Non-Compete Agreement to Defendants' counsel which was intended by both parties to be included in the final APA. *Id.* at 156:9-12.

12. Closing took place on January 5, 2007. *See* APA. At the closing, the parties for the first time allocated dollar amounts to each of the Agreement's provisions. *Id.* at 98:5-13; 98:25-99:10. Mrs. Lintal testified that prior to closing, she "had discussions with our attorney and we were working with [Defendants' attorney] to get an allocation of assets, because that was never put in the document prior to closing. [I] wanted it in . . . because I wanted to review it. It never got accomplished until we sat down at closing." *Id.* at 157:3-8. There is no dispute that until closing no dollar figure was specifically assigned to the Non-Compete Agreement. *Id.* at 156:13-22.

13. Mrs. Lintal and Mr. Knight both testified that the $1,000 allocation ultimately attributed to the Non-Compete Agreement was primarily driven by Mr. Knight at the instruction of his accountant. *Id.* at 160:1-24; 161:4-19; 201:8-25. Both Mrs. Lintal and Mr. Knight testified that Mr. Knight wanted to allocate $1,000 to the Non-Compete Agreement in order to allow him and Knight Systems to minimize their potential capital gains tax. *Id.* at 162:20-163:2; 179:10-23; 201:6-25. After collectively determining what allocation was best for the parties following the advice of their agents, the parties executed the Agreement. *Id.* at 182:13-16 (Mrs. Lintal testified that negotiations were "a give and take"); 202:4-20 (Mr. Knight testified that "there was some discussion" regarding negotiating the amount allocated to the Non-Compete Agreement, but that he did not remember what it was). *See* Trial Tr. p. 250:1-13.

14. Mr. Knight testified that he "appeared at the closing [with his attorney] and . . . read the documents at closing." *See* Trial Tr. at 249:16-19; 246:1-6. Mr. Knight further testified that "after th[e] discussion about the $1,000 that's mentioned as the consideration for the covenant not to compete, [he] did[] [not] object to that provision or any provision of either agreement at the closing." *Id.* at 249:20-25.

Defendants did not assert that the Non-Compete Agreement was procured by fraud or

15. Defendants did not assert that the Non-Compete Agreement was procured by fraud or that any of its terms were unconscionable. Accordingly, the Court can only consider the bargaining parity of the parties to determine whether there is some consideration exchanged or value placed on the Non-Compete Agreement. "It is not the business of courts to protect parties from the consequences of bad contracts, but to protect them from the consequences of either legal or moral fraud and imposition." *Jackson v. Carter*, 128 S.C. 79, 121 S.E. 559, 563 (1924) (*quoting Goree v. Wilson*, 17 S.C. L. 597 (S.C. Eq. 1830)).

16. The evidence in the record reveals that Defendants negotiated for a $1,000 consideration as stated in the Non-Compete Agreement. *See* Trial Tr. at 160:1-24; 161:4-19; 201:8-25; 162:20-163:2; 179:10-23; 201:6-25. This negotiation was done with the advice and consent of Defendants' accountant and attorney. *Id.* "Where a party gets all the consideration he voluntarily and knowingly contracts for, he will not be allowed to say he got no consideration." *Jackson v. Carter*, 128 S.C. 79, 121 S.E. at 563 (citation omitted).

17. Defendants' claim that $1,000 was an insufficient consideration for the ten-year and 150 mile radius Non-Compete Agreement is without merit. "The inadequacy must not be measured by grains, but it ought to be palpably disproportioned to the real and market value of the property, so as to constitute a hard, unreasonable, and unconscionable contract . . . ." *Campbell v. Carr*, 361 S.C. 258, 264, 603 S.E.2d 625, 628 (Ct. App. 2004) (*quoting Craven v. Williams*, 302 F.Supp. 885 (D.S.C. 1969)). The Court finds that all parties to the APA received mutual promises and consideration for those promises. Defendants' argument that $1,000 was insufficient amounts to a request that this court "measure grains," which is not something the Court is in a position to do. The undisputed evidence shows that the amount of consideration exchanged between the parties was determined after all parties received advice and consent of their agents.

18. Based on the facts presented at trial, the Court finds that the Non-Compete Agreement contained in the APA was supported by adequate consideration.

. ***The Non-Compete Agreement is Reasonably Limited in Time and Geographic Scope.***

19. Defendants allege and argue that "[t]he territorial and limitations and length of term of the Non-Compete Agreement are unduly broad and expansive and, therefore, constitute an unenforceable restraint on trade and unenforceable agreement. (Defendants' Answer to Amended Complaint at ¶ 37). The Court disagrees.

20. The Non-Compete Agreement at issue in this case arises out of the sale of a business, and not an employment contract. As such, the Court will not apply the test applicable to covenants not to compete contained in employment contracts. As the Fourth Circuit has recognized, "restrictive covenants not to compete in employment contracts . . . are scrutinized more rigorously than similar covenants incident to a sale of business." *American Hot Rod Ass'n, Inc. v. Carrier*, 500 F.2d 1269 (4th Cir. 1974) (noting that this is the "general trend of modern authority").

21. In South Carolina, covenants not to compete arising out of the sale of a business "will, in conformity with the just and equitable principles of the common law, be generally upheld and enforced if (1) supported by a valuable consideration, (2) if reasonably limited as to time, and (3) if reasonably restricted as to the place of the territory, that is, where the time is not more extended or the territory more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930) (citations omitted). "[T]he restraint must be reasonable, not oppressive, or out of proportion to the benefits which the vendee may in reason expect to follow from the restrictive features of the contract, and not injurious to the interests of the public." *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184 (1942) (citations omitted).

22. "In determining whether a contract in partial restraint of trade is reasonable, the court will look to the whole subject matter of the contract, the kind and character of the business, its location, the purpose to be accomplished by the restriction, and all circumstances which

show the intentions of the parties and which must have entered into the making of the contract." *Reeves*, 200 S.C. 494, 21 S.E.2d at 188 (emphasis added). "In determining whether a contract is reasonable in respect to the length of time during which the restriction is to run, as applied to a case like the one before us, it would seem that the fair and full protection of the business, good will and trade name from which the vendee has purchased and paid for, may well be accepted as the test. It naturally follows that each case must be governed in the main by its own facts." *Id.*

23. In *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930), the South Carolina Supreme Court upheld a covenant not to compete that was five years and extending to the territorial extent of the corporate limits of the City of Orangeburg. The Court held: "there is nothing to indicate that either the period . . . or the territorial extent . . . considered alone and without regard to surrounding facts and circumstances which might affect a reasonable protection of the rights of the purchasing party, imposes unreasonable limitations in regard to either." *Id.*

24. The South Carolina Supreme Court has also upheld a covenant not to compete which was unlimited in time, but limited in territory:

> We think the reasonableness of the restraint in the case at bar may be demonstrated. In the first place, we consider whether the restriction is more comprehensive than is necessary to secure to the plaintiff the benefits of his purchase. Is the protection afforded the plaintiff larger or wider than is necessary? In this case, the defendant entered into the covenant, not only for the sale of his property, but the contract included the sale of the good will and the use of his name. He realized a large sum of money, and presumably he considered it to his advantage to make the sale. One element of the value of the business transferred by him to the plaintiff was the almost certain probability that his customers would continue to trade with the plaintiff, and this probability was increased and the value of the purchase enhanced by the agreement of the defendant not to engage in the same business in the county of Richland **during his lifetime**. Such an agreement was a strong inducement to the plaintiff to make the purchase, and was based upon a good consideration. . . . . The contract as we view it was in no sense unreasonable or oppressive.

Reeves v. Sargeant, 200 S.C. 494, 21 S.E.2d 184, 188 (1942) (emphasis added).

25. Courts in other jurisdictions recognize that covenants not to compete arising out of the sale of a business are enforced more liberally than covenants arising out of the employer-employee relationship. *See Wells v. Wells*, 400 N.E.2d 1317 (Mass. App. 1980). "Among the considerations which favor more liberal enforcement of buyer-seller covenants are: that a seller of a business interest may not derogate from the value of the business as sold by competing with it; that the buyer is entitled to the full value of the "benefit and advantages of his purchase"; and that the parties entered into the agreement with the assistance of counsel and without compulsion (an element frequently not present in the employer-employee context)." *Id.* at 1320.

26. The Court finds that the ten-year period and one hundred and fifty mile radius are reasonable and should be enforced. The Agreement at issue involved the complex and complicated sale of a business for a total price of $590,000.00 between two sophisticated businesses and parties.

27. In particular, Mr. Knight received $590,000 in exchange for the Non-Compete, as part of an APA he negotiated with the assistance of counsel and an account. Defendants assigned three (3) body removal contracts to Plaintiff as part of the Agreement, but specifically retained the right to conduct their body bag business. "[I]t is held that the restraint must be reasonable, not oppressive, or out of proportion to the benefits which the vendee may in reason expect to flow from the restrictive features of the contract, and not injurious to the interests of the public." *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184,

187 (1942) (*citing Beam v. Rutledge*, 9 S.E.2d 476 (N.C. 1940) and *Rakestraw v. Lanier*, 30 S.E. 735 (Ga. 1898)).

28. Similar to the seller in *Reeves v. Sargeant*, Knight entered into the covenant not to compete, not only for the sale of his business and his business's assets, but he also realized a large sum of money, and by his execution of the Agreement he considered it to his advantage to make the sale. *Reeves*, 200 S.C. 494, 21 S.E.2d 184, 188. Accordingly, the Court finds that the consideration exchanged for the entire contract together with the consideration exchanged for the Non-Compete Agreement was reasonable and justifies the terms of the Non-Compete in this case.

29. Additionally, the Plaintiff provided testimony regarding the importance of the Non-Compete Agreement to its decision to buy the business. Mr. Lintal testified that the ten-year term of the Non-Compete Agreement was significant to Palmetto Mortuary's decision to purchase Knight's business. The ten year period was intended by both parties to protect Palmetto Mortuary from competition with Knight Systems for two five-year contract cycles with the University of South Carolina, and Richland and Lexington Counties' Coroners' Offices, contracts which were previously held by Knight Systems for more than fifteen years. See Trial Tr. at 74:25-75:12. The ten year period was selected so that Palmetto Mortuary would be able to get a second term with the Richland County Coroner's Office without the risk of competition by Knight. The Lintals wanted a ten year period to allow Palmetto Mortuary "to get through at least two cycles" of five-year contracts with the Richland and Lexington Coroner's Offices. *See* Trial Tr. at 103:16-25. "The contracts were the whole value to this business in regards to what types of guaranteed revenues that we were going to be able to generate. So we wanted at all costs to try to protect that for as long as we could." *See* Defendants' Exhibit 1 (Lintal Deposition) at 86:2-10. "[T]he value of th[e] contracts made up [the Lintals'] ultimate purchase price" of the business. *Id.* at 86:11-18. Mr. Lintal testified that the Non-Compete Agreement "was very important to [the Lintals' evaluation] because without the non-compete we wouldn't have bought the business." *Id.* at 88:6-10.

30. Mr. Lintal additionally testified that as to the geographic restriction, he believed Palmetto Mortuary would expand its business throughout other counties in the State of South Carolina. *See* Trial Tr. at 104:12-106:14 ("We did not know, but we did not want to limit our options if it was available to us. At the time it did not seem to be an issue on their part. I don't recall any objections to that.").

31. Given Mr. Knight's testimony that he did not intend to get back into the mortuary transport business both before and after the Agreement was executed by the parties (*see* Trial Tr. at 195:25-196:6; 204:1-8 (Mr. Knight testified that he "expressed [his] desire to [Mr. Lintal] how much I wanted to get out of the business.")) and the significant value placed on the restrictions by Palmetto Mortuary, the Court finds that the time and geographic restrictions imposed by the Non-Compete Agreement were reasonable. The Court recognizes that the Non-Compete Agreement was a significant part of the consideration expected by Palmetto Mortuary in exchange for its agreement to purchase Defendants' mortuary transport business for $590,000. As a result of the foregoing evidence, the Court finds that the Non-Compete Agreement is enforceable.

DEFENDANTS BREACHED THE ASSET PURCHASE AGREEMENT BY REFUSING TO MAKE BAGS AVAILABLE TO PLAINTIFF AND BY VIOLATING THE NON-COMPETE AGREEMENT

32. Plaintiff alleges that Defendants breached the Non-Compete Agreement (Exhibit 3.2.6) by submitting a bid for mortuary transport services to the Richland County Coroner's Office on June 17, 2011. Plaintiff also alleges that Defendants breached the Exclusivity Provision (Section 3.4.8) by removing its odor-proof bags from the market.

33. To recover for a breach of contract, the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As stated more fully above (*see supra* Section I(A) and (B)), the Non-Compete Agreement is enforceable because it is supported by adequate consideration and is reasonable in time and geographic scope.

34. The Non-Compete Agreement provides in relevant part:

For a period of ten (10) years after the date hereof:

- **Customers, etc.** Seller shall not, directly or through Affiliate, (i) call upon or contact (or assist another person(s) or business entity to call upon or contact) any Customer for the purpose of furnishing the same or similar services provided or offered at any time by the Business to any Customer, or (ii) solicit or divert (or assist another person(s) or business entity to solicit or divert) any Customer from purchasing or using any of the Buyer's services, or (iii) provide or attempt to provide (or assist another person(s) or business entity to provide or attempt to provide) to any Customer the same or similar services provided or offered by the Business. For purposes of this Section 2(A), the term "Customer" shall mean any customer or client of the Business and shall include (without limitation) every such person(s) to which the Business or Seller has provided services prior to the date hereof.

- **Territory**. In addition to (but not in limitation of) the restrictions of Section 2(A), Seller shall not, directly or through an Affiliate engage in, or assist another person or entity to engage in, providing services similar to those furnished by the Business or Seller at any time prior to Closing (as such term is defined in the Purchase Agreement) in competition with Buyer anywhere within 150 miles of the present location of the Business (the "Territory").

35. In early 2011, the Richland County Coroner's office issued a Request for Proposal ("RFP") seeking bids to provide mortuary transport services for a period of five years. At that time, Palmetto Mortuary held the mortuary transport services contract with Richland County as a result of the Agreement. *Id.* at 58:24-59:3; 61:18-62:5. The deadline for submission of bids was June 17, 2011 at 3:00pm. *Id.* at 58:12-22. Palmetto Mortuary prepared a bid and timely submitted it for Richland County's consideration. *Id.* at 59:4-5.

36. Defendants also submitted a bid to the Richland County Coroner's Office.

37. Additionally, after the RFP closed on June 17, 2011, Mr. Knight emailed Ms. Christie Swofford at the Richland County Procurement Office, seeking a determination that Knight Systems be chosen to provide mortuary transport services because Knight System is the "sole provider" of odor-proof body bags required by the RFP. *See* Trial Tr. at 62:6-64:13; 137:14-24; 242:14-243:25. There is no dispute that Richland County required odor-proof bags as part of the RFP. Mr. Knight stated in his email to Richland County that he was taking all of his odor-proof bags off of the market, despite the Exclusivity Provision's requirement that Knight Systems provide "odor-proof body bags" to Palmetto Mortuary. According to Mr. Lintal, he "was [not] aware of" needing any alternative to an odor proof bag for his bid to Richland County "[b]ecause [he] still was under the existing

contract . . . with Knight Systems." *Id.* at 136:24-137:1. That contract gave Palmetto Mortuary "the rights to buy th[e] odor proof bag [from Knight], as well as these other[] [types] of bags" in Section 3.4.8 of the Agreement. *Id.* at 137:2-5.

38. Despite the fact that Palmetto Mortuary submitted a bid with the lowest price for services and received the highest total of points from the Procurement Office as part of the review of the RFP, Richland County selected Knight Systems for the five-year contract. *Id.* at 122:1-14; 64:14-25; 137:2-24. There is evidence in the record supporting the contention that without Defendants' claim that they were the sole provider of odor-proof body bags, the Richland County contract would have been awarded to Palmetto Mortuary. *See* Trial Tr. at 122:1-14; 64:14-25; 137:2-24. (Q: "And if [Knight] hadn't [sent the letter], there wouldn't have been an issue?" A: "I should have won the contract.").

39. Defendants' suggestion that they were the sole providers of odor-proof body bags contradicts the clear language of Section 3.4.8 of the parties' Agreement which required Defendants to provide odor-proof body bags to Palmetto Mortuary for a price of $50.00 per bag. *See* APA at Section 3.4.8. This Court concludes that the "shall provide" language in the Exclusivity Provision required Defendants to provide Palmetto Mortuary with odor-proof body bags at the time of the parties' submission of bids to Richland County. *Id.*

40. Defendants' bid submission and subsequent award of a mortuary transport contract with Richland County violates the terms of the Non-Compete Agreement as it represents "providing" body removal services to a "Customer" within the geographic territory and during the time period specified therein. Palmetto Mortuary's principal place of business is Lexington County, South Carolina and the contract at issue was for Richland County, South Carolina, a county within one hundred and fifty (150) miles of Palmetto Mortuary's business in Lexington County. Additionally, at the time Defendants submitted the bid to Richland County, there remained five years and seven months on the parties' ten-year Non-Compete Agreement.

41. In addition, the Court concludes that Defendants breached the APA's Exclusivity Provision by refusing to sell odor-proof body bags to Plaintiff as required by Section 3.4.8 of the Non-Compete Agreement and by claiming to Richland County that it was the "sole provider" of odor-proof body bags in order to increase its changes of receiving the Richland County Coroner's Office contract.

PLAINTIFF'S CONDUCT DID NOT CONSTITUTE A MATERIAL BREACH OF THE PARTIES' AGREEMENT SUCH THAT DEFENDANTS WERE EXCUSED FROM PERFORMANCE OF THEIR CONTRACTUAL OBLIGATIONS.

42. Defendants assert that "Plaintiff's breach of the agreement with Defendants negated all terms, conditions and responsibilities of the Defendants under the Asset Purchase Agreement and the Non-Compete Agreement." (Defendants' Answer to Amended Complaint, ¶ 42). The Court disagrees.

43. The Exclusivity Provision, Section 3.4.8 of the Agreement, provides:

Knight, through his related body bag business (the "Related Business"), shall provide to Buyer body bags at a discounted rate and buyer shall for the term of the non-compete agreement buy all of their body bags from the Seller. Below are the current charges for different types of body bags. The prices cited below shall not be increased by more than ten percent (10%) in any calendar year.

Heavy Duty body bags:	$20.00
Lightweight body bags:	$8.00

Odor-Proof body bags: $50.00

Water-Retreival body bags: $30.00

44. In construing the Exclusivity Provision the Court is guided by South Carolina's contract law. "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958). "The parties' intention must, in the first instance, be derived from the language of the contract." *Schulmeyer v. State Farm Fire & Cas. Co.*, 323 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *C.A.N. Enters., Inc. v. S.C. Human & Health Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("In construing terms in contracts, this Court must first look at the language of the contract to determine the intention of the parties."). Contractual interpretation requires the Court to look at the language of the entire contract "and not . . . isolated portions" thereof. *See Buice v. WMA Securities, Inc.*, 380 S.C. 149, 156, 668 S.E.2d 430, 434 (Ct. App. 2008) (*citing Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975)). "Further, in determining the intent of the contracting parties, the court should . . . read together different provisions dealing with the same subject matter." *Id.* (citations omitted).

45. Plaintiff claims that the Exclusivity Provision obligated Plaintiff to buy those categories of bags listed in Section 3.4.8 of the Agreement from the Defendants (including heavy duty bags, lightweight bags, odor-proof bags, and water-retrieval bags only). Contrarily, Defendants assert that the Exclusivity Provision prevented Plaintiff from buying any body bag from any source other than Defendants. The Court agrees with Plaintiff's interpretation of Section 3.4.8.

46. Defendants are correct that the Exclusivity Provision states that Plaintiff "shall for the term of the non-compete agreement buy all of their body bags from the Seller." However, Defendants' focus on such language in isolation overlooks provisions providing context for that phrase. Significantly, preceding language in that same sentence requiring Defendants to "provide to Buyer body bags at a discounted rate . . ." would be meaningless without all of those discounted rates being enumerated within the Agreement. Accordingly, the Exclusivity Provision subsequently lists the types of bags actually offered by Defendants and the prices at which Plaintiff could purchase those bags.

47. Reading the Exclusivity Provision as a whole and considering all of its provisions demonstrates that the parties intended the term "all of their body bags" to mean "all" bags in the listed categories and priced accordingly. "Documents will be interpreted so as to give effect to all of their provisions, if practical." *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997) (citation omitted).

48. While Defendants allege that they were "at all relevant times, capable and willing to manufacture and/or provide Plaintiff with any desired or needed body bags," (Defendants' Answer to Plaintiff's Amended Complaint at ¶ 41), that reading of the Exclusivity Provision could lead to unreasonable results not intended by the parties. "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail." *C.A.N. Enters., Inc. v. S.C. Health & Human Serv. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (citation omitted). For example, the Exclusivity Provision as construed by Defendants is silent with respect to how a type of bag not specifically listed therein would be priced. The Plaintiff's reading, on the other hand, memorializes both the Plaintiff's obligation to buy certain bags, and the Defendant's obligation to sell those bags at specific, discounted prices.

Bag Purchases by Plaintiff

49. Palmetto Mortuary purchased one infant body bag from Southland Medical Corporation on or about April 3, 2008 for the purchase price of $5.25, and on April 9, 2008 purchased one case containing thirty infant bags for a total price of $187.50. *Id.* at 45:22-46:12; *see also* Plaintiff's Exhibit 4 (admitted through Donald J. Lintal) at p. 1. Mr. Lintal testified that after receipt of the first infant body bag (a "pediatric" size bag) and demonstration to the Lexington County Coroner, he purchased thirty of the larger sized infant bags. "[W]e, being Randy Martin and myself, [determined] that the larger size would be more versatile for [our] use." *Id.* at 49:7-13.

50. On March 6, 2009, Palmetto Mortuary additionally purchased six water-retrieval bags from Evident at a purchase price of $45.00 a piece, for a total of $270.00. *See* Trial Tr. at 49:25-50:5; 50:24-51:23. The price paid by Palmetto Mortuary for the water retrieval bags from Evident was fifty percent more than the guaranteed discounted rate in the Exclusivity Provision of the Agreement, Section 3.4.8. *Id.* at 50:24-51:22; *see also* APA at Section 3.4.8 ("Water-Retreival [sic] body bags: $30.00").

51. On July 14, 2010, Palmetto Mortuary purchased a total of ten body bags from Medical Products Limited, including four extra-large body bags, and six heavy-duty body bags. *See* Trial Tr. at 52:2-11. Extra-large body bags are not included in the list of "different types of body bags" required by the Exclusivity Provision to be purchased by Palmetto Mortuary, but "Heavy Duty body bags" are included. *Id.* at 52:12-24; *see also* APA Section 3.4.8. The total purchase price for the bags from Medical Products Limited was $208.50. *See* Trial Tr. at 53:21-54:1. Palmetto Mortuary paid more for the heavy duty bags purchased from Medical Products Limited ($34.75 per bag) than the $20.00 per heavy duty bag set out in the Exclusivity Provision. *Id.* at 54:2-9; *see also* APA at Section 3.4.8.

52. This Court finds that the total amount of bags purchased by Palmetto Mortuary from sources other than Knight Systems totaled Eight Hundred and Eighty-Four Dollars and Ninety-Seven Cents ($884.97). *See* Trial Tr. at 54:9-17. This total amount includes thirty-one (31) infant bags at a total price of 192.75, four (4) extra-large body bags at a price of $213.72, six (6) heavy duty body bags at a total price of $208.50, and six (6) water-retrieval bags at a total price of $270.00. *Id.* at 48:5-25; 49:21-50:10; 52:4-23.

53. Infant body bags and extra-large body bags are not within the types of bags Palmetto Mortuary was required to purchase from Knight pursuant to Section 3.4.8. Therefore, the Court does not consider Plaintiff's purchases of such bags from manufacturers other than Defendants to be a breach of the APA. However, heavy-duty body bags and water-retrieval bags are included in the type of bags subject to the Exclusivity Provision of the APA. The total amount Palmetto Mortuary paid for bags that were included in the Exclusivity Provision was Four Hundred Seventy Eight Dollars and Fifty Cents ($478.50). *See* Trial Tr. at 49:21-50:10; 52:4-23.

Plaintiff's Breaches of the Exclusivity Provision Were Not Material

54. Plaintiff's acts of purchasing body bags from other sources do not constitute *material* breaches of the Agreement which would excuse Defendants' performance under the Agreement. Rather, Defendants are only entitled to monetary damages which are proximately caused by Plaintiff's breach, a total damages amount of $478.50. *See* Trial Tr. at 49:21-50:10; 52:4-23.

55. A breach of contract by nonperformance gives rise to merely a cause of action for damages. Monetary damages in a breach of contract action are intended to place the non-breaching party in the position he would have been in had there been no breach and the contract was performed. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 493 S.E.2d 875, 879 (Ct. App. 1997). The proper measure of compensation is the loss actually incurred as the result of the breach. *Willms Trucking Co., Inc. v. JW Construction Co., Inc.*, 314 S.C. 170, 442 S.E.2d 197, 202 (Ct. App. 1994) (*citing In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890, 897 (1937)).

Typically, the non-breaching party is not automatically excused from the future

56. Typically the non-breaching party is not automatically excused from the future performance of contract obligations every time the other party commits a breach. Rescission or repudiation may only be granted when there is a breach which is so fundamental and substantial that it defeats the purpose of the contract. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004). If the breach is relatively minor and not of the essence, the non-breaching party is still bound by the contract and may not abandon performance and obtain damages for a total breach by the defendant. *Williston on Contracts* 63:3. "Otherwise stated, a nonperforming party is liable for any breach of contract, but the other party is discharged from further performance, and is entitled to substantial damages only when there is a material breach." *Id.* (*citing In re Krueger*, 192 F.3d 733 (7th Cir. 1999)). The determination of whether a material breach has occurred is generally a question of fact.

57. Under South Carolina law, "[i]n order to warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract." *Ackerman v. McMillan*, 314 S.C. 268, 442 S.E.2d 618 (Ct. App. 1994) (*citing Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 427 S.E.2d 701 (Ct. App. 1993)). "Where the breach is not so material as to defeat the purpose of the contract, the non-breaching party is compensated by damages." *Ackerman* at 271, 442 S.E.2d at 620 (citing *Childress v. C.W. Myers Trading Post, Inc.*, 247 N.C. 150, 100 S.E.2d 391 (1957)). Similarly, "[a] breach of contract warranting rescission of the contract must be so substantial and fundamental as to defeat the purpose of the contract." *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009) (*citing Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 143, 382 S.E.2d 915, 917 (1989)). "Thus, a rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties." *Id.*

58. The Restatement (Second) of Contracts sets forth "circumstances significant in determining whether a failure is material" in Section 241. In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

(a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;

(b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;

(c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;

(d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and

(e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Restatement (Second) of Contracts § 241 (1981) (adopted by South Carolina Supreme Court in *Kiriakides v. United Artists Comm'n*, 312 S.C. 271, 440 S.E.2d 364 (1994), in the context of breach of a commercial lease); *see also Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004).

59. The first element regards ensuring the parties' reasonable expectation of an exchange of performances. In determining whether a failure is material, the Court must consider the extent to which the non-breaching party (Defendants) will be deprived of the benefit which was reasonably expected from the exchange. Defendants' obtained their

reasonable expectations from the contract, including the total purchase price ($590,000.00).

60. Additionally, it is undisputed that from January 2008 to June 2011, Palmetto Mortuary purchased more than forty five thousand dollars' worth of body bags from Knight Systems pursuant to Section 3.4.8 of the Agreement. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3. These purchases from Knight Systems occurred both before and after Palmetto Mortuary's purchases of body bags from sources other than Knight Systems. *Id.* at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

61. Under the second element, Defendants can be adequately compensated by the receipt of the monetary damages described above, as they are entitled only to the monetary benefit of the body bags Palmetto Mortuary purchased from other vendors but should have purchased from Defendants.

62. The third Restatement element is the extent to which the party failing to perform or make an offer to perform (Plaintiff) will suffer forfeiture if the failure is treated as material. The South Carolina Supreme Court has made abundantly clear that "in the liberally related rule of contracts . . . the law abhors a forfeiture and . . . contractual provisions of forfeiture are looked upon with disfavor by the Courts." *See Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 701 S.E.2d 742 (2010) (citation omitted). For this reason a failure is less likely to be regarded as material if it occurs late, after substantial preparation or performance, and more likely to be regarded as material if it occurs early, before such reliance.

63. In this case, Palmetto Mortuary will suffer a significant forfeiture if Defendants are able to repudiate the remaining five years and seven months of the Non-Compete Agreement. Under the terms of the Non-Compete Agreement, Defendants were prohibited from competing against Palmetto Mortuary for a period of ten years that began on January5, 2007. *See* APA. At the time of Knight System's breach in June of 2011, five years and seven months remained on the Non-Compete Agreement. Additionally, at that time Palmetto Mortuary had significantly complied with the terms of the parties' Agreement, by paying the full purchase price, $590,000.00, and purchasing significantly all of its body bags from Knight Systems pursuant to the Exclusivity Provision, a total amount of more than $45,000.00. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

64. A material failure by one party gives the other party the right to withhold further performance as a means of securing his expectation of an exchange of performances. *See* 14 Williston on Contracts § 43:5 (4th ed.). To the extent that the expectation is already reasonably secure, in spite of the failure, there is less reason to conclude that the failure is material. Here, Defendants already had security for Palmetto Mortuary's performance; in fact, Defendants were already paid the full purchase price for their mortuary transport business. *See* Trial Tr. at 237:9-20.

65. Additionally, Defendants had reasonable assurances of performance given by Palmetto Mortuary after its non-performance. On June 16, 2011, one day before the Richland County Coroner's bid was due, Mr. Knight tape-recorded a conversation between he and Mr. Lintal ("Tape Recording"). *Id.* at 59:8-60:2; 211:18-212:15. At the time of the conversation, Mr. Lintal was not aware that he was being recorded. *Id.* at 59:17. Throughout the tape-recorded discussion, Mr. Knight repeatedly references infant body bags Palmetto Mortuary purchased from another vendor in 2008, nearly three years prior to the conversation. *See* Trial Tr. at 60:14-61:5; *see also* Defendant's Exhibit 1 (admitted for Robert L. Knight) ("Tape Recording"); *see* Trial Tr. at 220:14-221:12. In response to the allegations, Mr. Lintal stated that he did not believe his purchases of body bags from other manufacturers were "significant," specifically stating that he was "not trying to breach" the parties' Agreement. *See* Tape Recording; *see also* Trial Tr. at 221:11-14; 221:19; 222:22; 223:5-9; 223:19-224:9; 225:4-9; 225:18-24.

66. Mr. Lintal assured Mr. Knight during the tape recorded conversation in July of 2011: "If you're willing to make them, I'm going to order them." *Id.* Mr. Knight responded: "I

can make them." *Id.* After Palmetto Mortuary purchased body bags from other manufacturers, Palmetto Mortuary continued to purchase body bags from Knight Systems. It is undisputed that from January 2007 to June 2011, Palmetto Mortuary purchased more than $45,000.00 dollars' worth of body bags from Knight Systems pursuant to Section 3.4.8 of the Agreement. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

67. Moreover, "[a] party's adherence to standards of good faith and fair dealing will not prevent his failure to perform a duty from amounting to a breach" entitling the non-breaching party to damages, but "[t]he extent to which [his] behavior . . . comports with standards of good faith and fair dealing is a significant circumstance in determining whether the failure is material." Restatement (Second) of Contracts § 241, cmt. f. Here, Palmetto Mortuary adhered to standards of good faith and fair dealing. There is testimony in the record that before each occasion when Palmetto Mortuary purchased bags from other sources, Mr. Lintal spoke with Mr. Knight about Knight System's ability to sell certain bags when it needed them for business. *See* Trial Tr. at 46:25-48:9; 50:9-23; 53:1-20.

68. Moreover, considering the context in which the Tape Recording took place and the timing of the Richland County Coroner's contract bid, the Court accepts Mr. Lintal's testimony that Mr. Knight knew or should have known that Palmetto Mortuary previously purchased body bags from other manufacturers. However, instead of bringing the breaches to Mr. Lintal's attention when he was aware of such allegations, Knight held onto the information until a time that was beneficial to him. *Id.* at 239:9-240:21. Additionally, Mr. Knight's conduct on June 16, 2011, including surreptitiously tape-recording Mr. Lintal, bringing up Palmetto Mortuary's purchases of body bags from other manufacturers after more than three years after the purchases, and immediately placing a bid for the Richland County contract one day following the parties' discussion, evidences something less than good faith with respect to adhering to the terms of the APA.

69. Rescission and restitution are equitable remedies which will not be provided when another party has acted in bad faith. A court of equity, in applying the principle of "unclean hands," will not lend its aid to a litigant who has been guilty of any reprehensible conduct directly connected with the subject-matter of the litigation before the court. *See Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943); *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000); *Aaron v. Mahl*, 381 S.C. 585, 674 S.E.2d 482 (2009); *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 746 S.E.2d 35 (2013). In this case, Defendants are requesting the right of rescission and/or repudiation of their obligations under the Non-Compete Agreement and Exclusivity Clause as a result of Plaintiff's alleged wrongful purchases of bags from other manufacturers. This court finds that Defendants are not entitled to any equitable relief as a result of their actions.

70. Based on the evidence presented, the Court finds that Plaintiff's purchases of certain bags from sources other than the Defendants do not constitute material breaches of the APA. As a result, Defendants were not excused from performance under the Agreement, including the Non-Compete Agreement. Defendants are only entitled to monetary damages that naturally flow from Plaintiff's breaches.

PLAINTIFF IS ENTITLED TO MONETARY DAMAGES, INJUNCTIVE RELIEF, AND AN AWARD OF ATTORNEY'S FEES AS A RESULT OF DEFENDANTS' BREACH OF THE NON-COMPETE AGREEMENT

71. The remedies provided in Section 3 of the Non-Compete Agreement provide for an accounting of lost profits *and* injunctive relief. *See* APA at Exhibit 3.2.6 at Section 2. These two potential remedies are not exclusive of one another. *Id.* The Non-Compete Agreement also provides for an award of attorneys' fees to the prevailing party in the

event of litigation. *See* Exhibit 3.2.6, Section 5(L); *see also* Trial Tr. at 148:6-16.

Plaintiff is Entitled to Lost Profit Damages

72. Defendants' breach of the Non-Compete Agreement entitles Plaintiff to monetary damages, pursuant to Section 3(A) of Exhibit 3.2.6 to the Agreement:

Accounting for Lost Profits. If Seller shall violate any of the provisions of Sections 1 or 2, Buyer shall be entitled to recover any non-speculative profits incurred by Buyer as a result of, growing out of, or in connection with, any such violation by Seller. This remedy shall be in addition to, and not in limitation of, any injunctive relief or other rights, remedies, or damages, to which Buyer is or may be entitled as a result of this Agreement.

73. "Under current South Carolina law, the standard of admissibility for evidence of future damages is 'any evidence which tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant's acts . . . if otherwise competent." *Burroughs v. Worsham*, 352 S.C. 382, 396, 574 S.E.2d 215, 222 (Ct. App. 2002) (*quoting Pearson v. Bridges*, 344 S.C. 366, 372, 544 S.E.2d 617, 620 (2001) (*quoting Martin v. Mobley*, 253 S.C. 103, 109, 169 S.E.2d 278, 281-82 (1969))). "Whether future damages are 'reasonable certain to occur is the standard of proof for future damages, not the standard of admissibility.'" *Id.* (*quoting Pearson v. Bridges*, 344 S.C. at 371-72, 544 S.E.2d at 619) (emphasis omitted). *See also Western Insulation, LP v. Moore*, 242 Fed. Appx. 112 (4th Cir. 2007) (*citing Saks Fifth Ave., Inc. v. James, Ltd.*, 630 S.E.2d 304, 311 (Va. 2006) (explaining that to prove entitlement to damages, "a plaintiff must prove the amount of those damages by using a proper method and factual foundation for calculating damages.")).

74. This Court finds that Mrs. Lintal, as Palmetto Mortuary's CFO, is competent to testify as to Palmetto Mortuary's future damages from Defendants' breach as a result of their competition with Palmetto Mortuary in violation of the Non-Compete Agreement. *See* Rule 602, SCRE (lay testimony must be based on personal knowledge) and Rule 701, SCRE (lay opinions must be formed as a result of the witness' rational perception). Additionally, the Court finds that Mrs. Lintal's testimony is admissible because it "tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant's acts." *See Burroughs v. Worsham*, 352 S.C. at 397, 574 S.E.2d at 222. Finally, the Court finds that the damages of Palmetto Mortuary, as introduced through Mrs. Lintal were "reasonably certain to occur" and were not challenged by Defendants. Therefore, the Court accepts Mrs. Lintal's testimony and finds that Palmetto Mortuary adequately submitted proof of damages under the *Burroughs* test.

75. Mrs. Lintal testified that Plaintiff's damages included "the overall profit that [the company] lost due to the fact of not having this business, with [the Richland County] contract." *See* Trial Tr. at 142:10-17. This amount represents the revenue Palmetto Mortuary would have received if it had won the Richland County contract in 2011 and performed that contract for a five-year term. If Palmetto Mortuary had been awarded the Richland County contract, Palmetto Mortuary's total revenue over the five year cycle would have been $437,900.00. *Id.* at 144:17-145:6.

76. Mrs. Lintal also testified that Palmetto Mortuary's total expenses, if it would have won the Richland County contract and performed it for five years, equaled $64,635.54. *Id.* at 145:7-147:6 (explaining calculation of expenses). The estimate of expenses calculated by Mrs. Lintal was based on the last contract year Palmetto Mortuary had with Richland County." *Id.* at 184:13-185:13.

77. Accordingly, Palmetto Mortuary's total lost profits for the five-year period "using [Palmetto Mortuary's] revenues" and expenses equal total revenues less total expenses, or $373,264.54. *Id.* at 147:10-12.

78. However, as more fully discussed above, Defendants are entitled to a set-off of the total amount of body bags purchased by Palmetto Mortuary which should have been purchased

from Knight Systems pursuant to Section 3.4.8 of the Agreement ($478.50).

Plaintiff is Entitled to Injunctive Relief

79. Plaintiff has also requested a permanent injunction against Defendants. Injunctive relief is available under Section 3 of the Non-Compete Agreement. *See* APA at Exhibit 3.2.6. Plaintiff seeks an injunction prohibiting Defendants from competing against Plaintiff pursuant to the terms of the parties' Non-Compete Agreement, and specifically to prevent a breach by Defendants. The injunction Plaintiff seeks would last for five year and seven months, the length of time remaining on the parties' Non-Compete Agreement at the time Defendants submitted the competing bid to Richland County.

80. "A covenant not to compete is enforceable if it is not detrimental to the public interest, is ancillary to the sale of a business or profession, is reasonably limited as to time and territory, and is supported by a valuable consideration." *Standard Register Co. v. Kerrigan,* 238 S.C. 54, 71, 119 S.E.2d 533, 542 (1961) (*citing* 36 Am.Jur., Monopolies, Combinations, and Restraints of Trade, Sections 52, 53, 54, 55, 56; *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 734; *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184; *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344). In this case, the award of a permanent injunction is necessary to give the Plaintiff the benefit of its bargain and to ensure Defendants' compliance with the Non-Compete Agreement. Although monetary damages are sufficient to put Plaintiff in the position it would have been in had Plaintiff held the Richland County contract for a five-year term, enforcement of the restrictive covenant is necessary to enforce the remaining term of the Non-Compete Agreement and to avoid a forfeiture of the contract as a whole.

81. The Court is not ordering specific relief with respect to the remaining terms of the APA, including the exclusive purchase clause in Section 3.4.8 of the APA. "Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Campbell v.* Carr, 361 S.C. 258, 263, 603 S.E.2d 625, 628 (Ct. App. 2004) (*quoting Ingram v. Kasey's Assocs.*, 340 S.C. 98, 104, 531 S.E.2d 287, 291 (2000)). The Court finds that the Non-Compete Agreement was a separately executed contract which is supported by adequate consideration. Plaintiff is only seeking specific performance of the parties' Non-Compete Agreement and no one is seeking specific performance of the entire APA.

82. Additionally, specific performance of the APA, including Section 3.4.8, would not be equitable as between these parties. Requiring Palmetto Mortuary to purchase the types of body bags stated would be unjust, especially considering evidence that Defendants have removed at least one type of bag, the odor-proof disaster bag, from the market and refuses to sell the odor-proof disaster bags to Palmetto Mortuary. "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Campbell v. Carr*, supra (*citing Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct. App. 1985)).

83. The Non-Compete Agreement is enforceable and the Court finds as a matter of fact that there are five years and seven months remaining on the original ten-year term. Accordingly, Plaintiff is entitled to an injunction enforcing the remainder of the Non-Compete Agreement. The injunction will begin as of the date of this order and will continue for five years and seven months.

84. However, because the Court has awarded monetary damages to the Plaintiff for the five-year term of the Richland County contract, the Defendants' performance of its contract with the Richland County Coroner for that time period does not violate the permanent injunction ordered by the Court.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

(1) (A) Defendants are ordered to pay Palmetto Mortuary Three Hundred Seventy Three Thousand, Two Hundred Sixty Four Dollars and Fifty Four Cents ($373,264.54), which constitutes Plaintiff's lost profits as a result of Defendants' wrongful competition in Richland County over the five-year term of the Defendants' contract with Richland County;

(B) Plaintiff is ordered to pay Four Hundred Seventy Eight Dollars and Fifty Cents ($478.50) in damages proximately caused by Plaintiff's breaches of Section 3.4.8 of the Agreement by purchasing body bags from sources other than Defendants. This amount may be set-off from the amount owed by Defendants for their breach of the Non-Compete Agreement;

(2) The Court finds that the Non-Compete Agreement is a separately executed contract for which adequate consideration was exchanged. The Court additionally finds that the term and scope of the Non-Compete Agreement is reasonable. Defendants are required to comply with the terms of the parties' Non-Compete Agreement in Exhibit 3.2.6 of the parties' Agreement for a term of five-years and seven months, beginning from the date of this Order, with the exception of their performance of the Richland County contract described above; and

(3) Defendants are ordered to pay Plaintiff's attorneys' fees and direct costs of litigation pursuant to Exhibit 3.2.6, Section 5(L) of the Agreement as Plaintiff is the prevailing party in this action. Plaintiff's counsel is to submit an affidavit of attorneys' fees and costs to the Court within ten (10) days of the date of this Order for the Court's consideration and the Court will issue a supplemental Order awarding attorneys' fees as reasonable and appropriate.

AND IT IS SO ORDERED.

_____

James Randall Davis, Special Master/Referee

February _____, 2014
Lexington, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
Palmetto Mortuary Transport, Inc.,	)	
	)	CIVIL ACTION NO: 2011-CP-32-04051
Plaintiff,	)	
	)	
vs.	)	
	)	
Knight Systems, Inc. and Robert L. Knight,	)	**ORDER**
	)	
Defendants.	)	
	)	

INTRODUCTION

This matter comes before me, as the court-appointed Special Referee, by Consent Order of Reference issued by The Honorable Thomas A. Russo, Chief Administrative Judge for the Eleventh Judicial Circuit on May 14, 2013. The case was tried before the Special Referee on December 18, 2013, at the Law Offices of Davis Frawley, LLC in Lexington, South Carolina. The Plaintiff, Palmetto Mortuary Transport, Inc. (also referred to herein as "Plaintiff" or "Palmetto Mortuary"), was represented by John J. Pringle, Jr. and Lyndey Ritz Zwing of Adams and Reese LLP. The Defendants, Knight Systems, Inc. and Robert L. Knight (also referred to herein as "Defendants" or "Knight") were represented by Reginald I. Lloyd of The Lloyd Law Firm, LLC and Todd Hagins of The Hagins Law Firm.

This case involves a dispute between these Parties alleging that the Plaintiff breached an asset purchase agreement between the Parties and that the Defendant breached a covenant not to compete executed as part of the Plaintiff's purchase of Knight's business assets. After careful consideration of the pleadings, testimony, evidence, and arguments of the Parties, and for the reasons set forth herein below, I find in favor of the Defendants and deny Plaintiff's claims for damages and injunctive relief.

PROCEDURAL HISTORY

On or about January 5, 2007, these Parties executed an Asset Purchase Agreement (also referred to herein as "Agreement") whereby the Defendants sold the assets of their mortuary transportation (or "body removal") business to Palmetto Mortuary. *See*, Plaintiff's Exhibit 1. In accordance with the Agreement, Palmetto Mortuary paid a total of Five Hundred Ninety Thousand and No/100 ($590,000.00) Dollars for the designated assets of Defendant Knight Systems. *See*, Plaintiff's Exhibit 1, p. 1 and 2. Pursuant to the terms of the Agreement, Palmetto Mortuary was obligated, after the asset purchase and for the term of the Parties' non-compete agreement, "to buy all of their body bags from" Knight's related body bag manufacturing business. *See*, Plaintiff's Exhibit 1, p. 4 (Section 3.4.8 Seller's Related Business). At the January 5, 2007 closing, the Parties also executed a Non-Competition Covenant.

See, Plaintiff's Exhibit 1 (Exhibit 3.2.6 of the Agreement) (also referred to herein as the "Covenant").

Pursuant to the terms of the Non-Competition Covenant and for the consideration of One Thousand and No/100 ($1,000.00), the Parties purported to prohibit Knight from competing against Plaintiff in the mortuary transportation business within 150 miles of Knight's present location and for a period of ten (10) years after the date of the Agreement. *Id.* at p. 2. Additionally, the Covenant states that Knight shall not be deemed to be in violation of "any covenant contained herein as a result of [Knight] providing services to [Palmetto Mortuary] or [Knight] selling body bags through his related body bag business." *Id.* at p. 3. Further, under a termination clause of the Covenant, entitled "Breach of the Purchase Agreement," the Non-Competition Covenant states that "[n]otwithstanding anything herein to the contrary, a breach by [Palmetto Mortuary] of the Purchase Agreement or such other documents ancillary thereto, shall constitute a breach of this [Non-Competition Covenant] and shall release [Knight] from any and all restrictions hereunder." *Id.* at p. 3.

Plaintiff initiated this civil action on or about October 26, 2011 and subsequently filed an Amended Complaint alleging that Knight breached the Non-Competition Covenant by bidding on and winning a public contract in 2011 to provide mortuary transportation services to the Richland County Coroner's Office. The Plaintiff seeks damages in the amount of revenues they did not receive from the Richland County public contract and injunctive relief against Defendants prohibiting further competition pursuant to the terms of the Covenant. In response, Defendants filed an Answer and Answer to the Amended Complaint alleging, *inter alia*, that Plaintiff first breached the Purchase Agreement by purchasing body bags from a source other than Knight's body bag manufacturing business; that the Non-Competition Covenant is unenforceable due to a lack of adequate consideration and unreasonable duration and geographic scope requirements; and that the Non-Competition Covenant is unenforceable as a matter of South Carolina law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the trial of this action, Mr. Donald J. Lintal (also referred to herein as "Don Lintal") and Mrs. Ellen M. Lintal (also referred to herein as "Ellen Lintal"), the owners and officers of Palmetto Mortuary Transport, Inc., testified on behalf of the Plaintiff. Mr. Robert "Buddy" Knight (also referred to herein as "Buddy Knight"), the owner of Knight Systems, Inc. and an ancillary body bag manufacturing business, testified on behalf of the Defendants. According to the testimony of Don and Ellen Lintal, the couple saw a sales listing of Knight Systems, Inc. on a business brokerage website in the summer or fall of the year 2006. *See,* Trial Tr. at 21:19-23; 164:2-7. After deciding they had an interest in purchasing Mr. Knight's mortuary transportation business and after negotiations over the purchase price, the Parties agreed on a price of $590,000.00 for the purchase of specific assets from Knight Systems, Inc. *See*, Plaintiff's Exhibit 1 (Asset Purchase Agreement); Trial Tr. at 83:21-25; 84-90; 91:1-4; 166:17-25; 167:1-18; 199:20-25; 200:1-15.

At the purchase closing on January 5, 2007, the witnesses testified that the $590,000.00 asset purchase price was allocated between "furniture, fixtures and equipment" ($37,500.00); a "non-competition covenant" ($1,000.00); and Knight

Systems, Inc.'s "customer lists" ($551,500.00).[1] *See*, Exhibit 2.3 (Purchase Price Allocations) attached to Plaintiff's Exhibit 1; *see also*, Trial Tr. 98-99:2-10; 157:3-13; 201:19-22. Both the Lintals and Buddy Knight testified that the Parties had no discussion about the amount of consideration to be paid for the Non-Competition Covenant prior to the Parties' arrival at the January 5, 2007 closing. Trial Tr. 156:9-25; 157-161:1-19; 166:12-16; 199:10-16.[2] In fact, the $1,000.00 allocated for the non-compete agreement was merely deducted from the originally negotiated $590,000.00 asset purchase price. Trial Tr. 158:13-20; 182:7-22. Thus, as Mrs. Lintal testified, there was never any discussion between the Parties about a separate and distinct offer of consideration for the non-compete agreement apart from the original purchase price for all assets of Defendants' mortuary transportation business. Trial Tr. 182: 17-22.

The Plaintiff offered testimony that the rationale for the 10 year term of the non-compete agreement was to allow Plaintiff to get through two contract cycles for the public contracts with Lexington County, Richland County and the University of South Carolina School of Medicine. Trial Tr. 26:7-16. Over the course of the 10 year non-compete, had Plaintiff maintained just the Richland County and Lexington County contracts, Palmetto Mortuary stood to make approximately $1,500,000, more than double the purchase price Plaintiff paid for the assets of Defendants' business. Trial Tr. 75:6-25; 76; 77:1-4.

At the time of the asset purchase between these Parties, Don Lintal testified that Knight Systems, Inc.'s primary area of providing mortuary transportation was in Lexington and Richland Counties. Trial Tr. 104:12-15.[3] Mr. Lintal further testified that the intent and affect of including a non-compete agreement within a 150 mile radius from Lexington County was to prevent Defendants from competing against Palmetto Mortuary anywhere within the State of South Carolina. Trial Tr. 104:1-11. Although Knight Systems, Inc. was primarily a Midlands, South Carolina based business, Mr. Lintal attempted to justify the statewide restriction on competition by stating that:

> "Just because I didn't -- why was it important? Putting a geographic distance on it would have strengthened -- I didn't -- it wasn't to go against Mr. Knight in that regard. We didn't know where the business was actually going to -- what we were going to -- if we were going to try to expand it at different locations. We wanted to keep our options opened if it was doable, I guess. i mean, you know, the standard -- a standard contract -- I mean, he didn't have to accept it. We put it in there. He accepted it. So, I mean, the significance of it was that not only was there a duration of time, but we defined the territory, the boundary of which this applied . . . We did

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[1] The asset purchase actually included three on-going public contracts for mortuary transportation services on behalf of the Lexington County Coroner's Office and the Richland County Coroner's Office, as well as the University of South Carolina School of Medicine.

[2] Witness Don Lintal testifed that he did not even have a dollar amount in mind that should be paid for the non-compete agreement prior to arriving at the transaction closing on January 5, 2007. *See*, Trial Tr. 77:5-8.

[3] Buddy Knight also testified that Knight Systems, Inc. primarily provided body removal and transportation services only in Lexington and Richland Counties. Trial Tr. 193:19-25.

not know, but we did not want to limit our options if it was available to us. At the time it did not seem to be an issue on their part. I don't recall any objections to that."

See, Trial Tr. 104-106. Thus, although both sides agreed that the business interests purchased from Knight Systems were based primarily in Lexington and Richland Counties, the only justification offered by the Plaintiff for a statewide non-compete agreement was that Palmetto Mortuary might someday expand its operations into other parts of the State of South Carolina. *Id.*

Plaintiffs allege that the Defendants breached the Non-Competition Covenant by submitting a 2011 bid to provide body removal and transportation services to the Richland County Coroner's Office. During Don Lintal's testimony at the trial, the Plaintiff also alleged that the Defendants breached Section 3.4.8 of the Asset Purchase Agreement (Seller's Related Business), by removing Knight's patented odor-proof bags from the open market, thereby preventing Plaintiff from meeting an essential requirement of the Richland County Coroner's Office Request for Proposals. Trial Tr. 62:10-24; 63:10-12; 189:6-22.[4] Mrs. Lintal testified that the only way that Plaintiff could fulfill the requirements of the Richland County contract is to have access to purchase the odor-proof bags manufactured by Buddy Knight.[5] Trial Tr. 189:6-18. Thus, according to testimony offered on behalf of the Plaintiff, even in the absence of Defendants' bid on the Richland County contract, Plaintiff was not guaranteed that Palmetto Mortuary would have been awarded this public contract. *Id.* at 189:19-22.[6]

In contrast to Plaintiff's claims that Defendants breached the Non-Competition Covenant, Defendants allege that, prior Defendants bidding on the Richland County public contract, Plaintiff breached the provision in the Asset Purchase Agreement requiring that Plaintiff purchase all of its body bags from Knight's body bag manufacturing business. Section 3.4.8 of the Agreement provides, in its entirety, that:

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[4] Although Plaintiff contends that Section 3.4.8 unambiguously requires Defendants to sell Palmetto Mortuary odor-proof body bags, another provision in the Parties' non-compete agreement provides that "[n]otwithstanding the foregoing [in the Non-Competition Covenant], the Seller [Defendants] shall not be deemed to be in violation of any covenant contained herein as a result of Seller providing services to Buyer [Plaintiff] or Seller selling body bags through his related body bag business." Despite Plaintiff's proffered interpretation of Section 3.4.8, they admit that Plaintiff is not asking the Court to affirmatively enjoin Defendants and require that Knight provide Plaintiff with the patented odor-proof bags. Trial Tr. 190:7-11. Further, the Plaintiff did not pursue any perceived remedies against Knight between the time Plaintiff learned that Defendants would not provide open market access to the patented odor-proof bags and the time that Richland County awarded the body removal contract. Trial Tr. 74:11-24.

[5] Even though Plaintiff's pleadings allege that Defendants' breach of the Non-Competition Covenant caused them damages, Plaintiff failed to avail itself of any remedies under the Asset Purchase Agreement to mitigate those alleged damages, such as seeking an injunction against Defendants prior to Richland County's award of the contract. *See*, Trial Tr. 73:19-25; 74:1-24. A Plaintiff has a duty to mitigate damages. *See*, *Mid-Continent Refrigerator Co. v. Way*, 263 S.C. 101, 208 S.E.2d 31 (1974).

[6] Mrs. Lintal also testified that any damages claimed in this case are merely speculative given the fact that the Plaintiff could not be assured that they would be awarded the Richland County contract. Trial Tr. 186:14-23;187:8-21.

> Knight, through his related body bag business (the "Related Business"), shall provide to Buyer body bags at a discounted rate and buyer shall for the term of the non-compete agreement buy all of their body bags from the Seller. Below are the current charges for different types of body bags. The prices cited below shall not be increased by more than ten percent (10%) in any calendar year.
>
> | | |
> |---|---|
> | Heavy Duty body bags: | $20.00 |
> | Lightweight body bags: | $8.00 |
> | Odor-Proof body bags: | $50.00 |
> | Water-Retrieval body bags: | $30.00 |
>
> Prior to any transfer of the Related Business to a third party, Knight shall offer to sell the Related Business to Buyer at the same price and on the same terms as those offered with respect to the proposed transfer of the Related Business.

Plaintiff claims that Section 3.4.8 does not require that Plaintiff purchase any other category of body bags, such as infant body bags, not specifically listed in that section. Plaintiff alleges that the phrase "all of their body bags" should be construed by the Court as limited by the four expressly described categories of body bags. Trial Tr. 46:21-25.

Despite testimony by Don Lintal that he purchased approximately 31 infant body bags from a source other than Mr. Knight, Lintal offered conflicting testimony as to whether he knew that he could have purchased infant body bags from Mr. Knight, as required by Section 3.4.8 of the Agreement.[7] Trial Tr. 45:22 - 49:16.[8] During a secretly recorded conversation between Don Lintal and Buddy Knight, Lintal never states to Knight that Plaintiff believed that he was not required by the Agreement to purchase infant body bags from Knight. *See*, Defendants' Exhibit 1 (Audio recording). In fact, Lintal was also untruthful with Knight during that conversation by telling Knight that the infant bags were the only bags he had purchased from another body bag vendor, even though Plaintiff had at that time purchased other types of body bags from vendors other than Knight. *Id.*; *see also*, Trial Tr. 229:2-3.

Don Lintal testified at trial that he purchased body bags, other than infant body bags, from sources other than Knight's body bag manufacturing business. According to Lintal's testimony, Palmetto Mortuary also purchased six water-retrieval bags from Evident Crime Scene Products prior to Defendants submitting a bid on the Richland

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[7] According to testimony offered on behalf of Palmetto Mortuary, the Plaintiff purchased those infant body bags from Southland Medical Corporation on or about April 3, 2008 and April 9, 2008, approximately three years prior to Knight's submission of a bid on the Richland County Coroner's contract.

[8] At varying points in his testimony, Don Lintal testified that he knew that Knight had previously manufactured an infant body bag for Lexington County; that he knew there were infant body bags in the inventory purchased from Knight Systems; and that he didn't realize that Knight could manufacture an infant body bag. Trial Tr. 109:2-25; 110-116; 220:13-25; 221-226:1-2.

County public contract.[9] Trial Tr. 49:25-50:5; 50:24-51:23. Lintal testified that the total price paid for those water-retrieval bags was $270.00. *Id.* On or about July 14, 2010, the Plaintiff purchased four extra-large and six heavy duty body bags from a company called Medical Products Limited. Trial Tr. 52:2-11.[10] Palmetto Mortuary paid a total price of $280.00 for the ten body bags purchased from Medical Products Limited. Trial Tr. 53:21-54:1. These purchases, like the purchases from Southland Medical Corporation and Evident, occurred well before Knight submitted a bid on the Richland County public contract.

Following the taped conversation between Don Lintal and Buddy Knight, Lintal testified that he was fearful that Knight believed that Lintal had violated the Asset Purchase Agreement by purchasing body bags from sources other than Knight's business. Based upon Lintal's stated fear that Knight believed Palmetto Mortuary had breached the Asset Purchase Agreement, Lintal believed that Knight might bid on the Richland County Coroner's request for proposals.[11] Following the June 16, 2011 taped conversation between Don Lintal and Knight, Lintal testified that he had an "inclination" that Knight was going to submit a bid for the Richland County contract. Trial Tr. 72:1-12. As to whether Knight had indicated to Lintal on June 16, 2011 that Palmetto Mortuary had breached the Agreement, Lintal stated that "I don't believe it was -- the terminology was breached. It might have been it broke my agreement. But in effect, yes, it was the same inference." *Id.* at 72:13-20. Lintal also stated at trial that, following that conversation with Knight, Lintal went home and told his wife that he was "quite confident" that Knight would bid on the Richland County contract. *Id.* at 73:12-23.

Ellen Lintal's trial testimony corroborated her husband's fear that Knight would bid on the Richland County contract because Plaintiff had breached the Asset Purchase Agreement. Trial Tr. 170:5-13. Ellen Lintal stated that Don Lintal was concerned that Knight would bid on the public contract because Knight believed Lintal had breached the Agreement. *Id.* at 170:14-22. Ellen Lintal further testified that although the couple believed that Knight considered Palmetto Mortuary in breach of the agreement, neither Lintal had any subsequent conversation with Knight about whether there was, in fact, a breach of the Asset Purchase Agreement or with Knight to try to reach a resolution of this potential dispute between the Parties. *Id.* at 171:2-14. Plaintiff's actions in response to the belief that Knight would bid on a major portion of Palmetto Mortuary's business, in supposed violation of the Non-Competition Covenant, is inconsistent with the Lintals' assertions that Plaintiff did not breach the Asset Purchase Agreement.

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[9] Plaintiff's Exhibit 4 states that Palmetto Mortuary purchased the six water retrieval bags from Evident on or about March 6, 2009.

[10] Lintal testified that he believed that Plaintiff was not required to purchase the extra-large body bags from Knight because those bags, like the infant body bags, are not expressly listed in the Asset Purchase Agreement. *Id.* at 52.

[11] Ironically, despite Lintal's proclaimed fear about what Knight might do in regard to Lintal's breach of the Agreement, he never spoke with Knight about his belief that the purchase of certain categories of body bags is not required by the Asset Purchase Agreement; never spoke with Palmetto Mortuary's attorney about whether there might have been a breach of the Agreement; and never sought a civil injunction against Knight after he learned of Knight's bid, but before Richland County awarded the public contract.

FOLLOWING PLAINTIFF'S BREACH OF THE ASSET PURCHASE AGREEMENT, BY PURCHASING BODY BAGS FROM SOURCES OTHER THAN KNIGHT'S RELATED BODY BAG MANUFACTURING BUSINESS, THE CLEAR AND UNAMBIGUOUS LANGUAGE OF THE TERMINATION CLAUSE CONTAINED IN THE NON-COMPETITION COVENANT ALLOWED KNIGHT TO BID ON THE RICHLAND COUNTY CONTRACT.

The central issue before this Court is whether Plaintiff or Defendants breached the contractual agreement between the Parties. In this case, the Court must apply well established rules of contractual construction or interpretation to Section 3.4.8 of the Asset Purchase Agreement and to the Termination Clause set forth in the Non-Competition Covenant. When an action raises a question as to the construction of a written contract, South Carolina law provides that the court's duty is limited to the interpretation of a contract made by the parties, regardless of its wisdom or folly, apparent unreasonableness, or failure of the parties to guard their interests carefully. *See e.g., Builders Mut. Ins. Co. v. OakTree Homes, Inc.*, 867 F.Supp.2d 800 (D.S.C. 2012). South Carolina follows an objective contract interpretation rule, meaning that if the language of a contract is patently plain and reasonably capable of legal construction, then such contractual language determines the force and effect of the instrument. *Catawba Indian Tribe of South Carolina v. City of Rock Hill*, S.C., 501 F.3d 368 (4th Cir. 2007).

When interpreting the language of a contract, the court must give such language its usual meaning and the words used therein must be taken and understood in their plain, ordinary and popular sense. *F.D.I.C. v. Prince George Corp.*, 58 F.3d 1041 (4th Cir. 1995) (applying South Carolina contract law); *Dean v. American Fire & Cas. Co.*, 249 S.C. 39, 152 S.E.2d 247 (1967); *Friarsgate,Inc. v. First Federal Sav. and Loan Ass'n of South Carolina*, 317 S.C. 452, 454 S.E.2d 901 (Ct. App. 1995), *reh'g denied* (Mar. 16, 1995). Courts have no authority to alter an unambiguous contract by construction or to make new contracts for the parties. *U.S. Bank Trust Nat. Ass'n v. Bell*, 684 S.E.2d 199 (Ct. App. 2009). Courts only have the authority to specifically enforce contracts that the parties themselves have made and, therefore, they do not have the authority to alter contracts or to make new contracts for the parties. *Lowcountry Open Land Trust v. Charleston Southern University*, 656 S.E.2d 775 (Ct. App. 2008) (court cannot impose unwanted obligations and terms under the guise of specific performance or judicial construction); *see also, Davis v. Davis*, 372 S.C. 64, 641 S.E.2d 446 (Ct. App. 2006) (in enforcement of an agreement or contract, court does not have the authority to modify terms that are clear and unambiguous on their face).

In interpreting the language of a contract, if the language is plain and capable of legal construction, then the language set forth in the agreement alone determines the instrument's force and effect. *See e.g., Jordan v. Security Group, Inc.*, 311 S.C. 227, 428 S.E.2d 705 (1993); *State v. Gates*, 299 S.C. 92, 382 S.E.2d 886 (1989). Thus, when construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or otherwise stated, the intent and meaning of the contract is gathered from the four corners of the instrument. *State Acc. Fund v. South Carolina Second Injury Fund*, 693 S.E.2d 441 (Ct. App. 2010). When such contract is clear and unequivocal, its meaning

must be determined by its contents alone and the court cannot supply a meaning different than that expressed in the agreement. *Id.* In fact, it is the duty of the court to enforce the plain language of a contract. *Donahue v. Multimedia, Inc.*, 362 S.C. 331, 608 S.E.2d 162 (Ct. App. 2005); *see also*, *Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001) (to discover the intention of a contract, one must first look to its language and if it is plain and capable of legal construction, then it alone determines the document's force and effect).

Only if a contract is deemed ambiguous does a court try to ascertain the intention of the parties from extrinsic or parol evidence.[12] *See e.g.*, *Middleton v. Eubank*, 388 S.C. 8, 694 S.E.2d 31 (Ct. App. 2010). An ambiguous contract is one capable of being understood in more ways than one, or is obscure in meaning through indefiniteness of expression, or having a double meaning. *Keefer v. Keefer*, 394 S.C. 329, 715 S.E.2d 379 (Ct. App. 2011); *Stevens Aviation, Inc. v. DynCorp Intern. LLC*, 394 S.C. 300, 715 S.E.2d 655 (Ct. App. 2011). A contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated writing and who is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business. *Laser Supply and Services, Inc., supra.*[13]

In the case before this Court, the language of the contract between Plaintiff and Defendants clearly requires that Palmetto Mortuary purchase **all** of its body bags from Knight's body bag manufacturing business. See, Section 3.4.8 of the Agreement. The contract expressly obligates Palmetto Mortuary, "for the term of the non-compete agreement [to] **buy all their body bags from the Seller**. *Id.* (emphasis added). That particular provision of the Agreement does further state that "[b]elow are current charges for different types of body bags." *Id.* However, that sentence is merely exemplary of different types of body bags that Plaintiff might purchase, but not exhaustive of all types of body bags that Palmetto Mortuary might use or that Knight could manufacture or provide.[14]

The contract language requiring that Plaintiff purchase "all" of their body bags from Knight is plain, unequivocal and capable of only one meaning. The word "all" is defined as meaning "the whole of," "every one of," "wholly," "completely," "entirely," "everything," "the whole amount, quantity, or extent of." Webster's Dictionary and Thesaurus (2002). "The word 'all,' standing alone, means exactly what it imports; that is, nothing less than all." *Knox Jewelry Co., Inc. v. Cincinnati Insurance Co.*, 203 S.E.2d 739, 741 (Ga. 1974). "[T]he word 'all' needs no definition; it includes everything, and excludes nothing. There is no more comprehensive word in the language . . . ."

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[12] Whether an ambiguity exists in the language of a contract is a question of law. *Laser Supply and Services, Inc. v. Orchard Park Associates*, 676 S.E.2d 139 (Ct. App. 2009).

[13] In determining as a matter of law whether a contract is ambiguous, a court must consider the contract as a whole, rather than deciding whether certain isolated phrases could be interpreted in various ways and, further, an ambiguity may not be created by pointing to a single sentence or clause in the agreement. *Buice v. WMA Securities, Inc.*, 668 S.E.2d 430 (Ct. App. 2008).

[14] *See e.g.*, Trial Tr. 220:18-25 (Knight explaining that he manufactures bags and can make any type of body bag.

Cannon v. Bresch, 160 A. 595, 596 (Pa. 1932). The word "all" is not in anyway limited, qualified, or reduced by the succeeding sentence which describes "current charges for different types of body bags." *See*, Section 3.4.8 of the Agreement (Plaintiff's Exhibit 1).[15]

Plaintiff's assertion that the sentence setting forth examples of "charges for different types of body bags" excluded infant bags and extra-large body bags from Section 3.4.8's exclusive purchase requirement is without merit and contrary to a plain and ordinary usage of the word "all."[16] The Court's interpretation of that provision of the Agreement is not only supported by the plain and ordinary meaning of the word "all," but rather it is also supported by the Plaintiff's knowledge of the fact that Knight actually manufactured body bags, as opposed to merely being a wholesale provider of body bags. In fact, Plaintiff included a right of first refusal in the Agreement granting Plaintiff the right to purchase Knight's body bag manufacturing business in the event Knight ever offered to sell that business. *See*, Section 3.4.8 of the Agreement (Knight was required to offer to sell the body bag manufacturing business to Plaintiff at the same price and terms as those offered to any third party). Therefore, this Court must construe Section 3.4.8 as requiring Plaintiff to purchase, without limitation, any and all body bags from Knight, including infant and extra-large body bags.

Regardless of whether the infant and extra-large body bags are included within the exclusive purchase requirement set forth in Section 3.4.8, Plaintiff concedes that it purchased categories of bags specifically listed in that section, including water-retrieval and heavy-duty body bags. *See e.g.*, Trial Tr. 49:25 - 50:5; 50:24 - 51:23; and 52:2-11. However, Plaintiff argues that its admitted breaches of the Asset Purchase Agreement were not "material" breaches of the Agreement.[17] Ordinarily, a nonperforming party is liable for breach of contract, excusing the other party from further performance, only when there is a material breach of the contract. *See*, Williston on Contracts, § 63:3, *citing*, *In re Krueger*, 192 F.3d 733 (7th Cir. 1999). "Otherwise stated, a nonperforming party is liable for any breach of contract, but the other party is discharged from further

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[15] At best, the only logical interpretation of that sentence is to assume that "different types of body bags" means "some types of body bags." The ordinary meaning of the word "some" is "of a certain unspecified quantity," "being unknown, undetermined, or unspecified unit or thing," "being at least one of a subclass." Webster's Dictionary and Thesaurus (2002). "The word 'some' by definition is 'indefinite' and 'indeterminate.'" *State v. Lerch*, 677 P.2d 678, 690 (Or. 1984), *citing*, Webster's New Third International Dictionary (Unabridged 1971). "'Some' is a word that refers to an unspecified quantity or quality. It is a word that diminishes precision, not adds to it." *Yazd v. Woodside Homes Corp.*, 143 P.3d 282, 289 (Utah 2006); *see also*, *State v. Gambling Device*, 859 S.W.2d 519, 523 (Tx. 1993) (*citing*, Webster's Dictionary and explaining that "some" means being of an unspecified quantity).

[16] Further, to the extent that Plaintiff argues that the phrase "[b]elow are current charges for different types of body bags" creates an ambiguity as to the word "all," in Section 3.4.8, that ambiguity must be construed against the Plaintiff and in favor of Defendants' interpretation of the section. *See*, *Mathis v. Brown*, 698 S.E.2d 773 (S.C. 2010).

[17] Plaintiff propounded testimony comparing the total amount of money paid for body bags purchased from Knight with the total amount paid for the purchase of body bags from other vendors. *See*, Trial Tr. 49:21 - 50; 52:4-23; 56:10-20 (approximately $45,000.00 versus slightly less than $900.00). Even excluding the disputed purchases of infant and extra-large body bags, Plaintiff admits to spending nearly $500.00 on body bags from sources other than Knight.

performance, and is entitled to substantial damages only when there is a material breach." *Id.* "[I]f a breach is relatively minor and not of essence, the [non-breaching party] is still bound by the contract and may not abandon performance . . . ." *Id.* However, in this case, the Court finds that the Plaintiff's argument is erroneous and, therefore, Palmetto Mortuary's breach of the Asset Purchase Agreement is a material breach of Section 3.4.8 and is also express grounds for Knight to revoke the Non-Competition Covenant.

First, Plaintiff's purchases of body bags from Evident, Medical Products Limited and Southland Medical Corporation constituted a material breach of the terms of the Asset Purchase Agreement.[18] "[C]ourts have come up with numerous ways of speaking about 'material' breaches of contract." Williston on Contracts, *supra.* "A breach is 'material' if a party fails to perform a substantial part of the contract or one or more of its essential terms or conditions, breach substantially defeats the contract's purpose, or the breach is such that up a reasonable interpretation of the contract, the parties considered the breach as vital to the existence of the contract." *Id.* "The standard for determining materiality must necessarily be both imprecise and flexible to further the purpose of securing for each party his or her expectation of an exchange of performances." *Id.* "[P]roof of a specific amount of monetary damages is not required when the evidence establishes that the breach was so central to the parties' agreement that it defeated the essential purpose of the contract." *Id.*

The Plaintiff attempts to minimize the materiality of its breach by arguing that the amounts paid to other vendors for body bags is insignificant compared to the dollar amount of purchases from Knight's body bag manufacturing business. Plaintiff's argument erroneously fails to account for whether Palmetto Mortuary breached an essential term or condition of the Asset Purchase Agreement, rather than the repetitiveness of its breaches. The Parties clearly considered the exclusive purchase provision of the Agreement to be a vital part of the contract by including it as an expressly required "Transaction Subsequent to Closing." Plaintiff's Exhibit 1, Section 3.4. In *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009), the South Carolina Supreme Court held that it is improper to focus merely on the dollar amount involved in the breach, rather than the essential nature of the term or condition actually breached.

In *Brazell*, vendors sued a purchaser for breach of contract and requested rescission of their contract for the purchase and sale of a house. The *Brazell* parties entered into a sales contract for the purchase of a home on Edisto Island. *Id.* at 514. The total purchase price of the home was $550,000 and, after satisfying liens on the property, the petitioners were to receive a total of $327,818.54 from the sale of the house. *Id.* The purchasers notified that petitioners that the reverse osmosis water filtration system at the house did not work and forwarded a check to petitioners for the net proceeds of the sale, minus $2,000.00 for the water system. Petitioners refused to

[18] The question of whether a breach of the contract is material is usually a question of fact for the fact finder. *Id.* Further, the "party who first commits a material breach cannot enforce the contract." *Id.*

accept the check and filed suit alleging breach of contract.[19] The trial court held that the complaint that the purchasers had withheld $2,000 from the contract price was a minor breach of the $550,000.00 sales contract. *Id.* at 827. "Similarly, the court of appeals held that the remedy of rescission was not available because the alleged breach was not fundamental or substantial enough to defeat the purpose of the contract." *Id.*

Reversing the lower courts, the South Carolina Supreme Court found a material breach of the sales contract. The Supreme Court stated that, [i]n our view, the trial court's and court of appeal's error stems from focusing on the dollar amount withheld in determining whether [purchaser's] actions defeated the purpose of the contract and the objective of the contracting parties." *Brazell*, supra at 827.[20] The Supreme Court held that "the overriding purpose of the contract was not merely to receive proceeds from the sale of a home, but rather to finalize a real estate transaction and transfer title from the vendors to the purchasers. *Id.* The Court further observed that the respondent "could have negotiated for provisions in the contract regarding the reverse osmosis system or could have sought relief by filing her own breach of contract action." *Id.*

As in *Brazell*, it would be wrong for this Court to focus on the dollar amounts paid to purchase body bags from sources other than Knight, rather than to properly focus on whether the exclusive purchase provision of Section 3.4.8 of the Agreement is an essential term or condition of the Agreement. These parties negotiated and executed a contract expressly requiring Palmetto Mortuary to purchase "all of their body bags" from Knight's related body bag business. "It has been said that the best indication of the true intent of the parties as to the materiality of a breach is their treatment of it." 23 Williston on Contracts § 63:3, *citing*, *Panhandle Rehabilitation Center, Inc. v. Larson*, 288 N.W.2d 743 (1980). Don and Ellen Lintal clearly treated Palmetto Mortuary's breach of Section 3.4.8 as a serious and material breach.

Both witnesses testified that following the June 16, 2011 conversation between Don Lintal and Buddy Knight, Don and Ellen Lintal discussed their belief or fear that Knight would bid on the Richland County Coroner's contract as a direct result of Plaintiff's breach of Section 3.4.8. *See*, Trial Tr. 72:1-12. Ellen Lintal even testified, contrary to her husband, that Plaintiff contacted an attorney concerning the fear that Mr. Knight was going to begin competing again in the body transportation business, after the issue was raised on June 16, 2011 as to whether Plaintiff had breached the Agreement. Trial Tr. 171:2-23. The Lintals' comments and actions, following the June 16, 2011 conversation with Knight, most certainly indicate that these Parties considered Section 3.4.8 to be an essential, important, and material term of the Agreement. As in Brazell, despite their fear that Palmetto Mortuary might have breached the Agreement; that Knight might compete against them for a substantial part of Plaintiff's business; and that they consulted an attorney about their non-compete agreement with Knight; Don

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[19] Unlike this case, the petitioner in *Brazell* also sought rescission of the entire contract. "[W]hether it would be fair and equitable to rescind [a] contract is a different issue from whether [a party has] sufficiently alleged a material breach of contract and sufficiently alleged that rescission would allow them to be restored to the status quo." *Brazell*, *supra* at 828.

[20] The Supreme Court commented that "the trial court noted that Respondent paid 99.6% of the contract price and withheld only .04%. The court found that Petitioners' complaint was 'over a minor .04%'" *Id.* at 827 n.1.

and Ellen Lintal failed to initiate their breach of contract action against Knight until after Knight was awarded the Richland County public contract. *See e.g.*, *Brazell*, 682 S.E.2d at 827.

The second reason that this Court is constrained to find that Plaintiff's breach of Section 3.4.8 of the Agreement requires ruling in favor of the Defendants is that the Non-Competition Covenant contains a Termination Clause. The termination provision, as expressly stated in the non-compete agreement, provides that in the event that Plaintiff breaches Section 3.4.8 of the Asset Purchase Agreement, then Mr. Knight may be relieved from the terms of the non-compete. Specifically the Termination Clause of the Non-Competition Covenant provides as follows: "Breach of the Purchase Agreement. Notwithstanding anything contained herein to the contrary, a breach by Buyer of the Purchase Agreement or such other documents ancillary thereto, shall constitute a breach of this Agreement and shall release Seller from any and all restrictions hereunder." *See*, p. 3 of Exhibit 3.2.6 of the Asset Purchase Agreement, admitted as Plaintiff's Exhibit 1. Thus, pursuant to the Termination Clause, any breach of the Asset Purchase Agreement, by Palmetto Mortuary, completely releases Knight from the terms of the non-compete agreement.

"Explicit termination clauses are common in many different categories of commercial contracts, including employment agreements, service contracts, merger and acquisition agreements, loans, and franchise and distributorship arrangements." Anticipating Litigation In Contract Design, 115 Yale L.J. 814, 873 (Jan. 2006). "Under the common law of contracts, material breach entitles the nonbreaching party to withhold performance and seek damages for breach. One reason for explicit termination clauses is to provide for the conditions that trigger termination, rather than relying on the common law requirements for material breach." *Id.* at 874.[21] In the absence of a termination clause, a party may ordinarily terminate a contract only in the event of a material breach. *See*, 33 New York Construction Law Manual § 4:2 (2d ed.)

In *Tricat Industries, Inc. v. Harper*, 748 A.2d 48 (Md. 2000), the Maryland Court of Special Appeals described the nature of termination clauses. The Maryland court explained that "unless a contract provision for termination for breach is in terms exclusive, it is a cumulative remedy and does not bar the ordinary remedy of termination for a 'breach which is material, or which goes to the root of the matter or essence of the contract.'" *Id.* at 61 (citations omitted). Under the express provisions of a termination clause, the *Tricat* court noted that a contract may be terminated for a breach of an obligation which did not amount to a material breach of that agreement. *Id.* Thus, the very existence of a termination clause in a contract eliminates the necessity for a court to determine whether a breach of a term or condition of the contract is material, thereby giving rise to the right of a party to terminate the contract.

In the case of *In re Hawker Beechcraft, Inc.*, 486 B.R. 264 (S.D.N.Y 2013), the United States Bankruptcy Court discussed a termination clause in a matter involving an

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[21] Parties may enter into any contracts that they deem fit, including, for example, contracts providing for termination of the agreement for reasons other than the common law material breach. *See e.g.*, *Philadelphia Storage Battery Co. v. Mutual Tire Stores*, 161 S.C. 487, 159 S.E. 825 (1931). "[P]ersons may enter into whatever contracts they see fit, which are not illegal, immoral, or against public policy." *Id.* at 826 (upholding contractually agreed upon termination provision).

aircraft manufacturing, sales and servicing company and certain purchase agreements. The bankruptcy court discussed, in part, whether there was a breach of a provision in certain aircraft purchase agreements. The court noted that "[o]rdinarily, the materiality of the [breached] promises would be a question of fact requiring a trial." *Id.* at 278, *citing*, *Almena State Bank v. Enfield*, 954 P.2d 724, 727-28 (Kan. 1998). "However, if the parties contractually agree that some or all of the terms are sufficiently important to discharge any further obligations imposed on the party aggrieved by a breach, their intent will govern." *Id.*, *supra*, *citing*, *Gen. Datacomm Indus., Inc. v. Arcara*, 407 F.3d 616, 623-24 (3rd. Cir. 2005) (provision in Benefit Plan that allowed corporation to terminate the employee's rights if he failed to comply with certain covenants, including the agreement not to compete and to maintain confidentiality, rendered those covenants material)[22]; *Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp.*, 495 A.2d 66, 75 (N.J. 1985) (enforcing provision in franchise agreement that rendered underreporting of sales a material breach of contract that allowed franchisor to terminate franchise and sue for damages); 23 Richard A. Lord, Williston on Contracts § 63:3 (4th ed. 2002) ("Where the contract itself is clear in making a certain event a material breach of that contract, a court must ordinarily respect that contractual provision."); *cf. Dexter v. Brake*, 269 P.3d 846, 856 (Kan. 2012) ("The doctrine of substantial performance does not apply where the parties, by the terms of their agreement, make it clear that only complete performance will be satisfactory.").

Palmetto Mortuary and the Defendants included a specific termination clause in the Non-Competition Covenant. The termination provision expressly provides that any breach of the Asset Purchase Agreement, by Palmetto Mortuary, releases Knight from the restrictions imposed by the non-compete agreement. *See*, p. 3 of the Non-Competition Covenant, admitted as Plaintiff's Exhibit 1.[23] Don and Ellen Lintal's fears that Knight would compete for the Richland County Coroner's contract, following Don Lintal's June 16, 2011 conversation with Buddy Knight, is consistent with the Lintals' knowledge that the termination clause allowed Knight to terminate the non-compete. The recorded conversation between Lintal and Knight included statements by Lintal indicating that he was concerned that Knight would see Palmetto Mortuary's purchases of infant body bags as a breach of the Asset Purchase Agreement. *See*, Trial Tr. 221 -225.[24] During the same conversation, Lintal was affirmatively untruthful with Knight, by denying that Plaintiff had purchased any bags, other than the infant body bags, from other vendors. Trial Tr. 223:4-9; 221 - 225. Don Lintal also discussed with his wife, and later their attorney, the issue of whether Knight's belief that Plaintiff had breached the

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[22] Even though the termination clause at issue in the case of *In re General DataComm* did not use the term "material," the court held that "[b]y contractual definition . . . such obligations are material." *In re General DataComm Industries, Inc.*, *supra*, at 624, *citing*, 23 Williston on Contracts § 63:3 (4th ed.) (when the contract itself is clear in making a certain event a material breach of the contract, a court must ordinarily respect that contractual termination provision).

[23] *See e.g.*, *Jespersen v. Minnesota Mining and Manuf. Co.*, 700 N.E.2d 1014 (Ill. 1998) (termination events listed in a termination clause or provision of a contract are themselves inherent instances of material breach and any contract is terminable upon occurrence of a material breach).

[24] Lintal never stated or indicated in any way during that conversation with Knight that Lintal did not believe that Plaintiff was required to purchase the infant bags under the terms of the Agreement.

Asset Purchase Agreement would be grounds for Knight to bid on the Richland County public contract.

The Plaintiff's behavior, coupled with the express language of the termination clause of the non-compete, requires this Court to uphold Defendants' right to terminate the Non-Competition Covenant.[25] These Parties' termination clause, as expressed in the Non-Competition Covenant, "should be examined to determine whether the clause makes termination automatic upon the occurrence of an event specified in the clause or merely gives a party the right to terminate upon occurrence." *See*, 28 N.Y.Prac., Contract Law § 13:1, *citing*, *In re Velo Holdings, Inc.*, 475 B.R. 367, 382-83 (S.D.N.Y. 2012). "When a contract provides it can be terminated upon occurrence of specified events, termination after such an event is proper even though the terminating party did not know of the event's occurrence." 28 N.Y.Prac., *supra.*, *citing*, *Arbor Leasing, LLC v. BTMU Capital Corp.*, 68 A.D.3d 580 (N.Y. 2009).

Therefore, as described herein above, Mr. Knight had an absolute right, pursuant to the termination clause of the Non-Competition Covenant, to terminate the non-compete at any time after Plaintiff breached the Asset Purchase Agreement by purchasing any body bags from sources other than Knight's business, regardless of the number of purchases or the amount of bags bought by Plaintiff.[26] Further, the purchase of the body bags by Plaintiff, from vendors other than Knight, constituted a material breach of the Asset Purchase Agreement. The material breach of the Agreement by Plaintiff and the unambiguous terms of the termination clause require this Court to find in favor of the Defendants and deny Plaintiff's cause of actions raising breach of contract.

APPLICATION OF THE NON-COMPETITION COVENANT TO PROHIBIT KNIGHT FROM SUBMITTING A BID ON THE RICHLAND COUNTY CORONER'S CONTRACT FOR BODY TRANSPORTATION SERVICES WOULD CREATE AN UNENFORCEABLE AND VOID AGREEMENT THAT IS VIOLATIVE OF PUBLIC POLICY.

Although the issue has not been directly addressed by South Carolina courts, many other jurisdictions have held that agreements restricting competition, even noncompete agreements, between potential competitors for public contracts are invalid

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[25] One party to a contract may end it if the contract itself so provides. 28 N.Y.Prac., Contract Law § 13:1. If the language of a termination clause contained in an agreement is unambiguous, the court must enforce it as written. *Id.*, *citing*, *Robert J. McRell Associates, Inc. v. Insurance Co. of North America*, 677 F.Supp. 721, 728 (S.D.N.Y. 1987). "When the parties assent to a right of termination at the time they enter into a contract, there is no reason that justifies a court's alteration of the clear provisions of the parties' agreement. *Id.*, *citing*, *A.S. Rampell, Inc. v. Hyster Co.*, 144 N.E.2d 371 (N.Y. 1957).

[26] The clear words of the termination clause at issue in this case omitted the requirement that Plaintiff's breach of the Asset Purchase Agreement had to be a "material breach" prior to granting Knight the right to terminate the non-compete. This Court has no obligation or right to insert a materiality requirement to the terminating event when these Parties themselves failed to included such a requirement. *See*, *Ebert v. Ebert*, 320 S.C. 331, 465 S.E.2d 121 (Ct.App. 1995), *cert denied*, Oct. 17, 1996 (court will not supply omitted terms to an agreement between contracting parties).

and void as against public policy.[27] Those courts have held that agreements not to compete with another in making bids or other agreements having a direct tendency to prevent bidding or competition for public contracts are against public policy. *See e.g.*, 17A C.J.S. Contracts § 300, *citing*, *Board of Ed. of Floyd County v. Hall*, 353 S.W.2d 194 (Ky. 1962); *Application of Caristo Const. Corp.*, 30 Misc.2d 185 (N.Y. 1961); *Borden v. Ellis*, 44 A.2d 530 (Pa. 1945); *Wade v. Ingram*, 528 F.Supp. 495 (E.D.Ar. 1981); *City of Oakland v. California Const. Co.*, 104 P.2d 30 (1940); *Uvalde Const. Co. v. Shannon*, 165 S.W.2d 512 (Tx. 1942). Courts have ruled that whether or not the public has received any actual injury by reason of the anti-competition contract or agreement will not relieve the contract of its illegality. *See*, *Finley Method Co. v. Standard Asphalt Co. of Fla.*, 139 So. 795 (1932); *Pyle v. Kernan*, 36 P.2d 580 (Or. 1934); *Borden v. Ellis*, 44 A.2d 530 (Pa. 1945). While South Carolina has not directly addressed the issue of non-compete, and other anti-competition, agreements as restricting bidding on public contracts, South Carolina courts have held that contracts violating public policy are illegal and unenforceable.[28]

In the case of *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (2000), the South Carolina Court of Appeals discussed, in an analogous case, the importance of a public policy upholding free and open competition for public contracts. Sloan brought a challenge to certain contracts entered into by a local school district and sought a declaration that those contracts were *ultra vires* to the District's procurement code, were invalid, and were illegal. *Sloan*, *supra*. The *Sloan* court noted that, although the local school district had adopted its own procurement code, "the [South Carolina] General Assembly's intent is relevant when examining the public policy of competitive sealed bidding in the award of public contracts. *Sloan*, 537 S.E.2d at 303. "The expenditure of public funds pursuant to a competitive bidding statute is of immense public importance." *Id.* Further, the Court of Appeals held that competitive bidding for public contracts is so important "that in some states 'once a contract is proved to have been awarded without the required competitive bidding, a waste of public funds [is] presumed . . . without showing that the municipality suffered any injury.'" *Id.* at 303-04, *citing*, 18 Eugene McQuillin, The Law of Municipal Corporations § 52.26

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[27] "Agreements designed to suppress bidding and competition in the letting of public contracts, such as agreements not to compete with another in making bids, to withdraw a bid for a public or quasi-public contract, or to share in the result or profits, are against public policy and void." 12 Ill. Law and Prac. Contracts § 107, *citing*, *Premier Elec. Const. Co. v. Miller-Davis Co.*, 291 F.Supp. 295 (N.D.Ill. 1968); *Conway v. Garden City Paving & Post Co.*, 60 N.E. 82 (Ill. 1901).

[28] "Whether a contract is against public policy or is otherwise illegal or unenforceable is generally a question of law for the court." *Milliken & Co. v. Morin*, 399 S.C. 23, 731 S.E.2d 288, 291 (2012). South Carolina law is well established that a contract "which is contrary to public policy, is void, and cannot be enforced in a court of justice." *Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 288 (2012), C.J. Toal *concurring in part* (citations omitted).

(3d ed. 1993); *see also*, 5 Sandra M. Stevenson, Antieau on Local Government Law § 73.04 (2d ed. 1999).[29]

Courts have long held that agreements or covenants not to compete in bidding for public contracts are void and unenforceable as violative of the public interest in competitive bidding. In *Spokane Sav. & Loan Soc. v. Park Vista Imp. Co.*, 294 P. 1028 (Wa. 1930), the Supreme Court of Washington held that any agreement to "chill or suppress bidding is void." *Id.* at 1036. "The authorities clearly recognize the principle that where an agreement, without regard to its form, is made for the purpose of preventing free and fair competition, or of stifling or chilling bids at public sales or in the letting of contracts by the government, or for the purpose of giving undue advantage to either of the parties thus engaged in dealing with reference to the biddings, it is contrary to public policy and void." *Id.*; *see also, Heid Bros. v. Riesto*, 281 S.W. 638 (Tx. 1926) (agreement stifling competition on government contracts is violative of state anti-trust statutes and contrary to public policy).

In *Richmond Co., Inc. v. Rock-A-Way, Inc.*, 404 So.2d 121 (Fla. 1981), the courts explained the nature of the harm to the public interest and why such collusive agreements restricting bidding on public contracts are void as a matter of law. The *Rock-A-Way* court noted that:

> "The principal contracts involved in this case were subject to the competitive bidding statutes. The rule is well settled in the United States that all agreements, whether principal or subsidiary in character, which, in their necessary operation upon the action of contractors engaged in bidding for public work, tend to restrain the natural rivalry and competition of the parties, and thus produce a result disadvantageous to the public, are against public policy and void. What the public has to be on guard against in the violation of such salutary statutes as these is not the violation direct, but the violation oblique; not the frank disregard of what the statues in terms require, but the suave and insidiously evasive arrangements which, operating in secret understandings between contractors and their privies, tend to produce an effect as harmful in result as the most direct misconduct or malfeasance."

Id. at 122-23. Therefore, this Court must find that the Non-Competition Covenant between Palmetto Mortuary and the Defendants, as applied to the Richland County Coroner's contract for body transportation services, is void and unenforceable on the grounds of the important public policy interest in competitive bidding on public contracts. *See e.g., City Nat. Bank of Corpus Christi v. City of Corpus Christi*, 233 S.W. 375 (Tx. 1921) (rule of law is settled that arrangements among prospective bidders, for government contracts, to prevent competition among themselves are contrary to public policy and void); *Kimball Elevator Co., Inc. v. Elevator Supplies Co., Inc.*, 272 P.2d 583 (Utah 1954); *Premier Electrical Const. Co. v. Miller-Davis Co.*, 291 F.Supp. 295 (N.D. Ill.

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[29] In ruling that Sloan had standing as a taxpayer to challenge the local contracts, the South Carolina Court of Appeals also held that "we find the issues involved 'are of such wide concern' that this declaratory judgment action should be decided for future guidance in the expenditure of public funds pursuant to competitive sealed bidding requirements." *Sloan*, 537 S.E.2d at 304.

1968); *Conway v. Garden City Paving & Post Co.*, 190 Ill. 89 (1901); *Re Salmon*, 145 Fed. 649 (D.C. 1906) (there is a uniform and inflexible rule of law that all combinations which would stifle competition as applied to bidding on public contracts are "immoral, vicious, and void."). Even if the Court could find that the non-compete agreement between Palmetto Mortuary and Knight is valid as to restricting competition for private sector business, the Court is bound by long-standing precedent, holding that such agreement to prevent bidding on a public contract is violative of South Carolina public policy, and, therefore, is unenforceable as applied to the Richland County public contract.

THE NON-COMPETITION COVENANT, AT ISSUE IN THIS CASE, IS VOID AND UNENFORCEABLE BECAUSE THERE WAS NO ADEQUATE AND INDEPENDENT CONSIDERATION FOR THE NONCOMPETE AGREEMENT, AS WELL AS BECAUSE THE GEOGRAPHIC RESTRICTION OF THE NONCOMPETE IS TOO BROAD AND NOT DESIGNED TO PROTECT A LEGITIMATE BUSINESS INTEREST OF PALMETTO MORTUARY.

The Non-Competition Covenant between these Parties is for a term of ten years and for a radius of 150 miles from Lexington County. *See*, Plaintiff's Exhibit 1. The consideration purportedly paid by Palmetto Mortuary for the non-compete agreement is described in the contractual documents as $1,000.00. *See*, Exhibit 2.3 attached to Plaintiff's Exhibit 1. However, this Court finds the consideration "paid" for the Non-Competition Covenant to have actually been a part of the original agreed upon purchase price for the assets of Knight Systems, Inc. and not an adequate, independent compensation paid by the Plaintiff. Further, the Court finds that the 150 mile radius of the geographic restriction is effectively a statewide ban on Knight competing against Plaintiff, even though all witnesses testified that the primary business area of Knight Systems, at the time of the asset sale, was Lexington and Richland Counties.

Initially, it should be noted that in South Carolina, covenants not to compete are generally disfavored and are should be critically examined by courts. *See e.g.*, 18 S.C. Jur. Monopolies § 9. "As a general rule, such covenants are given greater deference in the context of a sale of business than in the employment context." *Hagemeyer North America Inc. v. Thompson*, 2006 WL 516733 (D.S.C. 2006). Nonetheless, even a restrictive covenant not to compete, which is ancillary to the sale of a business, will be upheld only if it is supported by a valuable consideration; is reasonably limited as to time; and if it is reasonably restricted as to the place of territory, "that is, where the time is not more extended or the territory more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344, 346 (1958).

The Non-Competition Covenant between Palmetto Mortuary and Knight is not supported by adequate and independent consideration. Ordinarily, a "covenant not to compete contained in an addendum to a contract of sale is an independent agreement that must be supported by independent consideration." *See*, 54A Am.Jur.2d, Monopolies and Restraints of Trade § 854. In *Newman v. Sablosky*, 407 A.2d 448 (Pa. 1979), a Pennsylvania court considered whether adequate consideration existed for a covenant not to compete, which was executed separate from the contract purchasing a medical practice. In finding that the noncompete agreement was an independent

agreement that must be supported by independent consideration, the court noted that the contract to purchase the assets of the medical practice was a full, complete, and binding agreement that was not dependent on the covenant not to compete to complete its purposes. *Id.* at 450.

Sablosky involved the sale of a general medical practice in Norristown, Pennsylvania. In 1976, Sablosky agreed to sell his practice, along with all equipment, medical supplies, and furniture to Newman. *Id.* at 449. As originally drafted, the sales agreement included the sale of the "good will" of the practice, however, those exact words were deleted prior to closing.[30] *Id.* At the closing of the sale, the parties agreed to add a covenant not to compete as an addendum to the sales agreement. *Id.* at 449-50. Approximately one year later, Sablosky returned to the Norristown area and began practicing medicine at an area hospital. Newman brought suit to enforce the covenant not to compete. In finding a lack of consideration independent of the purchase price, the court stated that "[i]n a sale of business transaction, a covenant not to compete is especially useful to 'protect the asset known as good will which the purchaser has bought.'" [31] *Id.* However, in *Sablosky*, the court held that it could "find no support for the appellant's claim that the addendum was merely an ancillary agreement, part and parcel with and supported by the original sales contract," and, therefore, "the covenant was an independent agreement that must be supported by independent consideration." *Id.*[32]

Like the Sablosky court, South Carolina courts have held that covenants not to compete must be supported by adequate and independent consideration. In a case dealing with a covenant not to compete in the employment context, the South Carolina Court of Appeals deemed a non-compete agreement as unenforceable because it was not supported by new consideration. *See, Baugh v. Columbia Heart Clinic*, P.A., 402 S.C. 1, 738 S.E.2d 480, 489 (Ct. App. 2013). In *Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 525 S.E.2d 898 (Ct. App. 1999), the South Carolina Court of Appeals found that a covenant not to compete, entered into during an existing employment relationship, was unenforceable due to a lack of consideration. In a case analogous to the case before this Court, the Poole court found that the employee received no new benefit for signing the non-compete, including no increase in salary, no bonus, and no

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[30] In South Carolina, "good will" has been described as "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices." *Weinberg v. Wallace*, 314 S.C. 183, 442 S.E.2d 211, 212 (1994), *citing, Donahue v. Donahue*, 299 S.C. 353, 384 S.E.2d 741, 745 (1989).

[31] "Good will" has been defined as the excess value of a business beyond and separate from its buildings, inventory, and contracts. *See*, 38A C.J.S. Goodwill § 1. "The market value of good will is the amount a willing buyer would pay for a professional practice in excess of the value of the physical assets." 30A Ill. Law and Prac. Property § 15.

[32] In *Sablosky*, the words "good will" were stricken from the sales agreement, but whether or not the words had been included, the court found no actual independent consideration for the non-compete between the parties.

change in work conditions. *Id.* at 900. Stated another way, the employee in Poole received nothing new in exchange for signing the non-compete, other than the employee's originally bargained for terms of employment.

In this case, Palmetto Mortuary paid no consideration to Knight in exchange for the Non-Competition Covenant, other than the previously agreed upon purchase price for the physical assets of Knight's business and the value of the existing contracts with the Lexington County Coroner's Office, the Richland County Coroner's Office, and the University of South Carolina's Medical School.[33] Although the Parties assigned a large portion of the purchase price to "good will," the testimony and evidence produced at trial shows that the purchase price included no amount above and separate from the valuation of the physical assets and existing contracts of Knight Systems. Incredibly, Palmetto Mortuary's stated consideration amount of $1,000 was merely deducted from the previously negotiated purchase price for the physical assets and existing contracts, rather than even being $1,000 paid above or in addition to the negotiated purchase price. Knight testified at trial that he did not even know about a proposed non-compete agreement until he arrived at the closing. Both Don and Ellen Lintal testified that they had not thought of or contemplated a dollar amount to pay as consideration for the non-compete prior to their arrival at the closing.[34] It is clear from the testimony and evidence that there was no consideration paid to Knight for the non-compete above the existing negotiated purchase price.

Additionally, this Court must find that the Non-Competition Covenant is invalid and unenforceable because of the unreasonable geographic or territorial restriction. As stated above, the non-compete agreement contained a statewide ban on Knight competing against Palmetto Mortuary, although both sides admit that Knight Systems' business operating territory at the time of Plaintiff's purchase existed of primarily Lexington and Richland Counties.[35] The geographical restriction contained in the Non-Competition Covenant between Palmetto Mortuary and Buddy Knight is overbroad and unrelated to a reasonable, legitimate business interest of Plaintiff.

In *Hagermeyer*, the South Carolina District Court observed that "South Carolina Courts have struck down statewide restrictive covenants, but not for that reason alone; a particular geographic scope is 'generally reasonable if the area covered by the restraint is limited to the territory in which the employee was able, during the term of his employment, to establish contact with his employer's customers.'" *Hagermeyer, supra* at p. 5, *quoting, Rental Uniform Service of Florence, Inc. v. Dudley*, 278 S.C. 674, 301 S.E.2d 142, 144 (1983). Non-compete agreements should be limited in geographic or territorial scope to only the area necessary to protect an employer's or business

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[33] Ellen Lintal testified that other than the $590,000 purchase price agreed upon for the purchase of Knight's business assets, the Plaintiff never proposed any additional compensation for the non-compete. *See*, Trial Tr. 158:21-25; 159:1.

[34] Ellen Lintal, who testified that she had previous experience with non-compete agreements as part of business acquisitions, raised concerns with her husband and closing attorney about her perception that the amount designated as consideration for the non-compete was insufficient consideration for a valid agreement.

[35] *See*, Trial Tr. 104:1-25:105:1-15.

purchaser's legitimate interest in the current client or customer base. *See e.g., Vlasin v. Len Johnson & Co., Inc.*, 455 N.W.2d 772 (Neb. 1990) (striking 50 mile restrictive covenant as not reasonably necessary to protect employer's legitimate interest in existing customer goodwill); *Hartman v. W.H. Odell and Associates, Inc.*, 450 S.E.2d 912 (N.C. 1994) (to prove that a geographic area in a non-compete is reasonable, an employer must show where its customers are located and that the geographic scope of the covenant is necessary to maintain those customer relationships); *see also, Manpower of Guilford County, Inc. v. Hedgecock*, 257 S.E.2d 109 (N.C. 1979) (employer must show that the territory in covenant is no greater than necessary to secure the protection of its business).

In *Somerset, supra*, the South Carolina Supreme Court considered a covenant not to compete which arose in circumstances very similar to the present case between Palmetto Mortuary and Knight. The plaintiff in Somerset brought a declaratory judgment action to declare a covenant not to compete, executed as part of plaintiff's sale of his retail silver and jewelry business. Plaintiff's business was located in the Five Points area of the City of Columbia and nearly 95% of his sales were in the greater Columbia area. *Somerset*, 104 S.E.2d at 345. However, the covenant not to compete, signed by the parties in Somerset, prohibited plaintiff from engaging in the sale of jewelry, silverware, or similar items in the entire State of South Carolina for 20 years. *Id.* at 346.

The South Carolina Supreme Court cited long-standing authority for the rule that restrictive covenants, ancillary to the sale of a business, must be reasonably tailored to the customer area served by the purchased business. *Id.* at 346. "The [plaintiff's] trade came almost entirely from the area of Greater Columbia. Sales to customers living elsewhere, with the exception of four or five florists, were described in the testimony as being very 'spotty.'" *Id.* "Obviously, it was unnecessary to the protection of the business sold, or that later operated by [purchaser] that plaintiff be prohibited from engaging in a similar business in Charleston, Spartanburg, Greenville or numerous other cities in South Carolina. *Id.* Finding "no rational basis for the extent of the territorial restraint," the South Carolina Supreme Court ruled that the covenant not to compete was "clearly invalid." *Id.* at 347. Like the covenant not to compete in Somerset, the non-competition covenant in this litigation between Palmetto Mortuary and Knight is not narrowly drawn to protect the legitimate interests of Palmetto Mortuary and, further, the covenant cannot be saved by this Court.[36]

South Carolina courts have held that invalid or unenforceable covenants not to compete are incapable of being saved by a court imposing terms not negotiated by the parties or by "blue pencilling" the non-compete. The South Carolina Supreme Court has held that "[i]f a covenant not to compete is defective . . . it is totally defective and cannot be saved." *Faces Boutique, Ltd. v. Gibbs*, 455 S.E.2d 707, 708-09 (S.C. Ct. App. 1995) (citations omitted); *see also, Eastern Business Forms, Inc. v. Kistler*, 258 S.C. 429, 189 S.E.2d 22 (1979) (a court cannot make a new agreement or reform a covenant not to compete into one which the parties did not voluntarily enter, and, instead, the coiurt must uphold the covenant as written or not at all). In *Eastern Business Forms, Inc. v. Kistler*, 189 S.E.2d 22, the South Carolina Supreme Court made it abundantly clear that when a geographic limitation is not divisible, such as a listing of specific prohibited

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[36] *See,* Trial Tr. 104 - 105.

locations, then "there is no basis for drawing a sharply defined line separating the excess territory." *Id.* at 24. Thus, in South Carolina, a court may not modify or "blue pencil" a non-compete agreement so as to make its terms reasonable and enforceable. *See, Stonhard, Inc. v. Carolina Flooring Specialists, Inc.*, 366 S.C. 156, 621 S.E.2d 352, 353-54 (2005); *Team IA, Inc. v. Lucas*, 395 S.C. 237, 717 S.E.2d 103 (2011) (a court may not "blue pencil" the restrictions contained in a non-compete by inserting or subtracting terms not agreed to by the parties in order to make it valid and enforceable); *Stonhard, Inc. v. Carolina Flooring Specialists, Inc.*, 366 S.C. 156, 621 S.E.2d 352, 354 (2005) (Supreme Court holds that a covenant not to compete may not be reformed or "blue penciled" so as to add an entirely new term, such as a more reasonable and valid geographic limitation, to which neither of the parties agreed).

At the trial of this case, Palmetto Mortuary offered no cogent explanation as to why there is a statewide restriction in the Non-Competition Covenant when Knight's purchased business operated primarily in Lexington and Richland Counties. At best, Don Lintal testified, Palmetto Mortuary wanted a statewide territorial restriction simply because Plaintiff might, someday wish to expand its business into other areas of South Carolina. Clearly, the evidence and testimony established that there is no legitimate business interest of Palmetto Mortuary that is served by a statewide restriction on competition. As such, this Court is unable to "blue pencil" or reform the Non-Competition Covenant's unreasonable geographic restriction and must rule that the entire non-compete is void and unenforceable.

CONCLUSION

For the reasons stated herein, this Court finds in favor of the Defendants. The Court finds that the Plaintiff materially breached the Asset Purchase Agreement prior to Knight submitting a bid for the Richland County Coroner's contract. Further, the Court finds that the breaches of the Asset Purchase Agreement committed by the Plaintiff permitted Defendant Knight to terminate the Non-Competition Covenant, without breaching the contract with Plaintiff. Additionally, the Court finds that the Non-Competition Covenant is void based upon a lack of adequate, independent consideration, as well as an unreasonable territorial restriction, which is incapable of being modified or "blue penciled." Lastly, the Court finds that, as a matter of public policy, the Non-Competition Covenant is unenforceable as a stifling of competition for bidding on a public contract for services sought by Richland County government. Pursuant to the Non-Competition Covenant, Defendants are entitled to an award of reasonable attorney's fees and the direct costs of this litigation. As the prevailing party, Defendants shall submit an affidavit of attorney's fees and litigation costs to this Court, for consideration, within thirty (30) days of the date of this Order.

AND IT IS SO ORDERED.

The Honorable James R. Davis
Special Referee
Eleventh Judicial Circuit

This ____ day of _____, 2014.

Lexington, South Carolina.

COPY

STATE OF SOUTH CAROLINA	)IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)CASE NO.: 2011-CP-32-04051
Palmetto Mortuary Transport Inc.,	) REFERENCE HEARING
	) DECEMBER 18, 2013
Plaintiff,	)
vs.	)
Knight Systems, Inc. and Robert L Knight,	)
Defendants.	)

The reference hearing before the Honorable James Randall Davis, Esquire, Special Referee for Lexington County, was taken at the Offices of Davis Frawley, LLC, 140 East Main Street, Lexington, South Carolina on Wednesday, the 18th day of December, 2013, scheduled for 10:00 a.m. and commencing at the hour of 10:05 a.m. before Jaime D. Newton, Court Reporter and Notary Public in and for the State of South Carolina; pursuant to Rule 30 of the South Carolina Rules of Civil Procedure.

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Donald J. Lintal

Ellen Lintal

CONTENTS

(Reference Hearing December 18, 2013)

	PAGE
Exhibit Index	5
Stipulation	7
OPENING STATEMENTS	
Mr. Pringle	7
Mr. Lloyd	12
WITNESS - DONALD J. LINTAL	
Direct Examination by Mr. Pringle	21
Cross Examination by Mr. Lloyd	67
Re-Direct Examination by Mr. Pringle	135
Re-Cross Examination by Mr. Lloyd	138
WITNESS - ELLEN LINTAL	
Direct Examination by Mr. Pringle	139
Cross Examination by Mr. Lloyd	149
WITNESS - ROBERT L. KNIGHT	
Direct Examination by Mr. Lloyd	192
Cross Examination by Mr. Pringle	237
Re-Direct Examination by Mr. Lloyd	254
Re-Cross Examination by Mr. Pringle	259
Certificate of Reporter	267

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EXHIBIT INDEX

Exhibits:		Marked at Page
(Copy of exhibits attached to each copy of transcript.		
Plaintiff's Exhibits Admitted for Donald J. Lintal:		
1	Asset Purchase Agreement	23
2	Copies of Invoices	32
3	Summary of Invoices from Knight Systems, Inc.	44
4	Invoices other than from Knight Systems, Inc.	45
5	Request for Proposal	58
Defendants' Exhibits Admitted for Donald J. Lintal:		
1	Donald J. Lintal Transcript	88
Plaintiff's Exhibits Introduced for Ellen Lintal:		
1	Detail of Damages	142
Defendants' Exhibits Introduced for Ellen Lintal:		
1	Plaintiff's Response to Defendants' Third Set of Requests for Production	152
2	Email dated 12/4/06	154
3	Email from Don Jonas	177
Defendants' Exhibits Admitted for Robert L. Knight:		
1	Recorded Conversation June 2011	219

* * * * *

Court Reporter's note:

-- indicates interruption; incomplete phrases; unfinished sentences

This hearing is taken in accordance with the South Carolina Rules of Civil Procedure.

THE COURT: This is a reference hearing being held on December the 18th, 2013 in a case by the name of Palmetto Mortuary Transport, Inc. versus Knight Systems, Inc. and Robert L. Knight. This action was filed in Circuit Court in Lexington County and it has the assigned civil action number as it appears on the pleadings. The matter was referred to me by order from the Circuit Court signed by Judge Russo, who is the chief administrative judge over here, and appointing me as the special referee in this case. For the benefit of the lawyers who know what I'm doing, but for the clients, some cases get referred out to a lawyer, and that's me, to hear cases, and I'm appointed as the judge in this case to make a decision. That's what we're doing here today, just like you'd be in a courtroom. And let's see. The counsel for Plaintiff and Defendant are both present and with, I assume, their witnesses. And unless there's some other preliminary issue we'll start with the Plaintiff's case.

OPENING STATEMENT BY MR. PRINGLE:

MR. PRINGLE: Okay. May it please the Court. My name is Jack Pringle of the firm of Adams and Reese in Columbia

and I'm counsel for the Plaintiff, Palmetto Mortuary Transport. I'll probably call the PMT or Plaintiff. With me are Don Lintal and Ellen Lintal who are officers of PMT. Very briefly before we present our witnesses, I wanted to give you just a brief, brief overview. I think this is a fairly straightforward case. My clients on January the 5th, 2007, by means of an asset purchase agreement that there will be a great deal of discussion about -- it was actually attached to the complaint. But through this asset purchase agreement bought a number of assets from Knight Systems and Mr. Knight. Mr. Knight and Knight Systems are parties to that agreement. And what they bought was Knight's Mortuary Transport business. Very briefly that means -- without being callous, it means transporting dead bodies on behalf of governmental entities like the Lexington County Coroner, like the Richland County Coroner, like the University of South Carolina, or on behalf of private entities like funeral homes, and it involves a lot of picking up and transporting and dropping off, and the kinds of things that go along with that. And through the asset purchase agreement my clients paid the total of $590,000 to the Defendants in order to purchase a few hard assets. A few pieces of equipment that are listed

in the asset purchase agreement. But some vans, some stretchers, some hard assets that are used in connection with Mortuary Transport. But most importantly my clients purchased three mortuary transport body removal contracts with the previously mentioned Lexington County Coroner, Richland County Coroner and USC. And I think the USC contract has to do some with the medical school and some other University related topics. And in connection with that, with the asset purchase agreement, they also obtained and negotiated for a covenant not to compete, which provided that for a period of ten years following January 5th, 2007 the Defendants would not -- there's more particulars in the actual agreement, but would not compete with my clients in the mortuary transport business. Would not call on those customers and the folks in those contracts that were being transferred wouldn't encourage anybody else to -- wouldn't make contacts, wouldn't actually compete within 150 miles of the Defendants' business, which is Lexington. But very particularly and very important to my clients, it was that he and they, the entity, not compete for Richland, for Lexington, and for USC, as well as those other entities that might be within that territory. As we'll describe at length, the Defendant in June of 2011 bid

on a Richland County contract for body removal services that was held by my client in direct violation of the covenant not to compete. And additionally made communications with Richland County in order to try to secure the bid that violated the contract as well. The Defendants rationale for this, for walking away from, you know, the obligations that my clients paid $590,000 for was that my clients had bought body bags from a source other than the Defendant. The asset purchase agreement had a provision in it, and that's the provision down here that's on the board and we'll talk about it at length, that with certain types of bags and certain prices and an obligation that all body bags, according to the language, be bought from Knight. Knight maintained that because a bag or a set of bags had been bought outside the contract, or from somebody other than from him and his company, that he was entitled to disclaim the contract and walk away from it. We'll describe this at length the reason that that's not allowed is that the -- we'll go into great detail about this, is that even to the extent that that was a breach of the agreement, and we don't maintain that it was, certainly not in all circumstances, that he may very well have been entitled to be made whole for that, but it was not a kind of material breach that

would enable him to walk away and keep $590,000, but get out of his covenant not to compete and his obligations that at that time he was only four years into. So ultimately what we're asking from you is that pursuant to the specifics of the contract is that we be awarded damages equal to the amounts that a profit that he earned or that we would have earned had we been performing that Richland County contract. But for his involvement in the contract we would have that contract as we had it before that request for proposal, and we would have had it afterwards. We're seeking those damages for the term of the Richland County contract, as well as to the injunctive relief that's allowed in the agreement that says specifically that he's not to compete with us, and that that -- because of his violation of the covenant not to compete, and the fact that he's been actually competing with us for two and a half years, that the covenant not to compete that was originally scheduled to run from January 5th, 2007 to January 5th, 2017 it be extended for an additional two and a half years until roughly June of 2019 to reflect the contract's specific provision that he not compete with us for a period of ten years from January 5th, 2007. And that's it in a nutshell.

THE COURT: All right. I'll use that as an opening

statement on the part of the Plaintiff, and we'll hear from the Defendant.

OPENING STATEMENT BY MR. LLOYD:

MR. LLOYD: Thank you, Your Honor. We'll be brief as well. I don't to replow ground Mr. Pringle has already covered with Your Honor. Obviously, one of the things we do want to -- and Your Honor will hear today is that Mr. Knight built this business from the ground up and was well respected in this area for providing this service to a number of counties, funeral homes and others. He was approached, as Mr. Pringle said, in late 2006 after he decided to put his business up for sale. The Lintals did approach him through a business broker. There was a negotiation over the purchase price, which we'll get into regarding the amounts back and forth between the parties regarding that. Your Honor, the one thing that you will hear as this case unfolds is that the negotiation was simply -- between these parties simply about the sales price of the business. That the parties never negotiated an actual compensation package for the non-compete. What eventually happens after a sales price was negotiated between the parties is that at the closing the parties relied upon Mr. Knight to essentially allocate the purchase price to varying things. Goodwill, for

example, or customer list versus hard assets. There's a dollar figure eventually attached at the closing of $1,000 for the non-compete. The non-compete, Your Honor, is interesting in this instance. Mr. Knight had obviously indicated that he planned to sell his business and planned at that point because of a health issue to only continue to run his body bag manufacturing business. The non-compete that was presented in the closing documents actually is for a ten year period, which according to the testimony, Your Honor, we'll hear was essentially designed to allow the Lintals no competition from Mr. Knight over a couple of contract periods with these public contracts; the Richland County or Lexington County contracts. The territorial restrictions on the non-compete was for a distance of 150 miles from Mr. Knights present location at that time. So essentially the entire state of South Carolina was off limits to him for this non-compete, even though Mr. Knight's business prior to that was essentially in Richland County, Lexington County, and occasionally outside of the County. But that was not the substance of his business. It was really a local business. A dollar figure at the closing of $1,000 gets attached to the price for the non-compete. That was just by happenstance. It was whatever was left

over after they allocated the remaining, which was probably some $590,000 to other assets and intangibles. Our contention, Your Honor, would be that, in fact, the Lintals never actually paid any compensation for the non-compete. The entire amount was actually the purchase price that had already been negotiated between the parties for the assets of Mr. Knight's business. Certainly, even if one contends that $1,000 was, in fact, compensation paid for the non-compete, we would suggest to the Court through testimony I believe you will hear that that is a minimal sum, an inadequate sum, for such a broad and lengthy non-compete term. Your Honor, what eventually started this whole dispute between these parties is that after the sale of Mr. Knight's business he did everything he could to assist Mr. Lintal in making his business successful. You'll hear some testimony about a time period where Mr. Lintal actually lost the Coroner's contract in Lexington County. Mr. Lintal enlisted Mr. Knight's help in trying to get that contract back, which Mr. Knight attempted to do on behalf of Mr. Lintal. You'll hear testimony that Mr. Knight prior to the closing actually assisted Mr. Lintal and his wife in procuring a bank loan from Mr. Knight's bank. During discussions between Mr. Knight and Mr. Lintal, Mr. Knight learned

that Mr. Lintal was having some trouble acquiring a loan for the purchase of this business and referred him to his personal banker. And, in fact, that is who eventually lent the money for this purchase in the first place. So Mr. Knight, throughout this whole time period after he sells his business, is doing everything he can to help Mr. Lintal. During this whole time period after the sale of the business though, Your Honor, Mr. Knight begins to hear that Mr. Lintal was purchasing body bags from some other source. He continues to hear those rumors up until June of 2011 when he has a conversation at Mr. Lintal's place of business which he recorded. And, Your Honor, we'll offer that recorded conversation into evidence. During the course of that conversation, Mr. Lintal advises Mr. Knight that, in fact, he was aware that he was supposed to be purchasing all body bags from Mr. Knight, but that he had purchased only some infant body bags because he did not think that Mr. Knight made those bags or produced those bags. What Your Honor will hear is that throughout this whole time period after the sale of the business is that Mr. Lintal, in fact, had inventory of body bags that Mr. Knight had provided to him that he was aware that Mr. Knight could manufacturer any type of body bag. Mr. Knight,

throughout his business career in the body bag manufacturing business, has provided body bags, Your Honor, after 911, after Katrina and other incidents. And so, he was certainly capable of making any type of bag that Mr. Lintal needed. In fact, Mr. Knight was providing body bags for Lexington County prior to the sale of his business, and even sometime after the sale of his business. So Mr. Lintal, it's our contention, certainly knew that Mr. Knight could produce any type of bag that he wanted. But it didn't stop there. There were other body bags. Water retrievable body bags, for example, that were purchased by Mr. Lintal. This in violation of that provision that they would buy body bags solely from Mr. Knight. Your Honor, you'll hear testimony that Mr. Knight did not know about a non-compete agreement prior to showing up at the closing. He had never seen that before until he actually saw the closing documents. Mr. Knight did not offer this provision that's going to be discussed here before Your Honor today regarding that the Lintals would only purchase body bags from him. All of that was presented to Mr. Knight for the very first time at the actual closing. Now, Mr. Knight had reasons at the closing to go forward with the deal. He wanted to sell because -- and actually considered the fact that that

provision requiring the Lintals to purchase body bags exclusively from him would provide him some income separate and apart from any other business activities that he would have. That that would be some guaranteed income for him. So it was certainly important to him. But what you'll also hear, Your Honor, is testimony that it was not important. That provision itself was not important to the Lintals, and it would be our suggestion that it wasn't and cannot be treated as any compensation for a non-compete. So all we're left with is $1,000 paid for this non-compete that actually came out of the actual purchase price that was negotiated prior to that. So, Your Honor, it's our contention certainly that Mr. Knight at that point, learning that the Lintals were purchasing body bags from others, that they had violated the agreement, after he consulted counsel that he felt that he was entitled under the terms of this agreement to, in fact, pursue bidding for the Richland County Coroner's contract again. What Your Honor will also hear testimony regarding is that the Lintals never took advantage of the provisions of their own agreement that their lawyer drafted and tried to stop Mr. Knight from, in fact, bidding on that contract or being awarded that contract. They don't actually do anything about that, even though they learn

of that prior to the opening of the award until they filed this particular lawsuit before the Court today. Now, one of the other things, Your Honor, in closing that we think is important for the Court to consider is that the reason that the Lintals do not eventually get the Richland County contract is because Mr. Knight, who is under no obligation under the very terms of their own agreement that actually sell them body bags, stop selling a patented odor proof body bag pouch to anybody else. And Richland County did not and, in fact, rejected the alternative that was proposed by the Lintals. So it wasn't that Mr. Knight was competing against them again that caused them not to win that contract. It was, in fact, the fact that they did not have adequate technology for odor proof bags that was acceptable to Richland County. So it's our contention, Your Honor, and you'll hear evidence that, in fact, it wasn't the competition that caused them that contract. It was, in fact, their own inability to produce a satisfactory alternative for Richland County. So with that, we'll rest on our opening.

MR. PRINGLE: All right. The first witness for Palmetto Mortuary, PMT, is going to be Mr. Donald Lintal.

THE COURT: How do you spell that last name?

MR. LINTAL: L-I-N-T-A-L.

THE COURT: L-I-N --

MR. LINTAL: T-A-L.

THE COURT: T-A-L. We'll go until 12:30. I've got a conference call on something at 1:00 and start back at 2:00, if that's okay, and then we'll go to 5:00 or 5:30. Whatever suits you all.

MR. PRINGLE: Okay.

MR. LLOYD: Yes, sir. Your Honor, at this time we would ask -- because there's some issues between the testimony of Mr. Lintal and Mrs. Lintal that should be sequestered during his testimony.

MR. PRINGLE: I don't know that there's a basis for that at all. I think that she's got a right to be in here just like any other witness does.

THE COURT: Is she a principal in the business or is not?

MR. PRINGLE: She's in officer in the company.

MR. LLOYD: And I believe, Your Honor, they would be allowed one principal of the business. That would be Mr. Lintal who is the president of the PMT.

MR. PRINGLE: According to what? What authority?

MR. LLOYD: Well, she's just another actually paid employee of the business. She wouldn't be allowed, if we moved for a sequester, to continue to sit in.

MR. PRINGLE: Well, I mean, tell me about the -- I mean, a motion to sequester is based upon that --

MR. LLOYD: There's going to be testimony, Your Honor, regarding what conversations the two of them had regarding the actual purchase price for this, what made up that purchase price, conversations between the two of them after this tape recorded conversation between Mr. Lintal and Mr. Knight. Based on their depositions, there's some discrepancy between those recollections, and so that's why we would move to sequester her.

MR. PRINGLE: Let me just say, now that I understand where it's coming from, I can first say that there's not going to be anything on the direct examination that's going to touch on any of those topics that were just mentioned. Second, to the extent that that even comes up in cross examination, I'm going to be objecting to it based upon relevance, you know, and based upon the idea that the agreement says what it says and that it is the final word on what took place and what you are going to construe as part of this. So I don't believe that the motion is appropriate at all. But even if it is, it wouldn't have any relevance at all during the direct examination that takes place.

THE COURT: Did someone say that she is a principal in the business?

MR. PRINGLE: By principal, do you mean shareholder?

THE COURT: Owner. A part owner.

MR. PRINGLE: Do you own any shares?

MRS. LINTAL: Yes, I do.

THE COURT: All right. Based on the fact that she owns shares, and second, based on your representation as to what you are not going to ask on direct examination, I'm going to let her stay in the room.

MR. PRINGLE: Okay.

MR. LLOYD: Thank you, Your Honor.

THE COURT: Swear the witness.

DONALD J. LINTAL, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION BY MR. PRINGLE:

Q: Mr. Lintal, if you would, state your full name and your business.

A: My name is Donald J. Lintal, L-I-N-T-A-L. Our business is Palmetto Mortuary Transport. Also, we abbreviate to PMT.

Q: Okay. How did you get into the mortuary transport business?

A: The business was found on a Sunbelt Business website in summer of 2006, fall of 2006, by my wife. And we were interested based off of its being --

Q: Specifically, how did you get in the business?

How did you get in the business?

A: We purchased Knight Systems through an asset purchase agreement in January 2007.

Q: All right. I'm going to show you a document.

MR. PRINGLE: Do you want a copy? I've probably got one.

MR. LLOYD: Just a second.

MR. PRINGLE: Yeah.

Q: And get you to identify it.

THE WITNESS: Everybody gets one but me.

Q: I just handed you a document. Can you identify it?

A: It appears to be a copy of the asset purchase agreement that was put in place.

Q: Okay. And who were the parties to that agreement?

A: The parties are Knight Systems Inc., as seller, Buddy Knight and Palmetto Mortuary Transport is the buyer.

Q: Okay.

MR. LLOYD: Your Honor, to the extent Mr. Pringle is laying is foundation for the admission, we stipulate to the --

MR. PRINGLE: Okay, yeah. I was just going to go ahead -- I would like to ask that it be moved into evidence as Hearing Exhibit Number One, or Plaintiff's One.

THE COURT: Without objection, it will be marked as Plaintiff's Number One. Exhibit Number One.

MR. PRINGLE: All right.

(Plaintiff's Exhibit Number One was admitted into evidence.)

Q: You can hold on to it and take a look at it.

A: Okay. Thank you.

Q: What did you get by means of that asset purchase agreement?

A: The rights to his mortuary transport -- removal and transport operation. There were some assets side to it with stretchers, vans, and three contracts that were existing that he currently had with Lexington County, Richland County and USC for their School of Medicine.

Q: Okay. Are those contracts listed on Exhibit 1.1.1.3 of the asset purchase agreement? You can just answer yes.

A: Yes. I assume they're here.

Q: And referenced in section 1.1.1.3 of the agreement listed. And that's a contract with Richland County for body removal services?

A: Yes.

Q: Contract with Lexington County for body removal services?

A: Yes.
Q: Contract with the University of South Carolina for cadaver preparation and transportation services?
A: Correct, yes.
Q: Okay. How much did PMT pay Buddy Knight and Knight Systems for the assets it purchased?
A: The total value of the contract -- or the total value of what was paid was $590,000.
Q: So you paid Buddy Knight and Knight Systems $590,000?
A: Yes.
Q: Okay. In exchange for these assets?
A: Correct, yes.
Q: Did the agreement also have a non-competition covenant in it?
A: It did.
Q: Okay. Is that one of the exhibits to the asset purchase agreement?
A: Yes. Yes, it was.
Q: And briefly describe what the terms of that agreement were.
A: For a period of ten years it was agreed upon that Knight Systems and Robert Knight would not perform mortuary services removal and

transportation services within 150 mile radius of Lexington County.

Q: And is that in section 2A of the covenant not to compete?

A: Yes.

Q: Okay. Or section two of the covenant not to compete. Does it -- and I can point you towards -- I'm sorry. Is that in section 2A? What are the, just briefly, the subheadings A, B and C? Just name the subheadings.

A: A, is customers, et cetera.

Q: Okay. And what did that mean? You don't have to read it. Just what does it mean?

A: That he would not contact or solicit any customers in providing similar like or similar services.

Q: Who are customers?

A: They could be anyone that requires mortuary transport portion of our business, being the existing contracts we mentioned, or funeral homes that would typically require the services.

Q: Okay. So Richland County was a customer?

A: Yes.

Q: Lexington County was a customer?

A: Yes.

Q: USC, University of South Carolina, was a customer?
A: Yes.
Q: And you've mentioned the territory which is B, and then there's a 2C.
A: Right.
Q: Tell me the rationale, if you could, for a ten year non-compete.
A: Our goal was to be able to run through two contract cycles. Because of the staggered form of the three contracts that were involved, ten years would get us to a completion of two contracts. The ability to bid two contracts.
Q: Meaning that -- and how long would one contract cycle be?
A: One contract cycle complete was five years.
Q: All right. And then the -- this has already been discussed a little bit at opening. The asset purchase agreement had a provision that related to body bags.
A: Yes.
Q: Can you talk a little bit about that.
A: In the agreement we were --
Q: What part of the agreement was that? What section?

A: I don't know.
Q: Mr. Lintal, look to your right.
A: Oh, 3.4.8.
Q: Yeah. All right. And tell the Court a little bit about that.
A: Okay. It was decided that Knight shall provide us body bags at a discounted rate for the period of the non-compete agreement. And buy other body bags from the seller.
Q: Okay. So --
A: Yeah. Buy other body bags from the seller.
Q: Okay. And does 3.8 have any information with respect to bags and prices?
A: Right, yes. It lists the current charges for different types of bags that were involved, and the prices shall not be increased more than ten percent in a calendar year.
Q: What bags are listed in 3.4.8?
A: Heavy duty body bag at $20 per bag. Lightweight body bag at $8 per bag. Odor proof body bag at $50 per bag. And the water retrieval body bag for $30 per bag.
Q: Okay. We'll talk a little bit about this more. After January 5th, 2007, the date you purchased the business or the assets from Mr. Knight and

Knight systems, did PMT buy heavy duty body bags from Knight Systems?

A: Yes.

Q: Did it buy lightweight body bags from Knight Systems?

A: Yes.

Q: Did it buy odor proof body bags from Knight Systems?

A: Yes.

Q: Did it buy water retrieval body bags from Knight Systems?

A: Yes.

Q: Okay. And we'll come back to that in --

THE COURT: What was the last one? Water what?

MR. PRINGLE: Water Retrieval.

Q: Okay. Let's actually go ahead and talk about that a little bit more.

MR. PRINGLE: I beg the Court's indulgence for just a second.

Q: I'm going to go ahead and hand you two separate documents and then get you to talk about both of them.

MR. PRINGLE: Go ahead and get that marked.

(Plaintiff's Exhibit Numbers Two was marked for identification purposes.)

Q: And let me go ahead and hand you this one as well. I'm going to hand you another and get that one marked as well.

(Plaintiff's Exhibit Number Three was marked for identification purposes.)

Q: Can you identify the set of documents which is the first packet of documents that I handed you?

A: Yeah. It appears to be examples of various invoices pertaining to purchase of body bags.

Q: Okay. If you could look through that a little bit. Is that based upon your review, the sum total of invoices for body bags that Knight Systems created in connection with the body bags you purchased?

A: It would appear as such, yeah.

Q: Okay. Then let's look at the other document I handed you. Can you tell me what that is?

A: It's a listing of the invoices from Knight Systems related to these invoices that were previously mentioned.

Q: Okay. So can you tell the Court a little bit about the spread sheet, the smaller document, and just walk us through that?

A: It appears to create a month by month listing of invoices with appropriate invoice numbers and

invoice amounts month by month and broke down by year as well.

Q: Okay. So when does it start?

A: January 10th, 2007.

Q: Following your purchase of the assets from Knight Systems?

A: That was what was initially purchased at the time, right.

Q: And does the spreadsheet have a body bag amount associated with it?

A: Yes.

Q: What is that amount, for example, for January 10th, 2007?

A: $2,506.

Q: Okay. Why would that amount, for example, be different than the invoice amount? Just as a general proposition.

A: There were other items probably purchased.

Q: Okay. So you bought things other than body bags --

A: Right.

Q: -- from Knight Systems?

A: Yes.

Q: Did the asset purchase agreement have any requirements with respect to anything other than

body bags to be purchased from Knight Systems?
A: No.
Q: Okay. So you didn't have to buy --
A: No, it did not.
Q: -- stretches from Knight Systems?
A: No. No. For example, quite often we would buy shipping containers initially and we were under no obligation.
Q: It's not part of this contract?
A: No, sir.
Q: Not part of this case? Okay. Well so, for example there, for 2007, what's the total amount that PMT paid Knight Systems for body bags?
A: Just for bags --
MR. LLOYD: Your Honor, I'm going to object to him testifying from this document at this point.
MR. PRINGLE: Well, then I'll ask that it be marked and moved into evidence as a summary of the total number of invoices.
MR. LLOYD: The first set is Exhibit Two?
MR. PRINGLE: Yes.
MR. LLOYD: We have no objection to Exhibit Two being moved into evidence.
THE COURT: All right. Without objection, Number Two. How do you want it? You want to put this just Exhibit

Two compiled, or you want 2A- --

MR. PRINGLE: No, no. Two is fine.

THE COURT: Just two?

MR. PRINGLE: Two is fine.

THE COURT: Okay. That's marked as Exhibit Number Two for the Plaintiff.

(Plaintiff's Exhibit Number Two was moved into evidence.)

MR. LLOYD: And, Your Honor, we would object to Exhibit Three. I believe this is Plaintiff's Exhibit Three, being introduced into evidence. And I believe it's purporting to be a summary, I'm assuming, of Exhibit Two, but we've not seen this summary prior to today to discern its accuracy or --

MR. PRINGLE: Well, if you want -- I mean, I think it's going to speak for itself. We can get Mr. Lintal to take each individual invoice and just go through it one by one if that suits the Court. You know, it's not necessarily offering it for the exactitude of the numbers, but to be describing the relationship and get a general sense of the amount that my client paid Knight Systems for body bags.

THE COURT: My ruling would be that since it wasn't provided prior, if there needs to be testimony now to present that, you need to go ahead and --

MR. PRINGLE: Okay.

Q: Well, grab that list of invoices there and let's just look at the first one.

A: Okay.

Q: All right. What's the total amount on that invoice?

A: $7,336.

Q: Okay. And is there also some body bags that were purchased --

A: Oh, yes.

Q: -- in connection with that?

A: Yeah. Yes, there was.

Q: Okay. And let's see. What's the best way to --

THE COURT: Let me suggest this so we can -- since we have the objection. I understand the objection I ruled. Maybe we can just take -- I don't know. We can take five minutes to -- would that give you time to look at that proposed Exhibit Three, or does that push you into a time corner, so we don't have to go through each item? Because I ruled that, you know, you were not provided that so you can have a chance to look at it. But if you all want to take five minutes to go through that -- or some period of time to go through it to satisfy yourself, we can do that if you want to.

MR. LLOYD: Yes, sir. As I understand, and Mr. Pringle can educate me. What you're taking out of these and

listed on here is just for the body bag amount?

MR. PRINGLE: Well, there's a total invoice amount, too, so you can see, you know -- like for example, just to use as -- and it doesn't have to be evidentiary. If you look on the first invoice, the invoice dated January 10th, 2007, there's an invoice amount of $7,336, which corresponds with the first invoice amount on the spreadsheet, as well as the invoice number, and then a body bag amount that, you know, we can total it up, but it's the combination of those body bags that they bookend the two removals that were made for Richland County Corner and Lexington County Coroner, which are the things that got backed out, you know, and aren't included. So, you know, we can go through and do the math, and it's possible that -- you know, the math, but I think that it matches up pretty well. You can see, you know, 140 plus 328 is 470 plus 1,000. That's 1,470 plus 288 is 1,700, 2,000. So I think it gets to the $2,506 that's listed as body bags. And again, we're not doing this to the penny, but for a general sense of the amount of body bags that were purchased over the term of the contract.

MR. LLOYD: Your Honor, could we have five minutes?

THE COURT: Yeah, let's do that. We can take 15 minutes and you all talk about getting this resolved here.

Okay?

MR. PRINGLE: Sure. Sure.

THE COURT: That will give you some time to look at it. And if it's not enough time, let me know.

(Off the record from 10:47 a.m. to 10:57 a.m.)

THE COURT: All right. We're dealing with proposed Exhibit Three, I believe.

MR. LLOYD: Yes, sir. Your Honor, we would still raise an objection to this that it's not an accurate summary. The invoice amount appears to include the total that's on Exhibit Two for the full amount including taxes. The body bag amounts, it appears, just flipping through some examples, does not include or account for the taxes charged on that particular invoice. And so, you know, we don't think it's an accurate summary under the rule to be utilized.

MR. PRINGLE: All right. Well, we'll go through --

THE COURT: Let's proceed with the testimony then on --

MR. PRINGLE: Okay. And I'll just point out that even if sales tax -- you know, $61 on $1,000 is not -- the point we're not making is not the exact bottom line but the general amount of purchases. But we'll just go through it.

Q: Take a look at the first invoice.

A: Yes.

Q: The first item there is purchases of lightweight 300 body bags, does it not?
A: Correct.
Q: By the way, what is a lightweight body bag?
A: A lightweight is -- it's a low end standard bag, regular use bag for average use for funeral homes.
Q: Okay. Is it part of the contract?
A: It is, yes.
Q: What's the price for it?
A: Eight dollars.
Q: Okay. Can you turn back to 3.4.8.
A: It's on there.
Q: Okay. So it's $8. And so, you got 36 lightweight bags at $8?
A: Correct.
Q: And the total for that was $288?
A: That is correct.
Q: Okay. And then you also got what? Eighteen of what?
A: That's a heavy duty body bag listed at $20 per bag.
Q: Okay. Is that included in the contract, too?
A: It is. It's listed, yeah, at that price.
Q: So we've got $288 plus $360. Would you accept

subject to check that's $648?
A: Yes.
Q: Okay. Then what's the next item there?
A: It's odor proof. It's OP 200 body bag.
Q: Okay. What's the price on that?
A: It's $50 on both the invoice and the agreement.
Q: Okay. And you bought six of those for $300?
A: Yes, sir.
MR. PRINGLE: And this is Lyndey Zwing --
MS. ZWING: Good morning.
MR. PRINGLE: -- an associate.
MS. ZWING: Lyndey Zwing. Nice to meet you.
MR. PRINGLE: Come in and sit down.
MS. ZWING: Thank you.
Q: And that was $300, which leaves us with $1,296, correct?
A: Yes.
Q: Okay. And then what did you get?
A: Three water retrieval bags at $30 each.
Q: Are those part of the contract?
A: They are. And agree to the price on the contract.
Q: And you paid $90 for those three, right?
A: For three, yes.
Q: Ending up now with a running total of $1,386,

correct?

A: I guess, yes.

Q: Okay. $1,296 plus $90 is what? $1,386.

A: Okay.

Q: Okay. Then you move down past these removals to what else did you get?

A: Additionally purchased during the month of January. This would have been after acquisition.

Q: Yeah.

A: There were seven heavyweight bags at $20 each, 41 lightweight bags at $8 each, which is the same item as the LTWT300 listed above. And then below that was additionally bags purchased for stock on February 1st of 2007 which included 30 heavy bags at $20 each and 50 lightweight bags at $8 each.

Q: Okay. So with $140 you have a running total of $1,526?

A: Yes.

Q: Okay. And all these are purchased pursuant to the contract?

A: Yes, sir.

Q: Okay. And you have $328 for the lightweight bags.

A: Yes.

Q: Bringing us to a total of $1,854.

A: Yes.
Q: Okay. And then we have $600 for 30 heavy bags.
A: Correct.
Q: Bringing us to $2,454, correct?
A: Correct.
Q: And then 50 lightweight bags at $8 a piece for $400.
A: That is correct.
Q: Okay. And so, does that amount come out at $2,506, right?
A: That is correct.
Q: Okay.
MR. PRINGLE: Your Honor, I mean, we'll go through each one of these things. I'm not saying that there may not be sales tax discrepancies, but the point is to just demonstrate, for example --
Q: Well, Mr. Lintal, in that month, $2,506 in body bags were purchased, correct?
A: That is correct.
Q: Okay. And we're going to talk about this in a little bit. But do you recall what the sum total of body bags that you bought outside of the contract were, roughly?
A: Eight hundred dollars of total. But the ones that applied it was approximately --

Q: Okay. Just the number. Just the number.

A: I think it was 876, if I'm not mistaken. I don't know the exact amount.

THE COURT: Let me interrupt you and let me see if we can resolve this. The only issue taken from the Defendant on this Exhibit Three deals with a discrepancy in regards to sales tax.

MR. LLOYD: Yes, sir. There are some items, I'm assuming, that were taxable and others that weren't.

THE COURT: Right.

MR. LLOYD: And just going through some of these examples it looks like they didn't account for that as to whether these body bags were reflecting the taxable or none taxable rate in the summary. So that's the reason we're objecting to it.

MR. PRINGLE: All right. Let me ask it this way and then see if -- I mean, you can object to it, you know, to take that into consideration. And this is looking -- I'm going to look at the spreadsheet and you can object in total if you want.

Q: But look at the spreadsheet that I gave you.

A: Yes.

Q: Okay. In 2007, that shows a total of $11,355 in body bag purchases. That's what the number says.

A: Yes. According to this sheet.

Q: Taking into account sales tax and, you know, possible other discrepancies, did you spend over $10,000 in purchasing body bags for Knight Systems in 2007?

A: Yes.

Q: Okay. Likewise, in 2008, there's -- explain the items in yellow that have been --

A: Just in 2008 or --

Q: No. All the items in yellow.

A: Okay. Two different notations are on here in yellow. One was invoiced in April 14th, 2008, and the second one is April 3rd, 2009. Both invoices were invoices for Lexington County Coroner's Office. Well, Lexington County for use for the Coroner's Office, for body bags.

Q: Okay. How did that end up coming to be billed to you?

A: These items were part of his previous contract that was tied to the contract that we had purchased, or that was --

Q: For whose use were they?

A: -- assigned to us.

Q: For whose use were they?

A: The bags that were sold?

Q: Yeah.

A: They were for the use of the Lexington County Coroner's Office.
Q: Okay. And not actually for use by PMT?
A: No.
Q: Okay. Now let me move you to the last -- I think I can jump ahead. Move to the last part of the spreadsheet. The total that's not in yellow is what, on the right side?
A: The very far right is $68,225.77 which --
Q: And what does that represent?
A: That represents the body bag amount purchased between 2007 and 2011 in total.
Q: Okay. What does the yellow represent?
A: 2011 total minus the Lexington County invoices that we previously noted.
Q: Okay. 2007 to 2011, right?
A: Yes. I'm sorry.
Q: Okay. And that's to account for the fact that those two invoices went directly to Lexington County? They were not purchases by PMT but by Lexington County?
A: Correct.
Q: Okay. So in looking at that $50,000 number, and accounting for sales tax and other discrepancies, is it fair to say that PMT over the course from

January 5th, 2007 -- until when in 2011?

A: September. Well --

Q: When was the last bag purchase you made from Knight, if you recall?

A: Possibly May or June of 2011.

Q: Okay. But accounting for sales tax and other possible discrepancies, is it fair to say that you spent over $45,000 in bag purchases from Knight according to the contract?

A: Yes, definitely.

MR. PRINGLE: Okay. You know, I don't necessarily need the document. I think it's helpful for reference. I think the -- certainly the invoices can stand on, you know, what's actually in them, but this may be, you know, a helpful reference. Again, not necessarily for specifics but just for guidance as far as what happened.

THE COURT: Do you want to introduce it or --

MR. PRINGLE: I do.

MR. LLOYD: Just because -- I mean, because, Your Honor, we're not in front of a jury or anything --

THE COURT: Sure.

MR. LLOYD: -- we'll withdraw our objection to that. Your Honor, we would, as you're considering this though, just raise the issue that we're not sure about this

issue with the taxes and whether that accurately --
MR. PRINGLE: And that's fair, Your Honor.
MR. LLOYD -- reflects --
THE COURT: And I take that into consideration, as well as his testimony as to what he said the lesser figure was.
MR. LLOYD: Yes, sir.
THE COURT: It was below the 50,000. So under that basis, we'll let it in as Exhibit Number Three.
MR. PRINGLE: I think that's actually going to be four.
THE COURT: Is it four?
MR. PRINGLE: Is it four? It's three.
MR. LLOYD: Three.
MR. PRINGLE: You're absolutely right. So that's three.
(Plaintiff's Exhibit Number Three was admitted into evidence.)
Q: Now, there were occasions, were there not, where you had too many folders and you couldn't find the exhibits, right? No. Where you bought bags outside the contract; is that correct?
A: That is correct, yes.
Q: Okay. And we're going to locate --
MR. PRINGLE: Give me just a second, Your Honor. I beg the Court's indulgence for just a second.
THE COURT: Sure. I understand. I don't have anything here. I think these are my exhibits here, so I don't

think I have anything here.

Q: Okay. I'm going to show you a document and get you to talk about what's --

MR. PRINGLE: Just mark that for identification.

(Plaintiff's Exhibit Number Four was marked for identification purposes.)

Q: If you could start -- well, what are they, first of all? Just generally.

A: Invoices from bag suppliers other than Knight Systems.

Q: Okay. Let's start with the first one. Can you tell me about the first page?

MR. LLOYD: Your Honor, I think we may be able to circumvent that, too. Jack, these are all the ones you produced during this --

MR. PRINGLE: Yeah, yeah, yeah. And we can go ahead and move it into evidence.

MR. LLOYD: Without objection.

THE COURT: Be marked as Number Four without objection.

(Plaintiff's Exhibit Number Four was admitted into evidence.)

Q: Tell me the first page, what that is?

A: This is an invoice from Southland Medical Corporation to Palmetto Mortuary Transport.

Q: Okay. And with respect to -- there are a number

of items there. But with respect to body bags, tell me about what that invoice describes?

A: There's a listing for one infant eight mil curved zipper, I assume, body bags.

Q: Okay. And what was the price for that?

A: $5.25.

Q: And how many of them did you buy?

A: One.

Q: Okay. And that's the only body bag that's on this invoice? You've got some other things you purchased from Southland.

A: Yes, sir.

Q: Things that you weren't obligated to purchase from anybody else?

A: Correct.

Q: Okay. And the date on this is what?

A: April 3rd, 2008.

Q: All right. And what kind of bag is this?

A: This is a baby bag. Infant bag, in this particular case, it says.

Q: I'll refer you back up to 3.4.8 on the board there. Is there a category for infant bags in the 3.4.8?

A: No, sir.

Q: How did you come to purchase an infant bag from

Southland Medical Corporation?

A: A request was made by Randy Martin from Lexington County Coroner's Office for me to pursue a better way to handle the removal of and transport of infant babies. Small child, or children.

Q: Well, how come? What was wrong? Why seek an infant bag rather than a heavy duty body bag, a lightweight body bag, an odor proof body bag or a water retrieval bag?

A: All of the bags that are listed available on the contract are for adults and we were -- in this particular case when the situation arose, we were at a residence doing a removal for an infant that had died. And we being Randy Martin the coroner on the scene and I was the responding party for our company. At the time when I went in, I had a sheet, I believe, and an adult bag. Possibly an adult bag. But, I mean, it was -- you know, he said, "This isn't a good way to handle this." Something to that effect. And he said, "Isn't there a better way to do this?" And I said, "I don't know but I'll check into it."

Q: What did you do then?

A: I initially talked with Mr. Knight and asked him if he had these bags. And he said, "Why do you

want to do that? You know, we just wrap in sheets and that's adequate." But did not make an offering to make or purchase them on my behalf, or for this purpose.

Q: All right. And so, you went and bought a $5.25 bag?

A: Yeah. I was looking for an option to try to satisfy and -- you know, they were a new customer. I wanted to keep them happy, so.

Q: All right. The second page, I believe, is just an American Express receipt for that same transaction. If you move to the third page, just go through and identify that with the company, the date and what happened, or what that represents.

A: It's again an invoice from Southland Medical Corporation dated the next day -- no. April 9th. The first one was April 3rd. This one is April 9th, 2008. And it was for one case of a baby bag, eight millimeter curved zipper.

Q: Okay. And what was the charge for that?

A: It was $187.50 plus freight.

Q: Okay. And there were 30 contained in that, right?

A: Yes. I believe so.

Q: All right. I notice that there's a little bit different listing of body bag child versus infant on the previous invoice.

A: Well, if you note the invoice numbers -- or the items numbers are different even.

Q: Okay. So why were they different?

A: Initially, I had purchased a smaller bag that was -- I think it was pediatric. It was about half size of the bag that we ultimately purchased. And the reason being is that upon receipt and demonstration, or showing it, we decided that we, being Randy Martin and myself, that the larger size would be more versatile for that use.

Q: Okay. So the customer wanted the type that you purchased 30 bags of?

A: Well, they would -- yes.

Q: Right.

A: That was their preference, yeah.

Q: That's what they wanted. Okay.

A: They weren't obligated to buy them for me.

Q: Got you. Okay. And then the next page after that is another American Express receipt. And then moving to the next. Can you describe this document?

A: It's an invoice from Evident. It's dated March

6, 2009 for six recovery body bags.

Q: Okay. How much --

A: Water recovery bags.

Q: How much did you pay for those?

A: Two hundred and seventy dollars in total for six of them.

Q: Okay. Now, that's a water recovery bag. It does look like that's one of the categories in the contract. Can you explain how you came to buy those?

A: Earlier in the year, probably in February of that year I would assume, I had talked with Buddy about -- Mr. Robert Knight about buying -- or getting some of the water retrieval bags. And I misunderstood him to say that he no longer -- he didn't have them, or -- and my assumption was he didn't. He didn't have him. Or wasn't making them, or didn't -- I didn't know at that point what bags he made, what bags he purchased, and we were getting into the time of year when drownings would be more prevalent and I had probably zero -- or very low inventory. So I went ahead -- I secured some.

Q: Okay. How much per bag were those water recovery bags that you got from Evident?

A: Let's see. Can I use my calculator?
Q: Would you except, subject to check, that it's $45 per bag?
A: If you say so, yes.
Q: Okay.
THE COURT: Excuse me -- go ahead. I'm sorry.
MR. PRINGLE: Yeah.
THE COURT: Excuse me. I have one question. On Exhibit Four, the water recovery bag is the same as a water retrieval bag?
THE WITNESS: It is, yeah.
Q: Okay. And what price were you obligated to pay Mr. Knight for water retrieval bags under the contract?
A: Thirty dollars.
Q: So you paid 50 percent more for those $45 bags than you would have paid under the contract?
A: Yes.
Q: So you didn't get a deal?
A: No.
Q: In fact, you paid more.
A: Yeah.
Q: Okay. So that's $270. If we add that to the 5.25 that we talked about for the infant bag and the 187.50, those are the three we've got so far

that the totals that you bought outside the contract. Let's turn to the next page. The next invoice. And tell me what this is.

A: This is an invoice dated July 14th, 2010, and it's from Medical Products Limited. It is for two different bag types. Four of a -- ultimately it's a heavy duty extra large bag. And the second one is a -- there's four of those in the purchase. And six each of the heavy duty -- HD60 is their model on that. Heavy duty body bag, adult size.

Q: Are any of those body bags listed as a category on the contract?

A: Yes.

Q: Which one?

A: The one with six. The heavy duty HD60.

Q: Okay. With a price of 34.75?

A: Correct.

Q: Okay. And a total amount paid of $280.50?

A: That is correct.

Q: And then the other bags were $213.72?

A: Yes, sir.

Q: For a total of $422.22?

A: Yes.

Q: Okay. How did you come to purchase those bags?

A: I had attempted to get the extra large heavyweight -- or the Knight Systems' version of the extra large heavy duty body bag, I think probably the day before as I recall, and -- because we had used a bag for that purpose. It's not a -- it wasn't a large -- it's a large bag, but it's not one that we have a large use for. But it was a necessity at the time. And Buddy either had one or didn't have any, and I was concerned because he wasn't forgiving in regards to when they would actually become available to me or when he might have them. My understanding was that that bag was a purchased bag that he got from his supplier in China, I assume, because that's the only place that I knew his purchase of bags from. So I was given no indication as to when they would be available. And without this size bag, in certain instances, we couldn't perform our duties. So I went ahead and looked for options and found this option.

Q: Okay. With respect to the -- now, which one did you say was the heavy duty bag was the category? Within the category of the contract? Just say the price on the invoice.

A: The unit price is $34.75 and the extended price

is $208.50.

Q: Okay. And what's the price for heavy duty body bags under the contract?

A: Thirty dollars -- no, $20 each.

Q: So again, you paid --

A: Considerably more.

Q: Considerably more for that.

A: 14.75.

Q: And a total of $422. Okay. While I'm thinking about it, would you accept, subject to check, that the sum total of $5.25 for the infant bag, the initial infant bag, $187.50 for the case of infant bags, the $270 for the six water retrieval bags, and the sum total of these bags that you bought from Medical Products of $422.22 is a sum total of $884.97?

A: Yes.

Q: Okay. Now, as you mentioned, several of those were bags that were not listed in the agreement, correct?

A: That is correct.

Q: Okay. With respect, for example, to the water retrieval bags, did Mr. Knight learn of your purchase of those?

A: Yes.

Q: Okay. In response to that, did you do anything in response to his knowledge that you had purchased those bags?

A: I made an offering to reimburse him for the bags that I'd bought.

Q: And what was the response to that?

A: There was no response that was plus or minus. It was kind of agreed that I'd continue to buy from him.

Q: Okay. Now, in every instance the purchases made in April of 2008, March of 2009, July of 2010 -- well, let's say with respect to the Evident purchase of water retrieval bags in March of 2009. Following March of 2009, did you buy water retrieval bags from Knight Systems --

A: Yes.

Q: -- subsequently?

A: Yeah. I quit using the these bags and began using his again. I mean, I bought them when they became available, so.

Q: Okay. Following your purchase of those infant bags in April, did you continue to buy heavy duty body bags, lightweight body bags, odor proof body bags and water retrieval body bags from Knight?

A: I never stopped. I mean, I guess. It was an

ongoing --

Q: Right. Up until when?

A: I think the last -- like I said, it was May or June of 2011.

Q: Well, and we're going to talk about this. What happened in June of 2011 that precipitated you not buying bags from him anymore?

A: He bid against me in a contract to secure Richland County Coroner's business.

Q: Okay. And so, you say continuously through this time you were buying bags from Knight System with the exceptions of the ones that we've just talked about?

A: Yes.

Q: Okay. And as we mentioned, as you already testified, that amount paid to Knight Systems was somewhere -- you know, somewhere in the neighborhood of, I think, $45,000, or north of that?

A: Yes.

Q: Okay. Can you hazard a guess just right off the top of your head what percentage of $45,884 is?

A: Probably less than one percent, I would guess. Without calculating it.

Q: It is what it is. Okay. Well then, let's flash

forward to June of 2011. Do you remember when you had a conversation with Mr. Knight about the purchase of those water retrieval bags from Evident? Generally, when that was, time frame?

A: Let's see. Give me a second. I'll give you the best of -- I don't remember, but I would venture to say it was probably sometime in 2009.

Q: Okay. Was it before 2011?

A: Absolutely, yes.

Q: Was it before 2010?

A: That I couldn't swear to.

Q: Okay. But certainly --

A: It all depended on when we used these bags, yes.

Q: Okay. But before 2011?

A: Definitely.

Q: Okay. What happened in June of 2011?

A: I was in the process of bidding the Richland County Coroner's Office at their contract bid period after the five year -- their first five year term that we were in was expiring and found out that Knight Systems was one of the people competing in the bidding process.

Q: All right. Well, let's back it up a little bit. Do you remember when the deadline for submission was on the Richland County?

A: It moved. Initially, it was in May, but ultimately, I believe, it was June 17th.

Q: Right. Okay.

MR. PRINGLE: Let's just hand these out and go ahead and get these marked. I represent that's a copy of the request for proposal for body removal services that we've had some discussion about.

MR. LLOYD: Without objection.

THE COURT: Marked as Number Five.

(Plaintiff's Exhibit Number Five was admitted into evidence.)

Q: If you could turn -- just turn to the last page of this document and that would refresh your memory. I think you already said it. But the last page of this.

A: Yeah, June 17th.

Q: Okay. And that was the date when what had to happen?

A: The bid had to be received and dated, then -- received by Richland. Procurement by 3:00 p.m. on the 17th of June, 2011.

Q: Okay. June 17th, 2011.

A: Correct.

Q: And so, if you're bidding on that contract to do body removal services, the contract that PMT

held, you had to submit your bid by June 17th, 2011?

A: Yes.

Q: Okay. And PMT submitted a bid, correct?

A: Oh, yes.

Q: And Knight Systems submitted a bid?

A: Yes, they did.

Q: Okay. Prior to that submission, that deadline date, did you have a conversation with Mr. Knight?

A: Regarding this contract or --

Q: In June of 2011 --

A: Yes. Yes. We did have a contract.

Q: Okay. Tell me about the circumstances of that contract. I mean, that conversation.

A: I believe the one you're referring to is the one that was tape recorded for -- unknowing to me. At the time, I had offered to take an order that Knight Systems had to the University to South Carolina for delivery because I had access. He didn't. And it was an order that was delinquent and being shipped by him. And we were need of them for University purposes. So I had made contact with them about it that day. The day before being -- the best of my recollection it

was around the 16th, but it might have -- in that time frame of June. And during the course of this conversation, we had talked about a number of things. One of which was this Richland County contract of which I was trying to find out information in regards to if -- what was suggestions for helping me to win this and such.

Q: And what happened?

A: He ultimately bid against me. But during the conversation, it wasn't --

Q: What was discussed during the conversation?

A: The infant bags was part --

Q: Just describe what the allegation was.

A: Okay. The allegation -- well, he brought up the point that he had been told by one of my competitors that I was buying bags elsewhere than him. And I questioned him in regards to if it was the infant bag that he -- I said that, you know, I believe that that had -- we had talked about that before and I thought we were past it. But the reason of bringing it back up after two years or -- I mean, this is 2011 and the infant bags were purchased in 2008, so it's actually three years. I had no reason to know why it was being brought up other than to try to, you know,

make me uncomfortable about our relationship. And I was concerned about that at that point because I had tried to address it in previous conversations of which were not recorded. But it caught me off guard quite frankly, you know.

Q: Did he bid on the Richland County contract the next day?

A: Yeah. The next day would have been -- I mean, I --

Q: After he informed you that you had breached the contract.

MR. LLOYD: I'm going to object.

A: I don't believe there was any breach mentioned, but --

Q: He mentioned to you that you had bought infant bags from somebody else.

MR. LLOYD: I'm going to object. Leading.

Q: What did he tell you? What did he tell you?

A: He told me that I broke the contract.

Q: Okay. And then what did he do the next day?

A: Bid against me on the Richland -- as a entry into the Richland County Coroner's bid.

Q: A contract that you held at that time?

A: Oh, yeah.

Q: And a contract that was purchased as part of the

asset purchase agreement?

A: A very big portion of the --

Q: And a contract that, according to the covenant not to compete, he was prohibited to compete for?

A: That was my belief, yes. Yes.

Q: All right. Following June 17th, 2011, did anything else happen in the RFP process with respect to the consideration of the various offerors?

A: Initially, he took the odor proof bag off the market that made it -- which he was the only supplier of this particular style of bag, which we were obligated as part of our contract to be able to have access to at a given price.

Q: It was one of the categories?

A: It is. Definitely. It was the $50 item. The odor proof body bag.

Q: And he was obligated to sell it to you?

A: Yes. But he took it off by making note of it on his website, and I was informed of that some way or another. And then subsequently it was discovered that he had approached the County about sole sourcing the bid because he was the only one that could provide that particular bag.

Q: Well, explain that a little bit.

A: Since he no longer -- he had previously sold to competitors, but he had chosen -- he had stated in the letter that it was to his best interest -- to the best interest -- it was decided by Knight Systems and its employees that it was in their best interest to no longer to handle that practice and keep it in-house for their own use.

Q: Okay. And did that mean not selling it to you?

A: That's the way I read it, yes.

Q: So odor proof body bags, he had an obligation to sell them to you at one point.

A: Yes.

Q: And then decided that he would not offer them --

A: Right.

Q: -- to you?

A: Yes.

Q: Okay. And then what did he do with respect to the County and the RFP?

A: Well, sometime in that period he approached them about making him the sole source vendor based on the fact that that was a bag required for the contract and that he was the only one that could provide it. That was in later June, after -- after the bid had been submitted, so.

Q: And if the contract were in affect, or if he was

-- he would have had an obligation to provide you the odor proof body bags --

A: Yes.

Q: -- right?

A: Yes, he would have.

Q: And couldn't make that a sole source?

A: Correct.

Q: Because you would have been a source for it in addition to him?

A: That's correct.

Q: So in his mind, he couldn't have the contract in affect and then claim that he was sole source?

A: That is correct.

Q: Okay. And so, did the County ultimately -- what did the County do in response?

A: Well, ultimately they awarded the contract to him three months later.

Q: Right. Right. Do you recall what offeror received the highest total of points from the folks who evaluated the contract?

A: Palmetto Mortuary Transport, by quite a significant amount.

Q: Okay. But you still ended up losing the contract to Knight?

A: That's correct.

Q: All right. And did you do anything after the contract was awarded to Knight with respect to procurement? Did you protest it?

A: We didn't protest it. We were actually brought in by them -- we talked to them after the fact, yes.

Q: Okay. And then you filed the lawsuit?

A: Correct, yes.

Q: Tell me what a disinterment is.

A: Removing human remains from it's interned position in the ground.

Q: Okay. And doing what with it?

A: Taking it from the ground ultimately. That's what disinterring is, but --

Q: Okay. Well, is a disinterment mortuary transport?

A: If the body's moved, that's transport. For example, the carrying of the body from -- involving a disinterment, carrying it from a cemetery to -- often times disinterments are done for autopsies at a later date. And carrying it from the cemetery to the hospital and returning to the cemetery, that's transportation. And mortuary transportation is carrying a deceased human being, so I believe it applies.

Q: Okay. Have you performed disinterment since January 5th of 2007?

A: Yes, sir.

Q: Okay. For what kinds of entities or --

A: It was for a funeral home that -- the transfer of human remains from a cemetery in Columbia to Oklahoma, so.

Q: All right. What kind of equipment is necessary to perform a disinterment?

A: For our part virtually a truck and a trailer and straps and basic heavy rigging-type materials and such.

Q: Okay. Do you have access to that equipment?

A: Yes.

Q: Okay. To your knowledge, did Mr. Knight perform any disinterments after January 5th, 2007?

A: Yes. Two that I know of.

Q: Who did he do those for?

A: The Richland County Coroner's Office.

Q: Okay. Just based upon your understanding of the contract, was that mortuary transport?

A: I would consider it, yes. And discussions we had to that effect were considered that as well, so.

MR. PRINGLE: Okay. That's all I have for Mr. Lintal.

THE COURT: All right. Thank you, sir. Cross

examination?

MR. LLOYD: Beg the Court's indulgence.

THE COURT: Yeah.

THE WITNESS: Can I get some water?

THE COURT: Sure.

(Off the record from 11:40 to 11:42 a.m.)

CROSS EXAMINATION BY MR. LLOYD:

Q: Mr. Lintal, good morning again.

A: Hello.

Q: I'll ask you if we can start with -- I believe that's 3.4.8 of the --

A: You want me to turn it a little?

Q: If you don't mind. I'm not as young as I used to be. I'm having a little trouble. Thank you. Can you still see it from where you're at?

A: Me? Oh, yeah.

Q: Okay. And that is the provision in the asset purchase agreement which you contend obligates you to purchase your bags from Mr. Knight; is that right?

A: These bags listed, yes.

Q: Now, in that paragraph the only thing that it obligates Mr. Knight to do is actually sell you body bags at a discount; isn't that correct?

A: Yes. Right. Without -- yeah. And additionally,

without raising more than ten percent in any calendar year.

Q: Right. In fact, 3.4.8, seller's related business, only obligates Mr. Knight in terms of the prices he's going to charge you for body bags that he chooses to sell; is that right?

A: Only obligates --

Q: Only obligates Mr. Knight to charge you those rates if he's selling you body bags; is that right?

A: That doesn't make any sense to me.

Q: Is 3.4.8 require Mr. Knight to do anything other than charge you the stated prices for those body bags?

A: No. Not that I can see.

Q: And, in fact, if you look at the second and third line of paragraph 3.4.8, it actually obligates you to buy all of your body bags from Mr. Knight; isn't that right?

A: For the types listed, yeah. For different types.

Q: Well, I'm not sure I understood or heard your last part of your answer.

A: It says for different types of body bags, which they're listed here.

Q: Okay. That's not my question. Let's go through

this paragraph then. It says Mr. Knight. That's Buddy, right?

A: Yeah.

Q: Through his related body bag business. That's the body bag manufacturing business that you are aware he had?

A: Knight Systems.

Q: Right. And it says he shall provide you, the buyer, body bags at a discounted rate; isn't that right?

A: Yes.

Q: It doesn't require him to do anything else as it relates to those body bags; is that right?

A: No.

Q: And then it says and you shall, for the term of the non-compete agreement -- and we've established the non-compete is ten years; is that right?

A: Correct.

Q: For the term of the non-compete agreement you agree to buy all of your body bags from Mr. Knight; isn't that right?

A: As it's stated, yes.

Q: Well, is that what it says?

A: That's what it says, yes.

Q: Okay. And then it says below are current charges for different types of body bags; is that right?
A: Right.
Q: It doesn't say the exclusive list of body bags that Mr. Knight sells, does it?
A: No. It does not.
Q: And then it says the prices below shall not be increased by more than ten percent in any calendar year; is that correct?
A: Correct.
Q: So the only obligation under that agreement, as far as it relates to Mr. Knight, is that Mr. Knight has to sell -- any bags he sells you have to be at that discounted rate; is that correct?
A: Correct.
Q: Let's talk briefly about the non-compete agreement.
MR. LLOYD: I beg the Court's indulgence. I believe the non-compete agreement is attached as Exhibit One.
MR. PRINGLE: Exhibit One.
Q: Just let me know when you found --
A: I have it.
Q: Okay.
A: This was the reference to Robert Knight?
Q: I'm talking about the non-compete agreement that

was signed between the two parties. Now, when you all started out -- let me rephrase that question. If you'd flip over to page three of the non-competition agreement, or covenant. Do you see that?

A: I'm there.

Q: And down at the bottom under remedies on page three there's a paragraph that says injunctive relief; is that right?

A: Yes, it does.

Q: Now, let's back up for a second. This non-compete agreement was drafted by your lawyer; is that right?

A: Yes.

Q: Now, under the section marked injunctive relief. Are you with me?

A: I am.

Q: It says that you have the right, should you believe that there be a breach or threatened breach by Mr. Knight, to seek remedies in equity, meaning that you could go to a court and seek an injunction prohibiting Mr. Knight from competing against you; is that right?

A: Uh-huh (affirmative response.)

MR. PRINGLE: Yes?

Q: And you claim that as of June 16 of 2011, you were aware that Mr. Knight was going to submit a bid for the Richland County contract; is that right?

A: I was aware that he was going to?

Q: Yes, sir.

A: No, I was not.

Q: You did not know that he was submitting a bid?

A: Not definitely.

Q: Not definitely? You had some inclination that he was going to?

A: I did.

Q: Okay. A moment ago didn't you tell us that at that point in time Mr. Knight, as of that June 16th conversation, had told you that you had breached his agreement?

A: I don't believe it was -- the terminology was breached. It might have been it broke my agreement. But in effect, yes, it was the same inference.

Q: Whatever the formal words he used, you say as of that June 16, 2011 conversation that Mr. Knight indicated to you that he believed you were in violation of the asset purchase agreement; is that right?

A: You know, as I -- I mean, I'm sure that the tape recording would reveal what was exactly said. As I recall, I'm on it. It was that I -- I don't recall it stating that I broke the agreement, even though I might have said that at a previous testimony or something. But it was more about that I had bought bags elsewhere. That he was assuming the accusation. But if it did say breach, then that's fine. This June 16th was the pivotal date in that regard during the course of our conversation.

Q: The evening of June 16, did you go home and tell your wife that you believe Mr. Knight was going to bid against you for the Richland County contract?

A: Yes. I said I wasn't sure of what was going to happen, but I was quite confident that that was what was going to happen, yes.

Q: So as of June the 16th, the evening of June the 16th, you were of the belief that Mr. Knight was going to bid against you for the Richland County contract; is that right?

A: Yes.

Q: Now, did you get back to your attorney who drafted this agreement and discuss your fear that

Mr. Knight was going to compete against you again?

MR. PRINGLE: Objection. That's attorney/client privilege.

THE COURT: I agree with that.

MR. LIBBY: Well, Your Honor, I'm not asking him what they said. I'm just asking if he, in fact, went back to his attorney to, in fact, address that.

THE COURT: That's okay. You can answer this.

A: No, I did not. Not at that time.

Q: Okay. Did you ever attempt or have the attorney who drafted the agreement or anybody else file an injunction against Mr. Knight for bidding for that Richland County contract?

A: We did not.

Q: And, in fact, between the time that -- of June 16th -- at least the evening of June 16 when you had the discussion with your wife and you believed that Mr. Knight was going to compete against you, up until the time that you all filed this lawsuit several months later, is that right, you don't take any action to seek injunctive relief against Mr. Knight; is that right?

A: No.

Q: This non-compete agreement actually has a term of

ten years. And you explained earlier, I believe, in direct examination that that would have allowed you to go through at least two contract cycles; is that right?

A: Yes. It would have.

Q: And that would have been at least -- let's talk about a couple of contracts. The Lexington County Coroner's Office contract and the Richland County Coroner's Office contract. That would have allowed you to get through two cycles with both of those contracts; is that right?

A: It was our -- yes.

Q: Okay. Now, on the Richland County contract over a ten year period, how much did you stand to make through your business on that contract?

A: Ten years?

Q: Yes, sir.

A: I don't know the exact dollar amount.

Q: Give me a ballpark. How much were you anticipating making per year on that contract?

A: Let's see. It's about 100,000 a year. So what is that?

Q: So over ten years, you would have anticipated making a million dollars on that Richland --

A: Yes.

Q: -- County contract?
A: Yes.
Q: Roughly?
A: That's close enough.
Q: And per year on the Lexington County contract, how much did you anticipate making?
A: Let's say 40,000 a year. I don't recall exactly what that was. Forty to $50,000 a year maybe.
Q: So roughly --
A: A half a million.
Q: -- a half a million?
A: Say half a million. Let's use rough numbers.
Q: I'm sorry. If I ever talk over you --
A: No.
Q: I'm trying not to do that. The court reporter, who we all have to be very sympathetic to --
A: I understand.
Q: -- and we dealt with this in the deposition. She can only take down one of us at a time, so --
A: That's fair.
Q: -- I apologize if I trip over you. Roughly half a million dollars you anticipated making on the Lexington County contract; is that right?
A: That's a fair estimation, yes.
Q: So just those two contracts, Lexington County and

Richland County, over the ten year period, you anticipated making maybe a million and a half dollars?

A: Okay, yes.

Q: Now, when you all got to the closing of this asset purchase agreement, did you have a dollar amount in mind for the non-compete?

A: No.

MR. PRINGLE: I'm going to lodge a continuing objection about this line of testimony. I think that, as I referenced earlier, the contract speaks for itself, and any of the discussion about the mindset, or the negotiations, or what people believed going into it are not only irrelevant, they're immaterial. In fact, really can't be considered as parol evidence. The contract clearly speaks for itself in terms of the amounts that are included. Certainly legal arguments can be made, and perhaps about the effect of those things. But what the individual parties thought, or felt, or believed, or negotiated is completely inadmissable.

MR. LLOYD: Your Honor, one of the very issues about a non-compete, any non-compete, is whether there's adequate compensation for the length and term both geographic as well as time period of that non-compete.

One of the issues that this court is going to have to deal with is is there adequate compensation for this particular non-compete. Very essential to that is how the parties arrived at this $1,000 figure for the non-compete and what the value to both sides for that non-compete actually was.

MR. PRINGLE: Let me just respond briefly.

THE COURT: Sure.

MR. PRINGLE: Certainly the general black letter law is that there has to be adequate consideration for a covenant not to compete, or frankly any particular contract. That amount is stated. There is a $1,000 amount that's been allocated for purposes of the purchase agreement to the covenant not to compete. Like I said, you can have an argument about whether that is considered to be substantial enough for -- or a requisite amount of consideration. Certainly we would maintain that there's not any argument or any law at all that would suggest that a $1,000 -- any different than a one dollar consideration in a real estate contract, one dollar and other consideration, that there is nothing that would call that into question as a matter of law. But in any event, the number is stated in there. It doesn't have to be -- you don't have to figure out what it is. And that any

discussions by the parties don't go at all to whether that is considered adequate consideration for purposes of whether it's a valid covenant not to compete.

THE COURT: Yeah. My thought process on that is that -- and I can hear the question again. But the question being asked is -- as I understand it, is why that figure. Why is it that figure. And that testimony would not be varying the dollar figure. So you wouldn't be admitting conflicting testimony that's -- you would not be admitting testimony which would be varying the terms of the contract. So I don't think the parol evidence would come into play there. Because he's asking why that figure.

MR. PRINGLE: Okay. But even if he is, putting aside the parol evidence, asking why the figure, what does why that figure have anything to do with an issue that's in play here? Either a $1,000 amount is considered adequate consideration or it isn't.

MR. LLOYD: Your Honor, we would -- I'm sorry.

THE COURT: Go ahead.

MR. LLOYD: Your Honor, we would suggest that that's obviously exactly what the Court has to do. In all these cases that look at non-competes, that's what the Court is weighing, including looking at the amount of compensation for that non-compete against what's the

term, what's the length of that non-compete, as well as what's the geographical restrictions on that non-compete. And that's a balancing act that respectfully Your Honor is going to have to --

MR. PRINGLE: I don't think that's what the legal analysis says at all, especially in view of the fact that we know that $590,000 was the total amount paid for the contract. That something is given -- the law -- the state of the law, the way I understand it, is that putting an amount in a contract that is allocable to a covenant not to compete, because you have to have separate consideration for a covenant not to compete as opposed to for other things. If there is any separate consideration that's considered, a court is not going to fly spec and decide that $1,000 is inadequate and relevant to $10,000, and certainly not any requirement that the covenant not to compete and the amount that is just allocated, mind you, in this -- you know, allocated in the agreement when you have a full amount, that that amount is going to be deemed inadequate if it doesn't measure up to or equal exactly the parties' belief as to what it meant to them to have Mr. Knight not competing. So I think all of this discussion doesn't go to anything that's going to lead to any facts, whatever they think about it, that's going to

lead to any more -- make it any more or less likely that there was adequate consideration via $1,000 allocated to a covenant not to compete.

MR. LLOYD: Your Honor, I don't want to prolong this.

THE COURT: Yeah.

MR. LLOYD: And I would agree with Mr. Pringle if we were asking a court to blue line this non-compete. But one of the things -- it's our contention, and one of the things Mr. Pringle and I agreed to last week, Your Honor, is that once all the testimony is taken and the exhibits put in today, that obviously we would request that both sides submit proposed orders after this hearing discussing these issues.

THE COURT: I'm going to allow the testimony, noting your objection, and allow it in. And we're on a non-jury basis here. And when I make a final decision, I'll make a final ruling then as to the admissibility.

MR. PRINGLE: Okay, sure.

THE COURT: And we've got excellent lawyers here and good arguments, but that's my feeling now is allow it in, subject to your objection, and we will deal with it finally at the order stage.

MR. PRINGLE: Right.

MR. LLOYD: Thank you.

THE COURT: Answer the question.

Q: Do you recall the question?
A: What was the question again?
Q: We always do that to witnesses. Let me ask you again, and then we'll back up a little bit and put this in a little more context. Prior to coming to the closing where you all signed the asset purchase agreement, there had not been a dollar figure attached to the non-compete; is that right?
A: I would believe so. I really don't know.
Q: You don't know whether or not there was a --
A: Personally, no, sir.
Q: -- dollar figure attached to it?
A: I don't. Not to be definitive, I don't. Even if I -- I mean, I -- okay. I don't really -- I mean, I would -- I don't know, I would say. I don't recall.
Q: You don't recall today, or you never knew whether or not?
A: I don't recall from that time. No. You know, I really just don't recall. I don't take care of that aspect of -- and I did not during the time of the negotiation, did not deal with these parts of the aspects of it. You know, the allocations and such.

Q: Okay. Do you recall at the day of the closing having a conversation with your wife about the non-compete agreement?

A: There were conversations, yes.

Q: Okay. Specifically, about the non-compete agreement; is that right?

A: Yes.

Q: And part of that conversation with your wife centered around the fact that she disagreed with the amount that was attached to the non-compete, allocated to the non-compete, at the day of the closing; isn't that right?

A: I overheard that, yes.

Q: Okay. Well, did she have that conversation with you?

A: Trying to explain it to me.

Q: Okay. So prior to going into the closing, there was no dollar amount that you all brought to the table as far as that non-compete; is that right?

A: I don't recall.

Q: Okay. Let me approach it this way then. At some point you all agreed on a purchase price of $590,000; is that right?

A: That's correct.

Q: And the purchase price for that business being

sold by Mr. Knight, that included the hard assets; isn't that right? By hard assets, I mean, the stretchers --

A: That was listed, yes.

Q: -- vehicles; is that right?

A: That's pretty much it, yeah.

Q: Those tangible assets that were listed --

A: Right.

Q: -- in the exhibits to the exhibits to the --

A: Yes, sir.

Q: -- purchase agreement?

A: Agreed.

Q: And it also included, for example, the customer list; isn't that right?

A: Yes.

Q: And it included the good will of the business; isn't that right?

A: I believe that was part -- yes. That would normally --

Q: And it didn't include anything else, did it?

A: I don't recall.

Q: Did it include, for example, anything other than those items I just listed?

A: I don't know.

MR. PRINGLE: I'll just lodge an objection. I think the

agreement speaks for itself. But I think he's answered it.

Q: Do you recall us having that discussion at your deposition?

A: Yeah.

Q: About what was included in the purchase price?

A: I was very confused during that whole period of time, yes.

Q: Why were you confused?

A: Because this is not my strength. This area. I don't recall the exact proceedings at it, and I believe, if you recall, I suggested you have this discussion with my wife because she's more in tuned with this than I.

MR. PRINGLE: And as part of my continuing objection, I would just note that --

THE COURT: I note your objection.

MR. PRINGLE: -- that is why we have written contracts.

Q: My question though is as --

MR. LLOYD: I'm sorry.

THE COURT: Go ahead.

Q: My question though is as of the day of your deposition I asked you questions about the purchase price; isn't that right?

A: Yes.

Q: Okay. And I asked you what items were included in that purchase price; isn't that right?

A: I believe so, yes.

Q: And I asked you if there was anything else other than those items that we just discussed a few moments ago, hard assets, good will, the contracts, that was included in your offer of $590,000 for the purchase of that business; isn't that right?

A: I don't recall.

Q: Okay. Well, let me start. Was there anything about that day of that deposition that caused you not to understand my questions?

A: Confusion would be the biggest portion of it. I was -- I think I -- if I recall -- I don't have a copy in front of me. But I would recall that at some juncture in time I would have probably expressed that I was really unsure of that part of the testimony and tried to defer you to discuss that with my wife when you deposed her at that point in time. I might have agreed to something, but I quite frankly didn't understand.

Q: Okay. And as part of your deposition, do you recall me saying that if you didn't understand any questions --

A: Yes, I do recall it.
Q: -- you could ask me to repeat them?
A: Sorry. Yes.
Q: Isn't that right?
A: That is correct.
Q: Okay. And when we were talking about those items that were included in your offer price, you didn't ask me to repeat that question or tell me that you were confused; isn't that right?
A: I would have imagined not, yeah.
Q: So today you're telling me that you do not know whether or not there were other items included in the purchase price other than the hard assets, the good will and the contracts?
A: May I ask you a question?
THE COURT: Just answer what you're being asked. Just to the best of your ability, answer.
MR. PRINGLE: And objection. Asked and answered.
A: I don't know the answer, sir. I mean, I really don't. I mean, I could -- and I might have made the assumption that based on the fact that I was getting worn down by your asking me questions that agreed to something that I was unsure of, and it's probably erroneous on my part.
MR. LLOYD: Your Honor, I'm going to ask if we can unseal

Mr. Lintal's deposition.

MR. PRINGLE: Sure. Put the whole thing in. Put the whole thing in.

MR. LLOYD: Your Honor --

THE COURT: Yes. You can do it. I can do it. Did you hear what Mr. Pringle said?

MR. LLOYD: No, I didn't.

MR. PRINGLE: Put the whole thing in if you want. I mean, it doesn't make a bit of difference.

THE COURT: You want to do that?

MR. LLOYD: Without objection then we --

THE COURT: Yeah.

MR. PRINGLE: Continuing to make the point that -- and I would, you know, ask where this is going in terms of relevance to this case.

THE COURT: Well, let's hear what the next question is and we'll make a decision here.

MR. LLOYD: This is the sealed original of Mr. Don Lintal's deposition taken on Wednesday, July 31st, 2013 and we'll offer it as Defendants' One.

THE COURT: Any objection?

MR. PRINGLE: No objection.

(Defendants' Exhibit Number One was admitted into evidence.)

MR. LLOYD: Thank you. And I beg the Court's indulgence

for a moment.

Q: Mr. Lintal, that's Exhibit One and there are several places I'm going to ask you to refer to. Let's start page 32 of your deposition.

A: Yes, I'm there.

Q: And what should be beginning at line four. Do you see that?

A: I do.

Q: And my question was, "Let's talk about what you were negotiating over that period of time. There were the hard assets, so to speak, there were the stretchers and vans; is that right?"

A: I agree with that, yes.

Q: And what was your answer?

A: Yes.

Q: And my question next was, "What else did you understand was included in that purchase price?" Do you see that?

A: Yes.

Q: And your answer on line 11 was what?

A: "The vans. Well, okay. You said the vans, right?" And you said --

Q: And I said right. And then the next statement by you is what? Can you read that for me?

A: "Okay. Three contracts, and that was probably

primarily it."

Q: Okay. Let's go down to line 20. I said, "Did you believe good will was included in that initial asking price as well as the prices you all were negotiating back and forth?" And your answer?

A: "I -- can you define your good will?"

Q: Okay. My question to you next was, "Well, in other words, just the reputation of the business. The relationship that Mr. Knight had established," is that right? Do you see that?

A: Yeah.

Q: And if you skip down to line number four what is your answer?

A: "Then there was good will involved."

Q: And my next question was, "How did you value the good will?" Do you see that?

A: I do see that.

Q: Okay. And your answer to that was what?

A: "I'm sure there was a consideration put in there at that point for it, but I don't recall what percentage or what number was tied to good will. Don't know."

Q: Now, skip down to line 20. I asked you a question. "Is there anything else other than the

hard assets, the stretchers, vans and the good will that was included to your knowledge in the negotiations of a price?" And your answer?

A: "Not that I recall."

MR. PRINGLE: Again, while there's a break here, I'll make an objection that even if Mr. Lintal had said that there was a blue elephant that was being included in the purchase price in his deposition or at the negotiating table it wouldn't make any difference because the final agreement states what all of those things were and what was purchased and what was bought.

THE COURT: Let me ask the question now. I know we're on cross examination and you have leeway. And our direction now is still on this particular point about what Mr. Lintal thought was in the contract?

MR. LLOYD: The consideration. Specifically, the consideration for the non-compete.

THE COURT: Okay. Have you asked anything about the -- you've asked questions about what assets were in it.

MR. LLOYD: Yes, sir.

THE COURT: But how about as to the non-compete because that's where we started out.

MR. LLOYD: Your Honor, one of the issues that is being brought up in this, and we'll get to in this line of questioning, is was there actually separate

consideration paid for the non-compete, or are we just talking about the original purchase price.

THE COURT: Well, I think the asset purchase agreement should answer that question as to whether it's a specific figure for --

MR. LLOYD: Yes, sir.

MR. PRINGLE: And it does. It's $1,000

MR. LLOYD: I would agree. It does say $1,000.

THE COURT: Okay. Now, what I allowed was if you wanted to ask him why that figure is what I understood. I said subject to his objection and me make a final ruling I'll allow that to be asked, but that's the direction I saw where we were going with this thing.

MR. LLOYD: Yes, sir. And then I was asking him initially about whether there was, in fact, a figure attached to the non-compete other than what eventually happens at the closing. And that's where I was going with that.

THE COURT: You're asking him to -- a question that would vary the terms of the contract. And at this point, as far as I know, the evidence says that nothing -- no one has indicated there's any ambiguity in that contract as to what the language is as to a dollar figure for the non-compete. So I think that would not be a permissible question under cross examination.

MR. LLOYD: Well, Your Honor, we're not asking them to

alter the terms of the contract. We're asking is about how they get to that figure. That figure includes separate compensation for the non-compete, or are we really talking about an allocation of the original purchase price, which had already been negotiated.

THE COURT: If you want again ask him why the $1,000, I'm going to allow that subject to Mr. Pringle's objection. I'm going to allow that question.

MR. LLOYD: Thank you, Your Honor. And, Your Honor, let me ask, if I might, for some clarification from the court. You did rule that it's proper to get back into this issue of whether or not there was a dollar figure from the purchasers prior to the closing?

THE COURT: A dollar figure from the --

MR. LLOYD: As to the non-compete. I'm sorry.

THE COURT: If you want to ask does the contract call for a separate dollar figure for the non-compete, the answer is yes. Now, you want to ask that when he came to closing --

MR. LLOYD: Yes, sir.

THE COURT: -- did he have on his mind a -- I really think as to that he's already answered, as I remember, I don't know, is what I've heard a number of times. And if that's his answer, I think we need to move on from there, if I'm correct.

MR. LLOYD: Well, I'd like to be able to go back to the deposition again on that subject --

THE COURT: Okay. All right. You may.

MR. LLOYD: -- if I might. I beg the Court's indulgence.

THE COURT: Yes, sir.

MR. LLOYD: Well, Your Honor, let me withdraw that question at this point in time --

THE COURT: Okay.

MR. LLOYD: -- and look at it a different way, subject to Mr. Pringle's objection.

Q: Mr. Lintal, let me ask you. At some point during the negotiation or during the drafts of this asset purchase agreement, the non-compete went from a period of three to five years, is that right, up to ten years?

A: I believe I previously said it went three to five years, but I later found that the ten years was in from the beginning, from our aspect. The only change was the three year on the purchase of body bags to ten years at the time of closing. That's my understanding of this. I know I said three to five before. But there were previous markups that I think that you've been provided. Did any of those show the three year period in them?

Q: Well, let me ask you, because you're the witness

here today.

A: Okay.

Q: At some point during the drafting of the asset purchase agreement, including the non-compete, was it your understanding from those drafts that the non-compete was for a term of less than ten years?

A: No. I might have stated that, but I don't recall. I mean, I really don't. Our ultimate goal was that two term of contracts based -- in order to offset the fair price that we were offering for the business. And that was the -- okay.

Q: Is it your testimony today that, to your knowledge, the non-compete was always a period of ten years?

A: My knowledge is that I'm really not sure. That I believe that -- I knew there was variance in something at the time of closing that was changed for a given reason. But it went for -- where it was a difference in a time duration. That's what I was confused on at the deposition, because I was thinking that it pertained to the contract -- or the non-compete portion of the contract, not to the agreement for purchase of body bags.

That's where I got confused.

Q: Okay. Now I'm confused. At some point- during the drafting of the asset purchase agreement, the length of time that you were required to purchase body bags from Mr. Knight was less than the ten year term of the non-compete; is that right?

A: Yes.

MR. PRINGLE: I'm just going to lodge this objection yet again. All of this is parol evidence.

THE COURT: I tell you. I think we're at the point where we have a problem with parol evidence rule, because the contract, I'm assuming, sets these -- has information in the contract which indicates what the answer are of these questions and you're trying to vary from the agreed upon contract, and I see that as a parol evidence problem.

MR. LLOYD: Yes, sir. And just respectfully --

THE COURT: Sure.

MR. LLOYD: -- parol evidence would be to introduce some other interpretation of the agreement, and that's not what we're getting into. What we're getting into are negotiations leading up to this agreement and what terms of that were in those drafts. We're not offering that to suggest that any of these terms that eventually were in the agreement should be interpreted in a

different way.

MR. PRINGLE: Well, respectfully. Exactly for what purpose could they be offered other than to compare and contrast a just oppose against a term that eventually ended up being what we're arguing over here today and what may have been discussed back and forth. You can't get a motive. You can't get state of mind.

THE COURT: What would be the reasoning?

MR. LLOYD: Again, Your Honor, one of the issues in this is going to be that the value of this non-compete and how the Court values that. One of the issues, I think, central to that is this length of time. Obviously, the eventual ten years length of time. I believe the evidence shows is that over those negotiations the eventual value, despite the changes in the length of time for the non-compete, don't change.

THE COURT: I tell you, my ruling is going to be that -- on this subject is if you want to have questions in regards to why does it say $1,000 for non-compete, you can do that. As to other questions related to the non-compete, I'm going to limit the cross examination. If you want to go at that one question as to why it's $1,000 and ask this witness that question, I think you have a right to do that.

MR. LLOYD: Okay. Thank you, sir.

THE COURT: Yes, sir.

Q: Now, Mr. Lintal, you were at the closing; is that right?

A: Yes, sir.

Q: And when you got to the closing, you all were trying to allocate the purchase price to varying things; is that right?

A: My wife and my lawyer were, yes.

Q: Okay. Now, they were doing this on your behalf; isn't that correct?

A: Our behalf. It's mutually --

Q: Our includes you.

A: Our, my wife and myself. The owners of Palmetto Mortuary Transport.

Q: Okay. You weren't just a passive observer. All of these discussions about allocation of purchase price were on your behalf; is that right?

A: They were on my behalf, but I really didn't have a lot of say in the matter. It's not my strength.

Q: And I'm not asking whether you were, in fact --

A: Okay.

Q: -- contributing with --

A: What is your question then?

Q: My question to you was there was discussion --

A: Yes.
Q: -- at the closing about allocation of the purchase price; isn't that right?
A: That is correct.
Q: Okay. And there was back and forth with Mr. Knight and your side over what parts of the purchase price would be attributed to in terms of tangible assets versus intangible assets; isn't that right?
A: That's correct, yeah.
Q: And part of the concern was your wife being able to, on your behalf and the company's behalf, being able to amortize certain of that purchase price; isn't that right?
MR. PRINGLE: Objection. We're not talking about the price or the amount allocated to the covenant not to compete.
THE COURT: I think that's where we need to -- the question -- if you want to go into what I said before about why the $1,000 non-compete --
MR. LLOYD: Yes, sir.
THE COURT: -- you can ask -- if you want --
MR. LLOYD: I'm sorry.
THE COURT: Go ahead.
MR. LLOYD: I was just trying to establish Mr. Lintal, at

least in his testimony just a moment ago, seemed not to be sure what was going on, or at least seemed to indicate that it was other people doing things and he was there and it was being done on his behalf and he was certainly observing the discussions.

MR. PRINGLE: And I would maintain that even if he were unconscious, it wouldn't make a difference in terms of what these terms are and what they mean in the agreement.

MR. LLOYD: Again, Your Honor, I'm not asking him to change any of the terms. I'm just asking him what was occurring at the closing.

THE COURT: What I've heard from this witness is that this was not his area and it was his lawyer and his wife. But I think that's clear to me. And you've made that clear based on your cross examination. So I think we can move beyond that one, because I think that's set in my mind as to what he said on that one.

MR. LLOYD: Thank you, Your Honor.

THE COURT: Yes, sir.

Q: And again, part of that discussion that was going on was as to what was going to be attributed or allocated to the non-compete; isn't that right?

A: I would assume so.

Q: Okay. And did your side propose that the non-

compete be for $1,000?

A: I don't recall.

Q: Do you recall having again a discussion with your wife where she disagreed with the amount that was attached to the non-compete?

A: That we've submitted?

Q: The $1,000. Do you recall having a discussion --

A: No. I don't recall.

Q: -- with your wife about her disagreement with the amount of $1,000 being attributed to the non-compete?

A: I don't know. I don't recall what was -- actually, I didn't know until this period of time what was attached to it. It's nothing I know. I mean, I'm sorry, but I'm ignorant in this regard. You can ask me and ask me, but -- you know, you might have gotten me to agree to something in the course of testimony -- in deposition, but --

Q: Okay. A moment ago you just told me you did recall your wife discussing with you or in your presence with your lawyer about the amount that was attributed to the non-compete. Do you recall that?

A: I recall a conversation regarding this area of the negotiation. In regards to what actually was

being said and the allocations of different things, I recall there was a disagreement in certain forms of the allocation, but I don't know -- to this day I could not say the amount, the areas that this involved. Once again, you should defer these questions to her because she knows it. I don't.

Q: Okay. Well, let's take it this way then, because your wife is here to testify later on.

A: Yes.

Q: You have absolutely no knowledge as to how the $1,000 value gets in the agreement for the non-compete?

A: Truly, no.

Q: You didn't suggest $1,000 for the non-compete?

A: No.

Q: You didn't suggest any figure for the non-compete?

A: Not that I recall.

Q: Okay. As far as you knew -- did you actually review the non-compete prior to the closing?

A: Certain portions.

Q: Which portions did you review?

A: The portions that were non-business related. They would have been things that --

Q: Okay. Such as?
A: -- like the term or the length of the term, the --
Q: By length of the term, you mean the years?
A: The non-agreement term. The ten year period that was agreed upon.
Q: Did you review the portion that related to the geographical restriction on competition?
A: I did.
Q: Okay. Did you suggest those terms of the non-compete?
MR. PRINGLE: Let's just keep the continuing objection to all of this. I just want to make sure that it's --
THE COURT: It's noted.
A: I was involved in it, sure.
Q: Okay. And the ten year period, again, you've explained that that was to allow you to get through at least two cycles; is that right?
A: Correct.
Q: When you would have -- at least in your mind because of Buddy's non-competition against you, you would have earned just from the Lexington County and the Richland County contracts maybe a million and a half dollars, thereabout?
A: If I was able to retain them, yes.

Q: Okay. And the 150 mile radius from Lexington, that was your suggestion?

A: More than likely, yes.

Q: Okay. And the 150 radius from Lexington would have essentially prevented Mr. Knight from competing against you anywhere in South Carolina; isn't that right?

MR. PRINGLE: Objection. It assumes facts not in evidence.

THE COURT: I think it's a legitimate question.

A: Yes. For a period of ten years.

Q: And now, when you bought the business, Mr. Knight's business was primarily in Lexington and Richland County; isn't that right?

A: Right. Yes, sir.

Q: Okay. And the need for Mr. Knight not to compete against you in, let's say, Marion County, in your mind, was what? Why was that important to you?

A: Just because I didn't -- why was it important? Putting a geographic distance on it would have strengthened -- I didn't -- it wasn't to go against Mr. Knight in that regard. We didn't know where the business was actually going to -- what we were going to -- if we were going to try to expand it at different locations. We wanted

to keep our options opened if it was doable, I guess. I mean, you know, the standard -- a standard contract -- I mean, he didn't have to accept it. We put it in there. He accepted it. So, I mean, the significance of it was that not only was there a duration of time, but we defined the territory, the boundary of which this applied.

Q: Okay. I guess my question again. When you purchased Mr. Knight's business, you understood that he primarily serviced Lexington and Richland County; isn't that right?

A: Based off of his customer list, yes.

MR. PRINGLE: Objection. He's answered the question.

A: Yes.

Q: And --

THE COURT: Hold it right there. It maybe have been asked twice, but the Court recognizes what Mr. Lintal just said as to the geographic area involved, meaning Richland and Lexington County. I understand that part. So what's the next question on that issue?

MR. LLOYD: Again, I'm not sure -- the latter part of Mr. Lintal's answer was a little confusing to me, so I was trying to establish if I could ask it this way.

Q: Again, you wanted Mr. Knight not to compete

against you outside of this two county area, including all the way up to Greenville or Pickens County, because you anticipated potential expanding into those markets?

A: We did not know, but we did not want to limit our options if it was available to us. At the time it did not seem to be an issue on their part. I don't recall any objections to that.

Q: But again, the importance to you was to have statewide no competition from Mr. Knight?

MR. PRINGLE: Objection.

THE COURT: I think he's answered that. I think he has answered that.

THE WITNESS: Thank you.

Q: Now, anything else did you propose in the non-compete agreement other than the geographical distance and the length of the non-compete?

A: Let me read it page by page. Give me a second. I'm sure I would have been involved in the transition assistance portion of it. 3.4.6

Q: And when you say you would have been involved in that, would you have been suggesting the terms?

A: Yes.

Q: So other than that, everything else related to this non-compete as it related to negotiations by

your side, your wife is in a better position to answer those questions than you?

A: I would say yes.

Q: Now, let me ask you, going back to the body bags. You indicated that at some point Randy Martin discussed body bags with you? Infant bags; is that right?

A: Yes, sir.

Q: And is that the first time that you realized that there was such a thing as infant bags?

A: I believe so, yes.

Q: Now, when you purchased Mr. Knight's business, were there infant bags in the inventory that you purchased from him?

A: No, sir.

Q: Do you recall again the deposition that you took on July 31, 2013 when I asked you about whether or not there were infant bags --

A: In the inventory I took?

Q: Yes, sir.

A: If you asked it and I answered that there were then I answered incorrectly, because to my knowledge there was none in there. The inventory we took at that date was --

Q: Okay. Mr. --

A: -- was on the invoice that --

Q: Mr. Lintal, I'm not --

THE COURT: You answer it and then we'll get a question. You finish answering --

MR. PRINGLE: He's explaining his answer.

THE COURT: I know. I think he was.

A: The first invoice that was given on our part was invoice 2185. This was the list of items that we purchased that -- of body bags purchased at the time of sale. And these were the items that were included. Included in the business, I do not recall any infant bags being included in any part of this.

Q: Okay. My question was, on the day that we took your deposition, do you recall telling me that you were, in fact, aware back in -- at the time of the this conversation with Mr. Martin, that there were infant bags in the inventory that you purchased from Mr. Knight?

A: I don't recall saying that.

Q: Again, if you could turn to page 137 of your deposition.

MR. PRINGLE: I'll just interpose an objection. He's just described and shown the things that were purchased from Knight Systems as part of the transaction that was --

that body bag inventory.

THE COURT: I think he has the right to ask him what's in the deposition.

MR. PRINGLE: All right.

THE COURT: As compared to testimony today.

A: Okay. What number, sir.

Q: Okay. If you look on page 137. Well, let's go back so that we can put it in context to some degree what this conversation is about. So if you could flip back to page 136.

A: Okay.

Q: Okay. And is it fair to say that this discussion between you and I involved you describing a conversation you had with Mr. Archie Maddox in 2012?

A: It does.

Q: And this was about whether Mr. Knight produced or carried infant or pediatric bags; is that right?

A: Correct.

Q: And at line 21 I asked the question, "I just want to be sure I understand. In 2012, Capital Transportation, through Archie Maddox, told you that Mr. Knight had produced a --" that should be bag, "-- in 2009 a pediatric or infant bag that had been rejected by Lexington County Coroner's

Office?" And your answer was?

A: "That was my understanding."

Q: And you go on to say?

A: "I mean, it was made out of heavier material. Heavier weight material," excuse me.

Q: Okay. My next question to you was, "Okay. Now, did he have that discussion" -- referring to Mr. Maddox -- "with you prior to June 16 of 2011?" And your answer?

A: "No."

Q: And my next question was, "Again, what was the source? What created this conversation in 2012 about infant or pediatric bags that may or may not have been made by Mr. Knight?" And your answer?

A: "Probably when I took on inventory that we bought as part of the acquisition and there were infant bags in that inventory." Shall I continue?

Q: Yes, sir.

A: "So there were -- I acquired infant bags from his as a result of the sale of his current inventory. So it likely came up, but I don't recall the exact reasons it came about."

Q: Okay. In fact, when you acquired the body removal business from Mr. Knight, Buddy Knight

was already selling body bags to Lexington County Coroner's Office; isn't that right?

A: That's correct.

Q: And he continued to sell body bags even after you acquired the business from Mr. Knight through you on at least a couple of occasions; isn't that right?

A: Yes.

Q: And if Lexington County Coroner's Office wanted infant bags, they had the opportunity to purchase those directly from Mr. Knight, didn't they?

A: They had the opportunity, yes. That was not what this infant bag was intended for. But yes, they could have.

Q: I'm sorry?

A: That was not the purpose of -- that was not what that bag purchase was intended for, or the discussion that we had was intended for. It was for the at need things of which we were supplying the bags at the at need period of time on the majority of calls, and still do on the majority of calls that we take on -- for Lexington County.

Q: Okay. Mr. Lintal, when you purchased the infant body bag from Southland, at that point in time -- this was 2008; is that right?

A: Yes, sir.
Q: And at that point in time that purchase was, according to your testimony, triggered by this conversation you had with Randy Martin; is that right?
A: Yes.
Q: And at the time that you purchased -- let me rephrase that. At the time you had this conversation in 2008, you had already acquired the inventory from Mr. Knight; isn't that right?
A: That's correct.
Q: And in that inventory there were infant bags; is that right?
A: No, there were not. Can I refer you back to this?
Q: Yes, sir.
A: That is not talking about Mr. Knight. It's talking about Mr. Maddox. We acquired these infant bags through the acquisition of Mr. Maddox. Not through the -- of the Capital Transportation business. These were not infant bags that were provided by -- to the best of my knowledge, provided by Mr. Knight. They were similar in style and -- I don't know where they came from, but this was the Capital

Transportation inventory that I had acquired. That's where I noticed them in the items that we were given as part of the purchase.

Q: Let me phrase it to you this way. At the time you purchased those infant bags in 2008, --

A: Yes.

Q: -- the first bag, had you had any discussion with Mr. Knight about --

A: Yes.

Q: Let me finish the question.

A: Okay.

Q: About him either purchasing or manufacturing an infant body bag for you?

A: I inquired about his ability to provide them for me. To get me -- I didn't ask him to make them. I didn't feel it was my job. He was the supplier. He was the master bag maker. You know, I talked to him about the Lexington County conversation, the Randy Martin conversation, and said that they had the desire to look for a bag that was more suitable for the size of the infant than the adult size bags that we were using. And he brushed it off to say that we just always wrapped them in a sheet. Didn't make any offerings on his part to provide, or that he had

the ability to make them. So he had no interest. It's such a small volume, why do you want to mess with it. Just wrap them in a sheet and put them in an adult bag when you get to the hospital. So that's where it left and that's where I made the assumption at that point that he had no interest in it and proceeded, so.

Q: Do you know who sells Lexington County Corner's Office body bags currently?

A: Currently?

Q: Yes, sir.

A: I've sold them bags.

Q: Infant bags?

A: No.

Q: Are you aware of -- when did you get the contract -- and I'm not sure -- just for the Court's edification, I think this was discussed at some point. At some point after you acquired the business you lost the Lexington County Coroner's Office contract; is that right?

A: I did. Yes, sir.

Q: Okay. And when did you get it back?

A: At the time of the acquisition of Capital which was in 2012.

Q: And are you aware that Mr. Knight was supplying

them body bags during the time period that you lost the Lexington County contract?

A: Exclusively?

Q: I'm not saying exclusive. I'm saying are you aware that he was still supplying --

A: I am not aware. I am not aware.

Q: You don't know who was supplying them body bags?

A: During that period of time, I do not.

Q: Okay. Did you ever know --

MR. LLOYD: Beg the Court's indulgence.

Q: During that time period that you had the contract -- the first time period before you lost it, how many occasions did you use an infant body bag?

A: In Lexington County?

Q: Yes, sir.

A: I wouldn't know without looking through my records. A very small number.

Q: After you got the contract back, how many times have you used an infant body bag?

A: None, zero. Well, none of ours. None that we provide. If we did, it would have been a bag that they provide.

Q: And that's because Lexington County had infant body bags already; isn't that right?

A: They get them from another avenue. They have

another source for that.

Q: The time period that you had this conversation with Mr. Martin Lexington County Coroner's Office was already purchasing through some means infant body bags; isn't that right?

A: The Coroner's Office?

Q: Yes, sir.

A: No, sir. Not to my knowledge, no. I don't know that.

Q: To your knowledge, when did they start purchasing infant body bags?

A: I don't think they -- I mean, I don't think they've ever purchased them. It's used for their services. Services that are provided by the -- to transport personnel or for work that they would do. But the first time that they would have had access to them, to the best of my knowledge, based off of that conversation, was after I acquired the first order of the Southland ones.

Q: And sitting here today you cannot tell us when you used an infant body bag in Lexington County?

A: No. I'd have to look through the invoices, sir.

Q: Are those invoices here?

A: No. I don't believe so.

Q: Now, the water retrieval bags that you purchased, and you referred to them in your direct examination -- do you recall that?

A: I do.

Q: And let me clarify. From a source other than Mr. Knight. Do you recall that discussion?

A: I do recall, yes.

THE COURT: Mr. Lloyd, let me ask you this.

MR. LLOYD: Yes, sir.

THE COURT: Not to break you on your cross examination. Are you at a breaking point or are you not? I've got a conference call at 1:00 but I don't want to mess up on -- if you're on your --

MR. LLOYD: No, sir. We can take a break.

THE COURT: I mean, you're okay with that?

MR. LLOYD: Yes, sir. Yes, sir. I need a restroom and cigarette break anyway.

THE COURT: Let's do this. Let's take lunch. It's 15 to 1:00.

MR. PRINGLE: Yeah. Okay. Yeah, we can keep on.

THE COURT: And, let's see. It's 15 to 1:00. Let's get back here at 2:00.

MR. PRINGLE: 2:00?

THE COURT: Yeah.

(A lunch break was taken from 12:48 p.m. to 2:00 p.m.)

THE COURT: On the record.

Q: Mr. Lintal, I think I won't be much longer with you. I just wanted to ask you a few more questions actually. You mentioned that Mr. Knight had done a couple disinterments after you purchased the business; is that right?

A: Yes, sir.

Q: And on both of those occasions he actually called you and told you that he had been contacted by Richland County Coroner's Office and asked to do those; is that right?

A: No. On one occasion. The second occasion I discovered it when I was taking a body into the morgue at Richland and his trailer was outside there.

Q: Okay. And on the first occasion when he called you he said, hey, Richland County Coroner's Office asked if I could do this disinterment for them; is that right?

A: Pretty much, yeah. Last minute.

Q: And at that time you said you had no interest in doing that; is that right?

A: I did, yes.

Q: I'm sorry. You did?

A: I did say that I didn't have any interest. But I

also said that I would like, you know, to be involved in the future if they ever came about, so.

Q: And at that time was there an equipment issue when Mr. Knight first called you on your part?

A: I didn't have the equipment, but I didn't necessarily not have access to it. So, I mean, I didn't have a lot of time to respond. And it seemed easier just to say yes. We had a good relationship, so.

Q: And, in fact, the relationship was good to the point that Mr. Knight actually called you ahead of time before doing the disinterment and said, hey, Don, they called me and asked me to do this. Do you want to do it or do you mind if I do it?

A: It was more that he was going it. Did I mind.

Q: And let's talk about the Richland County contract. You demonstrated an odor proof bag -- it's not really just a bag. Let's be a little more clear. It's actually a process you go through with the prototype that you showed to Richland County, isn't it?

A: I didn't have a demonstration with Richland County.

Q: Okay. You never showed them --

A: I was never allowed the opportunity.
Q: Okay. Let me ask you the question. After you saw Mr. Knight's letter saying that he was no longer going to make this odor proof bag available on the open market, did you have any discussions with anybody at Richland County regarding an alternative to Mr. Knight's --
A: After they contacted me inquiring what I was going to offer as an alternative. And yes, that was the extent of it, yes.
Q: Okay. Is it your testimony then that you've never demonstrated anything to --
A: Gary Watts didn't allow --
MR. PRINGLE: Let him ask the question.
THE WITNESS: Sorry.
Q: Is it your testimony that you never demonstrated any type of odor proof bag or odor proof sealing method to anybody at the Richland County Coroner's Office?
A: That is my testimony.
Q: To your knowledge, did your wife take part in any type of demonstration?
A: She did not.
Q: So as far as you know, nobody on behalf of Palmetto Mortuary Transport made any type of

demonstration to the Richland County Coroner's Office?

A: That is correct.

Q: Now, you say you did have a discussion with them about an alternative?

A: I did.

Q: And as it related to that alternative, did you describe for them what you would use in place of Mr. Knight's odor proof bag?

A: Yes. As best I could, yes.

Q: And would you describe what that alternative is?

A: It's a laminated bioseal bag.

Q: And, in fact, you would have had to actually -- for lack of a better description, it's almost like a heat seal bag.

A: It is a heat seal bag.

Q: And when you pick up a body on the scene and put the body in the bag, you actually have to have an apparatus to seal the bag; is that right?

A: Yes.

Q: And once they get to the Coroner's Office or to a facility for an autopsy and open the bag, you have to have that machine to reseal it; is that right?

A: That's correct.

Q: And Richland County said they were not interested in that method; is that right?
A: They didn't tell me that.
Q: Okay.
A: A letter came. After a discussion that I had with Gary Watts on the phone and offering a demonstration of which he said that he didn't need to see it because he knew about it, he -- that afternoon or the next day wrote a letter that we later had in discovery to Christie Swafford at Richland County Procurement that she -- he gave his reasons for not finding an acceptable solution, so. But I was not allowed a demonstration.
Q: Now, prior to offering that alternative to Richland County Coroner's Office, had you done any research on other odor proof bags in the market?
A: Yes.
Q: And are you familiar generally with how many different types of odor proof bags there are on the market?
A: One that I know of. Well, counting the bioseal style, if you -- inclusionary of that type of system, as you will, those are the only two that

I'm aware of.

Q: So you're only aware of two --

A: I have not been able to find any other solutions.

Q: After Richland County Coroner's Office rejected that heat seal method, again, did you have any further discussions with Mr. Knight regarding whether or not he would sell you any more of his bags? Odor proof bags?

A: Yes. I tried to make an order in September.

Q: And you made that order by telephone or by written correspondence?

A: There was conversation and written correspondence as well.

Q: And this was after the period when Mr. Knight had been awarded the Richland County contract; is that right?

A: No. To my knowledge, I hadn't been notified at that point. If he had the award, I was still providing service for Richland County Coroner's Office at the point that I requested -- or I wanted to make the order.

Q: Just to clarify a couple other points from your earlier testimony. You said that you had had earlier conversations with Mr. Knight about the fact that you had purchased bags other than just

the infant bags prior to June 16th of 2011; is that right?

A: Yes.

Q: And those conversations that you had prior to June 16, 2011 about the purchase of other bags, you did not reference those conversations at all in that conversation on June 16, 2011, did you? In other words, you didn't remind Mr. Knight that --

A: No, sir. I did not.

Q: -- Buddy, we talked about this before. I've told you before that I bought infant bags and --

A: You're right.

Q: -- water retrieval -- I'm sorry.

A: I'm sorry.

Q: Or other bags prior to that, did you?

A: No.

MR. LLOYD: Beg the Court's indulgence. Thank you, Your Honor.

THE COURT: Yes, sir. Any re-direct?

MR. LLOYD: Final question. I'm sorry.

THE COURT: Oh, I'm sorry. Okay.

Q: The non-compete agreement, as well as the provision 3.4.8 relating to the obligation to purchase body bags from Mr. Knight, those were

all presented at the closing; is that right? All those agreements were presented at the same time?

A: Be more clear, please.

Q: Your attorney drafted the non-compete; is that right?

A: There was a trade off back and forth between --

Q: That's not my question. My question is your attorney drafted the non-compete; is that right?

A: To the best of my knowledge.

Q: Yeah. And your attorney initially drafted the asset purchase agreement; is that right?

A: I believe so.

Q: And included in there was also what we call the right of first refusal that if Mr. Knight decided to, in fact, sell his body bag manufacturing business, that you and Palmetto Mortuary Transport had the right to match that offer and, in fact, purchase his business; isn't that right?

A: Yes.

Q: And all that was put into a collection of documents that were executed at the closing; isn't that right?

A: Yes.

Q: And so, let me ask you this way. Whose idea was it to put into the agreement 3.4.8?

MR. PRINGLE: Just the continued objection to --
A: The whole thing?
Q: Yes, sir.
A: Probably our attorney.
Q: And, in fact, 3.4.8 was not offered as any separate consideration for the non-compete; is that right?
MR. PRINGLE: Objection. I don't even know what that means or what it asks, but if it asks anything, it calls for a legal conclusion.
THE COURT: I think it calls for a legal conclusion.
MR. LLOYD: Can I rephrase the question?
THE COURT: Sure.
Q: All of this was initially drafted to carry out the effect of what you all were trying to purchase and bind Mr. Knight to; is that right?
A: Yes.
MR. PRINGLE: Objection. Ambiguous.
THE COURT: Hold on a minute. Would you say that again?
Q: The initial draft of these agreements, the asset purchase agreement, the non-compete agreement, everything that was marked as Plaintiff's Exhibit Number One, those were all initially drafted to carry into effect your -- and by your, I mean, Palmetto Mortuary Transport and you and your

wife, your desire to purchase not only the business but also bind Mr. Knight to certain obligations; isn't that right?

A: Yes, as I understand it.

Q: And we got into discussion about what was offered up as compensation for the non-compete. Do you recall that earlier?

A: Yes.

Q: And we've established the documents as there's $1,000 allocated for the non-compete. Do you recall that?

A: I recall your statement of that, yes.

Q: My question is, when this provision 3.4.8 was introduced into these documents, was that introduced into the document as any sort of compensation additional to the $1,000 for Mr. Knight entering into the non-compete?

MR. PRINGLE: Objection. It calls for a legal conclusion. Again, it's parol evidence.

THE COURT: I think it's still a legal conclusion, Mr. Lloyd, and probably does violate parol evidence is what I see.

MR. LLOYD: Your Honor, if I could be heard.

THE COURT: Sure.

MR. LLOYD: I just want to make sure that Your Honor would

allow us to get into this issue and maybe -- this may be an issue for a legal argument later on.

THE COURT: Right.

MR. LLOYD: Some of the case law actually discusses and -- to the extent that Mr. Pringle is raising this as an objection, we would ask and argue at the conclusion of this that they be bound by that. That you look to the four corners of the entire agreement to discern what was, in fact, consideration for a non-compete. So to the extent that they're raising that objection, then we would just ask that any consideration other than $1,000 for the rest of the agreement also be barred by the parties being able to argue that anything else was, in fact, compensation or consideration.

MR. PRINGLE: I don't quite follow that. I mean, I completely agree that all of this discussion should be made in the context of legal arguments about what's within the four corners of the document, and that my objection to the line of questioning doesn't tie my hands in any way as to what I may argue about what -- just as it doesn't tie the hands of Knight Systems in terms of what they want to argue about whether or not you consider the asset purchase agreement and the covenant not to compete. I mean, all of that is -- I mean, those are legal arguments to be made about what

the affect is of all of those things.

MR. LLOYD: Then, Your Honor, I think factually -- the legal arguments are based on the factual reality of whether or not that was, in fact, offered as compensation or not. And that's my issue with if they bar us from asking questions about this particular provision as whether it was additional compensation, then we would contend that they're barred then to argue at the conclusion that anything other than the $1,000 should be considered by a court as compensation for the non-compete.

MR. PRINGLE: As I've said before, the only argument we're making is that $1,000, that figure contained in the contract, is adequate consideration for that or any covenant not to compete and it is what it is. We are not going to argue that a lesser amount is compensation. We're not going to argue that some other portion was compensation for -- or, excuse me, consideration. It is what it is. It's $1,000. And as I've said from the start, that's what we're standing on, and that's what it is. And that's all that we have to go on.

THE COURT: Okay. Now, I want to go back to your original question that you had a moment ago on the 3. -- what is it? I can't tell from here.

MR. LLOYD: 3.4.8.

MR. PRINGLE: The 3.4.8.

THE COURT: Yeah, 3.4.8. You were asking the question about -- would you repeat that question, because I want to rule on that particular issue right there.

MR. LLOYD: And, Your Honor, we were attempting to ask Mr. Lintal if 3.4.8, from the Plaintiff's standpoint, was put into the agreement as any type of additional consideration for the non-compete.

MR. PRINGLE: And my only response is the agreement says what it says. And frankly whether he said yes or no as it was -- it was clearly tied to it doesn't change the legal affect of -- and I guess if he wants to answer. But we're still in this realm of talking about the things that precede the contract.

MR. LLOYD: Again, I don't mean to belabor the point.

THE COURT: Go ahead. That's all right.

MR. LLOYD: I mean, our reading of the case law is that, you know, you can look beyond just the -- you know, there's a dollar amount in there. That the Court actually looks to see what was the full agreement between the parties. Is there additional give and take between the parties that would form the basis of consideration for a non-compete. If they are saying as Plaintiff's now, the only thing Your Honor can look at

is the dollar amount that's attached, the $1,000, and we'd certainly take that, we just don't want to not be allowed to inquire about other compensation or consideration at this time during this examination if they did argue --

MR. PRINGLE: That's not my point at all. My point is that as far as the consideration -- I'm not saying you don't consider everything about it. I feel, I mean, very, very strongly that in particular the $590,000 that's included in this is all part and parcel to that. My point is the consideration is what it was stated in there, and that is the -- and any significance you draw from that or any other term are within the four corners of the document and you argue about that.

THE COURT: I'm going to let you ask the question and note his objection. And this is significant, so this is one that we'll have to rule on when we issue a report. I just had an identical case just like it, so I'm very familiar with the -- not these set of facts, but the contract issues of four corners and who drew the document and parol evidence. So I just dealt with it again. But I'm going to rule that way so everybody is -- you can ask the question and he's protected as to the objection and let's see what the answer is. All right.

MR. LLOYD: Thank you, Your Honor.

Q: Mr. Lintal, was 3.4.8, at the time of the execution of the asset purchase agreement, was that considered by you to be additional consideration for the non-compete?

A: I quite frankly don't know. The answer is no, because I don't know what -- I mean, I don't understand this part of it, so. You know, all I know is how this thing came about, so.

MR. LLOYD: Okay. If I might have a little leeway, Your Honor.

Q: The consideration for the non-compete included $1,000; is that right?

A: If you say so. I don't recall. It included --

Q: Well, can you look at Plaintiff's Exhibit One --

MR. PRINGLE: Objection. The document speaks for itself.

A: Is the allocation put in here.

THE COURT: Hold right there. The question asked was does that document show $1,000 for the non-compete. Does the Plaintiff --

MR. PRINGLE: Stipulates that it does.

THE COURT: Okay. We're straight on that.

THE WITNESS: Okay.

A: Yes. Okay, yes.

Q: If that's the case, is there anything else that

was offered, including 3.4.8, as additional consideration or compensation for Mr. Knight signing the non-compete?

A: That was included in the original drafting after we made the signed offer. So this was drafted as a result of that. So from my point of view it was in there from the beginning. This was varied at the day of closing. This portion was varied. Beyond that I don't recall what else changed.

Q: Okay. My question is, when you came to the closing, was it your intention or belief that 3.4.8 was also part of the consideration paid to Mr. Knight for executing the non-compete?

A: I have no knowledge of that. This was an area that my wife would be much stronger in answering that, too.

Q: So as far as you know, as it relates to the compensation for the non-compete, the consideration paid to Mr. Knight for that non-compete, other than the $1,000 that you stipulated was consideration, you have no knowledge of anything else that was or was not offered as consideration?

A: I'd say the whole value had some benefit to that. The 590,000, how you break it up is

insignificant.

Q: Okay. The $590,000 was to purchase the assets, good will and other intangibles of the business; is that right?

A: And go into an agreement with us that was -- I don't know at what point it was stipulated in there, but this was drafted as a result of that. To come up with an agreement that we could buy the business within, so.

Q: So is it your testimony -- just so I understand -- is it your testimony that in addition to the $1,000 consideration paid to Mr. Knight to execute the non-compete, that the $590,000 total or all was also additional consideration?

A: I don't know. I don't understand any part of this. So, I mean, I don't know the answer.

Q: Okay. A moment ago you said --

MR. PRINGLE: He's answered --

THE COURT: I haven't heard a question and then I'll make a decision here. Let's see what the question is.

Q: A moment ago you said that -- your counsel stipulated to $1,000. Do you remember that?

A: Your all saying that so --

MR. PRINGLE: Yes.

A: Yes.

Q: Okay. Well, let me ask you this way, Mr. Lintal. Do you have any clue as to what was offered as consideration -- independent of your counsel's stipulation, do you have any independent knowledge as to what was offered as consideration to Mr. Knight to sign that non-compete?

A: No, I don't.

MR. LLOYD: I have nothing else for you.

THE COURT: Okay. Re-direct.

RE-DIRECT EXAMINATION BY MR. PRINGLE:

Q: Mr. Lintal, there's a lot of this discussion about who did the first draft, as if that had any significance in this case. Did anything happen after Chris Rogers created a first draft of the asset purchase agreement and the covenant not to compete?

A: Yes. Changes were made.

Q: By whom?

A: Don Jonas, the --

Q: Who does Don Jonas represent?

A: He represented Buddy Knight at the time.

Q: Okay, all right. Now, and with respect to -- there was a first draft that was written and that's what we're talking about here, right, is a document that has 15 or 20 pages, right?

A: Yes, sir.
Q: Okay. Prior to this draft, had there been any other document signed by both parties where the big terms that ended up in this agreement were agreed to?
A: The sale -- or the intent to -- what we did with Sunbelt Business Brokers was the only other --
Q: What was in it?
A: -- that I recall.
Q: What was in it?
A: Virtually the same type of information.
Q: The purchase price?
A: There was an offer price and --
Q: A covenant not to compete?
A: Yes. Yes.
Q: Okay. You had this conversation with Mr. Lloyd about when Richland County came to you and asked if you had an alternative to the odor proof body bag. On June 15th, or frankly on June 16th, did you need an alternative to an odor proof body bag?
A: Not that I was aware of.
Q: Why?
A: Because I still was under the existing contract as best I could -- I was still under an existing

contract with Knight Systems.

Q: And what did the contract say with respect to odor proof bags?

A: That we had the rights to buy that odor proof bag, as well as these others.

Q: So under that contract, with that contract being in effect, you would have been able to satisfy -- there wouldn't have been a Richland County concern, would there have been?

A: No. I bid that as part of my package at the time. We didn't have to list them out individually as a price item, so it was, you know, just an assumed.

Q: And so, what caused Richland County to have to come to you with an alternative?

A: A letter was --

Q: Broadly.

A: A letter was sent in to the procurement by Buddy Knight saying that he know longer was supplying them to competition, competitors.

Q: Right. And if that hadn't happened, there wouldn't have been an issue?

A: I should have won the contract.

Q: Right.

MR. PRINGLE: That's all I have.

MR. LLOYD: Just briefly, Your Honor.

RE-CROSS EXAMINATION BY MR. LLOYD:

Q: You said that Mr. Jonas who represented -- it was your understanding he represented Mr. Knight?

A: Yes, sir.

Q: What terms did Mr. Jonas suggest be changed in the agreement?

A: I have no clue. I don't recall.

Q: So you have no firsthand knowledge that Mr. Jonas suggested any changes be made?

A: No, I don't.

Q: And as of June 16, the evening of June 16, 2011, you believed that Mr. Knight was going to accuse you of having breached the agreement between the two parties and that he was going to bid on the contract?

A: Yes.

Q: And starting from June 16 of 2011 until the time the contract was awarded, did you undertake any efforts to research or find an alternative to the odor proof body bag that Mr. Jonas produced other than this heat seal method?

A: Mr. Jonas produced them.

Q: I'm sorry. Mr. Knight.

A: Okay. No. Or yes, I did. Yes. No, I did try

to secure.

Q: And that was the heat seal method?

A: Well, it was one of the -- yes. I mean, I researched. I never bought any. I never purchased any materials or -- even at the time that I offered the demonstration to Coroner Watts. The representative lives in Ladson next to Goose Creek. He had already agreed that he could help me go in if need be.

Q: Okay. And you're talking about the heat seal bag?

A: That is correct.

MR. LLOYD: Nothing further.

THE COURT: All right. Finished with the witness?

MR. PRINGLE: Yeah. Finished with that witness. And then the next witness is Ellen Lintal. You guys what to switch seats?

(Off the Record)

ELLEN LINTAL, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION BY MR. PRINGLE:

Q: If you would, state your full name.

A: Ellen Lintal.

Q: What is your job function with Palmetto Mortuary

Transport?

A: CFO. I handle all the financial aspects of the business.

Q: Okay. Let's just jump in right here. Do you recall that Chris Rogers, who is a lawyer at Ellis Lawhorne, did the initial drafts of the documents we're talking about here?

A: He did.

Q: Okay. Do you have any knowledge about what happened to them after he drafted them?

A: They were circulated to all the parties, including Mr. Knight and Mr. Jonas.

Q: Okay. Do you have any knowledge about what happened after that?

A: There were many revisions back and forth between --

Q: How do you know that?

A: There were email correspondence that we're all copied on.

Q: Okay. What did you see on the email correspondence?

A: There were attached documents with red lines through them proposing different types of changes or language.

Q: Okay. And without any of the specifics, but it's

your understanding from what you saw and what you read that Mr. Jonas presumably read the documents and then offered changes to them?

A: That is correct.

Q: Okay. And then he did appear at the closing with Mr. Knight, correct?

A: That is correct.

Q: And, in fact, negotiated at the closing on behalf of his client?

A: That is correct.

Q: Okay. Do you know whether or not Mr. Jonas shared versions of the documents with Mr. Knight?

A: Other than what I saw in the emails, that he was a copied recipient.

Q: All right. Have you had occasion to -- well, to do some calculations of damages in connection with how PMT has been damaged in this case?

A: I have.

Q: Okay. I'm going to pass out some documents that are just for illustrative purposes. I'm not actually to put -- but it's just something that could be helpful to sort of follow along with as we --

COURT REPORTER: Are we marking this?

MR. PRINGLE: Yeah. Just mark it for identification, but

not --

COURT REPORTER: And we're starting at one again?

MR. PRINGLE: Sure, I guess. Yeah.

THE COURT: What was that last comment?

MR. PRINGLE: Starting at one again.

THE COURT: Oh, okay.

MR. PRINGLE: That's fine.

(Plaintiff's Exhibit Number One was marked for identification purposes.)

Q: Tell me, in terms of coming up with -- well, tell me what your version of what damages are in this case.

A: Damages would have been the overall profit that we lost due to the fact of not having this business, with this contract.

Q: Okay. Which contract?

A: The Richland County.

Q: Okay. So what would you start with in order to calculate profit?

A: I would look at the overall terms of the contract as far as the revenue that was to be generated to the contract winner.

Q: Let's talk about revenue. And we can look at this document but just use that as a guideline to go from. In terms of revenue, what numbers did

you use for revenue?
A: I started with September of --
Q: Whose numbers did you start with?
A: I started with the award that was given to Mr. Knight. So his monthly award from September 2011 to June 2012, which was a ten month period. So I took ten months of that. And then every year --
Q: Of what?
A: I took ten months of what was awarded in his contract of the amount that he could bill Richland.
Q: Okay. Why don't you just describe that and -- just describe how you would calculate that.
A: So he was awarded $8,000 a month is what he could bill Richland. And so, I took $8,000 a month for ten months and came up with $80,000.
Q: Why did you chose eight months?
A: Because we didn't lose the business until September of --
Q: Excuse me. Ten months, yeah.
A: Yes. We started September of 2011 through June of 2012, which is ten months, under that term of revenue because --
Q: Going under a fiscal year or something?
A: Yes.

Q: All right. So what about the next line?
A: The next line. Each year he had an incremental price increase, or every two years. So from July 12th to July 13th, according to the awarded contract, that fiscal year he was allowed $102,982.50. Did the same for the next fiscal year.
Q: Yeah.
A: And then when you get to the fiscal year 2014 through 2015, his award was 106,586.50. Then the same for the last year of the contract. That carried it out to a total of this contract being awarded at 499,138.
Q: Okay. And why did you chose five years?
A: Because that was the length of the term of the contract.
Q: All right. Now, those are his numbers. Can you do -- you know, and we can maybe write on that sheet -- do what the calculation would be based upon what PMT bid.
A: I'm just going to have to look at a cheat sheet just so -- PMT would have been for the ten months, we were awarded $7,550 was our contract. So for ten months we would have been $75,550. And then we would have had 7,550 a month for

every month after that. We did not have an increase. So for 48 months after that for our total of revenue would have been 437,900.

Q: Okay. And that's based upon what you would have earned?

A: That would have been what we would have earned.

Q: Okay. And then what else do you consider when you're talking about coming up with product?

A: We went and looked at the average cost of bags. As you see from the exhibit over there and from the invoices earlier this morning, bag costs vary. I went and looked at the last year that we had the contract and went and looked at every call that we did and itemized what bags we used and came up with an average call based off of that average sample from the year prior. And that bag cost was $15.67 based on that. So various bags, various types. Not an exact science, but I can't predict who's going to go in what bag.

Q: But that was for that year?

A: That was for the year prior.

Q: Okay. And then what else did you consider?

A: I assumed that the average distance per trip is 60 miles. I assume that our vans get an average

of 20 miles per gallon, and --

Q: When you say assume, what do you mean by that?

A: Well, I looked at what our gas bills were and estimated that our -- depending upon, you know, how they drive, what they drive, it actually came out to 18.9, but I used --

Q: 18.9 miles per gallon?

A: Right.

Q: Okay. But you rounded up?

A: Right.

Q: Okay. I looked at what the average cost per gas was over the past year and that was just published on the web. And based on regular gas, it was $3.50. So gas cost per trip is $10.50 based on driving approximately 60 miles per trip.

Q: All right. And so, then what did you do?

A: I added that to the bag cost. So the cost was $26.17.

Q: Per call?

A: Per call. I looked at the actual calls from 7/1/2010 to 6/30/2011. So the last full year that we had their contract, and we did 511 calls.

Q: For Richland County?

A: For Richland County.

Q: Okay. Then what did you do?

A: I took that 511 and prorated September 2011 to June 2012 based on ten months. And then every year after that I did 511 calls time the 26.17.

Q: And then what did you come up with?

A: And came up with the total of expenses of $64,635.54.

Q: Okay. Leaving a total net damages under Mr. Knight's revenues of what?

A: 434,502.46.

Q: And what would that number be if you were using your revenues?

A: 373,264.54.

Q: Okay. I notice on here that you don't -- there aren't employee expenses. Why is that?

A: Our business was pretty fixed. We did not lay anybody off as a result of losing this contract. We did not terminate any vans. We did not change any auto insurance or any other costs that would be associated to this business. It was just volume. So it should not be considered in this case.

Q: So just to clarify. You served Lexington County, Richland County and USC with a certain number of employees?

A: And various funeral homes.

Q: And funeral homes.
A: Uh-huh (affirmative response.)
Q: Right. And then when you lost Richland, you didn't need to lose any employees?
A: We did not.
Q: Okay. And I notice down there that you mention attorney's fees to be provided. Do you know if the agreement provides for attorney's fees for prevailing parties?
A: In the asset purchase agreement, it does state that it's damages plus attorney fees.
Q: Okay. And so, it's your testimony that you wouldn't have to purchase any additional vehicles or hire any additional employees to take this contract back?
A: That is correct.
Q: Okay. And so, what date are you using as the sort of final date for the damages analysis? I mean, June of 2016?
A: Yes, sir.
Q: Okay. Not beyond that.
MR. PRINGLE: I think that's all I have. Please answer any questions that -- you know, I don't know whether you would agree to putting this in certainly as illustrative since she's gone through it.

THE COURT: Can we at least mark it for an exhibit?
MR. PRINGLE: Oh, I think we did.
MR. LLOYD: Just refer to it.
MR. PRINGLE: We did. Yeah, I think we did.
MR. LLOYD: Plaintiff's Six?
COURT REPORTER: No. Plaintiff's One.
MR. PRINGLE: Plaintiff's One. So all other things being equal I'd like to have it in, but I'm not going to push it. You know, you've certainly got your ability to --
MR. LLOYD: I'm sorry. This is marked as Plaintiff's One?
MR. PRINGLE: Yeah.
COURT REPORTER: It started over.
MR. PRINGLE: It just started over again for some reason.
MR. LLOYD: Oh, I'm sorry. I'm going to reserve an objection to this.
THE COURT: It's just marked for identification where it is right now.
MR. PRINGLE: Yeah.
THE COURT: Okay.
MR. LLOYD: Let's just start and come back to this, if we --
MR. PRINGLE: All right.

CROSS EXAMINATION BY MR. LLOYD:

Q: Your husband indicated a little bit ago during his testimony that you were sort of the

knowledgeable party in the room for your side as to the terms of the asset purchase agreement, the non-compete and any other documents that were a part of that closing; is that right?

A: That is correct.

Q: And let's talk about that non -- well, let's back up for a moment even before that day of that closing. You indicated that there were varying drafts submitted of the closing documents and that they were circulated between the attorneys for the parties; is that right?

A: The attorneys and my husband and I and Mr. Knight.

Q: And you're not aware of any particular changes that Mr. Jonas has actually made or suggested, are you?

A: Just what I saw in the emails that came back from him with his red lines in them. I mean, I can't recite which ones they were, but I remember reading them and seeing them.

Q: Okay. And these came directly from Mr. Jonas to you or did they go through your attorney?

A: They came from Mr. Jonas copying myself, Chris Rogers from Ellis Lawhorne, my husband and Mr. Knight.

Q: Are you aware of the Plaintiff responding to a third set of request for production to you? December 3rd, 2013.

A: December 3rd --

Q: Let me be more specific to job your memory.

A: Yeah.

Q: Do you recall responding to Defendants' request for production for any emails or other correspondence between your counsel and Mr. Jonas related to the negotiation of these agreements or documents?

A: I do.

Q: And are you aware of whether or not you fully responded to that request for production?

A: I'd have to defer to counsel on that, to be honest.

Q: Well, let me ask you. Are you aware of more than two emails between Mr. Jonas and your attorney regarding these documents?

A: That's all I had.

Q: And are you aware in response to this request for production raising any objections as to attorney/client privilege?

A: We did.

Q: You did raise objections?

A: We discussed it with Jack.
Q: Okay. Let me show you, if I may --
MR. LLOYD: Let me just show Mr. Pringle first.
MR. PRINGLE: Yeah, that's fine.
MR. LLOYD: Well, let me just mark it first as an exhibit for ID purposes only. This is Defendants' One.
(Defendants' Exhibit Number One was marked for identification purposes.)
Q: Have you seen that document?
A: I have.
Q: And as to the request for all emails or correspondence between Mr. Jonas and your attorney related to the closing documents, do you see a response on Plaintiff's behalf?
A: That there were two emails.
Q: And were there any objections raised as to producing anything additional?
A: No, sir.
Q: And in those two emails -- did you review those before they were produced?
A: I went back and looked at them, yes.
Q: And in those two emails do you recall Mr. Jonas actually suggesting any red lines or deletions, additions, rewording, anything?
A: He had red lines in them, yes.

Q: Do you recall -- which email -- well, let me do it this way, if I might.

MR. PRINGLE: Yeah, sure.

Q: This was produced with those.

MR. LLOYD: Jack, I'd be happy to put the whole thing in.

MR. PRINGLE: I don't think this is the whole --

MR. LLOYD: That's what we got.

MR. PRINGLE: Again, I'm fairly certain that there are additional --

MR. LLOYD: I beg the Court's indulgence for a second.

THE COURT: Sure.

MR. LLOYD: You all electronically sent it to me as well.

MR. PRINGLE: Yeah. Well, I mean, do you have the whole production? I can tell by looking at this.

MR. LLOYD: I took some of the emails out of there, but yeah.

THE COURT: Do you all need to be off the record for a second administratively or something?

MR. LLOYD: Yes, Your Honor.

THE COURT: Okay. Very good. Do that.

(Off the Record)

THE COURT: All right. Back on the record.

Q: Mrs. Lintal, I'm going to show you the emails that were actually produced. Then if we need to, we may introduce the entire production by the

Plaintiff to that request to produce. But do those look familiar to you?

A: Yes, sir.

Q: And those are emails that you reviewed as a part of responding to Defendants' Third Request for Production?

A: Yes, sir.

MR. LLOYD: And just for record keeping purposes, could we mark this as -- just for ID as Defendants' Two.

(Defendants' Exhibit Number Two was marked for identification purposes.)

Q: And, Mrs. Lintal, I'm going to ask you if you'll review those, and anywhere in those documents that are produced do you see any reference by Mr. Jonas that he is transmitting any changes, additions or corrections to those closing documents?

A: Well, there appears to be a section that's missing, because down here it says, "If anything needs to be discussed today I will meet with Buddy this afternoon, Don Jonas." So there's a piece of an email that appears to be missing from here of his response.

Q: Okay. And when you reviewed the originals, did that particular email --

A: There was a trail of which from Chris and Don and response back from Don and this is what I saw. I can't tell you verbatim what it said above this white part that's missing. But what I can make out that's on the top of this page, "If any --" I don't know what that word is "-- needs to be discussed today, I will meet with Buddy this afternoon." Any items, any something. So that's missing. But that was in the email where Don responded back with attachments that I recall seeing.

Q: Okay. Your recollection is that what's missing from that portion of the email marked as Defendants' Number Two are changes by Mr. Jonas?

A: A response that I believe I had documents attached with changes.

Q: Any reason, to your knowledge, that that was not included in this?

A: I don't know.

MR. PRINGLE: Attorney error.

MR. LLOYD: Attorneys are never wrong. Jack, without any objection, can we leave this marked and then we can discuss later, Your Honor --

MR. PRINGLE: Yeah.

MR. LLOYD: -- if we need to follow up on that?

THE COURT: Sure.

Q: As you recall, Ms. Lintal, what were the changes proposed by Mr. Jonas?

A: To be honest, I can't recall them by item. I mean, it would be unfair for me to do that.

Q: Any changes to the non-compete agreement?

A: They were both attached, so I really can't recall.

Q: And, in fact, the first time it appears that your counsel sent Mr. Jonas a draft non-compete agreement was December 14, 2006; is that right?

A: The first -- yes.

Q: And we discussed this briefly with your husband. In the original draft of the non-compete, was there a dollar figure attached to the non-compete?

A: Not in the non-compete, no.

Q: And in the course of the drafts going back and forth as you recall them, was there ever a dollar figure attached to the compensation or consideration for the non-compete?

A: Not prior to closing, no.

Q: The very first time there's any discussion between the parties about actual price to be attached, for lack of a better description, a

dollar amount to be attached to the non-compete, was at the closing itself?

A: I had discussions with our attorney and we were working with Mr. Jonas to get an allocation of assets, because that was never put in the document prior to closing. We wanted it in -- I did, because I wanted to review it. It never got accomplished until we sat down at closing.

Q: Okay. What you're referring to is an allocation of the purchase price for the business; is that right?

A: Because that's where we were going to assign the value of the non-compete.

Q: So the value of the non-compete was never -- at least as you were viewing the negotiations, the value that was going to be attached to the non-compete was going to come out of the purchase price; is that right?

A: Correct. It was never part of the negotiation.

Q: So whatever dollar figure you all were going to be able to agree to could have been -- let me start that question over. You all eventually settled on $1,000; is that right?

A: That is correct.

Q: At the closing, as far as you all were concerned,

you all could have attached any dollar amount to that non-compete; is that correct?

A: That is correct.

Q: And prior to the closing, you never suggested -- or your side. I don't mean you personally, Mrs. Lintal. Your side never suggested any particular dollar amount to be attached or allocated to the non-compete; is that right?

A: At the time we were waiting to get the initial allocation of assets back from Don Jonas. We never had a negotiation up until the time of closing.

Q: And the reason you were waiting on that is again because you were just going to allocate among a list of items, including the hard assets that we discussed earlier with your husband, good will, the customer list, and this non-compete, you were just going to allocate the negotiated sales price among those items; is that right?

A: That is correct.

Q: So other than the $590,000 that was agreed upon for the sale of Mr. Knight's business, there was never a proposal from your side of additional compensation or consideration for the non-compete?

A: No.
Q: Now, eventually Mr. Knight comes to the closing; is that right?
A: That's correct.
Q: And Mr. Jonas comes to the closing?
A: Uh-huh (affirmative response.)
Q: And I believe you're at the closing along with your husband; is that right?
A: That is correct.
Q: And your attorney is there?
A: Correct.
Q: And I believe your banker is there; is that right?
A: Uh-huh (affirmative response.)
Q: Was anybody else at the closing?
A: The business broker.
Q: I'm sorry. You're right. The business broker was also present.
A: Uh-huh (affirmative response.)
Q: During the course of that closing, dollar amounts eventually do get attached to things like the customer list and good will, et cetera; is that right?
A: That is correct.
Q: And at some point -- do you recall -- let me ask

it this way. Do you recall who came up with the $1,000 figure?

A: The $1,000 figure was really driven to minimize Mr. Knight's capital gains tax. He wanted as much of the purchase price attached to equipment, good will and/or customer list so that he would not have to pay capital gains tax. So the discussion was driven around that.

Q: And that's because when you all were at the closing, are you aware that Mr. Knight was talking with his accountant?

A: Absolutely.

Q: And, in fact, you are an accountant; is that right?

A: That is correct.

Q: And so, you understood the issues back and forth from a tax liability standpoint that Mr. Knight was discussing with his accountant; is that right?

A: That is correct.

Q: And that's because there are certain things that can be amortized or depreciated versus other things; is that correct?

A: That is correct.

Q: And the discussions by Mr. Knight is how do you

allocate this $590,000 agreed upon as the sales price; isn't that right?

A: That is correct.

Q: And at some point, either based on the negotiations or the advice of Mr. Knight's accountant, or all of the above, you all allocate everything but $1,000?

A: Correct.

Q: And the $1,000, was that just an amount left over after everything else was allocated, or did you all have a specific discussion about we've got to allocate something for non-compete?

A: That was a discussion that was negotiated because Mr. Knight wanted as much as he could attached to good will. I said we couldn't have good will, so we came upon that it would be customer list. So we negotiated that we would put as much as we could to customer list and we had to apply something to the non-compete.

Q: And we know this from your deposition. You've had prior experience with business acquisitions; is that right?

A: That is correct.

Q: And would you tell the Court a little bit about your prior experience.

A: I have 30 years in business, probably four years doing mergers and acquisitions for a Fortune 500 company.

Q: And that included purchasing businesses; is that right?

A: That is correct.

Q: And those purchases sometimes came with non-competition agreements; is that right?

A: It came with all sorts of intangible assets.

Q: Including non-competition agreements?

A: Correct.

Q: And you had had some experience through that M&A background with valuing non-compete agreement?

A: Correct.

Q: Now, at some point during the closing, you actually have a discussion with your attorney and with your husband about what you believe was the inadequacy of the $1,000 attached to a non-compete; is that right?

A: As we were going through the negotiation as to Mr. Knight wanting as minimal as he could for his tax benefit, it was truly a negotiation and a discussion between our attorney and my husband and I to decide what did we want to do. Were we going to continue with this transaction or were

we going to walk way over assigning a value for a non-compete.

Q: But just to put it more simply, my question was at some point you had a discussion with your attorney and your husband, Mr. Lintal, that you were concerned that the $1,000 amount for the non-compete was insufficient; is that right?

A: We had a discussion while we were trying to resolve the negotiation.

Q: Is it correct that you had that conversation with your attorney and with your husband that your feeling was that the non-compete valuation was too low?

A: We discussed it, yes.

Q: And part of the problem with coming to -- or at least solving your concern about that amount is that coming into the closing you all had never proposed an amount separate and apart from the purchase price for the non-compete; isn't that right?

A: We hadn't got to that point. This was a pretty fast transaction once we started with the asset purchase agreement, because we were trying to close by December 31st.

Q: But you all didn't close by December 31st?

A: We couldn't get it together, no.
Q: And you all began working with the broker in June of 2006; is that right?
A: No. October of 2006.
Q: Began looking at the business with the broker in October?
A: We looked at October 2006.
Q: So you didn't meet with the broker until October?
A: Correct.
Q: And from October to somewhere in December, obviously it would have to be before a date that your attorney first sent --
A: 14th. Yeah, December 14th.
Q: December 14. And that's the date that he sends the first draft of the closing documents?
A: That is correct.
Q: Somewhere between October and December 14, you all actually visited with Mr. Knight; is that right?
A: That is correct.
Q: You actually go look at his business location; is that right?
A: We looked at a building. Had kind of a room on one side and an office on the other side.
Q: And you all actually talk about certain documents

that you wanted to see; is that right?

A: That is correct.

Q: And you wanted to see those documents in part to help you value the business overall; is that right?

A: At that point we had not signed a finalized intent to purchase. So we are still making our valuation.

Q: And at that point when you all visited Mr. Knight, you were still trying to determine how much you were going to offer for his business; is that right?

A: That was in early November, yes.

Q: And part of what you wanted to see is a cash flow; is that right?

A: We wanted to see a real owner's cash flow.

Q: And during those conversations with Mr. Knight, was there any offer of we'll pay you x-amount if you don't compete with us?

A: No, there was not. One draft we had of the intent to purchase that hadn't been resolved yet did have in there a ten year non-compete. No value assigned.

Q: Have you produced the actual document that you're referring to? We talked about this at your

deposition.

A: No. My hard drive died and actually I don't have it. The business broker may have the copy, but I don't.

Q: But you've not tried to get it from your business broker?

A: He was Buddy's business broker. But no, I didn't.

Q: You never contacted him. Did your attorney have a copy of it?

A: I don't believe so.

Q: After you all meet with Mr. Knight, at any point do you send anything in writing to Mr. Knight offering a consideration amount or price to be paid to Mr. Knight for the non-compete?

A: No.

Q: The only discussions you actually have with Mr. Knight and the business broker is the amount of the purchase price for the business itself; is that right?

A: That is correct.

Q: And, in fact, all your efforts from October until December 14 were centered around properly valuing the purchase price for the business; is that right?

A: That is correct.
Q: Now, Mrs. Lintal, let me ask you. Your husband sort of touched on this earlier and he said you're the one to turn to in the family regarding financial matters. Did your husband play any role in valuing the hard assets of the business or any of the attainments?
A: I shared with him the values of the vehicles that we came up with. They would be the only hard assets were the vehicles and the stretchers.
Q: When you say you shared with him, you discussed it with him or did he provide you with values?
A: He gave input.
Q: Anything else other than the vehicles?
A: No.
Q: So the remaining valuation of this business purchase was left to you; is that right?
A: That is correct.
Q: And at some point during the transfer of draft documents back and forth between the lawyers, the ten year term of the non-compete actually was less than ten years in one draft; is that right?
A: Not that I'm aware of. From the original intent to purchase as an addendum it's at a ten year non-compete with a 150 mile radius, and that

document both Mr. Knight and Mr. Lintal signed. Where the, I think, confusion is is in the 3.4.8. I should know that by heart. It stated three years at one point. That we would buy bags for three years. That's where the disconnect. And that might have gone to five at one point.

Q: Well, my question is, as of the non-compete term, did any of the drafts actually indicate a term less than ten years?

A: No.

MR. LLOYD: I beg the Court's indulgence for one moment.

(Off the record discussion)

Q: Mrs. Lintal, I'm going to ask you, if you would, turn to page 17 of your deposition.

A: I'm there.

Q: And line 19 I asked you, "At some point was the non-compete for a less term than ten years?" And your answer, beginning at line 21, was what?

A: "At one point it went to seven years and in one of the drafts. Not sure where that came about or how that came about."

Q: So at some point in some draft that you saw it was less than ten years; is that correct?

A: I believe it was a discussion with Chris Rogers and myself. But yes, at some point we discussed

seven years.

Q: And during those discussions about seven years versus ten years, was there any discussion by you or your husband or Chris Rogers that the compensation for the non-compete might need to change?

A: No. We never discussed compensation or really consideration.

Q: Now, let's talk about the conversation you had with your husband on June 16 of 2011. Do you recall him coming home and telling you about a conversation he had with Mr. Knight on that date?

A: He didn't come home. So no, I don't recall that.

Q: Did he talk to you on that day?

A: He did.

Q: And that's because you all -- just so the Court is aware and it doesn't seem like it sounds. When he's up here working, you're actually -- you all actually live permanently outside of Lexington; is that right?

A: We have dual residency.

Q: So you actually live and work permanently in a different county?

A: Correct.

Q: And he comes back and forth; is that right?

A: Uh-huh (affirmative response.)
Q: So he did have a conversation. Was it by phone that night with you?
A: It was.
Q: And he told you during that conversation that he had a discussion with Mr. Knight about whether or not he had been -- your husband had been purchasing body bags from sources other than Mr. Knight; is that right?
A: I don't know the exact discussion or conversation, but I know what I got out of it was that he was concerned Buddy was going to bid the business.
Q: And at some point -- I was coming to that. At some point in that conversation Mr. Lintal actually tells you, I believe, that Mr. Knight is going to bid on the Richland County contract?
A: I think he is. I'm concerned.
Q: And he was concerned that Mr. Knight believed that he, your husband, had, in fact, breached the agreement between you all; is that right?
A: That was his basis.
Q: And when you say that was his basis, you're referring to what your husband related to you as what Mr. Knight had raised as a concern?

A: Correct.
Q: After your husband told you that, you all had no other conversations with Mr. Knight about this supposed breach or alleged breach by Mr. Lintal?
A: After the night of June 16th?
Q: Yes, ma'am.
A: No.
Q: And even after discussing whether or not, for whatever reason, Mr. Lintal believed that Mr. Knight was going to bid on a major portion of your business, you had no further conversation with Mr. Knight about trying to resolve this potential dispute?
A: No.
Q: And did you contact your attorney between June 16, 2011 and the awarding of the Richland County contract to discuss this fear or belief that Mr. Knight was going to, in fact, get back into the body removal service and compete with you?
A: We did make contact.
Q: Was that before or after the contract was awarded?
A: Before.
MR. LLOYD: I beg the Court's indulgence for a moment.
Q: Did you make that contact personally?

A: I did not.
Q: Your husband did?
A: Yes.
Q: How do you know your husband did that?
A: Some point late August we discussed it. I can't give you date and time.
Q: Do you recall during your deposition that you told me that you all did not make contact with your attorney or seek legal advice until after the Richland County contract was awarded?
A: I do.
Q: So you admit today that it wasn't until after the award of the Richland County contract that you and your husband made contact with counsel seeking advice?
A: I think the conversation was very brief. We think Buddy has bid the contract. The response was wait and see what happens. There was nothing for us to do until we knew where the award was coming back to, so...
Q: Okay. Did you make contact with your attorney seeking legal advice regarding Mr. Knight getting back into the body removal business prior to the award of the Richland County contract?
A: I did not, no.

Q: Did your husband?
A: Yes.
Q: Let me ask you, if you will, go to page 50 of your deposition.
A: Okay.
Q: And that line 17 I asked you a question, "Do you know whether you or your husband ever sought legal advice as to whether that might constitute a breach of the agreement," and we're referring to the issues raised in the conversation on June 16 between Mr. Lintal and Mr. Knight, and your response on line 20 says what?
A: It says, "Not until after the contract was awarded."
Q: Now, as it relates to the alternative odor proof bag that your husband testified to earlier you all looked at in or to comply with the Richland County RFP, did you take any part in researching odor proof bags or trying to find an alternative?
A: No, sir.
Q: That was totally left to your husband?
A: It's his skill set.
Q: And it's your understanding of the RFP that as long as Richland County wanted this particular method of odor proof bag sealant that Mr. Knight

had a patent on, that you were not going to be awarded the contract; is that right?

A: It was a concern.

Q: And, in fact, at some point you said -- or let me rephrase that question. Your understanding that once you no longer had the ability to purchase those odor proof bags or pouches from Mr. Knight, that you no longer met the terms of the RFP; is that right?

A: It was only after we saw the letter from procurement that that was going to be their requirement. The time we submitted the RFP we did not know any such thing. So we submitted it believing we met all the terms.

Q: Okay. What are you referring to as a document or anything else that changed your belief as to Richland County's requirement of odor proof bags?

A: My husband spoke to it this morning. It was an email that came from procurement stating -- I don't know if it was -- there was an email that came saying that we did not have the ability to purchase the odor proof bag anymore.

Q: In that email, in fact, you're referring to --

A: It was actually an email from Mr. Knight.

Q: You're referring to a letter from Mr. Knight

saying that he was no longer going to put his odor proof bag on the market?

A: That's correct.

Q: And at some point there was an email from a person within the Richland County Coroner's Office; is that right?

A: That's correct.

Q: And they were addressing this issue of Mr. Knight's letter regarding the removal of his pouches from the market?

A: And did we have an alternative.

Q: Well, Ms. Swafford at some point sent an email in response to Mr. Knight; is that right?

A: Correct.

Q: And in that email they weren't asking for an alternative from you all; is that right?

A: I don't recall off the top of my head.

Q: At some point after that there may have been correspondence between you and your husband and the Richland County Coroner's Office where they asked you if you had an alternative to Mr. Knight's odor proof bags; is that right?

A: That's correct.

Q: And in other words, they gave you an opportunity at that point to still provide an alternative

odor proof bag that would meet their requirements; is that right?

A: That is correct.

Q: And were you aware of what the alternative was that your husband was proposing?

A: I knew it was a heat seal bag.

Q: Prior to this, Mrs. Lintal, did you know anything about body bags and the different types that exist?

A: Prior to getting into this business?

Q: Yes, ma'am.

A: We had no clue.

Q: So if he came in and said this is a heat seal odor proof bag, you had no objection to that or support one way or the other for that?

A: My question would be what's the cost and how are we going to deal with it.

Q: And at some point your husband either describes or does a demonstration for Richland County of that alternative; is that right?

A: He described it to Mr. Watts. There was no demonstration.

Q: And Mr. Watts rejected that alternative; is that right?

A: That is correct.

Q: And you're not aware of other types of odor proof bags besides Mr. Knight's odor proof bags and this heat seal method, you're not aware if there are other alternatives to those two, are you?

A: No, sir.

MR. LLOYD: I beg the Court's indulgence.

THE COURT: Sure. Let me ask you. Are you at a breaking point on cross?

MR. LLOYD: Yes, sir.

THE COURT: We'll take about ten minutes.

MR. LLOYD: Yes, sir. I don't believe I'm going to be much longer.

THE COURT: We'll take about ten minutes.

(Off the record from 3:24 p.m. to 3:36 p.m.)

(Defendants' Exhibit Number Three was marked for identification purposes.)

THE COURT: Back on the record.

Q: Mrs. Lintal, I'm going to show you what your attorney has provided. It's been marked just for ID as Defendants' Number Three. I believe this is the cut off portion. I'll refer you to the very top of this document where he says dear Chris and it appears to be from Mr. Jonas. Can you take a look at that and tell me if you recognize that.

A: I do.
Q: And that refers to what you were referring to earlier as an indication that Mr. Jonas had, in fact, made some changes; is that right?
A: That is correct.
Q: And I believe in that email he references having made some minor changes to the agreement; is that right?
A: That's what it states.
Q: And can I see a copy of that?
A: Uh-huh (affirmative response.)
Q: There's some personal discussion about family health crises that Mr. Jonas is having in the first paragraph; is that right?
A: Uh-huh (affirmative response.)
Q: In the second paragraph of that, is it correct to say that he describes some minor changes to the documents that, in his words, eliminated the various items from the asset purchase agreement that were not involved in this transaction; is that right?
A: That is correct.
Q: And he references, for example, a leasehold; is that right?
A: Uh-huh (affirmative response.)

Q: And what he is referring to in that is that he backed out those items that you all were not purchasing or were not a part of the acquisition; is that right?

A: Correct.

Q: And in that he doesn't refer to any other changes, for example, to the non-compete, does he?

A: Correct.

Q: Now, Mrs. Lintal, let's look at your detail of damages document. Let me first ask you, Mrs. Lintal, while you're finding that. You described earlier in your testimony that Mr. Knight was very concerned for tax purposes how the purchase price was allocated; is that right?

A: That is correct.

Q: And there are certain advantages for him allocating that $590,000 to certain items in order to avoid tax liabilities; is that right?

A: That is correct.

Q: And the same is true for you all as the purchaser; isn't that correct?

A: That's correct.

Q: And you said you did not want a large amount, or any amount attached to good will; is that right?

A: That's correct.
Q: And that's because from a tax standpoint is actually less advantageous to you to assign a lot of the purchase price to intangible assets; is that right?
A: Specifically, good will.
Q: Good will. And is good will and the non-compete treated any different for tax purposes, from your standpoint?
A: No. They're two different items.
Q: You don't want a lot attached to good will because you don't get to depreciate that; is that right?
A: I don't get to amortize it.
Q: Amortize it. And isn't the same true with the non-compete?
A: I can amortize the non-compete.
Q: Over what period of time?
A: The life of the non-compete.
Q: So in your mind it would have been advantageous to assign a larger portion of the purchase price to the non-compete; is that right?
A: Could have.
Q: It would have been more advantageous from your tax standpoint to assign more to the non-compete?

A: Yes, it could have.
Q: And so, in addition to your concern that the $1,000 amount may be insufficient for the non-compete, there was also a tax advantage for you to have assigned more to the non-compete; is that right?
A: No, not necessarily, because customer list and non-compete both have the same tax treatment for my books. So it wouldn't matter to either one of those what the allocation was for a tax purpose. They would both get amortized and I would realize a tax benefit for it. So it didn't matter if I put an amount in either bucket.
Q: So the conversation you had with Chris Rogers and your husband regarding the $1,000 amount was solely related to your belief that given the acquisition that was being made that the non-compete consideration needed to be larger?
A: It was just a value. Yes.
Q: And that was a legal concern on your part?
A: That there should have been consideration. But, like I said, we were in negotiation and the negotiation was Mr. Knight did not want a large number there.
Q: In fact, in your prior M&A experience, you had

had situations come up where non-competes were contested because they were not -- there was at least an allegation that there was not a sufficient amount of consideration for it; is that right?

A: I had seen where they had been contested. I didn't get involved in it because I wasn't an attorney at that time.

Q: So when you were at the closing of this particular acquisition, that is the concern you had and that you were sharing with your attorney and Mr. Lintal; is that right?

A: To relatively come up with an allocation, yes. But like I said, there was contention back from Mr. Knight on what he was acceptable to. Again, it was a give and take.

Q: And again there's that give and take and back and forth because we're not dealing with a separate offer of consideration for the non-compete, we're dealing with allocating the purchase price of the business; is that right?

A: That's correct.

Q: Now, looking at your detail of damages, it doesn't take into account taxes, does it?

A: No.

Q: And your average is for expenses, where did you get the average for gas?

A: I looked at what our vehicles' gas cost is over a period of time, came up with miles per gallon that we get, and the average for gas I got from the Internet as to what the national average or state average for gas was.

Q: And you didn't look at projections for what gas prices might be over the next year, for example, did you?

A: No. Because if I did, I'd be a rich person.

Q: Are you aware that there are services that do give you --

A: I do, yeah.

Q: -- anticipated averages for gas?

A: I do.

Q: And that's not reflected in this?

A: It is not. No.

Q: The expenses that you list on here, these are necessarily dependent on the number of calls you have; is that right?

A: Correct.

Q: And these are just guesses on your part as to what the number of calls might be; is that right?

A: That's the actual of the year prior, so it's a

real number of calls. It's not a guess.

Q: Well, in years going forward, you have no idea of what the number of calls are going to be; is that right?

A: I can't predict who's going to die when.

Q: Right.

A: You can predict other things when you're doing evaluations, but death is pretty hard.

Q: Except for actuarials.

A: Actuarials. But that's a different animal.

Q: They're a different beast altogether.

A: That's right.

Q: So these are just guesses on your part as to the number of calls that you would experience --

A: And I stated, they're actuals from the year prior's history.

Q: And so, for the years going forward through the length of this contract with Richland County these are just guesses on your part?

A: Correct.

Q: Now, again --

A: If I may state one other comment, too, that the new contract that started when Mr. Knight won it is no longer a cost per call. So that call information, I don't know if it's a valuable to

project that forward. I can only go off of what we have from actual work we did. It's a flat fee per month. It doesn't matter if you do one call that month or $500 calls that month. It's a flat fee per month. So again, it may not make a difference from the calls based on expenses of the revenue that's attached here.

Q: Right. In other words, your expenses -- because it's a flat fee per month, your expenses may or may not be what's reflected on here. They could be higher or they could be lower; is that right?

A: Correct. Again, it's just taking the history from what we have.

Q: I understand. I believe we're close to being finished, Mrs. Lintal.

MR. LLOYD: Your Honor, if I could beg the Court's indulgence just for a moment.

THE COURT: Sure.

Q: Mrs. Lintal, you said you took a previous year to come up with these averages; is that right?

A: The last contract year that we had. Yes, sir.

Q: And was the last contract year, if you average it out over the previous years of this contract, was it higher or lower than previous years?

A: State that again?

Q: In other words, the number of calls you made, was that higher or lower than the previous years?

A: I'd have to go back and look. I don't know that off the top of my head. This was -- I'd have to go back and look. We'll leave it at that.

Q: You all are seeking injunctive relief from Mr. Knight in this lawsuit, aren't you?

A: Yes, sir.

Q: To enjoin him from providing services to Richland County Counsel; is that right -- I mean, Richland County Coroner's Office?

A: That is correct.

Q: And if he's enjoined from providing services to Richland County Coroner's Office, you have no guarantee that you, in fact, would be awarded a contract with Richland County Coroner's Office?

A: That is correct.

Q: And so, any damages going in years forward, even if there was an injunction that you claim that you have suffered would be merely speculative at this point; is that correct?

A: That's correct.

MR. PRINGLE: Object to the form. It's a legal conclusion.

THE COURT: Would you repeat your question again? I was writing a note. I apologize.

MR. LLOYD: Okay. I'm sorry. I was waiting on a ruling.

Q: Mrs. Lintal, any --

MR. LLOYD: Let me back up a little bit --

THE COURT: Sure.

MR. LLOYD: -- to put it in some context.

Q: I just asked you a moment ago. The injunction you all are seeking against Mr. Knight were to be granted, there's no guarantee that you would actually get the Richland County Coroner's contract; is that right?

A: That is correct.

Q: And so, going forward years that you suggest that you are owed damages for as a result of not having that contract, the loss of that income from the Richland County contract is merely speculative at this point on your part?

A: Yes. But we actually won the contract if we had the bags, so we would have obtained that revenue for five years.

Q: You won the contract if you had the bags?

A: By points, we had the most points awarded that business. So by not having the bag, we lost the contract. So we lost that five years of

revenue.

Q: Is there any requirement in this agreement that Mr. Knight sell you that odor proof bag?

A: Other than it's in that list.

Q: I understand. The list is an example of discount prices that Mr. Knight has agreed that if he sells you bags, he will sell you at those prices; is that right?

A: Well, it says he shall provide body bags.

Q: At a discounted rate; is that right?

A: He shall provide us bags at a discounted rate, but for the term -- he shall provide us bags at the term of the non-compete.

Q: The remainder of that is, "Knight, through his related body bag business, shall provide to the buyer body bags at a discounted rate;" is that right?

A: Yes, sir.

Q: And as you all discussed the terms of that agreement, there's no obligation anywhere in there that Mr. Knight actually has to sell you any kind of body bags, does it?

A: Other than it says shall provide.

Q: Okay. So you're reading that in your interpretation by leaving out the last part

which says at a discounted rate?

MR. PRINGLE: I'm objecting. This is all a legal conclusion.

THE COURT: I think this would be a legal conclusion.

MR. LLOYD: We'll move on from there, Your Honor.

Q: So the only way you believe that you could fulfill the requirements of the Richland County contract is to, in fact, have access to Mr. Knight's bags?

A: To have that odor proof bag. That was the bag that was the discerning factor, or deciding factor.

Q: And yet, the only way you can fulfill the terms of that RFP is to, in fact, have his bags; is that right?

A: To have that odor proof bag.

Q: Right.

A: That's the bag that's in contention.

Q: So if you don't have those bags, again, you're not guaranteed that Richland County will award you this contract; is that right?

A: Correct.

Q: And, in fact, in your lawsuit you're not asking to enforce your belief that Mr. Knight has to sell you those odor proof bags, are you?

A: I think we're asking for the contract to stay as it was awarded -- or as it was written.

Q: Your request for relief in your lawsuit is that Mr. Knight be enjoined or prevented from competing against you; is that right?

A: That's correct.

Q: You're not asking in relief in your complaint or amended complaint that the Court order Mr. Knight to sell you those odor proof body bags; is that right?

A: That's correct.

MR. LLOYD: Beg the Court's indulgence. Your Honor, we tender the witness.

THE COURT: All right.

MR. PRINGLE: I don't have any more questions.

MR. COURT: All right. We're finished with Mrs. Lintal.

THE COURT: Okay. Another witness?

MR. PRINGLE: Not for our side.

THE COURT: All right. Any motions or anything at this point or are we moving on to Defendants' case, or what do we want to do here?

MR. LLOYD: Your Honor, I believe we would reserve motions until the end --

THE COURT: Sure.

MR. LLOYD: -- just because we're asking we propose

orders. So we would ask if we could just --

THE COURT: That's fine.

MR. LLOYD: -- move motions to the end.

THE COURT: That'll be fine.

MR. PRINGLE: I move that you grant involuntary non-suit based upon the fact that we've established our case not only by preponderance of the evidence but beyond a reasonable doubt and ask --

THE COURT: Appreciate your argument. We will reserve motions to the end.

MR. PRINGLE: Right.

MR. LLOYD: Your Honor, we would inquire of the Court and Mr. Pringle, do you want Jack to move around or --

MR. PRINGLE: We could accommodate things.

MRS. LINTAL: I could move.

MR. PRINGLE: However, you guys want to do it.

THE COURT: We'll move Mrs. Lintal right here.

MR. PRINGLE: Sure.

THE COURT: How many more witnesses we got on this matter?

MR. LLOYD: Mr. Knight.

THE COURT: Mr. Knight. Okay. So we can finish today.

(Off the record discussion)

MR. LLOYD: Your Honor, we would call Mr. Robert Knight.

THE COURT: All right. Mr. Knight, please step over to the other side of the table. All right. If you will,

swear the witness then.

ROBERT L. KNIGHT, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION BY MR. LLOYD:

Q: Buddy, we've been referring to you throughout this as Buddy. Would you state for the record your full name.

A: Robert L. Knight.

Q: And out of no disrespect everybody refers to you as Buddy; is that right?

A: That's correct.

Q: Is that what most of the people that you've done business with and in this community know you by?

A: They have.

Q: And can you tell the Court when you started Knight Systems, Incorporated?

A: I started Knight Systems in 1982 and was incorporated in 1987.

Q: And just for the record, although we've had much discussion about it, what business or services does Knight Systems, Incorporated do?

A: When I started the business in 1982, primarily started making removal for funeral homes from the hospital to nursing homes, et cetera. And

in 1987, I started making body bags in the business also.

Q: And let's talk first about the body removal service. Exactly what do you do? Before getting into this case, I never really paid much attention to the fact that somebody does this. What typically is done in --

A: We're actually on call 24 hours a day. I have an answering service that actually picks up my calls and calls me. A funeral home or a coroner's office would call. A funeral home would call and give us a deceased's name and ask us could we go to, say, a certain hospital and pick the remains up and bring to the funeral home, or if a coroner -- had a coroner's call, we would go out to that scene and make a removal for them and take to the respective hospital for that county.

Q: And as far as it relates to the side of the business that is related to body removal and transportation, where primarily was that business, or those business services provided?

A: In basically Richland and Lexington County.

Q: So you're essentially a midlands based business?

A: Yes, sir.

Q: And as related to the body bag manufacturing side of the business, and you told the Court this earlier, but when did you get into that, and how did you get into manufacturing body bags?

A: Actually, I started manufacturing body bags -- I had been making removal for Richland County for a number of years and we had a drowning in a pond. Had a gentleman that had been in a pond probably about ten days. And I picked him up and took him to the morgue. And, you know, you could imagine the odor. And I went home that evening and went in the refrigerator to get me a sandwich, make a sandwich, and took some tomatoes out of a zip lock bag, and it just struck me that maybe I could make a body bag with a zip lock seal to put a decomposed body in. And through trial and error over a number of years, I developed an odor proof body bag, and that just snowballed into making other types of bags.

Q: And do you have an example of an odor proof bag here today?

A: I don't have it with me, no.

Q: You did bring some examples of other bags today?

A: I do.
Q: In a moment we'll get into those. But let me ask you. Prior to getting into this business, the Knight Systems, Incorporated, what was your profession?
A: I'm a retired fireman from Columbia Fire Department.
Q: And how long were you a fireman?
A: About eight years.
Q: And what caused you to no longer be a fireman?
A: I fell through the roof of a burning building.
Q: And you were injured during the course of that and you retired?
A: Yes, sir.
Q: Mr. Knight, can you explain for the Court what led to your decision to place your business up for sale?
A: I had thought about it for a while, then I had a leg injury in October of 2006 and put the business up for sale. I had trouble with the bone union -- I broke my tib fib in my left leg and had trouble with bone union. Didn't know if it would grow back together or not. And that's one reason I had the business up for sale.
Q: And when you placed the business up for sale,

you were only selling the body removal or transportation side of the business?

A: That's correct.

Q: And you intended to continue with the body bag manufacturing?

A: Yes.

Q: Now, you've manufactured body bags of all different types. Could you describe for the Court some of the places you've sold or shipped body bags?

A: Shipped body bags all over the country. I sold about 12,000 bags to New York City after 911, and sold roughly 9,000 to Mississippi and Louisiana during Hurricane Katrina.

Q: And you said after your leg injury you decided to place the business up for sale. The part of the business of body removal, or transportation. How did you go about advertising your business for sale?

A: I approached a company in Columbia that specialized in selling businesses.

Q: And eventually did you come to know Mr. Lintal through that offering of the business for sale?

A: I did.

Q: Can you describe for the Court when you first

had contact with Mr. Lintal, or somebody on his behalf?

A: At the broker's office off of Huger Street.

Q: And was Mr. Lintal there at that time?

A: Yes.

Q: And what occurred at that initial meeting?

A: We actually just talked generals about the business. Who I did work for, what kind of contracts I had, et cetera.

Q: And we heard testimony earlier that Mr. Lintal and his wife actually came to your business location. Do you recall that visit?

A: I do.

Q: Can you describe what occurred during that visit with the Lintals?

A: They came in the office. My office is on the right and we have a game room on the left and a sealing room where I make the bags in the middle of the hallway there. And I'm not sure, but I just showed them this or that contract. We went over -- you know, showed them just business related items.

Q: And at that point had you all begun the process of negotiating a sales price?

A: Not really. At that point I was just showing

them -- they had signed an agreement to, you know, not to disburse any information to anybody. I was just showing them around the company, showing them what the company was.

Q: And at some point did you all progress in negotiations over the sale of your business to the Lintals?

A: Pretty much the rest of it was done through the business brokers with them back and forth.

Q: During the course of those negotiations through or with the business broker, did the subject of a non-compete agreement ever come up?

A: No.

Q: And did you ever see any hard copies of documents during that negotiation period between the broker?

A: Only after the closing.

Q: Had you all ever discussed provision 3.4.8, sales related business, requiring the buyer to purchase all of their body bags from you?

A: This agreement wasn't discussed, but it was discussed about them buying bags over the period of the non-compete. But it wasn't a lot of detail discussed in it.

Q: Now let's go forward. What was your original

asking price for the business?

A: I think it was $650,000.

Q: And, in your mind, what was that sales price or offering price based upon?

A: I based it on about three years of income. Two and a half to three years of income.

Q: Now, the business eventually was sold for a figure of $590,000; is that right?

A: Yes, sir.

Q: Now, when you all arrived at the figure of $590,000, at that point in time, was it your understanding that any portion of that was to be as compensation for a non-compete agreement?

MR. PRINGLE: I'm going to interject my continuing objection about this line of questions.

A: No.

THE COURT: The Court notes his objection.

MR. LLOYD: Yes, sir. I'm sorry.

THE COURT: That's all right.

Q: So the $590,000, in your mind, was allowing the Lintals to purchase what?

A: The actual hard assets, which were vehicles -- items to work in the business. Stretchers, scoop stretchers, et cetera, and several vehicles.

Q: Were they to get customer lists?
A: Yeah, customer lists.
Q: And essentially you were assigning them contracts with Lexington Coroner's Office?
A: Lexington, Richland and USC.
Q: And Richland County Coroner's Office. Any other governmental contracts that you had at that time?
A: No.
Q: And when we say customer lists, I don't want to put words in your mouth, but what kind of customer lists would we be talking about?
A: I just give them contact of names of funeral homes that I did business for. And that would include those contracts.
Q: Now, going forward for a moment to the actual closing. You've seen us present documents to Mr. and Mrs. Lintal and have discussions regarding drafts of the closing documents. Did you ever see those drafts prior to showing up at --
A: No.
Q: Did Mr. Jonas ever show you copies of any drafts, whether it was the asset purchase agreement, non-compete or any other part of

this?

A: No.

Q: So the first time you ever saw the actual terms of this agreement was at the actual closing?

A: When I signed them.

Q: Now, you recall there was testimony earlier regarding how you all arrived at a figure of $1,000 for the non-compete agreement. Did you have discussions with your accountant about allocating the purchase price?

A: The only discussion I had was I had called an accountant and there was some discussion about how the funds would be distributed into what. So I called my accountant and she told me to put as much as possible in customer list.

Q: And did that conversation happen prior to the closing or at the closing?

A: During closing.

Q: So at that time at the closing you were all still in negotiations over allocating the actual $590,000?

A: Yes.

Q: Did you and Mr. Jonas propose that $1,000 be allocated to the non-compete agreement?

A: I didn't, no.

THE COURT: What was that response? I apologize.

THE WITNESS: No.

THE COURT: No.

Q: And did anybody during the course of the closing direct any discussion towards you about how much money would be allocated to the non-compete agreement?

A: I'm sure it was when it was put as it was put on paper.

Q: Do you recall any back and forth or negotiation over that amount?

A: I remember there was some discussion -- I don't know if it was that or what. Mr. and Mrs. Lintal and their attorney walked out of the room to discuss something and come back in. I don't remember what it was.

Q: Fair enough. Do you recall there ever being any figure other than $1,000 allocated to the non-compete?

A: No.

Q: Now, after the execution of these documents -- let me just go back for a moment. During the negotiation process and immediately after the closing of this transaction, did you and Mr. Lintal have a good relationship?

A: Yes.
Q: And you all had gotten to know each other through this acquisition process?
A: Yes.
Q: And after the acquisition was completed, were there times when Mr. Lintal would call you to ask you for advice or assistance on anything?
A: He pretty much used my office for the first month or so.
Q: And we've heard testimony about this earlier. At any point prior to the closing, did Mr. Lintal enlist you for assistance with acquiring lending for this transaction?
A: Yes.
Q: And could you tell the Court about how that came about and what you recommended?
A: My recollection was that they couldn't come up with all the money. I forget what the figures were, but they couldn't come up with all the money. And I said, why don't I call my banker and see what she could do. Set up an appointment so you call can go in and talk to her.
Q: And did that occur, to your knowledge?
A: That did occur.

Q: And both before the closing and after the closing, is it safe to describe your efforts to either provide advice or assistance to Mr. Lintal as representative of your desire to, in fact, sell this business and get out of this business?

A: I expressed my desire to him how much I wanted to get out of the business.

Q: Now, at some point after the transaction was completed, Mr. Lintal and Palmetto Mortuary Transport ran into some trouble with Lexington County Coroner's Office contract; is that right?

A: Yes.

Q: And can you describe for the Court what you came to learn as the issue between Palmetto Mortuary and the Lexington County Coroner's Office?

A: The bid came out. Mr. Lintal bid on it. There was two other I think -- it might have been just one, but I think it was two other companies bid on it. And he lost the bid to Capital Transportation, and he come to me asking me what I could do to help him. I went to Lexington County. Harry Harmon I've known for 35 years. I went to Harry and talked to Harry to see if he could help him with anything. I went to County

Council, Bobby Keisler, who I know. I've known for years, that's on County Council, and talked to Bobby Keisler. And Bobby told me that Mr. Lintal had sent -- emailed a letter to County Council pretty much telling him his --

MR. PRINGLE: Objection. Hearsay.

THE COURT: It is hearsay.

Q: Don't get into what the letter said.

A: Okay.

Q: But you can continue as to what your understanding was from Mr. Lintal what the problems were.

A: He told me there wasn't nothing he -- Bobby Keisler told me there wasn't nothing he could --

MR. PRINGLE: Again, hearsay. What Bobby Keisler said.

THE COURT: Okay.

MR. LLOYD: I would just say we're not offering it for the truth of the matter in this particular case. It's just in reference to what actions Mr. Lintal took on behalf -- I mean -- I'm sorry. Mr. Knight took on behalf of Mr. Lintal and what he did as a result of those conversations.

MR. PRINGLE: I think it can be expressed as there was -- I learned that there was nothing I could do. But talking about what other people said is offered for the

truth of the matter asserted.

THE COURT: I'll note your objection and I'll allow him to testify.

A: Bobby Keisler told me there as nothing he could do to help him because he had sent a letter to County Council that made all of them mad.

MR. PRINGLE: That's the same objection.

THE COURT: The part about Mr. Keisler told you what -- he couldn't do anything is -- I've allowed. But you have your objection, but that's as far as I can go.

Q: And let's just take it from the part that -- the councilman said that there was nothing he could do to turn this decision around?

A: That's correct.

Q: And at that point did you take any action to try to get back into the body removal service to compete for the business with Lexington County?

A: No. I actually went to the hearing Lexington County had that was signing off on the bid with him to still see what I could do.

Q: So at that point you accompanied Mr. Lintal to the County Council meeting to again do whatever you could do on his behalf; is that right?

A: I did.

Q: And again, that's after you've already sold the

company?
A: That's correct.
Q: And you're no longer in the body removal business?
A: No.
Q: At that -- let me, just for the Court's edification. Prior to the sale of your business to Palmetto Mortuary Transport, and even after the sale, were you selling body bags to Lexington County Coroner's Office?
A: I was.
Q: And how long had you been selling body bags to the Coroner's Office?
A: Shortly after I started making them in 1987.
Q: Did anybody, like Randy Martin or anybody else from the Coroner's Office, ever ask you for an infant bag?
A: No, they did not.
Q: And they were familiar with the fact that you actually manufactured bags?
A: Yes.
Q: And they knew that you could supply whatever bags that they asked for?
A: Yes.
Q: After your efforts to help Mr. Lintal get the

Lexington County Coroner's Office contract back, at some point did your efforts ever bear fruit, so to speak?

A: No. I continually did my best talking to those in the Coroner's Office and to Harry to -- they had problems with the removal service that won the bid. They had a number of problems with them, and I kept addressing that with the people at the Coroner's Office to try to get them to quit using them but void the bid and go to Don's bid. Mr. Lintal.

Q: And it was your understanding that based on the problems that you believe existed in terms of the service that was being offered, that the C County could, in fact, have voided potentially the contract?

A: Yes.

MR. PRINGLE: Well, this is -- I mean, that's a legal conclusion. It's speculation. He's talking about what he did, but now it's opinions and surmising about what could or couldn't be done. We'll stipulate that he helped -- you know, they helped him try to get the bid. I'm not sure where else this is going to go.

THE COURT: Do you want to, Mr. Lloyd, still pursue that question or --

MR. LLOYD: Yes, sir.

THE COURT: All right. Would you rephrase it again so we'll have clarity on it?

A: Yes, sir.

Q: You had discussions, again, on behalf of Mr. Lintal with Lexington County Coroner's Office that they should, at some point, based on the level of service they were receiving, void the contract they were in and start doing business with Mr. Lintal again?

A: On numerous occasions.

Q: At any point when you were having discussions with the Coroner's Office about voiding that contract, did you offer yourself up as able to provide or willing to provide those services?

A: No.

Q: So all your actions were always intended to get that contract back for Mr. Lintal?

A: It was.

Q: Now, you heard testimony earlier about the purchase of body bags from sources other than you by Mr. Lintal; is that correct?

A: Say that again. I'm sorry.

Q: You heard Mr. Lintal's testimony earlier that he purchased body bags from sources other than you;

is that right?

A: Yes.

Q: Now, you heard testimony from him that he had discussions with you about that. Do you recall that testimony?

A: I recall the testimony.

Q: Did you ever, prior to June 16, 2011, ever have a conversation with Mr. Lintal regarding his purchase of body bags from any source other than you?

A: No.

Q: Prior to June 16 of 2011, had you ever heard that Mr. Lintal was purchasing body bags from some source other than you?

A: On several occasions.

Q: And when was the first time you began to hear that he may be purchasing body bags from some place else?

A: It was either in '09 or 2010.

Q: And as a result of what you were hearing, did you take any action at that point?

A: No. Because Don and I had a good rapport. I would do anything I could to help him, and I just shook it off considering the first time I was told that considering the person that told

me that.

Q: So you didn't approach Mr. Lintal about the rumor that you heard?

A: No.

Q: And he never came to you during that time period, contemporaneous to that time period, to say yes he was or no he wasn't selling body bags?

A: That's correct.

Q: There was no discussion whatsoever about him buying body bags from someplace else?

A: No.

Q: Before June 16, 2011, how many times do you think you heard that Mr. Lintal was purchasing body bags from someplace else?

A: At least twice. I won't say it's three or four times, but at least twice minimum.

Q: And on June 16, 2011, do you recall having a discussion with Mr. Lintal about whether or not he was purchasing body bags from some other source?

A: I did discuss it with him, yes.

Q: Tell the Court how that conversation came about.

A: I had sold some lightweight body bags to USC school of medicine and he had told me -- I was

going to take them out there, and he and I had conversation and he said he was going out there himself that evening to finish an embalming job for them and that he would take them out there. And so I figured that was as good as time as any to ask him if he had bought bags elsewhere.

Q: And did you, in fact, tape record that conversation?

A: I did.

Q: What made you record that conversation?

A: Actually, for my own piece of mind. I didn't know what I was going to do at the time. At the last minute I felt -- on the way over there I just felt like I was going to record it just in case something -- down the road I needed it.

MR. LLOYD: Let me ask you to mark --

(Defendants' Exhibit Number One was marked for identification purposes.)

Q: Let me show you what's been marked as Defendants' Exhibit One for Mr. Knight's testimony. Do you recognize that?

A: That's my handwriting.

Q: And what is that? What is Defendants' One?

A: It's the recorded conversation that I had with Don Lintal that day.

Q: Is that a recording you made?
A: It is.
Q: And you actually put that on that disk?
A: I did.
Q: And is there anybody who is a party to that conversation other than you and Mr. Lintal?
A: No. Just him and myself.
Q: And where did this conversation occur?
A: At his West Columbia residence.
MR. LLOYD: And, Your Honor, we would offer in Defendants' Exhibit One to be played.
MR. PRINGLE: Well, I mean, you know, aside from the fact that it was surreptitiously done and, you know, as a result of that, you know, has very little, you know, probative value at all. And the conversation, I don't believe, is relevant, especially when we've already talked about the bags were purchased outside the contract. There's not any new information in it. It's duplicative at best. And, you know, it's not going to give the Court any more information than it has right now as far as what happened between these two parties. And, you know, I'd also add that I think it's extraordinarily prejudicial to -- you know, not withstanding whether it violates the South Carolina Homeland Security Act or not, or Wiretap Act. Maybe it

does and maybe where one party taking state. But the very idea of, you know, taping somebody that you've described as having a good relationship with for purposes of then using that later on without telling them is unethical and I believe that it's prejudicial and it's duplicative.

THE COURT: Mr. Lloyd.

MR. LLOYD: Your Honor, we are a one party state. These conversations specifically do not violate the State Homeland Security Act. In fact, our Supreme Court just recently dealt with this issue in a case dealing with whether or not a parent could consent to a recording made of a conversation between their minor child and another individual, and the very issue of the State Homeland Security Act came up and, of course, that was not violative of that. Your Honor, again, this goes to the very issues that were raised by Mr. Lintal about whether or not he had previous conversations with Mr. Knight about the purchase of other body bags from other sources. It goes to statements that Mr. Lintal made about Mr. Knight's awareness of -- supposed awareness of purchases by him on prior occasions. And it goes to the heart of the issue of Mr. Knight's contention that there was, in fact, a breach of the agreement by Mr. Lintal prior to anything coming up with him bidding for

the Richland County contract.

MR. PRINGLE: We've already testified about those very bags, including the very bag that's on here. To the duplicative, Mr. Lintal also testified that in the conversation where Mr. Knight surreptitiously tapes him that he said that he didn't mention the previous conversations or the previous testimony that was given about whether or not, for example, that he had mentioned this to Mr. Knight before. There's nothing new in it. Absolutely nothing new in it that hasn't already been aired in this and it's just -- you know, I mean, I realize you're probably going to let it in, but we're going to -- you know, just another thing to sit here and listen to facts that are already out there.

MR. LLOYD: Your Honor, again, not to prolong our response from this issue. But Mr. Lintal did testify very explicitly about his characterization of that conversation which we contend is vastly different than the actual conversation, which luckily from Mr. Knight was recorded. And it certainly is relevant to this issue of whether or not Mr. Lintal's testimony is, in fact, accurate or truthful as to these previous conversations he's supposedly referencing with Mr. Knight. And, in fact, Mr. Lintal offered testimony about the fact that these issues about infant bags that

come up previously, that the Court would be able to discern whether you believe that that happened based on his statements to Mr. Knight in this conversation. He also references this issue of water retrieval bags or other bags being purchased prior to this particular date, and that his conversations with Mr. Knight upon previous occasions and, in fact, revolve around that. And we believe that once the Court hears this, the Court will have a better ability to discern whether or not Mr. Lintal's testimony is, in fact, accurate.

MR. PRINGLE: Again, he testified that he did not talk about those issues and the previous conversations that he had with Mr. Knight. He testified to that already. So all this is going to do is just to add a different characterization on facts that are already there. Characterizations by somebody who went in there to set up my client and to take and to find out what he said, and with knowledge that he was taping somebody and that somebody else didn't know they were being taped to steer the conversation that way. But, you know, that's --

MR. LLOYD: I'm going to object to the characterization of that. And I think once the Court hears the tape, you'll hear that Mr. Knight actually does very little talking in this tape. The suggestion that he somehow

did something unethical or set up Mr. Lintal, you'll hear Mr. Knight in this conversation certainly is not steering this conversation. And, in fact, he does very little talking in this recording.

THE COURT: The case that you cited.

MR. LLOYD: Yes, sir.

THE COURT: I'm not comfortable putting that into evidence even over an objection unless I see that case and see what that case says. And I don't know whether you all intend to finish today or what --

MR. LLOYD: Yes, sir. I believe we can finish today.

THE COURT: You do?

MR. LLOYD: Yes, sir.

THE COURT: You think you can finish today?

MR. PRINGLE: I know I can finish today. I mean, it's subject to -- I don't remember the tape being --

MR. LINTAL: Forty-three minutes.

THE COURT: It's how long?

MR. LINTAL: Forty-three.

MR. LLOYD: We can fast forward through a good part of that. Because a good part of the conversation is just sort of a diatribe on some unrelated topics. But I would cite the Court to State v. Andrews, 479 SE 2nd 808, 1996 case, you know, with this very issue of this being a one party state. That private conversations

are admissible as long as one party, in fact, knows that the recording is being made. I would also cite the Court to State v. Whitner 732 SE 2nd 861, 2012 case where the court dealt with this very issue. Supreme Court dealt with this very issue whether or not a private taped conversation -- in this particular case, the question was whether or not -- they'd already gotten past obviously the issue of whether or not we're a one party state. They discuss that. The issue in that particular case, Your Honor, was whether or not a parent could, in fact, consent on behalf of a minor to tape a conversation where a parent was not a party to that conversation. It was a situation, Your Honor, dealing with some alleged abuse of a minor and they were trying to deal -- the offered reason by the parent was discern what the extent of that abuse was and what kind of assistance was needed for the minor. The Court had to deal in that particular case with this very issue of, number one, can there be a parental consent even if the parent is not a party to that conversation.

THE COURT: What's that citation?

MR. LLOYD: 732 SE 2nd 861, 2012.

THE COURT: Okay. Give me about ten minutes. I'll be right back.

MR. LLOYD: Yes, sir.

(Off the record from 4:33 p.m. to 4:48 p.m.)

THE COURT: Back on record. I read both of the cases that were cited by counsel and it looks like if one party does consent, that it's not a violation of Wiretap Statute itself. I'm going to allow it in subject to the other basis you have for your objection so we can deal with it later.

(Defendants' Exhibit Number One was admitted into evidence.)

MR. PRINGLE: Okay.

THE COURT: All right.

MR. LLOYD: Your Honor, we don't intend to play the whole thing. We're going to try to skip through some of it since it's in evidence.

THE COURT: Somebody said it's 43 minutes. Can we get to the part that you're interested in and --

MR. LLOYD: Yes. We'll have to fast forward, I think, through different -- a little bit of the problem, Your Honor, is I'm not technologically adept enough to have marked different portions of it time-wise. But there's conversation about this, then they go off on some other issues and back.

THE COURT: Okay. Well, I'm in that same category, so.

MR. LLOYD: I'm actually going to have to rely on Todd a bit here to --

(Playing Audio)

MR. LLOYD: And just for the Court's edification.

Q: Mr. Knight, whose voice was that?

A: That's mine.

Q: That's your voice.

MR. PRINGLE: And we'll stipulate the other one was Mr. Lintal.

THE COURT: All right. Did you pick up the stipulation?

COURT REPORTER: Uh-huh (affirmative response.)

(Playing Audio)

MR. LLOYD: Your Honor, we're going to try to drag it to the beginning of that. It's near the beginning.

(Playing Audio)

MR. KNIGHT: Let me ask you a question. Your competitor told me that you were using some body bags from somewhere else and that you had some baby bags or youth bags or something.

MR. LINTAL: I have -- I have a baby bag, yeah. It's a small -- I think that -- you don't have those things though.

MR. KNIGHT: I manufacture bags.

MR. LINTAL: Okay. Can you make me these bags?

MR. KNIGHT: I can make anything.

MR. LINTAL: Okay. Do you want one so you can see what --

MR. KNIGHT: I made the odor -- I made the odor proof bags.

MR. LINTAL: Okay. Well, these are a light -- these are a lightweight bag, you know. And the only reason I ever bought them was -- and, Buddy, I probably have used -- I might have bought ten at the initial time that I bought them. And between Lexington and Richland -- and Lexington was really the primary reason for it because they bitched about going into a house with a -- with a big -- a full sized bag folding it up. So I said, well, if I can get them. And I -- and I swore I asked you at one point about those things. But -- and I'm not trying to get around or break anything or go behind your back. Please understand that, you know. But, I mean, it -- out of the ten that we bought I bet I've still got six of them left, you know, maybe seven of them. No, not seven. I've probably got half of them left. I don't even know, you know. But -- but it's not such a significant thing. I mean, it's -- you know, I pay like, you know, $6. I paid like $6 for these bags, you know. Initially, I got two bags and -- just to see if they were something that the -- these guys would ever -- ever consider doing and -- and are using. And they liked them. And after I showed them, I showed Richland just to say, you know, if we have a

need for it, do you want these to be available, and they said yeah. That would be great.

MR. KNIGHT: How big a bag is it?

MR. LINTAL: Twenty-eight by -- do you want one?

MR. KNIGHT: No. Huh-uh (negative response).

MR. LINTAL: I mean, I'll get one. It's -- it's -- it's -- it's probably maybe --

MR. KNIGHT: For babies or something like that?

MR. LINTAL: It's for, you know -- I told you I bought two initially. I bought one that was a real small one, and that just isn't versatile enough. I mean, there's no sense -- we don't -- even if it is an infant type thing --

MR. KNIGHT: Yeah. We've always just wrapped them in sheets.

MR. LINTAL: Exactly, you know. And -- but -- and that suffices until you get to the morgue. That's the issue with putting a lock on at the morgue and all that part with the sheets. But there you can at least put it in a regular size bag, but they get lost in them. So -- so, I mean, these things you can crack off at no -- nothing flat. But I don't want the super heavy material that you use for, you know -- because for the -- the real stiff stuff if you can avoid it because of the fact that they -- they -- they --

they're harder to work with. This has got the regular zipper like you got, you know. And I guess if -- you could use a straight zipper if it was easier.

MR. KNIGHT: Yeah, something like that is easier.

MR. LINTAL: I mean, like I said, I -- you know, I haven't used that many that I really feel like it was even a significant point on the others. I've been, you know, loyal on everything that I knew you had. But as far as I'm --

MR. KNIGHT: But your competitor asked me if I had any and I said, well, I can make anything you want, and he said well --

MR. LINTAL: Is that Capital that asked you that?

MR. KNIGHT: Uh-huh (affirmative response).

MR. LINTAL: Okay, all right.

MR. KNIGHT: I said, well, I'll ask him about it because we can always make them.

MR. LINTAL: And that's fine. I hope that doesn't -- doesn't make you feel like I'm screwed you on anything because it -- you know, I don't probably have -- let's see, $70 in bags that I've purchased in the course of the time since I did it. And I probably have -- you know, it was at the tail end of Lexington. And what brought it on was one time when we were in a

house for Lexington and it was a way small infant that was in there. And I brought the big bag in there with a sheet. Wrapped him in the sheet. Which, first of all, they're lost in the sheet, because we don't have a big -- a small -- shorter sheet, you know. I probably could have ripped it and made it that way. And we put it into that bag and they said, you know, that was just -- they're going to get lost in there, you know. And I said, well, that's what I've got, you know.

MR. KNIGHT: That guy never come out and give you a price on the roof or nothing?

MR. LINTAL: I -- I never heard from the roof guy. The one that I heard from was the guy for the trim and I -- and I tried calling him back but I don't think -- I never got a call back from him or --

MR. LLOYD: Your Honor, we're going to try to fast forward a little bit of the -- the reason this is 44 minutes is it goes throughout the conversation like that.

MR. LINTAL: I talk a lot. Sorry.

(Fast Forwarding Audio)

MR. LLOYD: Jack, I'm just asking him how much further forward this conversation is.

(Fast Forwarding Audio)

MR. LINTAL: I tell you what. When I -- when I -- I'll give you plenty of notice on getting those

bags, if you can come up with something that I can use, you know.

MR. KNIGHT: All right.

MR. LINTAL: Like I said, I'm not -- I don't want to disappoint you on the fact that I did -- did get some, but I -- I knew you didn't ever have them that could be used, you know. I just probably reacted in a way that I -- I should have asked you first.

(Playing Audio)

MR. LLOYD: I think I'm going to skip to near the end of it. As I recall, there's some other -- they come back and forth, and unfortunately I won't ask you to listen to the whole thing, because in the middle of the discussions about these other times they'll pop up and say something about the body bags. But we'll forward near the end.

(Fast Forwarding Audio)

MR. LINTAL: I swear to God, no more of that, you know. I mean, I didn't -- I didn't think it was an issue that was going to break your pocket(inaudible). I didn't think it was going to be anything to break our agreement on the basis of the fact that you didn't have them. If you're willing to make them, I'm going to order them.

MR. KNIGHT: I can make them.

MR. LINTAL: All right.

MR. KNIGHT: All right. Stay in touch.

THE COURT: That's it?

MR. LLOYD: Yes, sir.

Q: Mr. Knight, during that conversation --

THE COURT: Excuse me, Mr. Lloyd. Was that marked as an exhibit?

MR. PRINGLE: Yes.

MR. LLOYD: Defendants' One.

THE COURT: What's that? Defendants' One?

MR. LLOYD: Yes, sir.

Q: Mr. Knight, during the course of that conversation you just heard, Mr. Lintal referred to the infant body bags as lightweight body bags. Did you hear that?

A: Yes.

Q: And is that an accurate description of infant body bags?

A: Pretty much, yes.

Q: They're lightweight bags?

A: Yes. They're just a small version of the adult lightweight bag.

Q: He references in there that he should have asked you first about the infant body bags. Is it fair to say that this was the very first

conversation that you had with Mr. Lintal about infant body bags?

A: Yes.

Q: Is it the first conversation you had with him about his purchase of other bags from other sources?

A: Yes.

MR. LLOYD: Beg the Court's indulgence.

Q: Mr. Knight, did you bring today an example of the lightweight bag?

A: I did.

Q: And just for demonstrative purposes, can I pass you this?

A: It's a white bag.

MR. PRINGLE: I don't necessarily want to object, but, you know, the purpose of this I'm presuming he'll lay some foundation about why this is relevant.

MR. LLOYD: Well, do you want --

MR. PRINGLE: No. Go ahead.

Q: We've been having a lot of discussions throughout this about body bags. And just for the Court's education, this is a full sized adult lightweight --

A: No. This is an infant.

Q: The one you have there is an infant lightweight?

A: Yes.
Q: And it is the same essentially as an adult lightweight bag?
A: With the exception it has a straight zipper and an adult bag has a curved zipper.
Q: And is that a bag that you manufactured?
A: It is.
Q: And when is the first time you manufactured an infant body bag?
A: In 2011, after our discussion.
Q: And prior to that, had anybody at Lexington County Coroner's Office or anybody else ask you to manufacturer an infant bag?
A: No.
Q: Now, during that conversation -- did that recording represent the entire conversation between you two?
A: It does, yes.
Q: And was there any part of the conversation that wasn't on that tape that you presented?
A: No.
Q: And at any point during that conversation that was recorded on June 16, 2011, does Mr. Lintal reference or make you aware of the fact that he purchased water retrieval bags from someone

other than you?

A: No. As a matter of fact, he referenced that he hadn't bought any of the bags at all.

Q: And when is the first time that you had actually learned that he had purchased water retrieval bags from somebody other than you?

A: During discovery.

Q: And that would be discovery in this case?

A: Yes.

Q: Now, let's go to the closing again. Is there a point in time when you realized at the closing what the restrictions on you from the non-compete would be in terms of years and geographical area?

A: Yes, at the closing.

Q: And is that the first time that you had any -- let me rephrase that. Did you have any knowledge prior to seeing that document of what the geographic area that you would be restricted from competing against the Lintals in was?

A: No.

Q: And based on the agreement, is there any place that you believe within South Carolina that you could compete against the Lintals?

A: No.

Q: Would their agreement also prohibit you from competing against them in some out-of-state markets?

A: No.

Q: I'm sorry?

A: It would not. As long as it was, I think, 150 miles.

Q: Right. From 150 miles from Lexington?

A: Yes.

Q: Would that stretch, for example, into some markets within Georgia?

A: Yes.

Q: So under the terms of the non-compete, if it were in force, it would also prohibit you from competing over in Georgia against them?

A: It would.

Q: Now, had you ever done business on a regular basis in Georgia?

A: No.

Q: Arguably the restriction would apply potentially to parts of North Carolina; is that correct?

A: Yes.

Q: Had you ever done regular business in North Carolina?

A: No.

Q: Did you discuss on June 16, 2011 with Mr. Lintal that you were possibly going to bid on the Richland County Coroner's contract?

A: No.

Q: Did that even come up in your conversation?

A: No.

Q: Following that taped conversation, did you ever talk to Mr. Lintal again on June 16, 2011?

A: He called me several times.

Q: Can you tell the Court about those calls to you from Mr. Lintal?

A: Apologizing for buying the bags that he bought and assured me that the baby bag was the only bags he bought.

Q: And what dates were those calls?

A: I think at least one that same day, possibly two. And then a day or so later.

Q: And at that point, and during the course of those conversations either that later that day on June 16 or a day or so later after June 16, did you ever indicate to Mr. Lintal that you might bid on the Richland County contract?

A: No, I did not.

Q: Now, prior to bidding on the Richland County contract, did you take any action in seeking

advice or determining whether or not you could bid on that contract?

A: I did.

Q: Would you describe for the Court what you did to, in your opinion, satisfy yourself as to what your rights were under the contract?

A: After I left his office that day, or his residence that day, I went back to my office and read through the contract and found this part here, 3.4.8 and read through it, and then called my attorney who was then Don Jonas. Told him what took place and asked him if I had a right -- since he breached the contract, if I had a right to go back in the business.

Q: And when you say you found 3.4.8, you were aware that there was -- let me rephrase the question so I'm not leading you. Prior to going back to your office on June 16, 2011 and reviewing the contract, were you aware of that provision in the agreement?

A: I knew it was in there. I didn't recollect exactly how it was worded.

Q: And you said you called Mr. Jonas at that point; is that right?

A: It was either that night or the next day.

Q: And what, again, were you seeking to discern from Mr. Jonas?

A: I was seeking legal advice. Told him what took place and asked him if that allowed me to bid on the Richland County contract.

Q: And would you explain for the Court why were you feeling like you wanted to get back into the business on the Richland County contract?

A: I didn't want to get back in the business. I was forced to. I felt like I was forced to. I had -- that's a four year contract. And I felt like if I didn't take action at that time, I was going to be left out in the cold. It only cycles every four years. And I felt like it was 1,500, $2,000 a month that bags should have been bought from me over a ten year period, it would have been a quarter of a million dollars. And I felt like that I was not selling all the bags to him. And furthermore, I was selling them bags, like the odor proof bag, at a discount and he was selling them to funeral homes in competition with me.

Q: Let me explore that a little bit with you. When you say Mr. -- you were selling odor proof body bags and other body bags to Mr. Lintal and then

he was competing against you with funeral homes. Can you describe for the court, first of all, how you learned that he was selling your bags to others?

A: I had a funeral home in Lugoff call me, Powers Funeral Home, and told me that they were out of odor proof body bags and they needed to buy some. And my question to them was, I don't think I've ever sold you any. How did you get them. And they told me they'd been buying them from Don Lintal.

Q: So you were selling them to him at the price of $50?

A: Yes.

Q: And that represented a discount from what regular price?

A: Eighty-five dollars.

Q: And did you feel that he was selling body bags to others besides Powers?

A: Well, I didn't know that. But, you know, I had to take into account -- I knew he was buying other bags. I don't know how many he was buying. I knew his business had to be growing. It's grown every year I've been in it. Plus he had told me about the accounts he had acquired.

So I knew he should have been using more bags. So in my own mind I knew he was buying bags somewhere else, but I didn't know the number of bags he was buying elsewhere. And I didn't know whether he was selling to other funeral homes or not. This is the only one I found out about. Only by accident.

MR. LLOYD: Beg the Court's indulgence.

Q: Mr. Knight, I just have a few more questions for you. You heard testimony earlier from Mr. Lintal and Mrs. Lintal about their description of an alternative odor proof bag to the Richland County Coroner's Office, do you recall that testimony?

A: I do.

Q: And they describe a -- in layman's term, I would describe as a heat seal-type bag. Is that an accurate description of a method that you're familiar with?

A: Yes.

Q: And how does that work?

A: I saw it demonstrated on the Internet, but that's the only place that I've read up on it myself. It's actually a vinyl that you roll out, place the deceased on it and seal the rest

of it up.

Q: And does it require some equipment to be transported to the scene?

A: I think they have to plug it into a cigarette lighter. If you don't have electricity at the scene, you could probably plug it into a cigarette lighter, and you have to wait until it gets hot and then seal around it.

Q: And anytime that seal is broken does it have to be resealed in the same method?

A: It does.

Q: Now, during your experience manufacturing body bags and being in this business, are you familiar whether or not there are other types of odor proof bags on the market?

A: I know there's patents been issued for them.

Q: And when you say there are patents, those patents differ from the patent you hold on your odor proof bag; is that right?

A: It does.

Q: And they differ from this heat seal method; is that right?

A: They are.

Q: And so, there are alternative odor proof bags available?

A: I don't know whether there are now, but when I researched by patent, I saw other patents out there on odor proof bags.

MR. LLOYD: I beg the Court's indulgence for a moment. I may be finished with Mr. Knight. Your Honor, we tender the witness.

THE COURT: Cross examination.

CROSS EXAMINATION BY MR. PRINGLE:

Q: Mr. Knight, you testified that you needed to get back in the business or you were going to be left out in the cold; is that right? Those are the exact words you used, right?

A: Yeah.

Q: Left out in the cold with $590,000 that my client paid you?

A: I wouldn't characterize it like that.

Q: You were paid $590,000 by my client, correct?

A: Correct.

Q: Okay. And you accepted that money?

A: I did.

Q: Okay. The comment that you mentioned that my client was selling bags to funeral homes. Those bags that he was selling that you found out about, he bought from you pursuant to the contract, didn't he?

A: He did.
Q: Under the terms of the contract?
A: That's correct.
Q: And the contract did not have any prohibition on what he did with the bags once he had them?
A: It does not.
Q: Okay. You mentioned also that Mr. Lintal's business had to be growing and you knew that he bought some bags from someone else. As you sit here today, do you have any evidence whatsoever that he bought any more bags than the ones he described and the ones that total $884 worth of purchases?
A: No, I don't.
Q: Okay. What was the date of your accident? The one where you broke your leg?
A: October.
Q: Of?
A: 2006.
Q: October of 2006. Okay. And wasn't the posting for the sale of your business actually posted in August of 2006?
A: It was.
Q: Okay. So, indeed, you had just made the decision to sell your business before you had

your accident?

A: I had talked to them at that time.

Q: Okay. And it was listed there?

A: Yes.

Q: Okay. So somebody could initiate discussions to buy your business at that point, before your accident?

A: But I hadn't talked to anybody, yes.

Q: All right. You mentioned that you found out in either 2009 or 2010 that my client had bought bags from somebody else?

A: That's correct.

Q: And was that Mr. Maddox?

A: It was.

Q: Okay. And at that point when you learned that, you didn't tell me client about it?

A: No. I just -- I knew him.

Q: You knew Archie?

A: Well, I knew him and his ways, let's say.

Q: Okay. And you had some reason to believe perhaps that he wasn't being truthful?

A: That's correct.

Q: Okay. But then when you asked my client about this on June the 16th, maybe Mr. Maddox was a little more truthful?

A: Yes. I had somebody that told me that they seen a bag. And I don't remember who it was. They told me they saw a bag. And I want to say it was a huge bag or something in the morgue at Lexington Medical Center.

Q: Okay. So Mr. Maddox went from being a little bit less than trustworthy in 2009 and 2010 to being a good source on June 16th, 2011?

A: I wouldn't say that. But, you know, that's when I asked Mr. Lintal about it. I felt like it had come from somebody else.

Q: Okay. And you mentioned it to him June 16th. You took somewhat -- with someone that you had characterized as having had a good relationship that you had done things on their behalf, you decided to tape him without telling him on the day before you bid the Richland County contract?

A: I decided to tape him, yes.

Q: Okay. And that was the day before you bid the Richland County contract?

A: Yes.

Q: And is it your testimony that you hadn't prepared any of the bid when you had the conversation with my client?

A: That's correct.

Q: Okay. And so, that was roughly, what, 4:00 or 5:00 in the afternoon on the 16th?

A: No. I don't think it was that -- I don't know. It was midday, I think.

Q: You think it was midday.

A: I don't remember.

Q: So whether it was noon and -- and after that conversation you managed to prepare an entire bid and submit it by close of business on June the 17th?

A: Yes.

Q: Okay. With respect to the RFP and the odor proof bag and the discussion that you just had with your counsel about the idea that there may be other odor proof bags out on the market and patents, or bags that had been patented, certainly as of -- in the summer of 2011 it was your contention that you were the only game in town with respect to odor proof bags, wasn't it?

A: I was the only one in Columbia that had one.

Q: And the only one that could provide it, in fact, to Richland County?

A: Not necessarily.

Q: Well, that's what you asked Richland County. You asked them to award you the contract --

A: I was the only one that could give them my bag. He had avenues to find his own odor proof bag. I just said I wasn't going to sell him mine.

Q: No. But in addition to you saying to my client that you weren't going to sell him bags pursuant to the contract that you'd signed and paid my client $590,000, you specifically, after the RFP had been closed, asked the County to award you the contract based on that you were the sole source for odor proof bags; isn't that correct?

A: I talked to my attorney. My attorney said that he didn't have a contract with me any longer if he said that he had bought bags elsewhere.

Q: Okay. That was not the question I asked you. After the RFP was closed, after the RFP was closed on June the 17th of 2011, you sent communications in violations of the RFP to Richland County --

MR. LLOYD: Objection.

Q: -- asking them --

MR. LLOYD: Assuming evidence.

MR. PRINGLE: Okay.

Q: You sent communications after the RFP was closed asking Richland County to award you the contract because you were the sole source provider of the

odor proof disaster pouch, didn't you?

A: I did.

Q: Okay. And so, at that time it was your opinion that you had the only bag that could be used to satisfy the body removal contract for Richland County?

A: I felt like the bag I made was the only bag. There was other avenues that he could have looked into.

Q: You didn't say in your letter I have a bag. There might be other avenues that somebody can use to satisfy the RFP, but I think that this one might be the best. You said this is the only one that satisfies it, didn't you?

A: Yes.

Q: Okay. And that's what sole source means, doesn't it?

A: Yes.

Q: Okay. And you did that after the RFP had been closed?

A: I did.

Q: Okay. And you copied Gary Watts on an email, along with Christie Swafford making that request?

A: That's correct.

Q: Okay. And understanding that you believe that even the purchase of a $5.25 bag entitled you to walk away from a $590,000 contract, if the contract were in place -- if it were in place, you would not have had the right to send a letter saying that you didn't offer these bags to the public and to everybody else --

A: I felt like it was not a contract. He had breached the contract.

Q: No. Listen to my question again. Putting aside the fact that you believe that there was a contract -- that had this contract been bid on -- let's say, for example, January the 6th, 2007, the day after my client had paid you $590,000, and you had agreed that you would not compete for Richland County, and Richland County put out an RFP, you would not have had the ability to tell Richland County that you were the only provider, the only entity that could provide your odor proof bag, could you have?

MR. LLOYD: Your Honor, I'm going to object. Same basis Mr. Pringle was objecting earlier, that that calls for a legal conclusion.

MR. PRINGLE: I'm asking whether he could have sent the letter or not.

MR. LLOYD: That requires a legal conclusion.
MR. PRINGLE: It was his belief he didn't have a contract. Not the reason why he doesn't do it.
MR. LLOYD: Your Honor, that's the exact same --
THE COURT: I'm going to let him answer the question under the objection.
MR. PRINGLE: Yeah.
A: Ask the question again, please.
Q: Okay. On January the 6th, 2007, you wouldn't have had the ability to request that Richland County, or anybody else within the territory or limitations of your contract, to ask them to approve you as a sole source of odor proof bags, could you have?
A: I would have had the ability, but morally I wouldn't have done it because I was under contract with him.
Q: Morally and contractually, right?
A: That's correct.
Q: Okay, right. Let's talk a little bit about the asset purchase agreement. I know whether you've seen Exhibit One. There's some discussion -- you had some discussion about when you saw it and when drafts were done. Don Jonas represented you in that transaction, did he not?

A: Well, he went to the closing with me.
Q: Okay. He wasn't there on my client's behalf?
A: He went to the closing with me on my behalf.
Q: On your behalf. Okay. Representing you as an attorney?
A: Yes.
Q: Okay. You're aware that Mr. Jonas was sent drafts of the asset purchase agreement and the covenant not to compete on December 14th of 2006?
A: No, I wasn't.
Q: Okay. The document is in evidence. We can show it to you. The particular email that --
A: I think I looked at that and it had everybody's email -- it was sent to everybody but me.
Q: Okay. But it was sent to your attorney?
A: But he got a copy, she got a copy and you got a copy. I didn't get a copy of it.
Q: Okay. Did you believe that maybe your attorney would send you documents that were sent to him?
A: I didn't get them, so that answers your question.
Q: Okay. Wouldn't that be something that you discussed between you and your attorney and not between the attorney on my side?

A: But you understand, I didn't see it. I didn't know it was there. So why would I ask him about it?

Q: Well, I don't know. That's something that you ask him about it. But he did receive a copy, didn't it? Just to clarify that question.

A: By looking at the email address on the paper it looks like it.

Q: Okay. He got it. And you showed up for the closing with him?

A: I did.

Q: And you mentioned today that you did read the asset purchase agreement at the closing?

A: Can I see that?

Q: The asset purchase agreement?

A: The email. No, the email. The email. There it is. And before today I never saw this.

Q: You never saw the email?

A: No.

Q: Okay. But your attorney got it?

A: Well, his name is on there. It looks like he got the email, yeah.

Q: Okay. And, indeed, as the discussion happened, he provided a email response with some red lines or changes to the drafts that had been sent to

him by my clients' attorney?

A: Well, I don't see anything that's red lined.

Q: Okay. But his references -- and I'll just refer you to this particular email, and you can read it if you want --

THE COURT: How about reference the exhibit, what it is.

Q: What exhibit is that?

A: Three.

Q: And is it an email from Don Jonas?

A: It is.

Q: To Chris Rogers?

A: To Kay Gaddis at the Carolina National Bank and Lintal.

Q: Yeah. And what does it say?

A: It says, "Dear Chris, I was unfortunately delayed in finishing this project as a result of a family crises. My 100-year-old mother-in-law in Indiana is suffering from what appears to be her final illness. I just returned from the Charlotte airport where I dropped off my wife. Assuming mom gets through the night I will leave from Columbia to join her immediately after this closing. If not, I will send someone. I made some very minor changes to the docs that eliminated various items from the asset purchase

that were not involved; leasehold, et cetera. I understand that you have the info regarding the breakdown, the PP between good will and asset purchase. I also understand you have the employee information that Buddy provided. As I advised, the parties have agreed to a pro rata of the monthly billing so Buddy gets credit for the five days in January. Anything further needs to be discussed today. I will meet with Buddy this afternoon."

Q: So he reviewed those documents on your behalf and made changes?

A: Sounds like he reviewed something, yes.

Q: Okay. And he did that on your behalf?

A: Yes.

Q: Okay. And then you appeared at the closing and testified just a little while ago that you read the documents at closing?

A: Yes.

Q: Okay. And after this discussion about the $1,000 that's mentioned as the consideration for the covenant not to compete, you didn't object to that provision or any provision of either agreement at the closing, did you?

A: I didn't.

Q: Okay. And you signed the documents, both of them?

A: I did.

Q: Those are your signatures on both of those things?

A: There was some talk -- like I said before, and Mr. Lintal, Mrs. Lintal, and Mr. Rogers went outside and -- and I even think Kay might have went out with them but I'm not sure. They went out and come back in, but I don't remember what it was about.

Q: Okay. But you did sign it?

A: Yes.

Q: Okay. And, indeed, you believed that the language of the contract entitled you to walk away from it in June of 2011?

A: Yes. According to what he did, yes.

Q: Okay. Right. So you consulted the contract for that?

A: Yes.

Q: Okay. You moved a dead body for Richland County on December 2nd, 2008, didn't you?

A: I did a disinterment, yes.

Q: Okay. And you moved a dead body on March 9th, 2011 for the Richland County Coroner's --

A: I don't have the exact date.
Q: Okay. But you did two?
A: Yes.
Q: And as you testified in your deposition, you've contacted the Lexington County Coroner's Office asking them to rebid the contract that's held by my client?
A: I don't think he had it at that time. I'm not sure.
Q: No. I meant in the current time, we had a conversation in your deposition.
A: Well, I don't remember whether it was after he got it or -- it might have been after he bought it from one of the other company.
Q: Okay. And you've contacted the University of South Carolina asking them to rebid the contract held by my client?
A: I have had discussions.
Q: Okay. So you're actively seeking to go after the other two contracts?
A: I am. Yes, sir.
Q: All right. You mentioned some of the efforts that you made on Mr. Lintal's behalf with Lexington County. In fact, Mr. Lintal got the Lexington contract back by buying Capital,

didn't he?

A: That's correct.

Q: Okay. So it was his efforts that got him the contract back?

A: Yes.

Q: Okay. In your experience, do people with good working relationships tape each other surreptitiously?

MR. LLOYD: Objection.

THE COURT: Sustained.

Q: I mean, you mentioned you had a good relationship with Mr. Lintal, right?

A: I did.

Q: All right. And -- all right. I'll just leave it at that. On the tape Mr. Lintal, you know, told you specifically that he bought two bags initially, right?

A: That's what he said.

Q: And you didn't object to that at the time, did you?

A: I was just after information.

Q: After --

A: I wasn't there for an argument.

Q: Of course you were after information.

MR. LLOYD: Objection.

MR. PRINGLE: Okay.

Q: And with that information you bid the contract the next day?

A: I did.

Q: Okay. One more thing. You mentioned that you had heard something about my client maybe -- was it selling infant bags to Lexington or using -- right before your conversation in June of 2011?

A: Say that again?

Q: That you had heard -- there was something in addition to what you heard from Archie Maddox about something at the morgue or another instance where my client had been buying bags from somebody else?

A: I don't remember who it was told me they saw a -- not an adult bag, but maybe a bag in between this one and an adult size. Like a teen bag. A small person bag.

Q: At the morgue?

A: At the morgue.

Q: Lexington County? And what time frame was this?

A: It's been a while. I don't know when it was.

Q: 2011?

A: I don't remember when it was. It was before the bid of the contract. I had heard it several

weeks or --

Q: You're aware, aren't you, that my client didn't hold the Lexington Contract in 2011?

A: I did.

MR. PRINGLE: All right. That's all I have.

THE COURT: Any re-direct?

MR. LLOYD: Thank you, Your Honor. Very briefly.

RE-DIRECT EXAMINATION BY MR. LLOYD:

Q: Mr. Pringle asked you about the quick turn around from June the 16th to June the 17th and being able to fill out the bid for the RFP for Richland County. How many times had you actually bid on the Richland County contract?

A: I probably had it 15/16 years.

Q: And is it --

A: Every four years.

Q: I'm sorry. Is it substantially different than bidding them, the process and the bid proposal that might be prepared for Lexington County?

A: It's basically the same. It's probably worded a little different.

Q: So over the years of this business, how many times do you think you've pulled together a bid for an RFP?

A: Twelve or 15.

Q: Was there any trouble for you to pull together this bid in one day?

A: No.

Q: Did you already have the outline of a bid, or any standard or --

A: It was put together in a hurry, which is probably why I didn't score as high as he did, because I only had a day to do it.

Q: Now, Mr. Pringle asked you about that conversation with you and Mr. Lintal where he talks about the other purchase of other bags. In that conversation, as you've gone through the discovery process in this particular case and learned just how many bags they have admitted to purchasing from sources other than you, did Mr. Lintal tell you the truth about how many bags he had purchased from other sources in that taped conversation?

A: No.

Q: And your knowledge of how many bags he's purchased from sources other than you is limited to what he's produced in this case; is that right?

A: That's correct.

Q: Mr. Pringle asked you about actively seeking

other contracts with MUSC or Lexington County. And again, at this point in time, after that June 16 conversation and your consultation with Mr. Jonas, did you believe you had the right to go back into the body removal business?

A: I thought I did, yes.

Q: And as part of that, that includes not just bidding on the Richland County Coroner's contract but pursuing other body transportation services?

A: Yes.

Q: Now, Mr. Pringle referenced just a moment ago the fact that Mr. Lintal purports to have bought 840 some odd dollars worth of body bags. Do you recall that?

A: I do.

Q: And earlier there was some testimony about what percentage that represented of the total purchase of body bags from you. Do you recall that testimony?

A: Somewhat.

Q: And if you compare the percentage of the non-compete price or consideration, $1,000, to the purchase price of the entire business itself, what percentage -- and you can estimate it. I'm

not as good at numbers. But do you know what percentage of the total purchase price that $1,000 presents?

A: You mean the non-compete $1,000?

Q: Yes, sir.

A: Twenty/24 bags/25 bags.

Q: Well, what percentage does $1,000 of $590,000?

A: Oh, what percentage is the $1,000?

Q: Yes, sir.

A: Five hundred ninety percent, isn't it?

MR. PRINGLE: We will stipulate that the figure is .00169492, or like one -- is that one-tenth of one percent, or one-100th of one percent? But it's .00169.

THE WITNESS: .0001.

MR. PRINGLE: There's two zeros, so --

THE COURT: Madam Court Reporter, do you have that stipulation?

COURT REPORTER: Uh-huh (affirmative response).

MR. PRINGLE: It's a little over a tenth of one percent.

MR. LINTAL: Carry the two.

MR. PRINGLE: Yes.

MR. LINTAL: No rounding up.

Q: Now, there was some discussion in Mr. Pringle's cross examination of you finding out -- or hearing first in 2009 or 2010 from Mr. Maddox

that Mr. Lintal was buying bags from someone else. Do you recall that?

A: Yes.

Q: And you indicated that you didn't believe that Mr. Maddox was necessarily the most trustworthy person on that subject matter; is that right?

A: That's correct.

Q: And subsequent to hearing that from Mr. Maddox -- well, first of all, let me ask you this. When you heard that from Mr. Maddox, did you have any reason to believe that you needed to go confront Mr. Lintal based on Mr. Maddox' statement?

A: No.

Q: And subsequent to hearing that from Mr. Maddox was there further rumors or confirmation about the fact that Mr. Lintal may be purchasing body bags from someone other than you?

A: I've been told that there were other bags that they were buying.

Q: And that culminated in the conversation you had with them on June 16, 2011?

A: Yes.

Q: Where you confront him about that for the first time?

A: Yes.

Q: And again, prior to that, you all have never had a conversation about him purchasing infant bags, and water retrieval bags, or any other type of bag from any other source other than you?

A: No.

MR. LLOYD: And I believe that's it, Your Honor.

MR. PRINGLE: Okay. I've got one.

THE COURT: You have another question?

MR. PRINGLE: Yeah. Yeah, I got re-cross.

RE-CROSS EXAMINATION BY MR. PRINGLE:

Q: You mentioned now -- okay. We talked about Archie Maddox. He told you in 2009 or 2010. You then, when we were talking just now, your testimony, you mentioned something about seeing an infant bag at the morgue. At Lexington morgue.

A: No. I said like a teen bag. It was a bag in the middle of this one and that one.

Q: Okay. So that was one other instance where you believed that my client was buying bags outside the contract?

A: Yeah.

Q: Now you've said, in response to re-direct, that you'd heard rumors from other people about this. Now, you haven't testified about that before.

What are those rumors and who said them?

A: I'd actually saw one of his employees come to my place to pick up bags, and I actually saw a bag in the back of his van that I didn't sell him.

Q: Okay. And when did this take place?

A: I really don't remember when it was. But the employee's name was Shannon Merrell.

Q: Okay. So you don't remember when that happened. That's the other --

A: That was before the bid, yeah.

Q: Okay. That's the other rumor. Were there other rumors?

A: That wasn't a rumor. I saw the bag.

Q: Okay. But you mentioned --

A: I didn't want to put one of his employee's name in it.

Q: Okay. Now, you remember -- of course, when you were talking with -- having the re-direct with your counsel you didn't say, well, I actually saw a particular person and there was a particular bag. You said you heard rumors.

A: I did.

Q: Or were told rumors.

A: I did.

Q: Okay. So other than this bag that was in the

back of a truck, or a vehicle, do you have any other --

A: There was other talk, as I said, that people said he was using other bags besides mine.

Q: Other talk --

A: I don't remember who they were.

MR. PRINGLE: Okay. That's all I have. Done.

THE COURT: All right. Anything else from the Defendant? Are you finished with this witness?

MR. LLOYD: Yes, Your Honor. There's nothing else further from this witness, and no further witnesses from the defense.

THE COURT: All right. So we've concluded the testimony?

MR. LLOYD: Yes, sir.

MR. PRINGLE: Yes, sir.

THE COURT: All right. So in regards to any motions, what I heard was you're going to just take care of that in your proposed order to us or --

MR. PRINGLE: I think so.

THE COURT: Okay, all right.

MR. LLOYD: Yes, sir. I think what Jack -- no disrespect. But what Jack and I have talked about informally, and as long as it's certainly amendable to the Court, is that we would have some time period to probably get a transcript and do proposed orders regarding this.

THE COURT: Okay. Let's do it this way. First of all, do you got all your exhibits? Before we leave this room, let's make sure we're covered there, and then we will --

MR. PRINGLE: I would like an expedited --

THE COURT: Okay. You've got your exhibits?

COURT REPORTER: Yes. Is the CD marked just for identification purposes or was it admitted?

MR. LLOYD: It was admitted.

THE COURT: It was admitted.

COURT REPORTER: You admitted it? Okay.

THE COURT: Yeah, over an objection. It was admitted though. But you've got your exhibits. So the next thing we want to do proposed orders.

MR. PRINGLE: Yeah.

THE COURT: Okay. Let's see. You need the transcript first. Let's see. December 24th is --

COURT REPORTER: Usually, hearings are 30 days, but whenever y'all need it.

THE COURT: We'll do it this way. As soon as you finish this transcript -- what you all want, 45 days, or 30 days, or --

MR. LLOYD: If I could just make a suggestion, and then I can get with Jack. There may be parts that Jack and I may be able to consent to in terms of part of the

factual background on this and it might short circuit what we need from the transcript and --

MR. PRINGLE: But that would be amongst us. We can certainly look at that. I mean, I want the quickest turnaround that we could possibly get, subject to, you know, everybody's schedules.

THE COURT: Okay. Well, I just heard what you said. But still time frame-wise after the transcript is produced, what are you all looking for? I'm flexible. It's what -- I'm hearing everybody wants to move forward. What kind of time frame do you want in regards to producing a proposed order back to me? If you need 30 days, 45 days, whatever you -- it's whatever you --

MR. PRINGLE: I want to propose 15 after the transcript.

COURT REPORTER: I can get the transcript to you in two weeks minus Christmas Eve and Christmas Day.

MR. PRINGLE: That's fine if you only work a half day on Christmas Day.

MR. LLOYD: Could we have at least until the end of January? I may have a grand jury case called in January at this point. I just don't know. They're supposedly asking the solicitor's office for a time.

THE COURT: Let me tell you. I really think the 30 day -- if she has it back -- you're talking about two weeks from -- are you talking about --

COURT REPORTER: Today.

THE COURT: Today?

COURT REPORTER: Yeah. Two weeks from today minus -- two weeks for business days only, and there's Christmas Eve and Christmas Day following that.

THE COURT: I think 30 days is okay with me. That's when I would want is within 30 days. However, but being non-jury, so everybody knows what I'm looking for, is I want to comply with the rule, is I'm looking for findings of fact. I'm looking for what the issues are as you see it. What I'm hearing here there's an issue in regards to whether there's sufficient consideration for the non-compete. So I'm looking for law on that question. And also looking for law on the allegation in the Defendants' counterclaim about the -- what I'm primarily interested in is paragraph -- if I can find it.

MR. PRINGLE: Is it the scope?

THE COURT: No. It's the paragraph in the counterclaim -- paragraph 42 about the Plaintiff's alleged breach -- breach negated all the terms and conditions, responsibilities under the contract. I'm interested in that obviously. But findings of fact, what the issues are. The law on what you see here that you need to cite and the factual argument to support your position

on the law, and then your recommended -- I think that comes under Rule 42 of the Rules of Civil Procedure as to what I have to do here.

MR. PRINGLE: Yeah.

THE COURT: Okay. Now, if you have something that you've consented to, you know, facts-wise, get it to me and --

MR. LLOYD: I think we may be able to at least agree to some background on this factual background, and then hopefully the disputed facts will be --

THE COURT: Be minimized.

MR. LLOYD: -- not so much.

THE COURT: Okay. Anything else from anybody?

MR. LLOYD: Your Honor, you're saying 30 days to --

THE COURT: From the time the transcript is given to the parties.

COURT REPORTER: Okay. So the attorneys need the transcript within 14 days of today. So that would be January 9th. Somewhere around there.

MR. LLOYD: Jack and I can send you an email just saying we're in receipt of the transcript and --

THE COURT: Have her -- you send me a copy of that transcript. Okay? And obviously it goes to the lawyers at the same time. That would trigger the 30 day deal. Anything else by you all? Anything else you all need to discuss? This is it?

MR. LLOYD: That's it.

MR. PRINGLE: I don't think so.

THE COURT: Your lawyers are very professional, civil and well prepared. I appreciate the way they presented it and they've done very well and we've finished in one day and that's good.

MR. LLOYD: We appreciate Your Honor's time.

MR. PRINGLE: Thank you, You Honor.

Further deponent sayeth not.

(There being nothing further, the hearing concluded at 6:00 p.m.)

CERTIFICATE OF REPORTER

I, JAIME D. NEWTON, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THE HEARING, ON WEDNESDAY, THE 18TH DAY DECEMBER, 2013, THAT THE WITNESSES WERE FIRST DULY SWORN BY ME AND THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF SAID HEARING.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED AND DELIVERED TO JAMES RANDALL DAVIS, ESQUIRE, DAVIS FRAWLEY, LLP, 140 EAST MAIN STREET, LEXINGTON, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 15TH DAY OF JANUARY, 2014.

Jaime Newton

JAIME D. NEWTON, COURT REPORTER

MY COMMISSION EXPIRES MAY 14, 2017

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, is made and entered into this 5th day of January, 2007, by and among Knight Systems, Inc. ("Seller"), Buddy Knight ("Knight"), and Palmetto Mortuary Transport, Inc. ("Buyer").

Preliminary Statement

Seller owns and operates a mortuary transport business known as "Knight Systems" (the "Business") with its principal place of business located at 4959 Platt Springs Rd., West Columbia, 29170. Buyer desires to purchase certain assets and goodwill used in the conduct of the Business, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises hereof, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions and exceptions set forth below, the parties hereto agree as follows:

Statement of Agreement

1. Sale of Assets.

1.1 Transfer of Assets. At the Closing, for the consideration herein provided, the Seller shall convey, transfer, assign, and deliver to Buyer and Buyer shall purchase and accept from the Seller, all of the Seller's right, title and interest in and to the following assets (collectively the "Assets"), excluding the Excluded Assets.

1.1.1 "Assets" Defined. For purposes of this Agreement the terms "Assets" shall include:

1.1.1.1 All of the Seller's property described in Exhibit 1.1.1.1 attached as a part hereof.

1.1.1.2 The Seller's Post Office Box 2423, West Columbia, 29171 used in the Business.

1.1.1.3 All of Seller's customer records, customer lists, customer contracts, customer information, general business records and data, advertising contracts and rights, and marketing materials, related to or used in the Business including (without limitation) those items described in Exhibit 1.1.1.3.

1.1.1.4 All of Seller's repair and service contracts, commitments, warranty rights related to or used in the Business.

1.1.1.5 All of Seller's goodwill, know how, computer software, trade secrets, trademarks, service marks, and trade names, and the benefit of all licenses for same which are used but not owned by the Seller and related to or used in the Business.

1.1.1.6 Every other asset (whether tangible, intangible, personal, real, or mixed property, or interests therein) of the Seller used or useful in the Business or in

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connection with any portion of the Business, including (without limitation) employee, personnel, payroll, purchasing, production, sales, tax, business, and financial records; sales and promotional materials; training materials; and the benefit of all rights, claims, arrangements, and agreements of the Seller relating to the Assets and properties to be transferred hereunder, excluding only the "Excluded Assets" as defined below.

1.1.2 Excluded Assets. The parties acknowledge and agree that the Seller will not sell, assign, or convey to Buyer any of the assets or property of the Seller described in Exhibit 1.1.2 (collectively the "Excluded Assets"). The term "Assets" as used herein shall not include the Excluded Assets. The Seller will make all reasonable efforts to complete removal of the Excluded Assets, if any, within 10 days after Closing. Buyer shall not be an insurer of the safety or condition of the Excluded Assets after Closing.

1.1.3 Method of Transfer. The transfer and sale of the Assets will be evidenced by appropriate bills of sale, assignments, and other instruments executed and delivered by the Seller to Buyer at Closing.

1.1.4 Not Sale of Business. This transaction constitutes the sale and transfer of assets by the Seller and not the sale of a business. However, it is the intent of the parties that Buyer purchase and acquire from the Seller all properties and interests necessary to operate the Business substantially as it is presently being operated.

1.1.5 Possession. Buyer shall take, and the Seller shall deliver, possession of the Assets, and the Seller shall relinquish to Buyer operation of the Business, at Closing.

2. Consideration for Acquisitions by Buyer. Subject to Section 10.4, the consideration to be paid by Buyer hereunder for the acquisitions described in Section 1 above shall be $590,000.00, which shall be paid, allocated, and held at Closing as follows:

2.1 Cash Payment. Buyer shall pay in conjunction with, or prior to, the execution of this Agreement, to the Seller in cash or other immediately available funds an amount equal to $59,000.00 Dollars as a non-refundable deposit.

2.2 Cash at Closing. Buyer shall pay to seller at closing in cash an amount equal to $531,000.00.

2.3 Allocations. The parties agree that the purchase price for the Assets shall be allocated, and the transaction shall be reported as provided in Exhibit 2.3.

3. Closing.

3.1 Closing Date. The closing of the sale and purchase of the Assets and related transactions (the "Closing") shall take place on or before January 5, 2007, at 1:00 p.m., at the offices of Ellis, Lawhorne & Sims, P.A., or at such other time or place as may be mutually agreed upon. The Closing shall be made effective as of 12:01 a.m. on January 1, 2007.

3.2 Transactions at Closing. At the Closing:

3.2.1 The Seller shall deliver to Buyer the bill of sale for tangible personal property and fixtures composing portions of the Assets in the form of Exhibit 3.2.1.

3.2.2 The Seller shall deliver to Buyer assignments of all other intangible personal property composing portions of the Assets in the form of Exhibit 3.2.2.

3.2.3 Buyer shall deliver to the Seller the cash payment pursuant to Section 2.2.

3.2.4 The Seller shall deliver to Buyer copies of such duly filed UCC termination statements or other lien satisfactions as are reasonably required by Buyer to evidence the Seller's clear and marketable title to the Assets as of the Closing.

3.2.6 Seller, Knight, and all immediate family members of Knight that are employed in the Business, shall execute a Non-Competition Covenant in the form of Exhibit 3.2.6.

3.2.7 Seller shall deliver any other instruments required to effect the conveyance of good and marketable title, free and clear of all liens, claims, and encumbrances.

3.2.8 As of the date of Closing, all employees of the Seller directly and primarily associated with the Business will cease to be employees of the Seller, and Buyer may in its sole discretion, offer immediately or thereafter to hire any or all of such persons. Buyer shall not assume any liability whatsoever which arose through Seller's employment of any employee, and Buyer shall not assume any liability whatsoever to any employee of the Seller not hired by Buyer. The Seller will be responsible for paying and reporting all costs and liabilities, including but not limited to compensation, severance, federal and state withholding and unemployment tax, and worker's compensation claims incurred or accrued prior to Closing.

3.3 Conditions of Title. At Closing, Seller shall convey good and marketable or insurable title to the Assets free and clear of all claims, liens, and encumbrances except personal property and ad valorem taxes for the year of Closing which are not yet due.

3.4 Transactions Subsequent to Closing

3.4.1 Taxes. Seller shall file such tax returns and reports, and pay such taxes, as are required for periods ending with the Closing Date.

3.4.2 Creditors. The Seller shall pay all valid liabilities and perform all valid obligations with respect to the ownership of the Assets and operation of the Business prior to the Closing Date.

3.4.3 Excluded Assets. The Seller or the Seller's designees shall remove the Excluded Assets and Buyer shall cooperate with such removal as provided in Section 1.1.2.

3.4.4 Trade Name. The Purchaser shall have the right to use the name "Knight Systems" until the existing contracts expire.

3.4.5 Restrictions. For a period of ten years after Closing, the Seller, Knight (for purposes of this Section 3.4.5, hereinafter collectively referred to as "Sellers"), shall not own, operate, or establish, in competition with Buyer, a mortuary transport business, within 150 miles of the location of the Business. The Sellers shall hold in confidence all documents and information concerning the Business and the Assets. The Sellers acknowledge and agree that these restrictions are reasonably related to the value of the

Assets, that the scope of these restrictions are reasonable in time and territory, and that Buyer shall be entitled to enforce these restrictions at law or in equity and obtain injunctive relief because monetary damages will not be an adequate remedy for, and because Buyer will suffer irreparable harm by the Sellers' violation of, these restrictions.

3.4.6 Transition Assistance. For a period of sixty (60) days after the Closing, Knight shall provide full time assistance to Buyer in connection with the transition of the customers, employees, vendors, operations, Assets, and goodwill of the Business from the Seller to Buyer, and shall be available for telephone consultation for a period of one year after the Closing.

3.4.7 Use of Premises. For a period of 30 days after the Closing, Seller shall allow Buyer to use the current location of the Business at 4959 Platt Springs Rd., West Columbia, 29170.

3.4.8 Seller's Related Business. Knight, through his related body bag business (the "Related Business"), shall provide to Buyer body bags at a discounted rate and buyer shall for the term of the non-compete agreement buy all their body bags from the Seller. Below are current charges for different types of body bags. The prices noted below shall not be increased by more than ten percent (10%) in any calendar year.

Heavy Duty body bags: $20.00
Lightweight body bags: $8.00
Odor-Proof body bags: $50.00
Water-Retreival body bags: $30.00

Prior to any transfer of the Related Business to a third party, Knight shall offer to sell the Related Business to Buyer at the same price and on the same terms as those offered with respect to the proposed transfer of the Related Business.

3.4.9 Allocation of Revenues and Expenses. All revenues and expenses shall be allocated through the date of Closing such that Seller shall reimburse Buyer for all expenses Buyer incurs that are attributable to Seller's conduct of the Business through the date of the Closing, Seller shall reimburse Buyer for all revenues it receives that are attributable to Buyer's conduct of the Business after Closing, Buyer shall reimburse Seller for all expenses Seller incurs that are attributable to Buyer's conduct of the Business after the date of the Closing, and Buyer shall reimburse Seller for all revenues it receives that are attributable to Seller's conduct of the Business through the date of Closing.

3.4.10 Other Actions. The parties shall take such other actions and comply with other obligations as are required after Closing under this Agreement or ancillary documents. In addition, Seller and Buyer agree that they will at any time and from time to time do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged, and delivered, all such further acts, assignments, transfers, conveyances, and assurances as may be reasonably required by the other party in order to carry out fully and to effectuate the transactions in accordance with the provisions of this Agreement.

4. **Debts and Liabilities.** Buyer does not assume, and expressly disclaims all, obligations or liabilities of Seller, contingent or absolute, including (without limitation) liabilities for (i) any and

all federal or state taxes, or (ii) any tort, contract, statutory, or other liability resulting from or alleged to have resulted from the business of Seller prior to the Closing Date.

5. Representations and Warranties of Seller. Seller hereby warrants, represents, and covenants to Buyer as follows:

5.1 Business's Status and Standing. The Seller is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Except as otherwise provided, none of the Assets are owned in any other individual names, or by any corporation, limited liability company, or limited or general partnership.

5.2 Authorization and Approval of Agreement. Seller has taken all action necessary to authorize the execution of this Agreement and the consummation of the transactions contemplated hereby. When executed and delivered by Seller, this Agreement and all related documents shall constitute valid and binding obligations of Seller enforceable in accordance with their terms and conditions. Neither the execution nor the delivery of this Agreement nor the consummation of the transactions, nor compliance with any of the terms and conditions, will result in the breach by the Seller of any of the terms, conditions, or provisions of any constitutive document, agreement, order, judgment, or instrument to which the Seller is a party, or by which the Seller is bound, or constitute a default of such constitutive document, agreement, order, judgment, or instrument.

5.3 Compliance with Laws. To the best of Seller's knowledge, after due inquiry, Seller is in substantial compliance with all laws, ordinances, and regulations that govern Seller's ownership and present use of the Assets, the violation of which would have a material adverse effect on the Assets or the Business. No notice has been issued and, to the knowledge of Seller, no investigation or review is pending or threatened by any governmental entity (a) with respect to any alleged violation by Seller of any law, ordinance, or regulation, or (b) with respect to any alleged failure to have any permit, certificate, license, or approval required in connection with ownership, occupancy, or use of the Assets or the operation of the Business.

5.4 Title to Properties. At Closing, the Seller will have, and shall be entitled to convey to Buyer, good, marketable, and insurable title to the Assets as required in Section 3.3.

5.5 Litigation. No judicial, arbitration, or other legal proceedings are pending or, to the best of Seller's knowledge, threatened that question the validity of this Agreement or any transaction contemplated or that relate to the Assets or to the conduct of the Business. No material judgment, decree, or order of any court, governmental department, commission, or arbitrator is outstanding against Seller; and Seller is not bound by any material judgment, decree, or order of any court, governmental department, commission, or arbitrator.

5.6 Consents. No consent of any third party, except as disclosed, is required in connection with the Seller's transfer and assignment of the Assets to Buyer.

5.7 Normal Course. Seller shall have operated the Assets in the normal and ordinary course of business since at least January 1, 2006, and shall have paid or caused to be paid promptly when due taxes, charges, and assessments imposed upon or assessed against the Assets prior to Closing. Seller shall have exercised its best efforts to preserve intact the business organization of the Business and the goodwill of the employees, customers, suppliers, and others having business relationships with the Business through Closing.

5.8 Financial Statements. The financial statements provided during the negotiation of this Agreement present fairly in all material respects the financial condition and results of operations of the Business as of their respective dates.

5.9 No Change or Undisclosed Liabilities.

(a) Between the date of the latest of the financial statements and Closing, no material adverse change has occurred in the condition (financial or otherwise) of the Business, and the Business has incurred no debts, liabilities, or obligations except in the ordinary course of business.

(b) With the exception of the liabilities incurred in the ordinary course of the Business, the Business does not have any liabilities of any nature.

5.10 Creditors, Solvency, and Bankruptcy. Seller has no intent to hinder, defraud, or avoid any obligation to any past, present, or future creditor. Seller has not initiated and does not intend to initiate any proceeding under bankruptcy, insolvency, or similar laws.

5.11 Employee Matters. Attached hereto as Exhibit 5.11 is a true and complete list as of the date hereof, showing the names of all employees of the Seller.

5.12 Status of Assets. The Assets constitute all of the assets of the Business (except the Excluded Assets) and include all property, rights, and intangibles necessary for Buyer to operate after Closing a business identical in all material respects to the Business. All Assets are generally sound, in good repair, and in merchantable condition. Seller does not anticipate any material capital expenditures which would be required to be made in connection with the Business as now conducted.

5.13 Taxes and Tax Returns. The Seller has filed and paid through the date hereof, and shall file and pay through the Closing Date, all income, property, ad valorem, sales, payroll, and other tax returns and taxes required by law.

5.14 Copyrights, Trademarks, Etc. To the best of Seller's knowledge, the Seller owns or possesses adequate title, license, or other right to use all intellectual property necessary to conduct the Business as now conducted without interference with or infringement on the rights of others and will transfer such title, license, or other right to Buyer.

5.15 Brokerage. Seller has retained Sunbelt Business Brokers as its broker in connection with this transaction. To the best of Seller's knowledge, no brokerage commission or claim therefor shall accrue or become payable to any person or entity respecting this transaction other than that of Sunbelt Business Brokers, the payment of which shall be the sole responsibility of Seller.

5.16 Disclosures. To the best of Seller's knowledge, all information and data furnished by Seller to Buyer with respect to the Assets and the Business is materially true, correct, complete, and not materially misleading.

5.17 Representations and Warranties at Closing. Except as expressly otherwise permitted in this Agreement, the representations and warranties of Seller set forth in this Agreement shall be true at Closing as though such representations and warranties were made on such date.

6. **Representations and Warranties of Buyer.** Buyer hereby represents, warrants, and covenants to Seller as follows:

6.1 Authorization and Approval of Agreement. When executed and delivered by Buyer, this Agreement and all related documents will constitute valid and binding obligations of Buyer, enforceable in accordance with their terms and conditions. Neither the execution nor the delivery of this Agreement nor the consummation of the transactions, nor compliance with any of the terms and conditions, will result in the breach by Buyer of any of the terms, conditions, or provisions of any constitutive document, agreement, order, judgment, or instrument to which Buyer is a party, or by which it is bound, or constitute a default of such constitutive document, agreement, order, judgment, or instrument.

6.2 Consents. No consent of any third party, except as disclosed, is required in connection with Buyer's acquisition of the Assets.

6.3 Litigation. No judicial, arbitration, or other legal proceedings are pending or, to the best of Buyer's knowledge, threatened that question the validity of this Agreement or any transaction contemplated, which if adversely determined would have a material adverse effect upon Buyer's ability to enter into this Agreement or perform its obligations. No material judgment, decree, or order exists of any court, governmental department, commission, or instrumentality outstanding against Buyer; and Buyer is not bound by any material judgment, decree, or order of any court, governmental department, commission, or instrumentality.

6.4 Brokerage. Buyer has not dealt with any broker in connection with this transaction; and, to the best of Buyer's knowledge, no brokerage commission nor claim therefor shall accrue or become payable to any person or entity respecting this transaction.

6.5 Representations and Warranties at Closing. Except as expressly otherwise permitted in this Agreement, the representations and warranties of Buyer set forth in this Agreement shall be true at Closing as though such representations and warranties were made on such date.

7. **Conditions Precedent; Additional Rights and Obligations.**

7.1 Buyer's Contingencies. Buyer's obligations shall be subject, to the extent not waived, to the satisfaction of each of the following conditions at the Closing:

7.1.1 Financial Condition. The financial condition of the Business shall not have materially degraded from that depicted in the Seller's financial statements and upon which the consideration contained in this Agreement is based.

7.1.2 Financing. Buyer shall have successfully obtained a loan commitment from a reputable financial institution to provide financing for the transaction.

7.1.3 Seller's Representations and Warranties. The representations and warranties made by Seller shall be true and correct in all material respects at Closing.

7.1.4 Seller's Compliance with Agreement. Seller shall have performed and complied with all obligations under this Agreement.

7.1.5 Title to Assets. Seller must have and be able to convey good and marketable title to the Assets as required herein at Closing.

7.1.6 Non-Solicitation and Employment Agreement. Buyer and Knight's son, who is employed by Seller in the Business, shall have entered into a Non-Solicitation and Employment Agreement in the form of Exhibit 7.1.6 regarding his employment with Buyer in the Business after the Closing.

7.1.7 Other Assurances. Seller shall have delivered to Buyer such other and further certificates, assurances, and documents as Buyer may reasonably request in order to evidence the accuracy of the Seller's representations and warranties, the performance of covenants and agreements to be performed prior to, at, or after the Closing, and the fulfillment of the conditions precedent to Buyer's obligations.

7.1.8 Good Faith. In order for any condition precedent in this Section 7.1, the accomplishment of which is within the control of Buyer, to be effective for the benefit of Buyer, Buyer shall have exercised its good faith and reasonable best efforts.

7.2 Seller's Contingencies. Seller's obligation to sell the Assets and to close shall be subject, to the extent not waived, to the satisfaction of each of the following conditions at the Closing:

7.2.1 Buyer's Representations and Warranties. The representations and warranties made by Buyer in or pursuant to this Agreement shall be true and correct in all material respects at Closing.

7.2.2 Buyer's Compliance with Agreement. Buyer shall have performed and complied with all of its obligations under this Agreement.

7.2.3 Good Faith. In order for any condition precedent in this Section 7.2, the accomplishment of which is within the control of Seller, to be effective for the benefit of Seller, Seller shall have exercised its good faith and best efforts.

8. Pre-Closing Covenants. From and after the date hereof and until the Closing:

8.1 Confidentially. Until such time as this Agreement is consummated, Buyer shall treat any information provided by Seller as confidential and shall use its best efforts to prevent disclosure of such information to third parties.

8.2 Operation in Regular Course. The Seller shall carry on the Business substantially in the same manner as it was carried on prior to negotiations.

8.3 Preservation of Books. For a period of at least three (3) years after Closing, Buyer will safekeep books of original entry acquired hereunder and will make them available to Seller.

9. **Cost and Expenses.**

9.1 Transactional Costs. Seller and Buyer shall be responsible for their respective attorneys' fees, accountants' fees, and other expenses incurred by them in connection with this transaction; provided however, in the event litigation is commenced to enforce any rights under this Agreement or to pursue any other remedy available to any party, all legal expenses or other direct costs of litigation of the prevailing party shall be paid by the other party.

9.2 Documentary Stamps. Seller shall pay all transfer taxes or filing fees which become due through the execution, delivery and/or recordation of any instruments of conveyance required to be executed or delivered by Seller under this Agreement.

10. **Indemnity Rights.**

10.1 Indemnity Damages. The term "Indemnity Damages" shall mean all losses, damages, non-speculative lost profits, liabilities, claims, suits, demands, penalties, assessments, remedial costs, fines, obligations, causes of action, expenses, or costs (including litigation expenses and reasonable attorneys fees) to which an indemnification right applies hereunder.

10.2 General Indemnity. Seller shall indemnify and hold Buyer and its agents harmless; and Buyer shall indemnify and hold Seller and their agents harmless, from any and all Indemnity Damages against or incurred by the indemnified party because of any breach of a representation, warranty, covenant, or agreement made by the other in this Agreement or any document to be delivered at Closing.

10.3 Special Indemnities. Seller shall indemnify and hold Buyer and its agents harmless from any and all Indemnity Damages asserted against or incurred by the indemnified party:

10.3.1 Environmental. As a result of any existing environmental contamination or the remediation thereof arising from the Business.

10.3.2 Bulk Sales. Under the Uniform Commercial Code - Bulk Transfers Act or similar law of any applicable jurisdiction relating in any way to this Agreement.

10.3.3 Worker's Compensation. As a result of any South Carolina Worker's Compensation award or settlement with respect to any claim of an employee of the Seller arising from an accident or work-related injury occurring prior to Closing.

10.3.4 Litigation. As a result of any lawsuit or similar claim related to the business of the Seller and arising from events or conditions prior to the Closing Date,

10.3.5 Title. As a result of any challenge to Buyer's title to the Assets.

11. **Risk of Loss.** In the event the Assets or any substantial part thereof shall be damaged or destroyed prior to Closing by any casualty or event, Seller shall promptly notify Buyer that such damage has occurred and the estimated extent thereof. Within five (5) days of receipt of such notice, Buyer may terminate this Agreement by giving Seller written notice of such termination and thereupon all parties shall be released of all further liability to the others.

12. **Miscellaneous.**

12.1 Entire Agreement. This Agreement, including the Exhibits, embodies the entire Agreement and understanding between the parties and supersedes all prior agreements.

12.2 No Waiver. No failure to exercise and no delay in exercising any right, power, or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power, or remedy which the parties hereto may have, nor shall any such delay be construed to be a waiver of any of such rights, powers, or remedies, or an acquiescence in any breach or default

under this Agreement, nor shall any waiver of any breach or default of any party be deemed a waiver of any default or breach subsequently occurring.

12.3 Survival. All representations, warranties, covenants, and agreements contained in this Agreement shall survive the Closing.

12.4 Amendment. No provision of this Agreement or any document or instrument relating to the Agreement may be amended, modified, supplemented, changed, waived, discharged, or terminated unless the parties consent in writing.

12.5 Notices. All notices, requests, approvals, consents, demands, and other communication provided for or permitted shall be in writing, signed by an authorized representative of the sender and addressed to the respective party at the address set forth below:

Seller: Knight Systems, Inc.
P.O. Box 84822
Lexington, SC 29073

Buyer: Palmetto Mortuary Transport, Inc.
200 Bay Tree Court
Aiken, SC 29803

A party may change its respective address by notice in writing given to the other parties to this Agreement. Any notice, request, approval, consent, demand, or other communication shall be effective upon the first to occur of the following: (i) when delivered to the party to whom such communication is being given, or (ii) three business days after being duly deposited in the U.S. mail, certified, return receipt requested.

12.6 Severability of Provisions. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

12.7 Successors and Assigns. This Agreement shall be binding upon the parties and their respective successors and assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns.

12.8 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one Agreement, and any party may execute this Agreement by signing any such counterpart. The attachment of counterpart signature pages shall constitute execution by the parties.

12.9 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

12.10 Usage. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Terms such as "hereof," "hereunder, " "hereto," "herein," and words of similar import shall refer to this Agreement in its entirety; and all references to "Articles," "Paragraphs," "Sections," and similar cross references shall refer to specified portions of this Agreement unless the context clearly requires otherwise.

12.11 Assignment. This Agreement is not assignable by any party without the prior written consent of the other parties.

12.12 Termination. This Agreement constitutes the binding and irrevocable agreement of the parties and may be terminated or abandoned only as follows:

12.12.1 By Buyer and Seller. This Agreement may be terminated without liability upon the mutual written consent of Buyer and Seller.

12.12.2 By Buyer. In the event that Closing has not been completed by January 15, 2006, as a result of the non-satisfaction or non-fulfillment in any material respect of any of the conditions upon Buyer's obligations (which had not been previously waived by Buyer), then Buyer shall be entitled at its option to terminate this Agreement by notice to the other party.

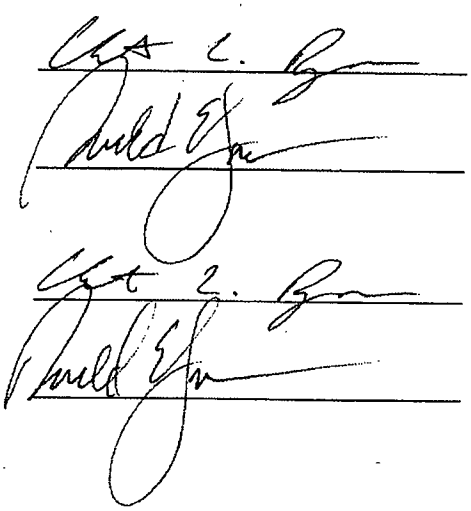
12.12.3 By Seller. In the event that Closing has not been completed by January 15, 2006, as a result of the non-fulfillment or non-satisfaction in any material respect of any of the conditions upon Seller's obligations (which had not been previously waived by Seller), then Seller shall be entitled to terminate this Agreement by notice to the other party.

12.13 Remedies. Upon any breach or other violation of this Agreement, the parties shall be entitled to exercise any and all rights and remedies contained herein or now or hereinafter existing and available at law, in equity, by statute, or otherwise. No right or remedy conferred upon a party is intended to be exclusive of any other right or remedy contained herein; and every such right or remedy shall be cumulative and shall be in addition to every other right or remedy contained herein or now or hereafter existing and available at law, in equity, by statute, or otherwise.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement to be legally binding and effective as of the date first written above.

WITNESSES:



PALMETTO MORTUARY TRANSPORT, INC., Buyer

By: Donald J. Lintal

Its: President

KNIGHT SYSTEMS, INC., Seller

By: Robert L. Knight

Its: President

Exhibit 1.1.1.1

Furniture, Fixtures, & Equipment

[See attached]

Knight Systems, Inc.
Equipment List
As of 11/30/2006

All stretchers and scoop stretchers are of Ferno-Washington brand name.

Stretcher Serial# L578994
Stretcher Serial#06015638
Stretcher Serial# L521846
Stretcher Serial# 06011114
Stretcher Serial# 06009288
Stretcher Serial# 06013114
Stretcher HVY 24MAXX Serial# L791435
Scoop Serial# I39262
Scoop Serial#016597
Scoop Serial# J06431
Scoop Serial# K19882
Scoop Serial# 016641
Scoop Serial# 016627
Scoop Serial# 016689

Vehicle Serial Numbers

Estimated Value

1998 GMC Savana Van VIN# 1GKFG15R7W1032325 $7,000.—
1998 Pontiac Montana Van VIN# 1GMDX03E3WD249569 $6,500.—
2003 Chevrolet Astro Van VIN#1GNDM19X93B146652 $9,000.—

Exhibit 1.1.1.3

Customer Information and Marketing Materials

1. Contract with Richland County for body removal services.
2. Contract with Lexington County for body removal services.
3. Contract with the University of South Carolina for cadaver preparation and transportation services.

Exhibit 1.1.2

Excluded Assets

1. Any and all assets used in the Related Business that are not necessary for the operation of the Business as it is currently operated.

Exhibit 2.3

Purchase Price Allocations

Furniture, Fixtures & Equipment	$37,500.00
Non-Competition Covenant	$1,000.00
Customer Lists	$551,500.00
Total	$590,000.00

Exhibit 3.2.1

Bill of Sale

[See attached]

BILL OF SALE

THIS INSTRUMENT is made and delivered by Knight Systems, Inc., a South Carolina corporation, ("Seller") this 5th day of January, 2007.

WITNESSETH

WHEREAS, on January 5, 2007, Seller and Palmetto Mortuary Transport, Inc., a South Carolina corporation, ("Buyer") entered into an Asset Purchase Agreement (the "Purchase Agreement"), pursuant to which Seller has agreed to sell and Buyer has agreed to purchase certain Assets (as that term is defined in Section 1.1.1 of the Purchase Agreement) of the Seller;

NOW THEREFORE, in consideration of ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby sell, convey, transfer, assign and deliver to Buyer all of Seller's right, title and interest in and to the Assets.

TO HAVE AND TO HOLD such right, title and interest in and to the Assets hereby conveyed, assigned and transferred or intended so to be unto Buyer, its successors and assigns, FOREVER.

Seller hereby constitutes and appoints Buyer and its successors and assigns as the true and lawful attorneys in fact of Seller in connection with the transactions contemplated by this instrument, with full power of substitution, in the name of and stead of Seller but on behalf of and for the benefit of Buyer and its successors and assigns, to demand and receive any and all of the Assets hereby conveyed, assigned, and transferred or intended so to be, and to give receipts and releases for and in respect of the same and any part thereof, and from time to time to institute and prosecute, in the name of the Seller or otherwise, for the benefit of Buyer or its successors and assigns, proceedings at law, in equity, or otherwise, which Buyer or its successors or assigns reasonably deem proper in order to collect or reduce to possession the Assets, and to do all acts and things in relation to the Assets which Buyer or its successors or assigns reasonably deem desirable.

Seller hereby warrants and represents that it has good and marketable title to the Assets and that the same are free from any claims, liens, and encumbrances except those that have been expressly assumed in writing by the Buyer. Seller does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said Assets unto Buyer and the Buyer's heirs and assigns, against the Seller and the Seller's heirs and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof

Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Purchase Agreement.

This instrument shall be binding upon and shall inure to the benefit of the respective successors and assigns of Seller.

IN WITNESS WHEREOF, the undersigned has executed this instrument effective as of the date first written above.

KNIGHT SYSTEMS, INC.

By: Robert L Knight
Its: President

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Exhibit 3.2.2

Assignment and Assumption

[See attached]

ASSIGNMENT AND ASSUMPTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that Knight Systems, Inc., a South Carolina corporation ("Assignor") for the consideration paid by Palmetto Mortuary Transport, Inc., a South Carolina corporation ("Assignee") set forth in that certain Asset Purchase Agreement dated as of January 5, 2007, by and between Assignor and Assignee (the "Agreement"), the receipt and sufficiency whereof is hereby acknowledged, hereby assigns to Assignee all of Assignor's right, title and interest in and to any vendor contracts, customer lists, permits, licenses, computer software, and all other intangible assets and rights composing portions of the Assets as described in the Agreement.

Assignee hereby covenants with Assignor to assume and faithfully perform and discharge all of the terms, covenants, liabilities and obligations set forth on Schedule 1 attached hereto (subject to the Agreement) maturing and to be performed or discharged by Assignor, if any, under the above assigned contracts beginning on the date hereof and henceforth.

This Assignment is made, executed, and delivered pursuant to the Agreement, and is subject to all the terms, provisions and conditions thereof, including (without limitation) the mutual indemnification therein. To the extent of any conflict between the terms hereof and thereof, the terms of the Agreement shall be controlling. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Agreement unless the context clearly requires otherwise.

IN WITNESS WHEREOF, the parties have duly executed this Assignment and Assumption Agreement this 5th day of January, 2007.

IN THE PRESENCE OF:

WITNESSES:

Knight Systems, Inc., Assignor

By: Robert S. Knight

Its: President

WITNESSES:

Palmetto Mortuary Transport, Inc., Assignee

By: Donald J. Lott

Its: President

Schedule 1

Liabilities To Be Assumed

1. Obligations under that certain contract with Richland County for body removal services.
2. Obligations under that certain contract with Lexington County for body removal services.
3. Obligations under that certain contract with the University of South Carolina for cadaver preparation and transportation services.

Exhibit 3.2.6

Non-Competition Covenant

[See attached]

NON-COMPETITION COVENANT

THIS NON-COMPETITION COVENANT ("Agreement") is made and entered into this 5th day of January, 2007, by and between Palmetto Mortuary Transport, Inc. ("Buyer") and ~~Buddy~~ Robert L. Knight ("Seller").

Preliminary Statement

Seller and Buyer have entered into that certain Asset Purchase Agreement dated January 5, 2007 (the "Purchase Agreement"), respecting the sale of substantially all of the assets used and connected with Seller's operation of its body removal services business in West Columbia, South Carolina (the "Assets") known as Knight Systems, Inc. (the "Business").

Seller has conducted and been involved with the Business for a substantial number of years. Thereby, Seller has made use of, acquired, and added to, or benefited from, the confidential and proprietary information and trade secrets, all of which are portions of the Assets which are being sold to Buyer pursuant to the Purchase Agreement.

Seller has also developed unique relationships with clients, customers, suppliers, and employees of the Business and unique information and knowledge about the competitive market, locations, potential customers and clients, processes, and prospects of the Business.

Buyer intends to operate the Assets acquired by it for Buyer's business similar to the past operations of the Business. The value of Buyer's acquisition would be diminished in the event that Seller were to compete with Buyer, to assist another person or business entity to compete with Buyer, or to wrongfully divulge any confidential information.

Buyer has required, as a condition precedent to its purchase of such Assets pursuant to the Purchase Agreement, that Seller covenant not to divulge any confidential information and not to compete with Buyer as set forth herein.

Seller has agreed to provide such covenants as set forth herein as a material inducement to Buyer to enter into and close the Purchase Agreement and in consideration of the payments to be made hereunder. Seller's covenants contained herein are ancillary to the Purchase Agreement.

Pursuant to the Purchase Agreement, Buyer and Seller desire to set forth the terms and conditions of their agreements and understandings respecting such covenants.

Statement of Agreement

NOW, THEREFORE, in consideration of the foregoing premises, the promises set forth herein, the consideration of $1,000.00 specifically allocated to this Agreement in the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer, intending to be legally bound, hereby agree and covenant as follows:

1. Non-Disclosure of Information. Seller shall not, at any time after the date hereof, directly or indirectly, divulge or disclose any confidential information that has been developed or obtained by, or disclosed to, Seller at any time before or after the date hereof (exclusive of such information as is in the public domain or as is required to be disclosed pursuant to law, rule, regulation, or court order). Seller acknowledges that such confidential information is of a special and unique nature and value relating to matters of the Business, including, without limitation, the locations and lists of customers, clients, and potential customers or contacts, pricing and fee information and lists, sales and marketing materials and methods, proprietary information, trade secrets, trademarks, systems, procedures, manuals, confidential reports, records, operational expertise, the nature and type of services rendered by the Business and Seller, the equipment and methods used and preferred by the customers of the Business and Seller, and the fees or charges paid by them.

2. Covenants against Competition. For a period of ten (10) years after the date hereof:

A. Customers, Etc. Seller shall not, directly or through an Affiliate, (i) call upon or contact (or assist another person(s) or business entity to call upon or contact) any Customer for the purpose of furnishing the same or similar services provided or offered at any time by the Business to any Customer, or (ii) solicit or divert (or assist another person(s) or business entity to solicit or divert) any Customer from purchasing or using any of the Buyer's services, or (iii) provide or attempt to provide (or assist another person(s) or business entity to provide or attempt to provide) to any Customer the same or similar services provided or offered by the Business. For purposes of this Section 2(A), the term "Customer" shall mean any customer or client of the Business and shall include (without limitation) every such person(s) to which the Business or Seller has provided services prior to the date hereof.

B. Territory. In addition to (but not in limitation of) the restrictions of Section 2(A), Seller shall not, directly or through an Affiliate engage in, or assist another person or entity to engage in, providing services similar to those furnished by the Business or Seller at any time prior to Closing (as such term is defined in the Purchase Agreement) in competition with Buyer anywhere within 150 miles of the present location of the Business (the "Territory").

C. Ownership. In addition to the restrictions of Section 2(A) and (B), Seller shall not, directly or through an Affiliate, own an equity interest (other than as the holder for investment purposes of the stock of any publicly traded corporation) in any entity conducting operations in the Territory which is competitive with the Business's activities prior to Closing.

D. Employees. In addition to (but not in limitation of) the restrictions of Sections 2(A), (B) and (C), Seller shall not, directly or through an Affiliate solicit or in any manner attempt to solicit or induce any person employed by Buyer to terminate such person's association or contract of employment or agency, as the case may be, with Buyer.

E. Definition of Affiliate. For purposes of this Agreement, an "Affiliate" of Seller is a Person that directly, or indirectly, controls, or is controlled by, or is under common control with Seller. For purposes of this Agreement, a "Person" includes, in addition to such person, all of the following persons: (i) any relative or spouse of such person, or any relative of such spouse, any one of whom has the same home as such person or has been employed by the Business at any time; (ii) any trust or estate in which such person or any person specified in Section 2(E)(i) above collectively own ten percent (10%) or more of the total beneficial interest, or of which any of such persons serve as trustee, executor, or in any other capacity; and (iii) any corporation, partnership, or other organization in which such person or any person specified in Section 2(E)(i) above are the beneficial owners collectively of ten percent (10%) of any class of equity securities or ownership interest.

F. Exceptions. Notwithstanding the foregoing, Seller shall not be deemed to be in violation of any covenant contained herein as a result of Seller providing services to Buyer or Seller selling body bags through his related body bag business.

G. Breach of the Purchase Agreement. Notwithstanding anything contained herein to the contrary, a breach by Buyer of the Purchase Agreement or such other documents ancillary thereto, shall constitute a breach of this Agreement and shall release Seller from any and all restrictions hereunder.

3. Remedies.

A. Accounting for Lost Profits. If Seller shall violate any of the provisions of Sections 1 or 2, Buyer shall be entitled to recover any non-speculative lost profits incurred by Buyer as a result of, growing out of, or in connection with, any such violation by Seller. This remedy shall be in addition to, and not in limitation of, any injunctive relief or other rights, remedies, or damages, to which Buyer is or may be entitled as a result of this Agreement.

B. Injunctive Relief. In the event of a breach or threatened breach by Seller of Sections 1 or 2, Buyer, in addition to, any other rights, remedies, or damages available to Buyer at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction, and permanent injunction in order to prevent or restrain such breach by Seller or Seller's agents, representatives, or any and all persons acting for or with Seller. Seller agrees that in the event of any breach by him of the covenants set forth in this Agreement, Buyer shall suffer immediate and irreparable harm for which the remedy of monetary damages may be inadequate.

C. Alternatives. The Buyer shall have the option to enforce the various restrictions of Sections 1 and 2 cumulatively or, in the alternative, consecutively.

4. Reasonableness of Restrictions.

A. Acknowledgement. Seller has carefully read and considered the provisions of Sections 1, 2, and 3, and, having done so, voluntarily agrees that the restrictions set forth in those Sections, including, but not limited to, the time period of restriction, the geographical areas of restriction, and the scope of restricted activities set forth in Section 2, are fair and are reasonably required for the protection of the legitimate interests of the Buyer.

B. Enforceability. In the event that, notwithstanding the foregoing, any of the provisions of Sections 1, 2, or 3 shall be held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable portions or parts had not been included. In the event that any provisions of Sections 1 or 2 relating to the time period, the areas of restriction, the scope of restricted activities, or related aspects shall be declared by a court to exceed the maximum restrictions such court deems reasonable and enforceable, the time period, areas of restriction, the scope of restricted activities, or related aspects deemed reasonable and enforceable by the court shall become and thereafter be the maximum restriction in such regard, and the restriction shall remain enforceable to the fullest extent deemed reasonable by such court.

5. Miscellaneous.

A. Burden and Benefit. This Agreement shall be binding upon Buyer's successors and assigns and Seller's heirs, personal and legal representatives, trustees, successors and assigns, and shall inure to the benefit of Buyer's successors and assigns and Seller's heirs, personal legal representatives, trustees, successors, and permitted assigns.

B. Modifications. This Agreement can only be modified by a written agreement signed by Seller and Buyer.

C. Waiver. Any waiver by any parties of any breach or any term or condition hereof shall be effective only if in writing and such writing shall not be deemed to be a waiver of any subsequent or other breach, term, or condition of this Agreement.

D. Assignments. Neither this Agreement nor any rights hereunder may be assigned or otherwise transferred by Seller.

E. Cumulative Remedies. All rights and remedies of a party hereunder shall be cumulative and in addition to any rights and remedies available to a party at law or equity.

F. Venue and Jurisdiction. The parties hereby (i) agree that any litigation, action, or proceeding arising out of or relating to this Agreement may be instituted in a state or federal court located in Richland County, South Carolina, (ii) waive any objection which they might have now or hereafter to any such litigation, action, or proceeding based upon improper venue or inconvenient forum, and (iii) irrevocably submit to the jurisdiction of such courts in any such litigation, action or proceeding.

G. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior contemporaneous written or oral agreements and representations between the parties with respect thereto.

H. Governing Law. The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of South Carolina.

I. Severability. The invalidity or unenforceability or any provision of this Agreement shall not render invalid or unenforceable any other provision hereof.

J. Survival. All terms of this Agreement shall survive the Closing under the Purchase Agreement.

K. Usage. Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Terms such as "hereof," "hereunder," "hereto," "herein," and words of similar import shall refer to this Agreement in its entirety; and all references to "Paragraphs," "Sections," and similar cross references shall refer to specified portions of this Agreement, unless the context clearly requires otherwise.

L. Enforcement. In the event litigation or other legal proceedings are commenced to enforce any rights under this Agreement, all reasonable legal expenses (including reasonable attorney's fees) and other direct costs of litigation of the prevailing party shall be paid by the non-prevailing party. All remedies specified herein are cumulative and non-exclusive, and parties shall be entitled to seek or enforce any other rights or remedies available to them at law or in equity.

M. Notices. Any notice, request, approval, consent, demand, or other communication shall be effective upon the first to occur of the following: (i) upon receipt by the party to whom such notice, request, approval, consent, demand or other communication is being given; or (ii) three (3) business days after being duly deposited in the United States certified mail, return receipt requested, and addressed as provided in the notice provisions of the Purchase Agreement. The parties hereto may change their respective addresses by notice in writing given to the other party to this Agreement.

IN WITNESS WHEREOF, this Non-Competition Covenant is executed under seal by Seller and Buyer to be legally binding and effective as of the 5th day of January, 2007.

~~Buddy~~ Knight, Seller

Robert L.

Palmetto Mortuary Transport, Inc., Buyer

By Donald Lintal, its President

Exhibit 5.11

Employee List

[Seller to provide directly to Buyer]

Exhibit 7.1.6

Non-Solicitation and Employment Agreement

[See attached]

PALMETTO MORTUARY TRANSPORT, INC.

NON-SOLICITATION AND CONFIDENTIALITY AGREEMENT

THIS NON-SOLICITATION AND CONFIDENTIALITY AGREEMENT (the "Agreement") is entered into this 5th day of January, 2007, by and between Palmetto Mortuary Transport, Inc. (the "Employer") and [illegible] (the "Employee").

WHEREAS, Employer has extended an offer of employment with the intent of retaining Employee to perform certain duties and render certain services;

WHEREAS, Employee acknowledges that, by virtue of the proposed position of employment with Employer, he will receive, and have access to, and use confidential information of Employer regarding, among other things, Customers (as defined below), accounts, suppliers, lists, costs, pricing materials, and financial data, all of which information is included in the term, "Trade Secrets" as defined below; and

WHEREAS, in consideration of Employer's offer of employment and the compensation to be paid thereunder, and other good and valuable consideration, Employee desires to enter into this Agreement not to disclose confidential information of Employer, nor to solicit customers of Employer.

NOW, THEREFORE, in consideration of the foregoing, these premises, and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employer and Employee agree as follows:

1. Definitions: As used in this Agreement

"Duration" means the period beginning on the date of the execution of this Agreement and ending twenty-four (24) months from the later of (i) the date of the execution of this Agreement and (ii) the date of termination of Employee's employment relationship with the Employer.

"Similar Organization" means any person or organization engaged, directly or indirectly, in the Employer's Business.

"Employer" means Palmetto Mortuary Transport, Inc., its successors and assigns, and any of its future subsidiaries or organizations controlled by, controlling, or under common control with it.

"Employer's Business" means the business of providing body removal, preparation, and transportation services.

"Employer's Trade Secrets" means the trade secrets, confidential and proprietary business information, and confidential and proprietary Customer Information of the Employer.

The Employer's Trade Secrets include, but are not limited to, the following: (1) the processes related to developing, marketing, selling, distributing, and/or the maintaining the Employer's Business to and for Customers, as defined in this section; (2) availability requirements, costs, and price information regarding the Customers; (3) sources of new Customers and the Employer's marketing plans, strategy and development tools related thereto; (4) all suppliers, sources, availability, costs, and prices relating to the Employer's Business, as defined in this

section; and (5) the technical processes and techniques utilized in the conduct of the Employer's Business.

The Employer's Trade Secrets do not include (1) information that is now or subsequently becomes part of the public domain through no fault of Employee; or (2) information that subsequently comes into Employee's possession from an independent third source not under an obligation of secrecy to the Employer, which fact Employee can readily document.

"Customers" means the clients, partners, or participants in all aspects of the Employer's Business and prospective Customers solicited by the Employer and its employees, including Employee, and Customers who are attracted through the contacts, efforts and activities of the Employer, Employee, and other employees of the Employer.

2. Nondisclosure of Trade Secrets and Non-solicitation: Employee covenants and agrees as follows:

(a) Non-Disclosure of Trade Secrets: Employee agrees that he will not directly or indirectly disclose to any person, firm, or corporation, Similar Organizations, or entity any of the Employer's Trade Secrets for any purpose whatsoever. Employee acknowledges that the Employer's Trade Secrets have been acquired and maintained by the Employer at great effort and expense, constitute valuable assets to the Employer, and are maintained in secrecy by the Employer.

(b) Return of Employer's Property: Upon termination of his employment with Employer, Employee agrees that he will surrender to Employer all copies of all lists, books, documents or records, including computer records, connected with the Employer's Business or Customers, whether or not prepared by Employee, and all other property belonging to Employer.

(c) Non-Solicitation of Employees. During the Duration, Employee covenants and agrees that he will not directly or indirectly solicit for employment any of the Employer's employees.

(d) Non-Solicitation of Customers: Employee agrees that he will not, during the Duration, directly or indirectly, assist, be associated with, or support, whether as an individual on their own account, or as a partner, owner, shareholder, joint venturer, employee, agent, salesman, or official, any Similar Organization when that assistance, support or association involves Employee directly or indirectly calling upon, causing to be called upon, communicating with or assisting others in communicating with or otherwise attempting to bring about any transaction with any Customer:

- that was served by Employee at any time during his employment or consultation with Employer, or
- with whom Employee became acquainted while in the employ or consultation of Employer, or
- whose names and/or addresses were furnished to Employee by Employer, or
- with whom Employee had any contact, written or verbal, while in the employ of Employer.

However, Employee may accept employment with a Similar Organization if Employer receives, prior to Employee's accepting such employment, separate written assurances, satisfactory to Employer, from such Similar Organization and from Employee that Employee will not render services directly or indirectly to Customers and that the Employer's Trade Secrets will remain undisclosed. Employee further covenants that during the Duration they will send the Employer written notice of the name and address of their employer every six (6) months.

In the event that any of the agreements above stated are too broad in scope, space, or time to be enforceable, the parties request and agree that they may be reduced to such lesser breadth as may be necessary to make them enforceable. The covenants in this Section 2 shall be construed as an agreement independent of any other provision of this Agreement; the existence of any claim or cause of action of the Employee against Employer, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by Employer of these covenants.

(e) Other Acknowledgements: Employer and Employee acknowledge that Employer possesses, and Employee does not, the goodwill, financial resources, and the availability, source and supply of products and services in the Employer's Business, to attract and retain Customers for the Employer's Business, all of which information is part of the proprietary data, confidential information, and the Employer's Trade Secrets.

Employer and Employee acknowledge that the Employer's Business is competitive and that the essence of the Employer's Business consists of the Employer's Trade Secrets, confidential information and confidential, proprietary Customer relationships, all of which are zealously protected and kept by the Employer.

For these reasons, both Employer and Employee further acknowledge and agree that the restrictions contained herein are reasonable and necessary for the protection of their respective legitimate interests.

In the event of a breach or threatened breach by Employee of any provisions of this Section 2, Employee agrees and understands that Employer shall be entitled to an injunction restraining Employee from using, disseminating or disclosing, in whole or in part, any of such Trade Secrets or confidential information or confidential, proprietary business information and Customer relationships, or from rendering any services to any person, firm, corporation, association, or other entity to whom such information, in whole or in part, has been disclosed or is threatened to be disclosed. Nothing herein shall be construed as prohibiting Employer from pursuing any other remedies available to Employer for such breach or threatened breach of this Agreement, including the recovery of damages from Employee.

3. Terms Necessary for Employers' Reasonable Protection: Employee acknowledges that he has carefully read all of these terms, has given careful consideration to the restraints imposed upon him, and agrees to their necessity for the reasonable and proper protection of the Employer's Business. Employee admits and declares that Employer has been induced to agree to retain Employee, pay the consideration contemplated in this Agreement and the Employment Agreement, and provide Employee access to Employer's Trade Secrets, other employees, and Customers upon the representation of Employee that he will abide by each of the conditions and restrictions in this Agreement. Employee further admits and declares that he considers each and every restriction provided in this Agreement reasonable with respect to the subject matter, length of time and territory covered, and that this Agreement does not restrict Employee's ability to earn

a livelihood. Employee acknowledges and agrees that Employer shall have the right, in its sole discretion, to reduce the scope of any covenant set out or contained in this Agreement, effective immediately upon the mailing of notice to Employee at the address noted below, and Employee agrees that Employee shall comply forthwith with this Agreement as so modified.

4. Remedies:

(a) Accounting for Lost Profits. If Employee shall violate or breach any of the provisions of Section 2, Employer shall be entitled to recover any non-speculative lost profits incurred by Employer as a result of, growing out of, or in connection with, any such violation or breach by Employee. This remedy shall be in addition to, and not in limitation of, any injunctive relief or other rights, remedies, or damages, to which Employer is or may be entitled as a result of this Agreement.

(b) Injunctive Relief. In the event of a breach or threatened breach by Employee of any of the provisions of Section 1, Employer, in addition to, and not in limitation of, any other rights, remedies, or damages available to Employer at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction, and permanent injunction in order to prevent or restrain any such breach by Employee or by Employee's agents, representatives, employers, employees, Similar Organizations, companies, consulting clients, and/or any and all persons directly or indirectly acting for or with Employee. Employee agrees that in the event of any breach by them of the covenants set forth in this Agreement, Employer shall suffer immediate and irreparable harm for which the remedy of monetary damages may be inadequate.

(c) Set Off. In the event of any breach by Employee of this Agreement, in addition to the other rights or remedies to which Employer may be entitled, Employer shall be entitled, at its option, to set off and recoup against payments becoming due pursuant to this Agreement and/or the Employment Agreement amounts to which Employer may become entitled. Employee's right to lawfully contest such set off or recoupment in any action to collect the amounts due hereunder shall not be impaired by Employer's exercise of such set off or recoupment right.

(d) Alternatives. Employer shall have the option, in its sole discretion, to enforce the various restrictions of Section 1 cumulatively or, in the alternative, consecutively.

5. Corporate Benefit: This Agreement inures to the benefit of the Employer, its subsidiaries, affiliates, successors and assigns.

6. Applicable Law: This Agreement shall be interpreted in accordance with the laws of the State of South Carolina.

7. Consent To Jurisdiction: This Agreement shall be deemed to have been entered into and performed in part in the State of South Carolina, and Employee hereby agrees that the courts in Columbia, Richland County, South Carolina, state and federal, shall have sole jurisdiction over any suit relating to or arising out of this Agreement.

8. Entire Agreement: This Agreement, which may be executed in duplicate original counterparts, all of which shall constitute one and the same agreement, embodies the entire understanding and agreement of the parties with respect to the subject matter herein, superseding all prior agreements whether written or oral.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

PALMETTO MORTUARY TRANSPORT, INC., EMPLOYER

By: Donald J. Lintal
Its: President

EMPLOYEE

*

Print Name

135 Wildflower Ln
Address
W. Columbia SC 29170

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2185

Date 01/10/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number | Terms | Sales Rep

Quantity	Description	Unit Price	Amount
36	L f WT 300 Bodybags	8 00	288.00
18	HDP150A Bodybags	20 00	360 00
6	OP200 Bodybags	50.00	300 00
3	WRP400 Water Retreival Bags	30 00	90.00
	Removals made for Richland County Coroner 01/01/2007 Thru 01/05/2007		2,785.00
	Removals made for Lexington County Coroner 01/01/2007 thru 01/05/2007		2,045 00
	Bags furnished during the month of January		
7	Heavy Bags	20 00	140 00
41	Lightweight Bags	8.00	328.00
	Bags Purchased for stock on 2/1/2007		
30	Heavy Bags	20 00	600 00
50	Lightweight Bags	8 00	400 00

PAID

Amount Paid 0.00 Amount Due 7,336.00

TOTAL $7,336.00

ENTERED

PENGAD 800-631-6989 JN PLAINTIFF'S EXHIBIT 2-12-18-13 D. Lintal

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2185

Date 01/10/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number | Terms | Sales Rep

Quantity	Description	Unit Price	Amount
36	LTWT 300 Bodybags	8.00	288.00
18	HDP150A Bodybags	20 00	360 00
6	OP200 Bodybags	50 00	300 00
3	WRP400 Water Retreival Bags	30 00	90 00
	Removals made for Richland County Coroner 01/01/2007 Thru 01/05/2007		2,785 00
	Removals made for Lexington County Coroner 01/01/2007 thru 01/05/2007		2,045.00

NO SALES TAX/FOR RESALE

Amount Paid 0 00

Amount Due 5,868 00

TOTAL **$5,868.00**

ENTERED

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT

0 00409

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2189

Date 04/12/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
per Don Lintal

Terms

Sales Rep

Quantity	Description	Unit Price	Amount
50	KS/LTWT 300	8 00	400 00
15	KS/HDP150	20.00	300.00
15	KS/HDP Black Heavy Duty	20 00	300.00
4	KS/OP200	50 00	200.00

NO SALES TAX/FOR RESALE!

Items picked up on
3/2/07

Amount Paid 0 00

Amount Due 1,200.00

TOTAL **$1,200.00**

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2190

Date 05/03/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
Per Don Lintal

Terms

Sales Rep

Quantity	Description	Unit Price	Amount
50	KS/LTWT 300	8.00	400 00
15	KS/HDP Black Heavy Duty	20.00	300 00
10	KS/HDP150	20.00	200 00
1	KS/HDP 150 NO CHARGE		
3	KS/OP200	50 00	150.00
	PAST DUE INVOICE#2189 Pd check 1162	1,200 00	1,200 00

Amount Paid 0.00

Amount Due 2,250 00

TOTAL **$2,250.00**

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2196

Date 06/07/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
PER DON LINTAL

Terms

Sales Rep

Quantity	Description	Unit Price	Amount
50	KS/LTWT 300	8 00	400 00
15	KS/HDP BLACK HEAVY DUTY	20.00	300 00
15	KS/HDP150 A	20 00	300.00
4	KS/PO200	50 00	200 00
	INVOICE#2192 (AIR TRAYS)	260 00	260 00

Amount Paid 0.00

Amount Due 1,460.00

TOTAL **$1,460.00**

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 14

0 00412

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2198

Date 07/17/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O.Number	Terms	Sales Rep
PER DON LINTAL	DUE UPON RECEIPT	

Quantity	Description		Unit Price	Amount
6	KS/OP200	taxable	50.00	300.00
15	KS/HDP Black	taxable	20.00	300.00
5	KS/HDP White	taxable	20.00	100.00
30	KS/L TWT	taxable	8.00	240.00

PLEASE SEE ATTACHED SALES TAX STATEMENT

Taxable Total 940.00

Amount Paid 0.00

Amount Due 996.40

Subtotal	940.00
Sales Tax @ 6%	56.40
TOTAL	**$996.40**

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2199

Date 08/07/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O Number
per Don Lintal

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
40	KS/LTWT 300	taxable	8 00	320 00
10	KS/HDP Black Heavy Duty	taxable	20.00	200.00
5	KS/HDP-150	taxable	20.00	100.00
1	KS/OP200	taxable	50 00	50 00

Taxable Total 670 00

Amount Paid 0 00

Amount Due 710 20

Subtotal	670 00
Sales Tax @ 6%	40.20
TOTAL	**$710.20**

7/17

0 00414

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2202

Date 09/10/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O.Number	Terms	Sales Rep
per Don Lintal	DUE UPON RECEIPT	

Quantity	Description		Unit Price	Amount
50	KS/LTWT300	taxable	8.00	400.00
10	KS/HDP150 White	taxable	20.00	200.00
5	KS/HDP150 Black	taxable	20.00	100.00
5	KS/OP200	taxable	50.00	250.00
4	Combo Air Trays	taxable	90.00	360.00

Taxable Total 1,310.00

Amount Paid 0.00

Amount Due 1,388.60

Subtotal	1,310.00
Sales Tax @ 6%	78.60
TOTAL	**$1,388.60**

00036

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

0 00415

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2203

Date 10/08/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
60	KS/LTWT 300	taxable	8.00	480 00
5	KS/HDP150	taxable	20.00	100 00
10	KS/HDP150 Black	taxable	20 00	200.00
3	KS/OP200	taxable	50.00	150.00
1	KS/HDPXL (HEAVY DUTY POUCH LARGE 1000# CAPACITY)	le	100.00	100 00

Taxable Total 1,030 00

Amount Paid 0.00

Amount Due 1,091 80

Subtotal	1,030.00
Sales Tax @ 6%	61.80
TOTAL	**$1,091.80**

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 17

0 00416

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2205

Date 11/22/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
60	KS/LTWT300	taxable	8 00	480.00
5	KS/HDP150	taxable	20 00	100 00
5	KS/HDP150 Black	taxable	20.00	100 00
2	HDPXL(Heavy Duty Large Capacity 1000#	taxable	100 00	200 00
3	Combo Shipping Trays	taxable	90.00	270.00
2	Casketed Air Trays	taxable	80.00	160 00

Taxable Total 1,310.00

Amount Paid 0 00

Amount Due 1,401.70

Subtotal	1,310 00
Sales Tax @ 7%	91 70
TOTAL	**$1,401.70**

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PMT 21

0 00417

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2206

Date 12/17/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
60	KS/LWT300 lightweight pouches	taxable	8.00	480.00
5	KS/HDP150 Black	taxable	20.00	100.00

Taxable Total 580 00

Amount Paid 0.00

Amount Due 620 60

Subtotal	580 00
Sales Tax @ 7%	40 60
TOTAL	**$620.60**

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2209

Date 01/31/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number	Terms	Sales Rep
Per Don	DUE UPON RECEIPT	

Quantity	Description		Unit Price	Amount
50	KS/LTWT 200 Lightweight Pouch	taxable	8 00	400 00
15	KS/HDP 100 White Heavyweight Pouch	taxable	20.00	300 00
10	KS/HDP 100 Black Heavyweight Pouch	taxable	20 00	200.00
	The above pouches were picked up by Shannon on 12/29/2007			
60	KS/LTWT 200 Lightweight Pouch	taxable	8.00	480 00
10	KS/HDP 100 Black Heavyweight Pouch	taxable	20 00	200.00
1	Heavyduty Oversize pouch for obese remains	taxable	100.00	100 00
6	KS/OP200 Odor-proof Pouch	taxable	50 00	300.00
2	Combo Shipping Containers	taxable	90.00	180 00
	The above to be picked up 01/31/2008			

Taxable Total 2,160 00

Amount Paid 0 00

Amount Due 2,311 20

Subtotal	2,160.00
Sales Tax @ 7%	151 20
TOTAL	**$2,311.20**

Knight Systems, Inc.

Buddy Knight – *Owner*

Invoice

Number 2211

Date 04/14/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number	Terms	Sales Rep
PER DON	DUE UPON RECEIPT	

Quantity	Description		Unit Price	Amount
	March Bag Order			
50	Lightweight Pouches	taxable	8 00	400 00
10	Black Heavy Duty Bags	taxable	20.00	200 00
	April Bag Order			
60	Lightweight Pouches	taxable	8.00	480 00
15	Black Heavy Duty Bags	taxable	20 00	300 00
5	White Heavy Duty Bags	taxable	20 00	100 00
4	Odor-Proof Bags	taxable	50 00	200 00

Taxable Total 1,680.00

Amount Paid 0.00

Amount Due 1,797 60

Subtotal	1,680 00
Sales Tax @ 7%	117 60
TOTAL	**$1,797.60**

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2212

Date 04/14/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
LC/803605

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
30	Odor Proof Disaster Pouches	taxable	85 00	2,550 00
3	Oversized Disaster Pouches	taxable	150 00	450 00
100	Lightweight Pouches 36x90	taxable	16.00	1,600.00
100	Heavyweight Disaster Pouches 36x90	taxable	46.00	4,600.00

Lexington County BY ORDER

Taxable Total 9,200 00

Amount Paid 0 00

Amount Due 9,844.00

Subtotal	9,200 00
Sales Tax @ 7%	644.00
TOTAL	**$9,844.00**

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 26

0 00421

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2214

Date 05/12/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
per Don

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
30	Lightweight Pouches	taxable	8 00	240.00
20	Black Heavy Duty Pouches	taxable	20 00	400 00
5	White Heavy Duty Pouches	taxable	20 00	100 00
2	Odor Proof Pouches	taxable	50.00	100 00
2	Casketed Air Trays	taxable	80 00	160.00
	Discounted Loose Pouches			
32	Lightweight Pouches	taxable	5 00	160 00
13	Black Heavy Pouches (NO HANDLES)	taxable	13.00	169.00
2	White Heavy Duty Pouches	taxable	15 00	30 00
7	Heavy Duty Pouches Black	taxable	15 00	105 00
	UNPAID PREVIOUS BALANCE			11,641 60

Taxable Total 1,464 00

Amount Paid 0 00

Amount Due 13,208 08

Subtotal	13,105.60
Sales Tax @ 7%	102.48
TOTAL	**$13,208.08**

P.O Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 25

0 00422

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2217

Date 08/19/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
Per Don

Terms
DUE UPON RECEIPT

Sales Rep.

Quantity	Description		Unit Price	Amount
	July Order			
60	KS/LTWT 300	taxable	8.00	480.00
10	White HDP 150	taxable	20.00	200.00
15	Black HDP 150	taxable	20.00	300 00
2	Oversized Pouches	taxable	150.00	300 00
	August Order			
40	KS/LTWT Pouches	taxable	8 00	320.00
10	White HDP 150	taxable	20.00	200.00
20	Black HDP Pouches	taxable	20 00	400 00

THANK YOU!

Taxable Total 2,200 00

Amount Paid 0.00

Amount Due 2,354.00

Subtotal	2,200.00
Sales Tax @ 7%	154 00
TOTAL	**$2,354.00**

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2220

Date 12/04/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
60	KS/LTWT	taxable	8.00	480 00
10	KS/HeavyWeight White	taxable	20 00	200 00
25	KS/HeavyWeight Black	taxable	20.00	500.00
5	KS/OdorProof	taxable	50 00	250 00
2	Combo Shipping Trays	taxable	90 00	180 00
	The above was delivered on 10/22/2008			
80	KS/LTWT	taxable	8 00	640 00
5	KS/HeavyWeight White	taxable	20 00	100 00
	The above was delivered on 12/04/2008			

Taxable Total 2,350 00

Amount Paid 0 00

Amount Due 2,514 50

Subtotal	2,350 00
Sales Tax @ 7%	164.50
TOTAL	**$2,514.50**

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2222

Date 02/02/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
80	Lightweight bodybags KS/Ltwt 300	taxable	8 00	640 00
10	Black Heavy Duty	taxable	20 00	200.00
5	White Heavy Duty	taxable	20 00	100.00
6	Odor-Proof Standard	taxable	50.00	300.00
2	Odor-Proof Oversized	taxable	85 00	170.00
3	Combo Shipping Trays	taxable	90 00	270 00
2	Odor-Proof standard From Last Month	taxable	50 00	100 00

Taxable Total 1,780.00

Amount Paid 0.00

Amount Due 1,904.60

Subtotal	1,780.00
Sales Tax @ 7%	124.60
TOTAL	**$1,904.60**

P.O Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

0 00425

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2224

Date 03/11/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
100	Lightweight Bodybags KSLTWT 300	taxable	8 00	800 00
25	Black Heavy Duty	taxable	20 00	500 00
5	White Heavy Duty	taxable	20 00	100 00
4	Standard Size Odor-Proof	taxable	50 00	200.00

THANK YOU!

Taxable Total 1,600.00

Amount Paid 0.00

Amount Due 1,712.00

Subtotal	1,600 00
Sales Tax @ 7%	112 00
TOTAL	**$1,712.00**

0 00426

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2227

Date 04/03/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O.Number	Terms	Sales Rep
LEX CTYPO903733	DUE UPON RECEIPT	BK

Quantity	Description		Unit Price	Amount
30	KS/OP200	taxable	85.00	2,550.00
100	KS/HDP 100 Black	taxable	46.00	4,600.00
3	KS/HDP EXTRA WIDE/LONG	taxable	150.00	450.00

Taxable Total 7,600.00

Amount Paid 0.00

Amount Due 8,132.00

Subtotal	7,600.00
Sales Tax @ 7%	532.00
TOTAL	**$8,132.00**

00065

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0 00427

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2228

Date 05/31/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
120	Lightweight Bodybags	taxable	8 00	960 00
5	White Heavy Bodybags	taxable	20 00	100 00
25	Black Heavy Bodybags	taxable	20 00	500 00
4	OP Bodybags	taxable	50 00	200.00

Taxable Total 1.760 00

Amount Paid 0 00

Amount Due 1,883 20

Subtotal	1.760 00
Sales Tax @ 7%	123 20
TOTAL	**$1,883.20**

Knight Systems, Inc.

Buddy Knight — *Owner*

Invoice

Number 2233

Date 07/13/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number	Terms	Sales Rep
per Don	DUE UPON RECEIPT	

Quantity	Description		Unit Price	Amount
50	KS/LTWT300	taxable	8 00	400 00
10	KS/HDP150 White	taxable	20 00	200 00
10	KS/HDP 17B Black	taxable	20.00	200 00
8	KS/OP200	taxable	50.00	400.00
2	KS/HDP Extra Wide Long	taxable	100 00	200 00
4	KS/WRP400	taxable	30 00	120 00
2	Combo Air Trays	taxable	90 00	180 00

Taxable Total 1,700 00

Amount Paid 0.00

Amount Due 1,819 00

Subtotal	1,700 00
Sales Tax @ 7%	119 00
TOTAL	**$1,819.00**

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PMT 35

0 00429



Knight Systems, Inc.

P O Box 84822
Lexington, S C 29073

803-758-4103
Fax 803-359-0880
803-309-9547
e-mail @ knightsystemsinc@sc.rr.com
Website: www knightsystmsinc com

Invoice

Invoice No:	6
Date:	8/4/2009
Terms:	Net 10
Due Date:	8/14/2009
Order No:	
Territory:	
Sales Person:	

Bill To:

Palmetto Mortuary Transport Inc
200 Baytree Court
Aiken, SC 29803

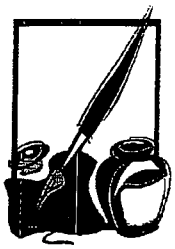
Ship To:

Ship Date	Ship Via	Tracking No	FOB
8/4/2009	PICK-UP		

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT300	100 00	$8 00	$800 00
	KS/HDP150	10 00	$20 00	$200 00
	KS/OP200	3 00	$50 00	$150 00
	KS/WRP400	4 00	$30 00	$120 00

* Indicates non-taxable item

Subtotal	$1 270 00
Tax (7.00%)	$88 90
Shipping	$0 00
Total	$1 358 90
Deposit	$0 00
Balance Due	$1,358 90



Knight Systems, Inc.

P.O Box 84822
Lexington, S C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www knightsystmsinc.com

Invoice

Invoice No: 11
Date: 9/23/2009
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
9/23/2009			

Code	Description	Quantity	Rate	Amount
	KS/LTWT300 Lightweight Pouch	70 00	$8.00	$560.00
	KS/HDP17B Black Heavy Duty Pouch	5 00	$20 00	$100 00
	KS/OP200 Odor proof Pouch	2 00	$50 00	$100 00
	Combo Shipping Air Trays	3.00	$90 00	$270.00

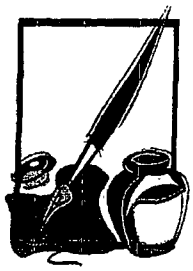
THANK YOU! PICKED UP BY SHANNON ON (9/23/09)

* Indicates non-taxable item

Subtotal	$1,030.00
Tax (7 00%)	$72.10
Shipping	$0.00
Total	**$1,102.10**

PMT 37

0 00431



Knight Systems, Inc.
P.O Box 84822
Lexington, S C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No: 17
Date: 10/28/2009
Salesperson:

Bill To:
Palmetto Mortuary Transport, Inc.
200 Baytree Court
Aiken, SC 29803

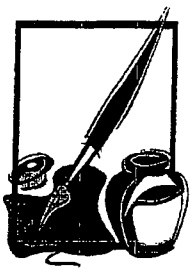
Ship To:

Ship Date	Ship Via	Tracking No	FOB
10/28/2009	<shipvia>	<tracking number>	<shipping_fob>

Code	Description	Quantity	Rate	Amount
	KS/LWT300 Lightweight Body Bag	100.00	$8 00	$800.00
	KS/HDP17B Black Heavy Duty Body Bag	15 00	$20 00	$300 00
	KS/HDP150 White Heavy Duty Body Bag	5 00	$20 00	$100.00
	KS/OP200	4 00	$50 00	$200.00

* Indicates non-taxable item

Subtotal	$1,400.00
Tax (7 00%)	$98.00
Shipping	$0.00
Total	**$1,498.00**



Knight Systems, Inc.

P O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc com

Invoice

Invoice No: 21
Date: 12/9/2009
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc.
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
12/9/2009			<shipping_fob>

Code	Description	Quantity	Rate	Amount
	KS/LTWT 300	100.00	$8.00	$800.00
	KS/HDP17B Black	10 00	$20.00	$200.00
	KS/OP200	3.00	$50 00	$150 00

* Indicates non-taxable item

Subtotal	$1,150.00
Tax (7 00%)	$80.50
Shipping	$0 00
Total	**$1,230.50**

Knight Systems, Inc.
P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	30
Date:	2/1/2010
Terms:	Net 05
Due Date:	2/6/2010
Order No.	
Territory:	
Salesperson:	

Bill To:

Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
2/1/2010	PICK UP		

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT 300 Light Weight Body Bags	90.00	$8.00	$720.00
	KS/HDP17B Black Heavy Weight Body Bag	15.00	$20.00	$300.00
	KS/OP 200 Odor-Proof Body Bag	2.00	$50.00	$100.00

* Indicates non-taxable item

Subtotal	$1,120.00
Tax 7.0%	$78.40
Shipping	$0.00
Total	$1,198.40
Deposit	$0.00
Balance Due	$1,198.40

00080

0 00434



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website www.knightsystmsinc.com

Invoice

Invoice No:	33
Date:	3/11/2010
Terms:	Net 05
Due Date:	3/16/2010
Order No:	
Territory:	
Salesperson:	

Bill To:

Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
3/11/2010	<shipvia>	<tracking number>	<shipping_fob>

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT 300 Lightweight Pouch	100.00	$8.00	$800.00
	KS/HDP17B Black Heavyweight Pouch	25.00	$20.00	$500.00
	KS/HDP17B Black heavyweight Pouch Replacements	0.00	$0.00	$0.00*

* Indicates non-taxable item

Subtotal	$1,300.00
Tax (7.00%)	$91.00
Shipping	$0.00
Total	$1,391.00
Deposit	$0.00
Balance Due	$1,391.00

PMT 41

0 00435



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	35
Date:	4/21/2010
Terms:	Net 05
Due Date:	4/26/2010
Order No:	
Territory:	
Salesperson:	

Bill To:

Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
4/21/2010			

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	100.00	$8.00	$800.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	10.00	$20.00	$200.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	4.00	$50.00	$200.00

* Indicates non-taxable item

Subtotal	$1,200.00
Tax (7.00%)	$84.00
Shipping	$0.00
Total	$1,284.00
Deposit	$0.00
Balance Due	$1,284.00

PMT 42

0 00436



Knight Systems, Inc.
P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	38
Date:	6/10/2010
Terms:	Net 05
Due Date:	6/15/2010
Order No:	
Territory:	
Salesperson:	

Bill To:
Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No.	FOB
6/10/2010			

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	80.00	$8.00	$640.00
	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	3.00	$50.00	$150.00
	KS/HDP 100 White Heavy Duty Body Bag W/8 Carrying Strap Handles	5.00	$20.00	$100.00
	KS/WRP400 Water Retrieval Pouch	4.00	$30.00	$120.00
	KS/HDP17B Heavy Duty Black Body Bag	25.00	$20.00	$500.00

* Indicates non-taxable item

Subtotal	$1,510.00
Tax (7.00%)	$105.70
Shipping	$0.00
Total	$1,615.70
Deposit	$0.00
Balance Due	$1,615.70

PMT 43

0 00437



Knight Systems, Inc.
P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	42
Date:	7/21/2010
Terms:	Net 05
Due Date:	7/26/2010
Order No:	
Territory:	
Salesperson:	

Bill To:
Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No.	FOB
7/21/2010	Pick Up		<shipping_fob>

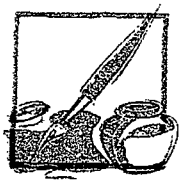
Code	Description	Qty/Hours	Rate	Amount
KS/LWT300		70.00	$8.00	$560.00
KS/HDP17B Black		10.00	$20.00	$200.00
KS/OP200 Regular		3.00	$50.00	$150.00
KS/OP200 Oversize		1.00	$85.00	$85.00
Thank You!				

* Indicates non-taxable item

Subtotal	$995.00
Tax (7.00%)	$69.65
Shipping	$0.00
Total	$1,064.65
Deposit	$0.00
Balance Due	$1,064.65

PMT 44

0 00438



Knight Systems, Inc.
P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	86
Date:	9/1/2010
Terms:	Net 05
Due Date:	9/6/2010
Order No:	
Territory:	
Salesperson:	

Bill To:
Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
9/1/2010	**Pick Up**		

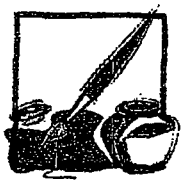
Code	Description	Qty/Hours	Rate	Amount
KS/LTWT300		80.00	$8.00	$640.00
KS/HDP150	White Heavy Weight	10.00	$20.00	$200.00
KS/HDP17B	Black Heavy Weight	15.00	$20.00	$300.00
KS/OP200		6.00	$50.00	$300.00 *
THANK YOU!				

* Indicates non-taxable item

Subtotal	$1,440.00
Tax (7.00%)	$100.80
Shipping	$0.00
Total	$1,540.80
Deposit	$0.00
Balance Due	$1,540.80

PMT 45

0 00439



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	94
Date:	10/5/2010
Terms:	Net 05
Due Date:	10/10/2010
Order No:	
Territory:	
Salesperson:	

Bill To:
Eastern Minerals Transport, Inc.
200 Daviese Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
10/5/2010	PICK UP		

Code	Description	Qty/Hours	Rate	Amount
KS/LTWT 300		80.00	$8.00	$640.00
KS/HDP17B		20.00	$20.00	$400.00
KS/OP200		5.00	$50.00	$250.00
THANK YOU!				*

* Indicates non-taxable item

Subtotal	$1,290.00
Tax (7.00%)	$90.30
Shipping	$0.00
Total	$1,380.30
Deposit	$0.00
Balance Due	$1,380.30

PMT 46

0 00440



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	101
Date:	11/18/2010
Terms:	Net 05
Due Date:	11/23/2010
Order No:	
Territory:	
Salesperson:	

Bill To:

Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
11/18/2010	Pick up		

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	90 00	$8.00	$720.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	15 00	$20.00	$300.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	2.00	$50 00	$100 00

* Indicates non-taxable item

Subtotal	$1,120 00
Tax (7 00%)	$78 40
Shipping	$0 00
Total	$1,198 40
Deposit	$0.00
Balance Due	$1,198.40

PMT 40

0 00441

Knight Systems, Inc.
P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website. www.knightsystmsinc.com

Invoice

Invoice No:	106
Date:	12/23/2010
Terms:	Net 05
Due Date:	12/28/2010
Order No:	
Territory:	
Salesperson:	

Bill To:
Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
12/23/2010			

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	90 00	$8.00	$720.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	10.00	$20.00	$200.00
Without View Panel	KS/HDP 150A White Heavy Duty Body Bag W/8 Carrying Handles	5.00	$20.00	$100 00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	4 00	$50.00	$200.00
	Credit Memo (Air Tray)	1.00	($80.00)	($80 00)*

* Indicates non-taxable item

Subtotal	$1,140 00
Tax (7.00%)	$85 40
Shipping	$0 00
Total	$1,225 40
Deposit	$0.00
Balance Due	$1,225.40

PMT 47

0 00442



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	109
Date:	1/25/2011
Terms:	Net 05
Due Date:	1/30/2011
Order No:	
Territory:	
Salesperson:	

Bill To:

Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No.	FOB
1/25/2011			

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	100.00	$8.00	$800.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	10.00	$20.00	$200 00
White Knight Systems Bag	KS/HDP 100 White Heavy Duty Body Bag W/8 Carrying Strap Handles	10 00	$20 00	$200 00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	1.00	$50.00	$50 00
	Balance Forward From December	1 00	$1,225 40	$1,225 40*

* Indicates non-taxable item

Subtotal	$2,475 40
Tax (7.00%)	$87 50
Shipping	$0 00
Total	$2,562 90
Deposit	$0.00
Balance Due	$2,562.90

PMT 48

0 00443

Knight Systems, Inc.
P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystmsinc.com

Invoice

Invoice No:	117
Date:	3/7/2011
Terms:	Net 05
Due Date:	3/12/2011
Order No:	
Territory:	
Salesperson:	

Bill To:
Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
3/7/2011	PICK-UP		

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	100 00	$8.00	$800 00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	15 00	$20.00	$300.00
Without View Panel	KS/HDP 150A White Heavy Duty Body Bag W/8 Carrying Handles	10.00	$20.00	$200.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	4.00	$50 00	$200 00

* Indicates non-taxable item

Subtotal	$1,500 00
Tax (7.00%)	$105.00
Shipping	$0 00
Total	$1,605 00
Deposit	$0.00
Balance Due	$1,605.00

PMT 49

0 00444

Knight Systems, Inc.
P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No:	125
Date:	4/27/2011
Terms:	Net 05
Due Date:	5/2/2011
Order No:	
Territory:	
Salesperson:	

Bill To:
Palmetto Mortuary Transport, In
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
4/27/2011	PICK-UP		

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	110.00	$8.00	$880.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	10.00	$20.00	$200.00
White Knight Systems Bag	KS/HDP 100 White Heavy Duty Body Bag W/8 Carrying Strap Handles	10.00	$20.00	$200.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	3.00	$50.00	$150.00

NOTE: STARTING APRIL 28, 2011, ALL BODYBAG PRICES WILL INCREASE BY 10% THE EXCEPTION IS LIGHTWEIGHTS, WHICH WILL INCREASE BY $1.00 EACH

* Indicates non-taxable item

Subtotal	$1,430.00
Tax (7.00%)	$100.10
Shipping	$0.00
Total	$1,530.10
Deposit	$0.00
Balance Due	$1,530.10

PMT 50

0 00445



Buddy's Trim Shop
PO Box 84822
Lexington, South Carolina 29073

4752 Platt Springs Rd
758-4103
803-309-9547

FAX. 359-0880

Invoice

Invoice No:	516
Date:	6/1/2011
Terms:	Net 05
Due Date:	6/6/2011
Order No:	
Territory:	
Salesperson:	

Bill To:
Palmetto Mortuary Transport In
200Baytree Court
Aiken, South Carolina 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
6/1/2011	PICKED UP BY DON LINTEL		

Code	Description	Qty/Hours	Rate	Amount
	KS/LWT 300 Lightweight Body Bags	120 00	$8.80	$1,056 00
	KS/HDP17B Black Heavy Duty Body Bags	10.00	$22 00	$220 00
	Lightweight bags had a price hike of $.80 cents instead of $1 00 to comply with our contract agreement. Thanks			*

* Indicates non-taxable item

Subtotal	$1 276 00
Tax (7 00%)	$89 32
Shipping	$0 00
Total	$1 365 32
Deposit	$0.00
Balance Due	$1,365.32

REMITTANCE ADVICE FOR Invoice # 516 on 6/1/2011

Received From: Palmetto Mortuary Transport In

Balance Due: $1,365.32

Amount Paid: $

Please detach and send with remittance to:
Buddy's Trim Shop
PO Box 84822
Lexington. South Carolina 29073

PMT 51

0 00446

INVOICES FROM KNIGHT SYSTEMS, INC.

DATE	INVOICE NUMBER	INVOICE AMOUNT	BODY BAG AMOUNT	
1/10/2007	2185	$7,336.00	$2,506.00	
4/12/2007	2189	$1,200.00	$1,200.00	
5/3/2007	2190	$1,050.00	$1,200.00	
6/7/2007	2196	$1,460.00	$1,200.00	
7/17/2007	2198	$996.40	$996.40	
8/7/2007	2199	$710.20	$710.20	
9/10/2007	2202	$1,388.60	$950.00	
10/8/2007	2203	$1,091.80	$1,091.80	
11/22/2007	2205	$1,401.70	$880.00	
12/17/2007	2206	$620.60	$620.60	
2007 Total:		$17,255.30	**$11,355.00**	
1/31/2008	2209	$2,311.20	$1,980.00	
4/14/2008	2211	$1,797.60	$1,797.60	
4/14/2008	2212	$9,844.00	$9,844.00	***Lexington County Invoice***
5/12/2008	2214	$1,566.48	$1,304.00	
8/19/2008	2217	$2,354.00	$2,354.00	
12/4/2008	2220	$2,514.50	$2,170.00	
2008 Total:		$20,387.78	**$19,449.60**	
2/2/2009	2222	$1,904.60	$1,510.00	
3/11/2009	2224	$1,712.00	$1,712.00	
4/3/2009	2227	$8,132.00	$8,132.00	***Lexington County Invoice***
5/31/2009	2228	$1,883.20	$1,883.20	
7/13/2009	2233	$1,819.00	$1,520.00	
8/4/2009	6	$1,358.90	$1,358.90	
9/23/2009	11	$1,102.10	$760.00	
10/28/2009	17	$1,498.00	$1,498.00	
12/9/2009	21	$1,230.50	$1,230.50	
2009 Total:		$20,640.30	**$19,604.60**	
2/1/2010	30	$1,198.40	$1,198.40	
3/11/2010	33	$1,391.00	$1,391.00	
4/21/2010	35	$1,284.00	$1,284.00	
6/10/2010	38	$1,615.70	$1,615.70	
7/21/2010	42	$1,064.65	$1,064.65	
9/1/2010	86	$1,540.80	$1,540.80	
10/5/2010	94	$1,380.30	$1,380.30	
11/18/2010	101	$1,198.40	$1,198.40	
12/23/2010	106	$1,225.40	$1,305.40	
2010 Total:		$11,898.65	**$11,978.65**	

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT #3 - 12-18-13 D. Lintal

1/25/2011	109	$1,337.50	$1,337.50
3/7/2011	117	$1,605.00	$1,605.00
4/27/2011	125	$1,530.10	$1,530.10
6/1/2011	516	$1,365.32	$1,365.32
2011 Total:		$5,837.92	**$5,837.92**
2007-2011 Total:		**$76,019.95**	**$68,225.77**
2007-2011 Total: (minus LC invoices noted above)		**$58,043.95**	**$50,249.77**

INVOICE

SOUTHLAND MEDICAL CORPORATION
466 W. Meats Avenue Orange, CA 92865
(800) 959-9160 Fax (714) 456-9094

Invoice ID #103850
Sales Order ID #T07394
4/3/08

Bill to: Palmetto Mortuary Transport
1100 Pulaski St , Apt. 406
Columbia SC 29201
Phone: 803-359-1545

Ship to: Palmetto Mortuary Transport
Don Lintal
1100 Pulaski St , Apt. 406
Columbia SC 29201
Phone: 803-359-1545

Cust. ID : Palmetto1
Terms : Net 15
Salesperson: Linda
Cust P O :

Quantity	Item No	Description	L	Unit Price	Amount
1	T1060-Burgandy	Cot Covers Lined Burgundy		95.95	95.95
1	NON70560W/Each	Body Bag Infant 8 Mil Curv		5.25	5.25
1	UL315-L/Cs	UltraOne PF Latex Gloves L		88.75	88.75
1	MF300-XL/Cs	Diamond Grip PF Latex Glov		79.00	79 00
1	Catalog	2008 SMC Catalog		0.00	0 00
1		Freight		45.83	45 83

PAID
4/3 Amex charge

mount Tendered: $314.78 American Express

Subtotal	314.78
Tax	0.00
TOTAL	314 78

HANK YOU FOR YOUR ORDER!!!
MC IS DEDICATED TO PROVIDING ALL OF YOUR
ROTECTIVE CLOTHING AND PREP ROOM NEEDS.
LL SHORTAGE, DAMAGE OR ERROR CLAIMS
UST BE MADE WITHIN 15 DAYS

PENGAD 800-631-6989
JN PLAINTIFF'S EXHIBIT #4 - 12-18-13
D. Lintal

PMT 52

0 00449

Print Receipt

Receipt

Merchant Southland Medical Corporation
466 W Meats Avenue
Orange, CA 92865
US

(714) 456-9160

Description:	Prep Supplies
Submission Date:	03-Apr-2008 11:45:49
Transaction ID:	1789673933
Transaction Status:	Captured/Pending Settlement
Authorization Code:	121246
Card Number:	XXXX1017
Payment Method:	American Express
Amount:	USD 314.78
Invoice:	103850
Customer ID:	Palmetto1

BILLING INFORMATION

SHIPPING INFORMATION

INVOICE

SOUTHLAND MEDICAL CORPORATION
466 W. Meats Avenue Orange, CA 92865
(800) 959-9160 Fax (714) 456-9094

Invoice ID #104132
Sales Order ID #T01598
4/9/08

Bill to: Palmetto Mortuary Transport
200 Bay Tree Court
Aiken SC 29803

Phone: 803-359-1545

Ship to: Palmetto Mortuary Transport
Don Lintal
1100 Pulaski St., Apt. 406
Columbia SC 29201

Phone: 803-359-1545

Cust. ID : Palmetto1
Terms : Net 15
Salesperson: Linda
Cust P O :

Quantity	Item No	Description	L	Unit Price	Amount
1	Dropshipped	From Manufacturer		0.00	0 00
1	NON70550W/Cs	Body Bag Child 8 Mil Curved Zi		187 50	187 50
1		Freight		14.12	14 12

PAID
4/10 Amex Thank you!

Amount Tendered: $201.62 American Express

Subtotal	201.62
Tax	0.00
TOTAL	201.62

THANK YOU FOR YOUR ORDER!!!
SMC IS DEDICATED TO PROVIDING ALL OF YOUR
PROTECTIVE CLOTHING AND PREP ROOM NEEDS.
ALL SHORTAGE, DAMAGE OR ERROR CLAIMS
MUST BE MADE WITHIN 15 DAYS.

PMT 54

0 00451

Print Receipt

Receipt

Merchant Southland Medical Corporation
466 W Meats Avenue
Orange, CA 92865
US

(714) 456-9160

Description:	Body Bags
Submission Date:	10-Apr-2008 10:07:50
Transaction ID:	1797814080
Transaction Status:	Captured/Pending Settlement
Authorization Code:	181137
Card Number:	XXXX1017
Payment Method:	American Express
Amount:	USD 201 62
Invoice:	104132
Customer ID:	Palmetto1

BILLING INFORMATION
Don Lintal
Palmetto Mortuary Transport
200 Bay Tree Court
Aiken, SC 29803
USA

SHIPPING INFORMATION

0 00452

EVIDENT
Crime Scene Products
739 Brooks Mill Road
Union Hall VA 24176
Phone 800-576-7606
Fax 888-384-3368

Page	Date	Invoice
1	03/06/09	46012A

Federal ID #54-1634534

SOLD TO
PALMETTO MORTUARY TRANSPORT
ACCOUNTS PAYABLE
200 BAY TREE COURT
AIKEN, SC 29803

SHIP TO
PALMETTO MORTUARY TRANSPORT
DON LINTAL
1100 PULASKI ST APT 406
COLUMBIA, SC 29201

Customer No.	Sales I.D.	Purchase Order#	Media Code	Payment Terms
27739	/GIL		ISC/	XXXXXXXX1017 AMERICAN

Credit Card Number	Type	App. Code	Phone Number	Total Wt.	Zone	# Packages	Ship Via
		244554	(803) 359-1545	39.0	8	1	UPR

We Appreciate Your Business Call Us At 1-800-576-7606
Email Us At contact@evident.cc
View Our Product Catalog Online At www.evident.cc

Qty.	B/O	Shipped	Item #	Description	Unit Price	Disc.	Extension	Pkg.
1	0	1	7121	6 - Water Recovery Body Bags - Fluorescent Orange	270.00--		270.00	
1	0	1	NON-REFUND	ALL ITEMS ARE NON-REFUNDABLE AND NON-RETURNABLE	0.00--		0.00	
1	0	1	NLE4	NON-LAW ENFORCEMENT APPROVAL	0.00--		0.00	
1	0	1	RESIDENTIAL	RESIDENTIAL DELIVERY	0.00--		0.00	

MERCHANDISE INVOICE TOTAL $	270.00
SHIPPING & HANDLING $	24.00
INVOICE TOTAL $	294.00
CR. CARD: AE, APPR:244554 $	-294.00

0 00453

MEDICALPRODUCTS LTD INC
P.O. BOX 80685
CONYERS, GA 30013
USA

INVOICE

Invoice Number: 2906497
Invoice Date: Jul 14, 2010
Page: 1

Voice: 800-345-2922
Fax: 800-372-5649

Sales Order No. 9001509

Bill To:
PALMETTO MORTUARY TRANSPORT 200 BAY TREE COURT AIKEN, SC 29803 USA

Ship To:
DON LINTAL PALMETTO MORTUARY TRANSPORT 1426 HOLLYBERRY LANE WEST COLUMBIA, SC 29169 USA

Customer ID	Customer PO	Payment Terms	
PALMMORT	VERBAL	Net 30 Days	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
	GROUND	7/14/10	8/13/10

Quantity	Item	Description	Unit Price	Amount
4.00	BBENV-CFX-HD60XL	54 X108 18 MIL 8 HAND HD SCRIM VNL XLG BLK	53.430	213.72
6.00	BBENV-CFX-HD60	36 X 94" 18 MIL ENV ZIP 6 HAND HD SCRIM VNL BLK ADULT SIZE	34.750	208.50

MEDICAL PRODUCTS
7100 WASHINGTON STREET
COVINGTON, GA
30014
678-413-9200

JUL 15, 2010 10:43AM

TERM : 1
MERCH: 911755469

REF #: 001
ACT #: M**********1017
CARD : AMERICAN EXPRESS
ORDER # :1509

SALE: $ 471.91

RETR REF#: 019615205039
APPROVAL CODE: 285615

I AGREE TO PAY ABOVE
TOTAL AMOUNT ACCORDING
TO CARD ISSUER AGREEMENT

x phone order
SIGNATURE

THANK YOU!
PLEASE COME AGAIN SOON!
CUSTOMER COPY

PLEASE REMIT TO:
P.O. BOX 80685
CONYERS GA 30013

Check/Credit Memo No:

Subtotal	422.22
Freight	49.69
Sales Tax	
Total Invoice Amount	471.91
Payment/Credit Applied	
TOTAL DUE	471.91

www.medicalproducts.com

PMT 56

0 00454

Detail Continued

		Amount
07/22/10	STAMPS.COM SERVICE FEE O102483035 90405	$17.99

DONALD LINTAL
Card Ending 6-31017

		Amount
07/01/10	NORTON ANNUALRENEWALSOFTWARE VAB53923435 95014	$69.99
07/09/10	USPS 451390955801026WEST COLUMBIA 800-2758777	$1.22
07/15/10	MEDICAL PRODUCTS CONYERS MEDICAL EQUIPMENT	$471.91
07/19/10	ACE HRDWR OF CAYCE LCAYCE HARDWARE STORE	$22.62

Fees

	Amount
Total Fees for this Period	**$0.00**

Interest Charged

	Amount
Total Interest Charged for this Period	**$0.00**

2010 Fees and Interest Totals Year-to-Date

	Amount
Total Fees in 2010	$0.00
Total Interest in 2010	$0.00

Includes fees and interest charged for billing periods with closing dates on or after June 25, 2010

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account

	Annual Percentage Rate	Balance Subject to Interest Rate	Interest Charge
Purchases	14.50% (v)	$0.00	$0.00
Cash Advances	25.24% (v)	$0.00	$0.00
Total			**$0.00**

(v) Variable Rate

Continued on next page

Request for Proposal
RC-025-P-1011 Body Removal Services

Read all parts of the solicitation package thoroughly.

Follow all instructions exactly as written.

Return all paperwork requested.

Sign all documents as required.

Submit your complete package on or before the date required, before the time requested.

All submittals must be in English.

All cost and prices given must be in United States of America's currency.

** Upon receipt of this document electronically, the receiving party shall promptly issue an acknowledgement in writing on company/firm letterhead to the Director of Procurement address same as Section A, page #4, block # 6. Acknowledgements can be faxed to (803) 576-2135. The County will not be responsible for addendum's not received. Proposal will not be accepted without receipt of acknowledgement.*

When received electronically this document shall be deemed to be signed on this page and when printed and maintained as a whole and in the normal course, shall be deemed to constitute an original document for all legal purposes, and shall not be contestable as to the validity or enforceability.

Richland County shall not be liable for any incidental or consequential damages arising from or as a result of the electronic transmission of this document, acknowledgements, or other data hereunder. In the event of receipt of an electronic document that is garbled in transmission or improperly formatted the Director of Procurement must be notified immediately for issuance of hard copy.

Failure to comply with the above could result in being declared non-responsive and may cause your Proposal to not be considered.

All Questions Must be Addressed to the Person Listed in Block 3 of Section "A" Prior to Completing and Submitting Proposal

Contracting Officer or Authorized Representative:	***Signature:***	***Date:***
Rodolfo A. Callwood, CPPO, CPPB		May 2, 2011

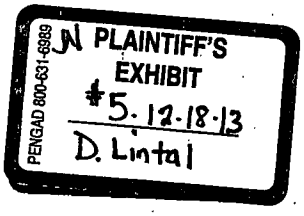


Table of Contents

RC-025-P-1011 Body Removal Services

1. Solicitation Contents:

Sections	Form Description	# of Pages	Return with Proposal
Cover Page	Cover Page	1	**No**
Table of Contents	Table of Contents	1	**No**
Section - A	Solicitation, Offer & Award	1	**Yes**
Section - B	General Conditions	17	**No**
Section - C	Statement of Assurance, Compliance and Noncollusion	1	**Yes**
	Drug Free Workplace	1	**Yes**
	No Response Form **(Return Only If Not Participating)**	1	**Yes**
Section - D	General Information	1	**No**
Section - E	Special Conditions	7	**No**
Section - F	Requirements	3	**No**
Section - G	Minority Participation	1	**Yes**
Section - H	Advertisement	1	**No**

2. **Acknowledgment of Amendments**	Amendments #	Date	Amendments #	Date
Offeror acknowledges receipt of the following amendment(s) to the solicitation (give number and date of each)				

Section - A

Solicitation Offer & Award

RICHLAND COUNTY
COLUMBIA, SOUTH CAROLINA 29204
REQUEST FOR SOLICITATIONS, OFFERS AND AWARDS
(supplies, equipment or services)

**********Solicitation Information**********

1. SOLICITATION: RC-025-P-1011	4. **Brief Description:** Body Removal Services
2. ISSUE DATE: May 2, 2010	
3. FOR INFORMATION CALL: (803)576-2129, Procurement Agent : Christy Swofford	
E-mail: rcsolicitations@rcgov.us	
5. Submit Solicitations To: **Richland County Office of Procurement 2020 Hampton Street, Suite 3064 Columbia, South Carolina 29204**	6A. Pre-Solicitations Conference: See "Pre-Conference" clause in Special Conditions for more information.

6B. Submission Deadline: Day: Tuesday Date: **May 24, 2011** Time: 3:00pm Eastern Standard Time

7. Submit Sealed Solicitations: (1) one original and (1) electronic copy

8. Firm Offer Period: **One-Hundred Twenty Days**

9. This solicitation and any resulting contract consists of Section "A" through Section " H " to include all addendum's

>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>**Offer (To be completed by Offeror)**<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<

10. BUSINESS CLASSIFICATION	(Check Appropriate Box)	☐ Partnership ☐ Corporation ☐ Individual	☐ Sole Partnership ☐ Trading under Trade Name

11. Offer: In compliance with above, the undersigned agrees, if this Solicitation is accepted within the period specified in Block 8, above, to furnish any or all information requested.

12. Firm's name and address (Type or print): e-mail : Telephone # Fax # Federal Identification #:	13. Name & Title of Person Authorized to sign the Solicitations. (Type or Print): 14. Qualifier's Signature & Date 15. Subscribed and sworn to me This _____ day of_____, 20___. My commission expires: _____ (Title) SEAL *(Must be notarized by a Notary)*

>>>>>>>>>>>>>>>>>>>>>>>>>>>>**AWARD (To be completed by Richland County)**<<<<<<<<<<<<<<<<<<<<<<<<<<<<

16. Richland County Council Approval Date:	17. Total amount of award:	18. Contract number:
19. Contracting Officer: *Rodolfo A. Callwood, CPPO, CPPB*	20. Signature:	21. Award date:

Section - B

General Conditions

Solicitation General Conditions

1. ACCIDENTS
2. ADVICE
3. AFFIRMATIVE ACTION
4. AMBIGUOUS OFFERS
5. AMENDMENTS
6. ANTI-COMPETITIVE PRACTICE
7. ANTI-KICKBACK PROCEDURES
8. ASSIGNMENT OF CONTRACT
9. AUDIT OF RECORDS
10. CHANGES
11. COMPENSATION
12. COMPLETE DOCUMENTS
13. CONTRACT ADMINISTRATION
14. COUNTY FURNISHED DATA
15. COUNTY'S RIGHTS OF OWNERSHIP
16. COVENANT AGAINST CONTINGENT FEES
17. DEFAULT
18. DEFINITIONS
19. DISCREPANCIES AND OMISSIONS
20. DISCUSSIONS
21. DISPUTE RESOLUTION
22. DOCUMENTATION AND PROJECT COMPLETION
23. DRUG FREE WORKPLACE
24. EXAMINATION OF RECORDS
25. EQUAL EMPLOYMENT OPPORTUNITY
26. FAILURE TO SUBMIT SOLICITATION
27. FORCE MAJEURE
28. GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA
29. GOVERNING LAWS/DISPUTES
30. GRATUITIES
31. GUARANTEE
32. IMPROPER INFLUENCE
33. INDEMNIFICATION
34. INSURANCE
35. LICENSES, PERMITS AND CERTIFICATES
36. MATERIALS REQUIRED
37. NON-APPROPRIATIONS
38. NOTICE
39. OFFEROR'S PROPOSAL
40. OFFEROR'S RESPONSIBILTY
41. OR APPROVED EQUAL" CLAUSE
42. ORDER OF PRECEDENCE
43. OTHER WORK
44. PATENT
45. PACKING AND DELIVERY
46. PRICING INFORMATION
47. PERMITS, LAWS, AND REGULATIONS
48. PRIMARY CONTRACTOR, ASSIGNMENT AND SUBCONTRACTING
49. PROHIBITION OF GRATUITIES
50. PROJECT ORGANIZATION
51. PROPRIETARY INFORMATION
52. PUBLIC RELEASES
53. PROPOSAL
54. QUALITY OF PRODUCT
55. REJECTION
56. SECURITY – COUNTY'S RULES
57. SPECIFICATIONS
58. SEVERABILITY
59. SERVICE DATA MANUALS
60. SOUTH CAROLINA LAW CLAUSE
61. STATEMENT OF COMPLIANCES AND ASSURANCE
62. SUBCONTRACTOR
63. TERMINATION
64. TIME OF COMPLETION
65. WAIVER

1. ACCIDENTS:

The Offeror shall hold the County harmless from any and all damages and claims that may arise by reasons of negligence on the part of the Offeror, his agents, or employees in the performance of this contract. In case of any action brought therefore against the County or any of its agents or employees, the Offeror shall assume full responsibility for the defense therefore, and upon his failure to do so on the proper notice, the County reserves the right to defend such motion and charge all cost thereof to the Offeror. The Offeror shall take all precautions necessary to protect the public against injury

2. ADVICE:

No official or employee of the County shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a proceeding, application, request for a ruling or other determination, contract, grant cooperative agreement, claim, controversy, or other particular matter in which these funds are used, where to his/her knowledge he/she or her/his immediate family, partners, organization, other than a public office in which he/she is serving as an officer, director, trustee, partner, or employee or any person or organization with which he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

3. AFFIRMATIVE ACTION:

The Offeror shall take affirmative action in complying with all Federal, State and County requirements concerning fair employment, employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reasons of race, color, sex, religion, national origin and/or physical handicap

4. AMBIGUOUS OFFERS:

Offers that are uncertain as to terms, delivery, compliance requirement, and/or specifications, may be rejected or otherwise disregarded.

5. AMENDMENTS:

All amendments to and interpretations of this agreement shall be in writing. Any amendments or interpretations that are not in writing shall not legally bind the County and or its agents. It is the Offeror's responsibility to acknowledge receipt of amendments either by signing and returning one (1) copy of the amendment or by letter.

6. ANTI-COMPETITIVE PRACTICE:

Offerors that developed or drafted specifications, requirements, statement of work, Request for Solicitations, or Request for Proposals from this agreement shall be prohibited from participation in this proposed procurement.

7. ANTI-KICKBACK PROCEDURES

a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, which is provided, directly or indirectly, to any prime Offeror, general Offeror employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or in connection with a subcontract relating to a contract.

"Person," as used in this clause, means a corporation, partnership, and business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the County for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"General Offeror" as used in this clause, means a person who has entered into a contract with the County.

"General Offeror employee," as used in this clause, means any officer, partner, employee, or agent of a prime Offeror.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a general Offeror or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the general Offeror, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Offeror or a higher tier Subcontractor.

b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from.

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a general Offeror to the County or in the contract price charged by a Subcontractor to a general Offeror or higher tier Subcontractor.

c) (1) The Offeror shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Offeror has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Offeror shall promptly report in writing the possible violation. Such reports shall be made to the Contracting Officer and the County Attorney.

(3) The Offeror shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) offset the amount of the kickback against any monies owed by the County under the prime contract and/or

(ii) direct that the general Offeror withhold from sums owed a Subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the County unless the County has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the general Offeror shall notify the Contracting Officer and the County Attorney when the monies are withheld.

(5) The Offeror agrees to incorporate the substance of this clause, including paragraph (c)(5) but accepting paragraph (c)(1), in all subcontracts under this contract which exceed $100,000.

8. ASSIGNMENT OF CONTRACT:

No contract may be assigned, sublet, or transferred without a written consent of the Director of Procurement. The solicitation, specifications, scope of work, proposal and negotiated results between the County and Offeror shall constitute the entire contract.

9. AUDIT:

Offeror shall keep accurate records and books of account showing all charges, disbursements or expenses made or incurred by Offeror in the performance of the service herein. County shall have the right, upon thirty days notice, to audit at any time up to one year after payment of its final invoice, the direct costs, expenses, and disbursements made or incurred in connection with the services to be performed herein as well as for the validity of the representations made and in the compensation provisions of this Agreement, and may examine Offerors books and records relating to these several areas. County may execute a technical audit of project progress at any time during the duration of the contract. County will allow a minimum of 72 hours of notice of a pending onsite inspection of project materials. Materials to be inspected may include, but are not limited to, project progress reports, logs from mission flights concerning AGPS, IMU, and data acquisition, logs from image processing, rectification, etc., procedure manuals, and QA/QC pr
ocedures manual.

10. CHANGES

All changes and claims for extra cost shall be in writing. The parties have right to make changes by written change order, with contract price and the time for completion being adjusted accordingly; and with the mutual acceptance by both parties

11. COMPENSATION:

COUNTY agrees to pay Offeror as compensation for Work and service provided fees in the amount agreed on, payable in installments for work confirmed as accepted and meeting the standard of quality to which agreed no later than thirty days after receipt of Invoice by the County.

12. COMPLETE DOCUMENTS:

Plans, Specifications, General Conditions, Special Conditions, Requirements and all Supplementary Documents, will be essential parts of agreed on Contract and requirements occurring in one are as binding as though occurring in all.

13. CONTRACT ADMINISTRATION:

The Contracting Officer shall have the authority to act on the behalf of the County to make binding decisions with respect to this agreement. Questions or problems arising after award of this contract shall be directed to the Director of Procurement, 2020 Hampton Street, Suite 3064, Columbia, South Carolina 29204.

14. COUNTY FURNISHED DATA

All data and materials, negatives, diapositives, models, photographs, maps, plans, specifications, drawings, or other County furnished property shall remain the exclusive property of County. Offeror agrees by executing this agreement that such County property will be used for no purpose other than for work for County under this agreement. Offeror shall sign and deliver written itemized receipts for all such property and shall be responsible for its safekeeping. Upon conclusion of the work/services hereunder, all such property shall be returned to the County.

15. COUNTY'S RIGHTS OF OWNERSHIP:

Except for Offeror's proprietary software and materials, and the proprietary Operating System Software, all data, plans, drawings, images, materials, documentation (including electronic files or documents), and

applications generated and prepared by or exclusively for the County pursuant to any agreement shall belong to the County. Offeror shall not sell, give, loan nor in any other way provide such to another person or organization, nor otherwise utilize any commercially valuable data, images, or developments created specifically by or for the County under this agreement, without the written consent of the Contracting Officer. Any external requests to procure these data or materials must be forwarded to the County.

16. COVENANTS AGAINST CONTINGENT FEES:

The Offeror warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business. For breach or violation of this warranty, the County shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

17. DEFAULT

In case of default, the County reserves the right to purchase any or all items in open market, charging Offeror with any excessive costs. Should such charges be assessed, no subsequent Proposals of the defaulting Offeror shall be considered until the assessed charge has been satisfied.

18. DEFINITIONS:

a) Richland County Government hereinafter will be referred to as "County" or "County."

b) "Contracting Officer" shall be the person occupying the position of the Director of Procurement.

c) "Offeror" shall be the firm submitting a proposal or solicitation for the pending acquisition.

d) All references to days in this solicitation mean calendar days.

e) All references to "shall", "must", and "will" are to be interpreted as mandatory language.

f) Request for Proposals, Solicitations, and Proposal are procurement method selected for pending
acquisition and will be referred to as "RFP", "RFB" or "RFP".

19. DISCREPANCIES AND OMISSIONS

In case of discrepancies in the Plans, calculated dimensions shall govern. Any omissions from the Specifications as to items of equipment and material or quantities therefore, the Plan shall govern. It shall be the responsibility of the Vendor to call to the attention of the Engineer obvious omissions of such magnitude as to affect the strength, adequacy, function, operation, completeness, or cost of any part of the work in ample time for amendment by Addendum prior to the opening date.

20. DISCUSSIONS:

Offeror shall not attempt to negotiate with the using department or other parties, and shall not discuss any aspects of the procurement without prior written approval of the Director of Procurement.

21. DISPUTE RESOLUTION

The parties agree utilize the "escalation clause" by elevating the dispute upward in the County and utilizing the requirements established by the Richland County Code of Ordinances.

22. DOCUMENTATION AND PROJECT COMPLETION:

Upon completion of the project, Offeror shall furnish, at no extra charge all closeout documentation including:

Signed project completion notice approved, in writing, by County's Contracting Officer and Contracting Officer's Representative;
Warranties and/or guarantees,
Project-related training materials and/or training plan;
Any licensing;
Contracted or plan for tech support, when appropriate;
All required deliverables

The County, Contracting Officer and the Contracting Officer's Representative will recognize each project as complete only upon written confirmation.

23. DRUG FREE WORKPLACE ACT:

The Offeror and the County agrees to comply with the requirements set forth in Title 44, Code of laws of South Carolina, 1976, Chapter 107, and shall apply to all procurement actions involving an award for FIFTY THOUSAND dollars, ($50,000.00) or more. The Offeror is required to execute a statement certifying that they understand and are in full compliance with the Drug Free Workplace Act. Failure to comply with this requirement shall result in termination of this agreement.

24. EXAMINATION OF RECORDS:

The Administrator of Richland County or his duly authorized representative(s), and/or duly authorized representative from the office of the Internal Auditor shall until three (3) years after final payment under this contract, have access to and the right to papers and other records involving transactions related to this contract.

25. EQUAL EMPLOYMENT OPPORTUNITY

Offeror agrees not to discriminate against any employee or applicant on the basis of age, race, color, religion, sex, or national origin; and to take affirmative action to employ and treat employees without regard to such factors. Offeror will provide information and submit reports on employment as County requests.

26. FAILURE TO SUBMIT SOLICITATION

Recipients of this solicitation not responding with a solicitation should not return this solicitation, unless it is specified otherwise. Instead, they should advise the issuing office by letter or a postcard whether they want to receive future consideration for similar requirements. If a recipient does not submit a solicitation or fails to respond by submitting a "no solicitation" for three (3) consecutive solicitations for the same commodity, they shall be removed from the applicable Vendor list.

27. FORCE MAJEURE:

The Offeror shall not be liable for any excess costs if the failure to perform the contract arises out of cause beyond the control and without the fault or negligence of the Offeror. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In every case the failure to perform must be beyond the control of both the Offeror and Subcontractor and without fault or negligence of neither of them. The Offeror shall not be liable for any excess costs for failure

to perform, unless supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Offeror to meet the required delivery schedule.

28. GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA:

Contractor/Vendor use of Richland County geographic information systems (GIS) data:

Prior to execution of contract, vendor must identify any and all existing Richland County's GIS data to be used in work identified within the project scope. Available data are listed on RichlandMaps.com ("Data" section). Justification of project need for GIS data must be identified on departmental form *GIS-0285 RC Contractor/Vendor GIS Data Request*. Delivery of requested GIS data will be arranged by the IT/GIS department without licensing fee to the contracted Contractor/vendor. Contractor/Vendor and any subcontractors must agree to and sign standard County GIS Data License Agreement (*GIS-0260 GIS Data License Agreement*). Per County Ordinance Section 2-261(D)(3), fee waiver requests must have written approval of County Administrator prior to execution of contract.

29. GOVERNING LAWS/DISPUTES

Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement that is not disposed of by agreement between Offeror and the County shall be decided by a court of competent jurisdiction of the County of Richland in the State of South Carolina, in accordance with the laws of South Carolina

30. GRATUITIES

County prohibits its employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonable be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Offeror or its employees shall not, under circumstances which might reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of County.

31. GUARANTEE:

The Offeror shall guarantee all workmanship and materials utilized in and for this contract being furnished for a period of not less than the contract term after the final inspection and acceptance of the deliverables. When defects of faulty material is discovered during the guaranteed period, the Offeror shall, immediately, upon notification by the County, proceed at own expense, to repair or replace the same, together with any damage to all the finished deliverables that may have been damaged as a result of omission and/or workmanship.

32. IMPROPER INFLUENCE:

The Contracting officer is the person occupying the position of the Director of Procurement. He is the only authorized "Agent" of the Country, and he is responsible for all contractual affairs of the contract to include service delivery. The Contracting Officer shall appoint, in writing, a technical representative to help him monitor performance. This individual shall be a county employee and hereinafter referred to as the Contracting Officer Representative (COR). The Offeror must use this chain of communications at all times on all aspects of this contractual relationship.

Soliciting of special interest groups or appointed and elected officials with the intent to influence contract awards or to overturn decisions of the Contracting Officer is hereby prohibited. Violation of this provision may result in suspension or debarment. Aggrieved Offerors are encouraged to use the County policy on any matter related to this contract.

33. INDEMNIFICATION:

Offeror shall indemnify, defend and hold harmless the County, its employees, and directors, each from and against all loss, damage, claims, and actions, and all expenses incidental to such claims or actions, including but not limited to liability as a result of injury to or death of any person, based upon or arising out of damage to property or injuries to persons or other tortuous acts caused or contributed to by the Offeror or anyone acting under its direction or control or in its behalf in the course of its performance under this agreement, and directly or indirectly caused, in whole or in part, by acts or omissions, negligence or otherwise, of Offeror or a Subcontractor or an agent of the Offeror or an employee of anyone of them, regardless of the negligence of the County or its employees, be it active or passive, except where such loss, cost, damage, claim, expense, or liability arises from the sole negligence or willful misconduct. Upon request of the County, Offeror shall, at no cost or expense to the County, defend any suit asserting a claim for any loss, damage or liability specified above, and Offeror shall pay any cost and attorneys' fees that may be incurred by the County in connection with any such claim or suit or in enforcing the indemnity granted above.

34. INSURANCE:

Offeror shall be accountable for any damages resulting from his/her activities. Offeror shall pay for all such damage. Prior to commencing work hereunder, Offeror, at their own expense, shall obtain and maintain, throughout the duration of this agreement, all such insurance as required by the State of South Carolina Statute, and minimally the below listed coverage's. Such insurance shall be issued by a company or companies authorized to do business in the State of South Carolina, Richland County, and any City in Richland County where any of the work is performed and must have a Best Rating of A-, VII or higher. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the County, but regardless of such acceptance, it shall be the responsibility of Offeror to maintain adequate insurance coverage at all times. Failure of Offeror to maintain insurance coverage shall not relieve Offeror of their contractual obligation or responsibility hereunder. The information described herein sets forth-minimum coverages and limits and is not to be construed in anyway as a limitation of liability on Offeror.

Offeror shall obtain and maintain such Public Liability and Property Damage Insurance as shall protect Offeror, their Subcontractors, and the County from claims for damages for personal injury, including accidental death, as well as for claims for property damage which might arise from operations under this agreement, whether such operations be by Offeror, or its Subcontractors, or by any one directly or indirectly employed by them. The County shall be named as a **Certificate Holder** and as **Additional Insured** (e.g., trustees, officers, employees), against whom Offeror waives all rights of subrogation.

The Offeror must "flow-down" these provisions to its Subcontractors or insure its Subcontractors under its own policies. The Offeror shall furnish County with certified copies of certificates of insurance. County shall have the right to approve the carriers.

The Offeror's contractual liability insurance need not cover bodily injury or property damage resulting from the sole negligence of the County.

Workers Compensation Insurance including Statutory Workers' Compensation Amounts as then required under South Carolina law for Benefits, and Employer's Liability. The Policy shall include an "all states" endorsement.

Comprehensive Automobile Liability Insurance to protect Offeror against claims for damages from:

*Bodily injury, including wrongful death; and

*Property damage, which may arise from the operations of any owned, hired, or non-owned automobiles used by or for him/her in any capacity in connection with fulfillment of obligations under this contract. Minimum acceptable limits shall be: Bodily Injury $1,000,000 per person and $2,000,000 per occurrence; and Property Damage of at least $3,000,000 Combined Single Limit.

Coverage shall include: Premises and Operations, Products and Completed Operations Broad Form Property Damage Endorsement, Blanket Contract Liability and Protective Liability protecting Contractor against claims arising out of operations by its subcontractors. Property damage deductibles shall not exceed $500 for any one claim.

-The County's Protective Liability insurance which shall protect the County against any and all claims and liabilities for injury or death of persons, or damage to property caused in whole or in part by the negligent acts of CONTRACTOR, his agents, employees, or subcontractors, in connection with or resulting from the operations performed under the terms of this agreement.

The Certificate holder shall be *Richland County Government, South Carolina, Attn: Procurement and Contracting, Suite 3064, Columbia, South Carolina 29204.* The Certificate should state:

(1) Richland County, South Carolina is named as additional insured with the respects to liability arising out of any work performed by or on behalf of the Offeror; and

(2) "This insurance is primary to other insurance or self-insurance, whether such other coverage is stated as primary, excess, contingent or otherwise." Insurance shall provide that it may not be canceled or changed without thirty - (30) calendar days' written notice to County.

30 days cancellation, non-renewal, material change or coverage reduction notice is required. The words" endeavor to" and", but failure to mail such notice shall impose no obligation or liability or any kind upon the company its agents or representatives" should

be eliminated from the Notice of Cancellation provision on standard ACORD certificates

The Certificate should state, "The insurance evidenced hereon applies to work performed by or on behalf of ***Name of the Vendor or Contractor.*** ("the Offeror") for Richland County South Carolina.

35. LICENSES, PERMITS AND CERTIFICATES

The Offeror at their own expense shall secure all licenses, permits, variances and certificates required for and in connection with any and all parts of the work to be performed under the provisions of this agreement.

36. MATERIALS REQUIRED:

Materials required must be in conformity with the specifications and shall be subject to inspection and approval after delivery, and shall comply in quality and type of material and method of manufacturer with all applicable local and state laws pertaining hereto. The right is reserved to reject and return at the risk and expense of the Contractor such portion of any shipment, which may be defective or fail to comply with specifications, and without validating the remainder of the order.

37. NON-APPROPRIATIONS

Any contract entered into by the County shall be subject to cancellation without damages or further obligations when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

38. NOTICES

Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand and signed for or sent by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to any other person at any other address as may be designated in writing by the parties:

- notice may be by means other than those listed, other than oral;

- parties must acknowledge the receipt of any notice delivered in person;
- Date of notice shall be the date of delivery or date signed for on certified registered mail by the U.S. mail; and
- either party may change its address by written notice within ten calendar days to the other.

County:

Richland County Coroner's Office
1931 Pineview Drive
Columbia, SC 29209
Attn: Cathy Rawls

With a carbon copy to:

Richland County Office of Procurement
Attn: Rodolfo A. Callwood, Director
2020 Hampton Street, Suite 3064
Columbia, SC 29204

39. OFFEROR'S PROPOSAL:

Offeror must be regularly established in the business called for, and who by executing this agreement certifies that they are financially capable and responsible; is reliable and has the ability and experience, to include, the facility and personnel directly employed or supervised by them to complete this contract. Offeror certifies that they are able to render prompt and satisfactory service in the volume called for under this contract.

County may make such investigation, as he deems necessary to determine the ability of the Offeror to perform the work. The Offeror shall furnish to the County all such information and data as the County may request, including, if requested, a detailed list of the equipment which the Offeror proposes to use, and a detailed description of the method and program of the work he proposes to follow. The County reserves the right to terminate, if anytime throughout the term of this agreement the evidence submitted by, or investigation of, the Offeror fails to meet all requirements as stipulated or satisfy the County that the Offeror is properly qualified to carry out the obligations of the contract and to complete the work

40. OFFEROR'S RESPONSIBILTY

The Offeror certifies that he/she has fully acquaint himself/herself with conditions relating to the scope, and restrictions attending the execution of the work under the conditions of this agreement. The failure or omission of a Offeror to acquaint himself/herself with existing conditions shall in no way relieve the Offeror of any obligation with respect to this contract.

41. OR APPROVED EQUAL" CLAUSE:

Certain processes, type of equipment or kinds of material are described in the specifications and/or on the drawings by means of trade names and catalog numbers. In each instance where this occurs, it is understood and inferred that such description is followed by the word "or approved equal." Such method of description is intended merely as a means of establishing a standard of comparability. However, the Owner reserves the right to select the items, which, in the judgment of the Owner, are best suited to the needs of the Owner based on price, quality, service, availability and other relative factors. Vendors must indicate brand names, model, model numbers, size, type, weight, color, etc., of the item solicitation. If not exactly the same as the item specified, vendor's stock number or catalog number is not sufficient to meet this requirement. If any Vendor desires to furnish an item different from the specifications, he/she shall submit, along with the solicitation, information, data, pictures, designs, cuts, etc., of the material he/she plans to furnish so as to enable the

Owner to compare the material specified; and, such material shall be given due consideration. The Owner reserves the right to insist upon and receive items as specified, if the submitted items do not meet the Owner's standards for acceptance.

42. ORDER OF PRECEDENCE

In the event of inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: ***(a) SPECIAL SOLICITATION CONDITIONS, (b) SPECIFICATIONS, GENERAL SOLICITATION CONDITIONS AND (d) SOLICITATION SCHEDULE***

43. OTHER WORK

The County shall have the right to perform or have performed similar or such other work, as it may desire while Offeror is performing work. The Offeror shall perform its work in a manner that enables completion of other work without hindrance or interference (or shall properly connect and coordinate its work with that of others when required). Any claim of interference due to other work must be made to County within ten (10) calendar days of its occurrence or it is deemed waived.

44. PATENT:

The Offeror shall hold the County, its officers, employees, and agents, harmless from liability of any nature or kind whatsoever, on account of use by the publisher or authorized agent or manufacturer, and any copyrighted/un-copyrighted composition, secret process, article or application furnished or used under this solicitation.

45. PACKAGING AND DELIVERY:

All shipments shall be FOB to the County's location, as cited on the purchase order(s) and/or contract(s). Purchase order and/or contract number shall be clearly displayed on the shipping container. Furthermore, the parties agree hereto, that delivery by the Offeror to the common carrier does not constitute delivery to the County. Any claims for loss or damage, shall be between the Offeror and the carriers.

46. PAYMENT

Offeror will invoice County each month for services rendered during previous month. Under provisions of the Prompt Payment Act payment terms are "Net 30 days" the County will make every attempt to satisfy the payment request within thirty- (30) calendar days as of receipt of invoice by the Contracting Officer for work confirmed as accepted and meeting the standard of quality to which agreed. The County may pay interest to Offeror at a rate equal to **0.001%** on sums, which the County fails to remit to the Offeror any undisputed portions within thirty - (30) days from date of Contracting Officer receipt of a valid and correct invoice on any unpaid amount for each month or fraction thereof, that such payment is delinquent due no fault of Offeror. Invoices shall be submitted periodically for the amount of work carried out and approved as accepted in that period. Invoices submitted for payment for services provided under this contract, shall contain as a minimum:

- Name of business concern;
- Contract number;
- Project number;
- Complete description of services;
- Cost/price of services actually delivered;
- Name; title; telephone number and complete mailing address of responsible official to whom payment is to be sent.

- shall be sent to the COR for the project at least four weeks prior to desired payment date.
- with the submission of any application for payment, Offeror must submit a schedule of values for the various parts of the work accomplished.
- Each month (or at such regular intervals as the parties may decide), County shall pay Offeror 90 percent of the value of the work
- Balance shall be paid upon completion of all work and County's final acceptance of all work.
- Option: After filing a Notice of Completion, County shall pay Offeror a sum sufficient to increase the total payments to 90 percent of the contract price (Completion Payment). No later than sixty days after filing of the Notice of Completion and upon receipt of a full and complete release of all liens or lien bonds, County shall pay the unpaid balance to Offeror (Final Payment).
- Payment does not constitute acceptance of defective or nonconforming work or work with errors or omissions or otherwise relieve Offeror of any obligation under the contract.
- The County may disputes the value and quality of the work in question
- The County shall have the right to withhold payments from the Offeror due to actual or prospective loss due to defective or nonconforming work;
- damage or cost for which Offeror is liable;
- amounts representing Offeror's inability to complete the work or breach of any terms or conditions of the contract,

Invoices submitted periodically for the amount of work carried out and approved as accepted in that period shall be sent to:

Richland County Coroner's Office
1931 Pineview Drive
Columbia, SC 29209
Attn: Cathy Rawls

47. PERMITS, LAWS, AND REGULATIONS

The Offeror will comply with "all applicable laws and regulations" and agrees to at a minimum comply with:

- The Fair Labor Standards Act;
- Statutes regarding Proposal to do business;
- Statutes prohibiting employment discrimination;
- OSHA (e.g., all materials and services furnished meet or exceed OSHA safety standards);
- EPA regulations;
- Governmental price regulations/orders (as required by law, Offeror will deliver proof that materials sold or installed and services rendered comply with price regulations) if a federal grant project.

The Offeror shall obtain all permits or licenses required in connection with the work,

give all notices, pay all fees, etc., to ensure compliance with law (unless County elects to procure and pay for same), and shall deliver all proof of compliance to County upon the County's final acceptance of the work.

- Offeror shall report to County any aspect of noncompliance of specifications, drawings, and other contract documents with the law.

- If Offeror cannot procure necessary permits, County may cancel the contract without liability or may procure the permits and deduct the cost thereof from the contract price (only at the discretion of the Director of Procurement/Contracting Officer.

48. PRIME CONTRACTOR, ASSIGNMENT AND SUBCONTRACTING

The Offeror shall be the "Prime Contractor", and the agreement shall be the primary agreement. All other agreements between the County and Offeror shall be subordinate to the primary agreement in the event of conflict between the primary agreement and any other agreements unless, otherwise specifically stated herein, or by mutually executed Amendment hereto. The County shall consider the Offeror to be sole point of contact with regard to all contractual matters of this project.

Offeror hereto without the express written consent of the Contracting Officer shall not assign obligation under this agreement to another party.

If any part of the work covered by the agreement is to be subcontracted, the Offeror shall submit the Proposal of the subcontracting organization and the proposed contractual arrangements to the County for approval prior to execution of the contract. The approved Offeror-Subcontractor contractual agreement, excluding financial information, shall be provided to the County. Approval by the County of such subcontract shall not in any way relieve Offeror of any of their obligations, responsibilities, or liabilities, under this agreement, regardless of the nature and conditions of such Subcontractor services and actions on Offeror's behalf.

49. PROHIBITION OF GRATUITIES:

Amended Section 8-13-720 of the 1976 Code of Laws of South Carolina states:

"WHOEVER gives or offers to any public official or public employee any compensation including a promise of future employment to influence his action, vote, opinion or judgment as a public official or public employee or such public official solicits or accepts such compensation to influence his action, vote, opinion, or judgment shall be subject to the punishment as provided by Section 16-9-210 and Section 16-9-220. The provisions of this section shall not apply to political contributions unless such contributions are conditioned upon the performance of specific actions of the person accepting such contribution nor shall they prohibit a parent, grandparent or relative from making a gift to a child, grandchild or other close relative for love and affection except as hereinafter provided."

50. PROJECT ORGANIZATION

It is expected that Offeror will be dealing with various members of the County's Staff during the course of this agreement. To establish a clear line of communications, a Contracting Officer Representative (COR), acting as Project Manager, shall be appointed to oversee and coordinate all aspects of the work. He/she shall be the focal point of contact with the Offeror.

51. PROPRIETARY INFORMATION:

Offeror(s) shall visibly mark as "Confidential" each part of their proposals which they consider proprietary information that could be exempt from disclosure under Section 30-4-40, Code of Laws of South Carolina, 1976 (1986 Cum. Supp.) (Freedom of Information Act). If any part is designated as "Confidential," there must be attached to that part an explanation of how the information fits within one or more categories listed in Section 30-4-40. The County reserves the right to determine whether this may be brought against the County or its agent for its determination in this regard.

52. PUBLICITY RELEASES:

Offeror agrees not to refer to award of this contract in commercial advertising in such manner as to state to imply that the products or services provided are endorsed or preferred by the County.

53. PROPOSAL:

a) Solicitations shall be considered only from Offerors who are regularly established in the business called for, and who in the judgment of the Owner are financially responsible and able to show evidence of their reliability, ability, experience, facilities and personnel directly employed or supervised by them, to render prompt and satisfactory service in the volume called for under this contract.

b) The Owner may make such investigations as he deems necessary to determine the ability of the Offeror to perform the work, and the Offeror shall furnish to the Owner all such information and data for his purpose as the Owner may request, including, if requested, a detailed list of the equipment which the Offeror proposes to use, and a detailed description of the method and program of the work he proposes to follow. The Owner reserves the right to reject any solicitation if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Owner that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional solicitations will not be accepted.

54. QUALITY OF PRODUCT:

Unless otherwise indicated in this solicitation, it is understood and agreed that any item offered or shipped shall be new and in first class condition, that all containers shall be new and suitable for storage and/or shipment, and that process include standard commercial packaging. For "information technology" procurements, if items are other than new (i.e. remanufactured or refurbished) are being proposed, the Offeror must obtain written permission to offer such items at least five (5) days in advance of RFB receipt date from the Director of Procurement.

55. REJECTION

(a) Any Submittal that fails to conform to the essential requirements of the Request for Proposal (RFP) shall be rejected.

(b) Any Submittal that does not conform to the applicable *requirements and specifications* shall be rejected unless the RFP authorized the submission of alternate Submittals and the Submittal offered as alternates meet the requirements specified in the invitation.

(c) Any Submittal that fails to conform to the delivery schedule or permissible alternates stated in the RFP shall be rejected.

(d) A Submittal shall be rejected when the Vendor imposes conditions that would modify requirements of the invitation or limit the Vendor's liability to the County, since to allow the Vendor to impose such conditions would be prejudicial to other Vendor's. For example, Submittals shall be rejected in which the Vendor-
(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the County cannot be determined;
(2) Fails to state a price and indicates that price shall be "price in effect at time of delivery;"
States a price but qualifies it as being subject to "price in effect at time of delivery;"
Requires that the County is to determine that the Vendor's product meets applicable County requirements and specifications; or
Limits rights of the County under any contract clause.

A Vendor may be requested to delete objectionable conditions from a Submittal provided the conditions do not go to the substance, as distinguished from the form of the Submittal, or work an injustice on other Vendor's. A condition goes to the substance of a Submittal where it affects price, quantity, quality, or delivery of the items offered.

Any Submittal may be rejected if the Contracting Officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the Submittal, but the prices for individual line items as well.

Any Submittal may be rejected if the prices for any line items or sub-line items are materially unbalanced.

Submittals received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the Submittal opening date shall be rejected unless a compelling reason determination is made.

The Contracting Officer must reject Submittals received from concerns determined to be non-responsible.

When a Submittal guarantee is required and a Vendor fails to furnish the guarantee in accordance with the requirements of the Submittals, the Submittal shall be rejected.

The originals of all rejected Submittals, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

After submitting a Submittal, if all of a Vendor's assets or that part related to the Submittal are transferred during the period between the Submittal opening and the award, the transferee may not be able to take over the Submittal. Accordingly, the Contracting Officer shall reject the Submittal unless merger, operation of law effects the transfer or other means not barred by law.

56. SECURITY – COUNTY'S RULES:

In consideration of the security responsibility of the County, the Contracting Officer or designee reserves the right to observe Contractor's/vendor's operations and inspect the related areas. Moreover, Contractor/Vendor agrees to asolicitatione by any and all of the County's rules and regulations, procedures and General Orders, as well as any directives by the County Administrator, Contracting Officer or designee regarding Offerors performance when operating on or in County's property under the terms and conditions of this agreement. Contractor/Vendor agrees to provide the names of employees assigned to work in and on the County's property and that the County may make criminal background record checks, and County may require Contractor/Vendor to provide criminal background record checks. Contractor/Vendor is also required to provide a certified medical certificate stating that each proposed employee is free from communicable diseases. The Contracting Officer or designee reserves the right to require all of Contractor's/Vendor's employees, Contractors/Vendors, and sub-contractors accessing County property to have the company's identification with photograph, name, and position of the employee at the Contractor's/Vendor's sole expense. The Contractor/Vendor must issue photo identification cards if requested by County and require it to be worn by it's employees whenever they are present on or in the County's property. Persons not previously screened for admittance shall not be admitted on or in the County's property without proper notification and authorization from the Contracting Officer or designee.

The County reserves the right, upon showing probable cause to search the employees of the Contractor/Vendor while in or on County's property.

Contractor/Vendor is responsible for identifying fire escape routes in County facilities.

Contractor's/Vendor's employees shall comply with the County's written policies and procedures relating to County's security. Contractor's/Vendor's employees shall also comply with all of the County's rules concerning the use of the working areas.

Contractor's/Vendor's representative shall report any unusual occurrences immediately to the Contracting Officer or designee. It shall be the responsibility of Contractor/Vendor to secure any assigned areas before exiting the County's facilities, unless notified in writing by the Contracting Officer or designee to do otherwise.

57. SPECIFICATIONS:

Any deviation from the specifications indicated herein must be clearly pointed out, otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful Vendor shall be held responsible therefore. Deviations must be explained in detail on separate sheets and be attached to the submitted solicitation.

58. SEVERABILITY:

If any term of provision of any contract resulting from this solicitation shall be found to be illegal or enforceable, not withstanding any such legality or enforceability, the remained of said contract shall remain in full force and effect, and such term or provision shall be deemed to be deleted and severable there from.

59. STATEMENT OF COMPLIANCES AND ASSURANCES:

Offeror(s) to be eligible for consideration shall be required to certify in writing, that the firm or agency represented in the proposal submitted, complies with all applicable federal and state laws/regulations and County ordinances.

a. Offeror(s), shall be required to provide with each proposal, a written assurance of noncollusion and understanding and acceptance of any and all provisions stated in this contract.

b. A statement of Compliance and Assurance, along with other statements and certification shall be provided to Offerors and be part of each solicitation.

60. SERVICE DATA MANUALS:

The contractor agrees to furnish two (2) copies of a manual, handbook, or brochure containing operating and maintenance instructions (to include pictures, illustrations, and schematics and complete repair/test guides as necessary). When applicable, it shall include electrical data and connection diagrams for all utilities. The instruments shall also contain a complete list of all replaceable parts, showing part numbers, nomenclature and quantity required.

61. SOUTH CAROLINA LAW CLAUSE:

The Offeror must comply with the laws of South Carolina, which require such person or entity to be authorized and/or licensed to do business in this state. Not withstanding the fact, that applicable statutes may be authorized and/or licensed to do business in this state, by signing this agreement, the Offeror agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina, as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability of taxes, licenses or fees levied by the State/County.

62. SUBCONTRACTS:

Offeror shall not subcontract work hereunder without the prior written consent of the County, and any such subcontract without consent of the County shall be null and void. If Offeror proposes to subcontract any of the work hereunder, it shall submit to the County the name of each proposed Subcontractor(s), with the proposed scope of work, which its Subcontractor is to undertake. The County shall have the right to reject any Subcontractor, which it considers unable or unsuitable to satisfactorily perform. Offeror shall not enter into any cost reimbursable contracts with any proposed Subcontractor without County's prior written authorization.

Notwithstanding any consent by the County to a proposed subcontract, Offeror shall remain responsible for all subcontracted work and services. Offeror agrees it shall be as fully responsible to the County for the acts and omission of its Subcontractors, their agents, representatives, and persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Offeror.

Neither this provision, this contract, the County's authorization of Offeror's agreement with Subcontractor, County's inspection of a Subcontractor's facilities, equipment or work, or any other action taken by the County

in relation to a Subcontractor shall create any contractual relationship between any Subcontractor and the County. Offeror shall include in each of its subcontracts a provision embodying the substance of this article and shall exhibit a copy thereof to the County before commencement of any work by a Subcontractor. Offeror's violation of this provision shall be grounds for the County's termination of this contract for default, without notice or opportunity for cure.

In addition, Offeror indemnifies and holds the County harmless from and against any claims (threatened, alleged, or actual) made by any Subcontractor (of any tier) for compensation, damages, or otherwise, including any cost incurred by the County to investigate, defend, or settle any such claim.

63. TERMINATION:

County shall have the right to terminate this Agreement in whole or in part for its convenience at any time during the course of performance by giving thirty- (30) days written or telegraphic notice. Upon receipt of any termination notice, Offeror shall immediately discontinue services on the date and to the extent specified in the notice. Offeror shall be paid the actual written approved costs incurred during the performance hereunder to the time specified in said notice, not previously reimbursed by County to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Offeror prior to and in connection with discontinuing the work hereunder. In no event shall such costs include unabsorbed overhead or anticipatory profit, nor shall such costs exceed the total price of any individual supplement or Project Release.

County may also cancel or terminate for default this Agreement in whole or in part by thirty (30) days written, electronic or telegraphic notice to Offeror:

if Offeror shall become insolvent or make a general assignment for the benefit of creditors; or

if a petition under the Bankruptcy Act is filed by Offeror; or

if Offeror becomes involved in some legal proceedings that in the opinion of County interfere with the diligent, efficient performance and satisfactory completion of the services; or

if Offeror fails to make delivery of the supplies or to perform the services within the time specified or any County-authorized extension thereof.

64. TIME OF COMPLETION:

Date of delivery shall be a consideration factor in the awarding process. The Vendor shall include with this solicitation delivery dates for each item as requested, and shall furnish all items in accordance with the solicitation solicitation unless an extension was granted by the Director of Procurement, in writing.

65. WAIVER:

The County reserves the right to waive any provisions of the General or Special Conditions, or specification deviations.

Section - C

Statement of Assurance, Compliance & Noncollusion

Drug Free Workplace

No Response Form

Body Removal Services
RC-025-P-1011
Richland County, South Carolina
Statement of Assurance, Compliance and Noncollusion

State of _____)

County of _____)

_____, being first duly sworn, deposes and says that:

(1) The undersigned, as Offeror, certifies that every provision of this Proposal have been read and understood.

(2) The Offeror hereby provides assurance that the firm represented in this Proposal:

(a) Shall comply with all requirements, stipulations, terms and conditions as stated in the Proposal/Proposal document; and

(b) Currently complies with all Federal, State, and local laws and regulations regarding employment practices, equal opportunities, industry and safety standards, performance and any other requirements as may be relevant to the requirements of this solicitation; did not participate in the development or drafting specifications, requirements, statement of work, etc. relating to this solicitation; and

(c) Is not guilty of collusion with other Offerors possibly interested in this Proposal in arriving at or determining prices and conditions to be submitted; and

(d) No person associated with Offeror's firm is an employee of Richland County. Should Offeror, or Offeror's firm have any currently existing agreements with the County, Offeror must affirm that said contractual arrangements do not constitute a conflict of interest in this solicitation; and

(e) That such agent as indicated below, is officially authorized to represent the firm in whose name the Proposal is submitted.

Name of Firm:

Name of Agent:

Signature & Title:

Address:

City, State & Zip:

Telephone:

Subscribed and sworn to me this _____ day of _____, 20___.

_____ My commission expires:
(Title)

NOTARY SEAL:

Body Removal Services
RC-025-P-1011
Drug Free Workplace Act Statement

The undersigned hereby certifies that he/she understands and is in full compliance with the requirements set forth in Title 44, Code of Laws of South Carolina, 1976, Chapter 107, Paragraph 47, as set forth in item 41 of the general conditions of this solicitation.

Name of Company: _____

Agent of Company: _____

Signature of Agent: _____

Date: _____

Subscribed and sworn to me this _____ day of _____, 20___.

_____ My commission expires:
(Title)

NOTARY SEAL:

Body Removal Services
RC-025-P-1011
No Proposal Response

If a "No Proposal" is to be submitted, please check the appropriate box(es) below and return this form, prior to the Proposal due date, to:

Richland County Office of Procurement
2020 Hampton St, Suite 3064
Columbia, SC 29204

Cannot respond to this solicitation due to the following reason:

- ☐ Do not sell or provide the requested goods or services
- ☐ Cannot comply with specifications/statement of work
- ☐ Specifications/statement of work is unclear
- ☐ Cannot meet delivery or period of performance
- ☐ Delivery/period of performance is unreasonable
- ☐ Cannot meet the bond requirements
- ☐ Not enough time to prepare Proposal
- ☐ Plan to subcontract
- ☐ Job is too large
- ☐ Job is too small
- ☐ Other(please specify) _____

_____

_____

Company: _____

Phone/Fax: _____

Company Rep.: _____

Signature: _____

Section - D

General Information

General Information
Body Removal Services
RC-025-P-1011

Purpose of the Request for Proposal (RFP)

Richland County Government is seeking proposals from qualified vendor's to provide Body Removal Services for the Richland County Coroner's Office.

This RFP has been compiled for providing information, requirements, guidelines, specifications, and other data that can be used by vendors who wish to submit a Proposal for consideration.

It is the intention of this competitive procurement that other governmental and non-profit agencies operating within the State of South Carolina be permitted to procure the same services from the awarded Vendor, under the same terms and conditions set forth under the final negotiated contract between Vendor and Richland County. It is required that all such procurements reference the contract number that shall be assigned by Richland County at the time of contract award.

About Richland County

The County is located in the center of South Carolina and covers a total area of 756 square miles. The County surrounds the state capital city of Columbia, which is also the County seat. Established in 1785, the County has grown to become home to just over 334,000 residents, and represents a thriving business, industrial, governmental, and educational center. The County employs approximately 1765 people and operates a general fund budget in excess of $100 million dollars.

Ranked consistently as one of the fastest growing areas in the State, Richland County and Columbia possess a virtually recession-proof economy. This is due to the presence of the seats of State and County government, the University of South Carolina, 7 additional institutions of higher education, and Fort Jackson (the nation's largest and most active initial entry Army training base). Other positive attributes of the area include the new 142,500 sq. ft. Columbia Metropolitan Convention Center, Riverbanks Zoo & Botanical Gardens (twice awarded the Governor's Cup for the most outstanding tourist attraction in South Carolina), the Richland County Public Library (ranked 8th national among urban libraries serving a population of 250,000 – 499,999) and the Colonial Center (the largest arena in the state of South Carolina at 18,000 seats and the 10th largest on campus basketball facility in the nation.

Approximately 65% of the land within the County is categorized as forest, 15% as urban, and the remaining 20% falls into the wetlands agriculture water, range land and barren categories. The average maximum temperature is 75.4 degrees Fahrenheit, the average minimum temperature is 51.4 degrees Fahrenheit, and the average annual precipitation is 48.5 inches.

The County is governed by an 11-member council, which in turn appoints an Administrator to handle daily operations and to provide professional expertise in government management. Under state law, the County is the primary governmental unit for the administration of law enforcement, justice, health, education, taxation, social service, library service, agricultural service, and the maintenance of public records.

Section – E

Special Conditions

Body Removal Services
RC-025-P-1011
Special Conditions

1. Proposal shall be received and the names of the submitting parties shall be recorded at the place indicated in Section A and in the advertisement of this solicitation.

2. Proposal shall be made in the official name of the firm or individual under which business is conducted (showing official business address) and shall be signed in ink by a person duly authorized to legally bind the person, partnership, company or corporation submitting the Proposal. In addition, the Federal Identification Number (FEIN) or in its absence, the Social Security Number of the individual issuing the invoices must be included.

3. Offeror is to include all applicable requested information.

4. Sealed Proposal clearly marked: ***"RC-025-P-1011 ; Body Removal Services"*** shall be submitted in a secured envelope/container. A decal must be affixed to the lower left hand corner of the envelope/container with the name and address of the sender, and shall be addressed to the ***Office of Procurement, 2020 Hampton Street, Suite 3064, Columbia, S.C. 29204.*** **(1) One original hard copy and (1) One CD are to be submitted for consideration**

5. Proposal shall be accepted until ***3:00 pm., Eastern Standard Time, Tuesday May 24, 2011, 2010.*** at 2020 Hampton Street, Suite 3064 3rd Floor.

6. In the event that a Proposal is unintentionally opened prior to the official time set for the opening, the employee opening such a Proposal shall immediately sign the envelope, state his position/title and deliver it to the Director of Procurement.

7. All prices and quotations shall be entered in ink or type written, and shall remain firm for not less than one hundred-twenty (120) calendar days from the date of Proposal submission. Mistakes may be crossed out and corrections inserted adjacent thereto, and shall be initialed in ink by the person signing the Proposal.

8. The County shall not accept responsibility for unidentified Proposal.

9. For additional information, please contact Christy Swofford at the address shown in Section A or at rcsolicitations@rcgov.us

10. The County shall not be liable for any costs associated with the preparation of responses to this solicitation; therefore, all costs shall be borne by the Offeror.

11. In case of non-appropriation of funds, the County may terminate the contract in whole or in part without further obligation to the Offeror.

12. It is the intent and purpose of Richland County that this solicitation permits competition. It shall be the Offeror's responsibility to advise the Director of Procurement in writing if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this solicitation to a single source. Such notification shall be submitted in writing, and must be received by the Office of Procurement at least five calendar (5) days prior to Proposal receipt date. A review of such notification shall be made.

13. Every effort has been made to ensure that all information needed is included in this document. If the Offeror finds that he/she cannot complete his/her response without additional information, he/she may submit written questions to the Office of Procurement at least five calendar (5) days prior to the Proposal receipt date. No further questions will be accepted after this date.

14. Proposal preparation must follow the directions below:

    a. All Proposal shall be complete and carefully worded, and must convey all of the information requested by the County.

    b. Proposal are to be prepared simply and in a manner designed to provide the County with a straightforward presentation of the Offeror's capability to satisfy the requirements of this RFP. The Offeror must, therefore, follow the RFP format, utilizing the same section titles and paragraphs.

    c. Proposal may include any additional comments over and above the specific information requested.

15. Proposal must be clearly marked ***"Confidential"*** for each part of the Proposal that is consider to be proprietary information that could be exempt from disclosure under Section 30-4-40, Code of Laws of South Carolina, 1976 (1986 Cum Supp.) (Freedom of Information Act). If any part is designated as ***"Confidential"***, there must be attached to that part an explanation of how this information fits within one or more categories listed in Section 30-4-40. The County reserves the right to determine whether this information should be exempt from disclosure.

16. Contractual engagement and designation shall remain in force for a period of one (1) year, equivalent to Three-hundred sixty five (365) calendar days, with the parties having the right to extend by mutual agreement, on a year-to-year basis not to exceed four (4) additional years. The document that forms the contract shall include this entire solicitation, all amendments and the successful offeror's proposal. Additional contracts for maintenance support may be entered into between the customer and Vendor at the completion of the warranty period

17. To maintain the integrity of the procurement process, all contacts and discussions shall be directed to the Director of Procurement prior to the solicitation due date. The Director of Procurement may waive this provision on a case-by-case basis, and such waiver shall be documented. Interested vendor's shall not contact the Richland County Coroner's Office directly with questions related to this solicitation.

    Verbal comments or discussions by county associated personnel relative to this solicitation shall not be binding!

18. **Insurance**

    Insurance shall be obtained and maintained as per the requirements outlined in the General Conditions – Item 34

19. Each Offeror shall fully acquaint themselves with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this solicitation. Failure to acquaint themselves with existing conditions shall in no way relieve the Offeror of any obligation with respect to this solicitation or contract.

20. By responding to this solicitation, it is understood that each Offeror shall comply with all applicable federal, state and local laws and shall meet all requirements imposed upon this service industry by regulatory agencies.

21. Richland County will award a contract to one vendor. The successful vendor may not subcontract the award without prior written consent from the Richland County Procurement Department

22. Richland County does not authorize automatic price increases. A request for a price increase must be submitted in writing sixty (60) days prior to the effective date to the Richland County Procurement Department. The request will be subject for negotiations and approval

23. For the purpose of contract administration, the Contracting Officer will be the Assistant Director of Procurement. A Contracting Officer's Representative (COR) will be appointed in writing, who will serve as the point of contact for the contract

24. **Evaluation & Award Criteria**

The award of the contract will be made to the Proposer providing the most responsive, responsible offer that provides the best overall value and a fair and reasonable cost and is most advantageous to the County. This award will take into consideration soundness and flexibility of proposal, functional capability, quality of performance and service, the time specified in the proposal for the performance of the contract, ability to provide support, overall cost, and Proposer's references and any other factors that may impact on the project. The County reserves the right to reject all proposals or accept such proposals, as appears in its own best interest, and to waive technicalities or irregularities of any kind in the proposal.

A review team duly appointed in writing will conduct a Proposal evaluation. Team members shall assign a rating to each Proposal submitted and establish a "short list" representing the top firms for further evaluation, at which time the County reserves the right to establish different evaluation criteria. The County reserves the right to request any one of the top ranking firms or all to appear for oral interviews and or provide electronic presentations in order to further evaluate qualifications.

The county will then negotiate with one or more offerors over any other terms, conditions, or other items, including cost, and then will publish intent to award.

If an agreement cannot be reached with the top qualifier the County will then negotiate in descending order.

After the approval of the qualified consultant by Richland County Council, a vendor contract will be executed for the services outlined.

25. **Evaluation Criteria**

The review team will take the following criteria, listed in relative order of importance, into consideration during evaluation. The maximum score is one hundred percent (100%).

A. Functionality & Suitability of Proposed Solution **0 – 40 Percent**

How well your company can meet the needs of the RC Coroner's Office as it is described within this solicitation

B. Performance History & Professional Background **0 - 30 Percent**

Provide a brief history of your company to include the number of years of experience and at least three (3) references of current customers to include the company/agency name, contact person and their contact information – phone number, fax number and email address for which similar services are being performed. Provide complete information on the Project Manager and Project Team to include all resumes, licenses and permits for each individual as it relates to body removal services

C. Location of Contractor **0 – 20 Percent**

Awarded contractor must be within a 50-mile radius of the Richland County Administration Building located at 2020 Hampton Street, Columbia SC 29204

D. Cost Proposal **0 – 10 Percent**

Provide a complete cost proposal that includes all areas of the Scope of Services

26. DETERMINATION OF RESPONSIBILITY

The following are the standards, and procedures for determining whether prospective contractors and subcontractors are responsible. These standards and procedures apply to all proposed contracts with any prospective contractor.

A. Policy

1. Contracts shall be awarded to, responsible prospective contractors only.
2. No award shall be made unless the Director of Procurement makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the Director of Procurement shall make a determination of non-responsibility
3. A contract will only be awarded to the lowest, responsive and responsible evaluated proposal. A prospective contractor must affirmatively demonstrate its responsiveness and responsibility, including, when necessary, the responsibility of its proposed subcontractors.

B. General standards

The contractor must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them;
2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
3. Have a satisfactory performance record;
4. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).
5. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them

C. General or Prime Contractor's Responsibility

To be determined responsible, a prospective contractor must:

1. *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources. Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor's compliance with limitations on subcontracting shall take into account the time period covered by the contract base period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.
2. *Satisfactory performance record.* A prospective contractor that is or recently (the last two years) has been terminated or deficient in contract performance shall be presumed to be non-responsible. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. The contractor must demonstrate satisfactory record of performance in

previous similar projects to include written verifiable references with original signatures and letterhead to include, the number of years and experience performing similar projects successfully.

3. Demonstrate adequate level of expertise, management/technical capability in area requested.
4. Demonstrate legal qualifications to conduct business in South Carolina.(i.e. license), certifications, professional credentials and a certified resume indicating qualification for this project.
5. Availability of Logistical Resources: Must demonstrate the ability to obtain required resources in form of a commitment letter or explicit arrangement that will be in existence incumbent on contract been awarded by having the necessary equipment or show purchase, lease, rent or otherwise acquire the needed equipment, personnel and other resources.
6. Demonstrate adequate financial resources to perform, by submitting your company's Annual Audited Certified Financial Statement or the latest Certified Financial Statement and any other method of proof of adequate financial resources acceptable to the contracting officer.
7. Have a satisfactory record of integrity and business ethics.
8. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

D. SUBCONTRACTOR RESPONSIBILITY

1. Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.
2. When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility. In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

E. PROCEDURES

1. Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards.
2. A. The contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting pre-award surveys when necessary to determine responsibility promptly after receipt of offers. Requests for pre-award information shall be limited to information concerning-

    - The proposal that best meets the requested requirements ; or
    - Those offerors in range for award.

    B. Pre-award surveys shall be managed and conducted by the contracting officer.

    - If the surveying activity is a contract administration office then:
        a. The contracting officer shall request information on prospective contractors' financial competence and credit needs; and
        b. The contracting officer shall obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting for use in administering the proposed type of contract.
    - The contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit

needs, the adequacy of their accounting procedures and suitability for use in administering the proposed type of contract.

C. Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

3. In making the determination of responsibility the contracting officer shall consider relevant past performance information. In addition, the contracting officer should use the following sources of information to support such determinations:

A. Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices and any other governmental agencies and non-governmental entities

B. The prospective contractor including proposal information, questionnaire replies, financial data, information on production equipment, personnel information and sub-contractors information.

C. Commercial sources of supplier information of a type offered to buyers in the private sector.

D. A pre-award survey reports as determined by the contracting officer.

E. Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

F. The contracting officer may consider performance evaluation reports.

4. County's Project Managers, Contracting Officers Representatives (COR) and cognizant contract administration personnel that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information and that information will be used to assist in the determination.

F. DETERMINATIONS.

1. The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the contracting officer shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination.

2. *Support documentation.* Documents and reports supporting a determination of responsibility or non-responsibility, including any pre-award survey reports and any applicable Certificate of Competency, will be included in the contract file.

A. Except as provided in the Freedom of Information Act, information (including the pre-award survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

B. The contracting officer may discuss pre-award survey information with the prospective contractor before determining responsibility. After award, the contracting officer or a designee may discuss the findings of the pre-award survey with the company surveyed.

3. Before beginning a pre-award survey, the contracting officer shall ascertain whether the prospective contractor has been terminated, debarred, suspended, or deemed ineligible. If the prospective contractor has been terminated, debarred, suspended, or deemed ineligible, The contracting officer will not proceed with the pre-award survey unless specifically requested to do so.

27. Vendor's must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in solicitations will be debarment or suspension from participating in Richland County solicitations, purchasing and award of contracts for a period as prescribe by the Director of Procurement. Richland County does not waive its rights to seek further actions

28. Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

29. Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

30. All invoices received shall include detailed billing information

31. Richland County will pay mileage based on the most current standard mileage rate set by the IRS.

32. The contractor is responsible for obtaining all licenses and permits required to perform this service

Section – F

Requirements

Body Removal Services
RC-025-P-1011
Requirements

1. Proposal Requirements

Overview

The County is not interested in considering Proposals that are not straightforward, with hidden, undisclosed, or difficult to understand verbiage.

Proposal Preparation

The proposal response should address the items included in the Scope of Services and the Criteria for Proposal Evaluation. Proposals should be prepared simply, providing straightforward and concise responses to requests for information and descriptions of qualifications and capabilities. Each copy of the proposal should be bound with all documentation in a single volume where practical. Failure to do so will result in a lower evaluation. Incomplete proposals may be determined non-responsive.

Offerors should organize their proposal using the format described below:

A. Title Sheet

Furnish the information requested on the **REQUEST FOR SOLICITATIONS, OFFERS, AND AWARDS** page of this solicitation and include it as the first page of your Proposal response. The name stated on the Title Sheet must be the full legal name of the Offeror and the address must be that of the office which will have the responsibility for the services provided. **Offers shall specify in the introductory cover sheet the section(s) containing trade secrets or proprietary information.**

B. Project Methodology

Provide a complete description of the proposed methodology for implementation of and providing the required services under this contract as stated in the Scope of Services. Provide detailed plans for each step of the project and describe the commitment of staff, personnel and resources required. A statement of management philosophy should be included.

Describe the company's current work load and availability to begin work on this project

Provide the method or process for cost saving, cost control and effective, efficient cost management

Provide proof of company's insurance

C. Project Schedule

Provide a time line and schedule for implementation of this contract, highlighting critical points in the process.

D. Performance History of the Offeror in Providing This Service

1. Provide a brief overview of your company's experience and qualifications as it relates to the Scope of Services

2. If the organization has had a contract terminated for default during the past five (5) years, submit full details surrounding the termination including the nature of the default and the terminating party's name, address and telephone number

3. Provide the full company or corporate name, address and phone number along with the project contact person full name

4. Provide a list of subcontractors to include their full company or corporate name, address, telephone number and contact person

E. References

Provide a list of at least three (3) clients for whom a similar service has been provided and dates when the services were provided. Include client name, address, telephone number, facsimile number and person to contact.

2. Right to Audit

A. The County shall have access to the Contractor's facilities, to all necessary records, and shall be provided adequate and appropriate workspace, in order to conduct audits in. The County shall give the Contractor(s) a 10-day advance notice of intent to audit.

B. If an audit discloses overcharges (of any nature) by the Contractor(s) to the County in excess of five percent (5%) of the total contract billings, the actual cost of the County's audit shall be paid by the Contractor(s).

3. Additional Services

Richland County may add to the Scope of Services or make changes in the Scope of Services with any services of a similar nature to those specified in the Scope of Service of this Request for Proposal as mutually agreed upon in writing at a price mutually agreed upon.

4. Licenses and Permits

The Contractor shall secure, pay for and maintain all permits, governmental fees and licenses which are legally required for the proper execution and completion of the work outlined, for the life of the agreement.

5. **Scope of Services:**

Richland County is seeking an all inclusive service for Body Removal for the Richland County Coroner to be billed on a monthly flat rate basis. This service shall include, but is not limited to, the following items:

1. 24 Hour answering service
2. Supply all materials needed for removal – gloves, sheets, bag locks, odor proof Body bags, water retrieval body bags, heavy duty body bags, etc. The appropriate bag is to be designated by the Coroner/Deputy Coroner in charge at the scene
3. Maximum One (1) hour arrival time to call location
4. Delivery to be made to Palmetto Richland Medical Park, 5 Medical Park Drive, Columbia, SC 29203
5. A minimum of two (2) people and two (2) vehicles shall be on call 24 hours 7 Days a week
6. Proper dress and appearance of all personnel is expected
7. Additional personnel available for special removals – heavy patients, unusual circumstances
8. Additional locations for pickup and delivery may include but are not limited to Newberry County and Augusta
9. Provide the number of vehicles available to perform this service
10. No additional charges shall be added for wait time or no transport

Additional Information:

Number of Transports:	2009 – 2010	521
	2010 – 2011	530 to date

Approximate trips to Newberry County and other locations 30 per year

Section - G

Minority and Women Owned Business Enterprises

1. MINORITY PARTICIPATION:

Richland County established a fifteen percent (15%) minority participation goal for each contractual agreement. Offerors shall be required to submit a quarterly report to the Contracting Officer not later than the fifth day of each month. Example: April 5, July 5, October 5, and January 5. The report shall contain the name of individual or firm; status (minority or woman-owned); and the dollar amount awarded. If Offeror's are unable to meet the prescribed goals, evidence of a good faith effort shall be submitted to the Contracting Officer for his determination.

2. TYPE OF BUSINESS:

a) The Offeror represents as part of its offer that it operates as (Make one with an "X"):

☐ An individual

☐ A partnership

☐ A sole proprietorship

☐ A corporation

☐ Another entity_____

b) If incorporated, under the laws of the State of:

_____

3. MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES (MBE/WBE):

a) The Offeror represents as part of its that it (Mark one with an "X"):

☐ Is

☐ Is not

A minority-owned business enterprise (MBE). An "MBE" is defined as "a small business concern which is at least 51 percent owned by one or more minority individuals, or in case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority individuals and whose management and daily business operations are controlled by one or more of the minority individuals who own it." For purpose of this definition, minority individuals include Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, and Native Americans.

b) The Offeror represents as part of its offer that it (Mark one with an "X"):

☐ Is

☐ Is not

A woman-owned business enterprise (WBE). A "WBE" is defined as "a small business concern which is at least 51 percent owned by women, or in case of any publicly owned business, at least 51 percent of the stock of which is owned by women and whose management and daily business operations are controlled by one or more of the women who own it."

Section - H

Advertisement

Request for Proposal
RC-025-P-1011
Body Removal Services

Richland County Government, Columbia, South Carolina is soliciting proposals from qualified companies to provide Body Removal Services for the Richland County Coroner's Office

Services to be provided may include, but are not limited to, the following activities:

- Provide all materials needed for removal: bags, heavy duty, odor proof, water retrieval etc; gloves, sheets, bag locks,etc
- 1 hour max, arrival time to any call
- Removal from anywhere in the County to Palmetto Richland Hospital
- At least 2 vehicles and 2 people on call 24/7, 7 days a week
- Proper dress and appearance of all personnel
- Bill on a flat rate per month

Proposals shall be accepted until ***3:00 P.M., local time, Tuesday May 24, 2011*** proposals submitted after the above date and time shall not be considered. For additional information visit our website shown below and click on "Solicitations":

http://www.richlandonline.com/departments/procurement/index.asp

RICHLAND COUNTY OFFICE OF PROCUREMENT
COLUMBIA, SC

AMENDMENT OF SOLICITATION

1. SOLICITATION NO: RC-025-P-1011 **2. AMENDMENT NO: 1** **3. EFFECTIVE DATE: 5-16-11**
Body Removal Services

4. REVISION OF OFFER RECEIPT DATE & TIME: **DATE: June 9, 2011**
TIME: 3:00pm

5. AMENDMENT OF SOLICITATION:
The Solicitation identified in Block 1, above, is hereby amended as described in Block 9, below. Except as provided herein, all other provisions of the solicitation, as to hereto amended, remain unchanged and in full force and effect.

6. REQUIREMENT TO ACKNOWLEDGE AMENDMENT:

Offerors must acknowledge receipt of this amendment prior to the deadline specified in the solicitation for receipt of offers and by one of the following methods:

a. By signing this amendment in Block 7, below, and returning one signed copy;
b. By acknowledging receipt of this amendment on the Solicitation, Offer and Award form; or,
c. By separate letter or telegram that includes a reference to this solicitation and amendment numbers.

WARNING: Failure of an offeror to acknowledge receipt of this Amendment, as described herein, may result in the REJECTION OF THE OFFER.

NOTE: For Invitations for Bids the terms "Offer" and "Offeror" shall mean "Bid" and "Bidder", respectively; and for Request for Proposals the terms "Bid" and "Bidder" shall mean "Offer" and "Offeror", respectively, in this solicitation and any associated exhibits.

7. OFFEROR'S ACKNOWLEDGMENT OF AMENDMENT:

Name & Title: _____ Signed Acknowledgment: _____
(print or type)

Offeror: _____ Date Acknowledged: ____/____/____

8. CONTRACTING OFFICER OR AUTHORIZED REPRESENTATIVE:

Signed: Christy Swofford Date: 5-16-11

For Further Information Please Contact Christy Swofford: swoffordc@rcgov.us (803) 576-2130

9. Description of Amendment: **No. of Pages Attached: 0**

1. **Change Proposal Due Date To: Thursday June 9, 2011 3:00pm**

RICHLAND COUNTY OFFICE OF PROCUREMENT
COLUMBIA, SC

AMENDMENT OF SOLICITATION

1. SOLICITATION NO: RC-025-P-1011 **2. AMENDMENT NO: 2** **3. EFFECTIVE DATE: 6-6-11**
Body Removal Services

4. REVISION OF OFFER RECEIPT DATE & TIME: **DATE: June 17, 2011**
TIME: 3:00pm

5. AMENDMENT OF SOLICITATION:
The Solicitation identified in Block 1, above, is hereby amended as described in Block 9, below. Except as provided herein, all other provisions of the solicitation, as to hereto amended, remain unchanged and in full force and effect.

6. REQUIREMENT TO ACKNOWLEDGE AMENDMENT:

Offerors must acknowledge receipt of this amendment prior to the deadline specified in the solicitation for receipt of offers and by one of the following methods:

a. By signing this amendment in Block 7, below, and returning one signed copy;
b. By acknowledging receipt of this amendment on the Solicitation, Offer and Award form; or,
c. By separate letter or telegram that includes a reference to this solicitation and amendment numbers.

WARNING: Failure of an offeror to acknowledge receipt of this Amendment, as described herein, may result in the REJECTION OF THE OFFER.

NOTE: For Invitations for Bids the terms "Offer" and "Offeror" shall mean "Bid" and "Bidder", respectively; and for Request for Proposals the terms "Bid" and "Bidder" shall mean "Offer" and "Offeror", respectively, in this solicitation and any associated exhibits.

7. OFFEROR'S ACKNOWLEDGMENT OF AMENDMENT:

Name & Title: _____ Signed Acknowledgment: _____
(print or type)

Offeror: _____ Date Acknowledged: ____/____/____

8. CONTRACTING OFFICER OR AUTHORIZED REPRESENTATIVE:

Signed: Christy Swofford Date: 6-6-11

For Further Information Please Contact Christy Swofford: swoffordc@rcgov.us (803) 576-2130

9. Description of Amendment: **No. of Pages Attached: 0**

1. **Change Proposal Due Date To: Friday June 17, 2011 at 3:00pm**

** **All questions must be received in writing to the Office of Procurement no later than Thursday June 9, 2011 at 12:00pm** **

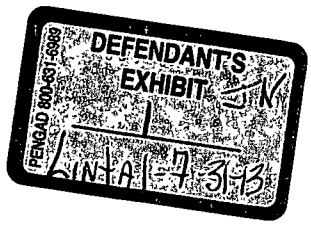
Detail of Damages

Revenue:			
Sales Realized per the contract			
Sept 2011 - June 2012		80,000.00	
July 2012 - June 2013		102,982.50	
July 2013 - June 2014		102,982.50	
July 2014 - June 2015		106,586.50	
July 2015 - June 2016		106,586.50	
Total Sales			$ 499,138.00
Expenses:			
Avg bag Cost per call	15.67		
Gas			
Avg distance per trip	60		
Avg MPG	20		
Avg Cost per Gallon	3.5		
Gas Cost per trip	10.5		
Expense Per Call	26.17		
Actual Calls from 7/1/10 - 6/30/11	511		
Sept 2011 - June 2012		11,144.06	
July 2012 - June 2013		13,372.87	
July 2013 - June 2014		13,372.87	
July 2014 - June 2015		13,372.87	
July 2015 - June 2016		13,372.87	
Total Expenses			64,635.54
Net Damages			$ 434,502.46
Additional Items			
Attorney Fees to be Provided by Mr. Pringle			0
			0
Total Damages			$ 434,502.46

Phone number that are used in the ads that are for Knight
2 1/2 years added back to the Non compete

PLAINTIFF'S EXHIBIT #1 12-18-13 E. Lintal

PENGAD 800-631-6989



Timeline of events - Knight Systems Inc

- January 5, 2007 – entered into Asset Purchase agreement with KSI for $590,000

- Late 2007 – early 2008 - **Infant body bags** - LCCO (Randy Martin) asked me to check into a better way to bag infants.

- January 31, 2008 - I brought the request for smaller bags up to Buddy when I was picking up my bag order. His response was he always wrapped infants in a sheet and put them in a folded light weight bag. I told him this is not what they wanted and asked me to check into smaller bags. He said it's not worth getting small bags for the few infants that we deal with.

- April 3, 2008 - bought one pediatric bag from Southland Medical Supply for demonstration purposes. Subsequently showed the bag to Randy Martin at LCCO and Jane Powell from RCCO. Both agreed that the next size larger (infant) would be more versatile and a great idea. My goal was to give the customer what they were requesting and improve our professionalism in handling the baby cases.

- April 3, 2008, I ordered one case (30 per case) of infant size bags at $6.25 per bag.

- December 2, 2008 - KSI performed a **disinterment** and transport of human remains for RCCO. Early 2009 - I asked RCCO to consider PMT to bid for any future disinterment.

- February 2009 - **Water retrieval bags** - When ordering bags in February 2009, I misunderstood Buddy to say he no longer had the water retrieval bag. I found a source on the internet and ordered six bags at $45.00 per bag on March 6, 2009.
- Later that year (likely in June or July), Buddy confronted me on a water retrieval bag that had been used on a RCCO case. I explained that I understood him to say that he no longer had them. At this point I was not sure if this was a bag he made or purchased. He said this was a bag he makes and he was out of them when we talked about them. I told him we would only buy them from him in the future and offered to pay him for the lost revenue on the six bags we had bought elsewhere but he declined.
- All water retrieval bags purchased by PMT after that were bought from KSI.

- June 2009 – At some time shortly after Capitol won the LCCO bid Buddy asked me if I had purchased infant bags from someone else. He explained they were trying to bags from him for the LCCO contract and the infant bags were requested. They knew PMT bought bags from him so assumed infant bags were included. I told him yes I had

bought the bags elsewhere but I first had tried to buy them from him but he was not interested. I offered to reimburse him for the cost of the bags but he ignored my offer.

- July 2010 - **XL heavy duty bags and Standard heavy duty bags** - For our July order I wanted to get three XL heavy weight bags but Buddy only had one and did not know when he would be able to get more in. KSI purchased these bags from a vendor in China and the lead times were long. I felt I could not risk being out and searched options on the internet. Decided to buy one box of four XL heavy weight bags at $53.44 per bag and also to buy one box of six standard size heavy weight bags at $34.75 per bag to be sure we had some with a heavy zipper for cases needing the heavy zipper.

- March 7, 2011 - KSI performed a **second disinterment** and transport of human remains for RCCO. I found out when delivering a coroner case to morgue and Buddy was there for the autopsy with his truck and trailer.

- June 16, 2011 - **USC bag delivery** - Buddy called me to tell me he had the bags ready that they had ordered and paid for 1 – 2 months prior. I offered to meet him at his shop to pick them up as one of my employees or I always did in the past. He declined my offer and insisted on bringing them to me at my home. Buddy brought up bags purchased elsewhere.

- September 6, 2011 – **Denied bags**- We were still servicing RCCO and had not been notified of any award being made and needed to order three bag types (LW, BHW and OP). I attempted to order from KSI but was denied on two (LW and OP) of the three requested as they were "unavailable" and informed me to refer to his website for our pricing.

		Paid		KSI
April 9, 2008	Infant bag (30)	$187.50	$5.25 ea	$240.00 (adult LW)
March 6, 2009	Water retrieval (6)	$270.00	$45.00 ea	$180.00
July 14, 2010	XLHVY (4)	$213.72	$53.44 ea	$400.00
July 14, 2010	HVY (6)	$208.50	$34.75 ea	$120.00
		$879.72		$940.00

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	C/A #: 2011-CP-32-04051

Palmetto Mortuary Transport, Inc. Plaintiff, v. Knight Systems, Inc. and Robert L. Knight, Defendants.	)

ORIGINAL

DEPOSITION OF

DONALD J. LINTAL

****

Wednesday, July 31, 2013
11:43 a.m. - 5:08 p.m.

The deposition of DONALD J. LINTAL was taken on behalf of the Defendant at the law offices of Adams and Reese, LLP, 1501 Main Street, Fifth Floor, Columbia, South Carolina, on the 31st day of July, 2013 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

DEFENDANT'S EXHIBIT #1 - 12-12-13 D Lintal
PENGAD 800-631-6989

APPEARANCES

Reginald I. Lloyd, Esquire
The Lloyd Law Firm
715 West DeKalb Street
Camden, South Carolina 29020
Attorney for Defendant

Todd Hagins, Esquire
Hagins Law Firm
701 Gervais Street, Ste. 150-116
Columbia, South Carolina 29201
Attorney for Defendant

John J. Pringle, Jr., Esquire
Adams and Reese, LLP
1501 Main Street
Fifth Floor
Columbia, South Carolina 29202
Attorney for the Plaintiff

INDEX

MR. LINTAL:		PAGE:
MR. LLOYD	EXAMINATION	3
MR. PRINGLE	EXAMINATION	203
MR. LLOYD	RE-EXAMINATION	209
Signature Sheet		212
Certificate		213

EXHIBITS

Defendant's Exhibit Number One 6
(Timeline of Events, Knight Systems, Inc.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following examination be, and the same are, hereby not waived. Signature sheet is attached at page 212.

DONALD J. LINTAL, having been duly sworn, deposes and testified as follows:

MR. LINTAL - EXAMINATION BY MR. LLOYD:

Q: Mr. Lintal, we've met before. Reggie Lloyd, representing Mr. Knight. Just a couple of preliminary questions before we really get into the meat of this. Have you had your deposition taken before?

A: No, sir.

Q: Okay. First of all I'm going to go over a couple things, and just obviously your attorney, if there's a form of the question that he doesn't like or believes he needs to, he will object to it. Otherwise I would ask that you answer my question. If you don't understand a question that I ask you I'll just ask that you ask me to rephrase it or make sure you understand it. If you don't ask me to do that I'm going to assume that you did understand my question, okay?

A: Yes, sir.

Q: Are you taking any medications or suffering from any illnesses that might ---

A: No. No, sir.

Q: --- hamper your ability to answer today?

A: No.
Q: And you said you've never taken -- testified in a deposition before? Have you ever testified at a trial before?
A: Nope. No, sir.
Q: Have you ever been party to a lawsuit prior to this?
A: No, sir.
Q: You've never brought a civil action or been -- had a lawsuit filed against you previous to this?
A: Not that I recall, no.
Q: Let me ask, just so that we're clear, have you filed -- other than this action, have you filed an action against anybody after you filed this particular action?
A: No.
Q: And you had a chance to review the pleadings, the Complaint, Answers filed in this case?
A: I've read many documents. I assume that that's what I've been reading, yes. Okay, I guess, yes.
Q: But you understand generally the claims that you've raised against Mr. Knight ---
A: Yes, yes.

Q: And you understand the ---

A: Right, counter ---

Q: --- answers that he's responded with?

A: Yes, sir.

Q: Can I ask you what did you do to prepare for this deposition this morning?

A: Read over documentation and we did prepare a document to help me. It was particulars if there's a issue ...

Q: Did you prepare this ---

A: I did.

Q: --- document?

A: Yes, sir.

COURT REPORTER: Is it going to be an exhibit?

MR. LLOYD: Yes. If we can go ahead and mark this as Defendant's One.

COURT REPORTER: Defendant's One, okay. I'll give it right back to you. We'll just switch when it's done.

A: That's the one I use, okay.

COURT REPORTER: Well, yeah, then at the end ---

A: Yeah.

COURT REPORTER: That'll come with me and that one can go back with you.

A: Thanks.

COURT REPORTER: Okay?

A: Yeah.

(Defendant's Exhibit Number One was marked for identification purposes.)

Q: Okay. Did you prepare this document, sir?

A: Once again, yes.

Q: What did you use to prepare the document that we're looking at as Exhibit One?

A: The same information that we've been -- well, the information that -- invoices, recollection, I guess, to the best -- to my knowledge of the activities through the course of time.

Q: So you looked at invoices? When did you look at those invoices?

A: Since the exchange of invoices. So I mean, this is all within the last 30 days of -- since Buddy's deposition and such. I felt that it was -- that it'd be -- help me in being -- to be prepared, so.

Q: And where are those invoices located?

A: It's the evidence that we've both have had party to. You have copies of everything that was involved in this.

Q: So the invoices you're referring to that you referenced to create Defendant's Exhibit One,

those were invoices you've already produced ---
A: Yes.
Q: --- as part of discovery in this case?
A: Yes, yes.
Q: Any invoices that you reviewed that have not, to your knowledge, been produced?
A: No, sir.
Q: What was the purpose of reviewing the invoices?
A: To create a time line just like it says at the top of the thing, of the document. So that I was assured I'd get the right sequential order of information.
Q: And specifically these were invoices to who, for what?
A: Invoices to me, from either -- let's see, from various suppliers.
Q: Okay. They were invoices from you to suppliers, or --
A: Well, let me see if that's the case. No, it would be the other way around. From suppliers that I purchased from.
Q: And these are suppliers of what?
A: Body bags. Various types of body bags, I guess.
Q: And we'll come back to Defendant's Exhibit One.

You're certainly free to refer to that if you need to during the course of the deposition but I'll ask you some more detailed questions about that shortly. Let me ask you, when did you first come to find out that Mr. Knight was selling his business?

A: I believe the time frame, it was prior to -- I would say it was probably the summer of 2006. I know it was in 2006.

Q: Okay. Let's start with summer of 2006 and actually work backwards for a little bit.

A: Backwards?

Q: Prior to the summer of 2006, what occupation were you in?

A: I -- prior to this, at that point in time I was a -- I worked at E-Z-Go in Augusta, and I was a warranty specialist.

Q: And let me ask you, what is E-Z-Go? Is that a ---

A: Golf cart.

Q: --- Golf cart maker?

A: Textron was their actual parent company.

Q: And what were your duties as a warranty specialist?

A: My particular job related to a gas engine

recall that had been -- that we were performing for repair of some incidents that E-Z-Go had experienced, gas engine fires throughout the various places in the United States. And I was a project coordinator per se, I'm facilitating this to happen -- the repair to take place.

Q: And how long were you at E-Z-Go?

A: I think a year and a half.

Q: Okay. And what did you do prior to that?

A: I was a project manager for a brush manufacturer in Summerville, South Carolina. It was -- well, in the Summerville area.

Q: And you said brush manufacturer?

A: Yeah. Real exciting job. Toilet brushes, household brushes.

Q: And how long were you there?

A: Two years, maybe.

Q: And what did you do before that position?

A: I worked as a -- I don't know what my title was. I worked for Corning, Incorporated. It was a -- it was actually called -- gosh -- Corning Cable Systems, I'm sorry, but yeah, I have to explain. I'm from the Corning, New York area originally so I always knew it as Corning, Incorporated but we had two different

names in the time we were there.
Q: And that was in New York?
A: No. This -- I never worked for Corning, up in New York.
Q: Okay.
A: It was just strictly in Summerville. And that was about eight years.
Q: And did you have any full-time employment prior to that?
A: Oh, yeah. Yeah, I was -- okay, now I was -- prior to that I was a licensed funeral director, up in New York State.
Q: And how long did you do that?
A: Funeral director?
Q: Yes, sir.
A: Off and on for -- up until that point -- well, let me think, do the math. I was originally licensed in 1976, I believe. '76 or 1977, so from then until we moved in 1997 so --
Q: When you say you moved, you moved to South Carolina?
A: Yes, sir. It was a relocation for that project, the cable systems project.
Q: And you say you were a licensed funeral director off and on?

A: I did. I worked full-time at some points in my life and I worked part-time and had other jobs, primarily in the sales and marketing. But I was always -- always had my license in that period of time, so and did some type of work typically.

Q: You said you got licensed in 1976-1977 time period?

A: Yes, sir. Yeah.

Q: Did you work for a particular funeral home?

A: Yeah. Over the course of time I worked for -- the last one I was at was-- you want the names, that's my assumption?

Q: Yes, sir.

A: Barber Funeral Home, that's in Horseheads, New York.

Q: And you were a funeral director for them?

A: Yeah. Others, or --

Q: Yes, sir.

A: Okay, I didn't know if you were gonna ask times or anything. Okay. I worked for a short time for Olphoff, O-L-P-H-O-F-F, Funeral Home, and that's in Elmira, New York. And William R. Chase and Son. That's Binghampton, New York. That's it.

Q: Those three --
A: I mean I did incidental work for others but -- occasionally, but those were my primary full-time or part-time employers in the funeral service.
Q: Okay. Which ones did you work for full-time?
A: All three at one point. That's why -- yeah, that's what I'm saying, all three of them at one point or another.
Q: And what were your duties as funeral director?
A: Removal, embalming, making arrangements, conducting the services, conducting funeral services, interments.
Q: Prior to moving to South Carolina, had you ever owned another business?
A: No.
Q: And prior to -- let me ask you, when did you create Palmetto Mortuary?
A: At the time of the purchase of, or going into the asset purchase agreement with Knight Systems. It was created for that purpose.
Q: Had you ever owned another business after moving to South Carolina?
A: No. You're saying -- me, right?
Q: Yes, sir.

A: Yes, no. No, I did not.
Q: Did somebody else in your family have a business?
A: I don't know if it would be considered as a -- my wife was a consultant for a short time. So I don't know if once -- I don't know if that would qualify to answer your question. So that would be the closest thing that I can recall that would even apply, so.
Q: And your wife's a CPA is that right?
A: No.
Q: She's an accountant?
A: She's an accountant by trade, yes. But she's not a CPA. You could say she's a CFO but not a CPA, if you want to get into acronyms.
Q: When did you -- and we started talking about sometime around the summer of 2006 is when you learned that Mr. Knight was planning to sell his business, is that right?
A: That's correct.
Q: And how did that fact come to your attention?
A: A business listing on, I believe it was Sunbelt Business, a business website.
Q: And what did you do, as related to that listing?

A: I contacted the broker initially, and after we considered whether or not it held any potential value for consideration.

Q: Okay. And who was that broker?

A: I honestly don't remember his name. I could get it but I don't remember.

Q: Is it the same broker you dealt with throughout this period of time prior to the purchase?

A: Yes, sir.

Q: And you said you all, you and the broker discussed whether it was a good opportunity to purchase this particular business. What did those discussions entail?

A: Initially my wife was primarily the point of -- the person of contact to him. Relating to different -- we were in the market for considering various businesses, and she was actually looking for one for herself. What was discussed for our purpose was the fact that it was listed as a transport business. And when it was revealed that it was mortuary transport we were interested because of my background.

Q: Were there other types of businesses you were on the lookout for as well?

A: Me personally?

Q: Yes, sir.
A: No, sir. Her, yes.
Q: Okay. Had you already determined prior to seeing that listing that you were looking for a transport or body removal business?
A: No, sir. I was content with my job at E-Z-Go.
Q: Now, once you saw the listing and either you or your wife made contact with the broker, you again described it as trying to decide whether it was a good purchase for you, or might be. Tell me what kind of considerations were you and the broker discussing regarding that?
A: The financial aspects, guaranties, and what actually the business contained regarding the assets, potential assets I should say. What was included in the price of the asking price of the business.
Q: There was -- in that website listing by the business broker, was the asking price for the business already stated there?
A: Truly, I don't remember. I can't remember exactly how they represented -- there might have been a price on there, I mean, but I honestly do not recall.
Q: Okay. If it wasn't listed on the website, did

you and the broker have some discussions ---

A: Sure.

Q: --- about the price?

A: Yes, of course.

Q: So, he ---

A: He gave us -- if it wasn't listed on the website, the broker was the one that provided us with the asking price.

Q: And from the time that you were first informed of the asking price, whether it was through the broker or through the website itself, did the asking price change between that time and the time y'all actually closed the deal?

A: No. Not the -- to my knowledge, no. I don't recall.

Q: Okay. You said you also discussed the financial aspects of the business with the broker. Can you be a little more specific and describe what financial aspects of Mr. Knight's business you and the broker discussed?

A: I guess maybe it was more of a -- well the -- they typically provide you with an -- I believe it's an income statement, or a -- there's some basic, basic sales versus -- I can't recall exactly if there was sales dollars involved in

it, in the discussion or -- it would have been information that was provided by Mr. Knight to him. It wasn't anything outside of what had been provided on that basis. So I don't recall. Honestly, my wife did a lot of the financial stuff.

Q: And your wife, when you said she was doing the financial stuff, she was discussing those financial aspects with the broker?

A: Likely, yes.

Q: Okay. Was she preparing any sorts of sheets or documents for you to look at regarding those aspects?

A: Likely, yes. I would assume, yes. I mean we had to have something to work off decisions on it.

Q: Sometimes I may use the term and it may not be the correct term or term that you understand, but for example does she do any proformas based on what you would be purchasing, profit/loss statements, etcetera, this is the kind of return or ---

A: Sure.

Q: --- investment?

A: Yeah. I would assume, yes. I mean that's more

in her background, so I assume that the answer is yes.

Q: Do you still have those sheets?

A: I honestly do not know.

Q: I'm going to ask, with Mr. Pringle, that you make a search for those sheets if you still have them.

A: You want to get ---

Q: Not at this moment, no, sir.

A: Okay.

Q: Based on what you understood from your wife and the broker regarding the purchase price, what you would get in terms of the business did you determine that this was going be a good purchase for you?

A: We believed so.

Q: And what in particular about this deal, based on what information you had at that point, lead you to believe that this would be a good business opportunity for you?

A: It had some -- it had decent sales volume, sales dollars tied to it. There were contracts involved that were transferable that would give us some guarantees of business for a period of time. And there was equipment and assets to

support the business that we felt that would -- it would benefit, you know, the business and be capable of continuing on under a different ownership, our ownership.

Q: Were you looking for a certain guarantee of income at that point?

A: You mean as a locked number?

Q: Yes, sir.

A: Not necessarily.

Q: At the point that you were considering purchasing Mr. Knight's business were you planning to quit your job ---

A: E-Z-Go.

Q: --- at that point you were at E-Z-Go ---

A: Right.

Q: --- were you planning to quit that job?

A: Yes.

Q: Were you looking for a business that would replace all of that income, that you were making at that particular job?

A: Yes.

Q: And what was your salary at that job?

A: I don't recall.

Q: Can you ballpark it for me?

A: 28,000 a year, maybe.

Q: So you were looking for a business opportunity that would replace that $28,000?
A: Of course.
Q: And in comparison to the other jobs you listed for me, the project manager position in Summerville and the Corning Cable System position, the $28,000, was that more or less than you had made at those other positions?
A: It -- some were, some less.
Q: Well, let's ---
A: Okay. You ---
Q: --- go specifically to the brush manufacturer, was $28,000 more or less?
A: It was about the same. Corning Cables was more.
Q: How much were you making at Corning Cables?
A: I think about 60,000 a year.
Q: Okay. And why did you leave Corning Cables?
A: They closed.
Q: And you immediately got a position with the brush manufacturer or was there a period of time when you didn't work?
A: Pretty much immediate, it was a short time but they were right next to each other so I had the skills. The knowledge of -- my first job in

South Carolina was to watch the building that the brush manufacturer, that was in, to be built. So I mean I was real familiar with the facilities and it was built for Corning, and then we moved out of that to another facility right up the street, so that helped.

Q: Now, in the process of you and your wife considering whether to purchase Knight Systems, did you do any other research other than talk with the broker?

A: Not that I recall.

Q: Did you believe that if you purchased Knight Systems that you would immediately be able to continue the business running without doing any other training or any other type of research to prepare for that business?

A: Repeat that please.

Q: In other words, did you believe that once the purchase -- if you could purchase Mr. Knight's business, that you could immediately go from E-Z-Go to running that business without taking on any additional training?

A: For the most part. It was a field that I was very familiar with, with the number of years I'd worked in the funeral -- in funeral

service. I had known others in New York that, you know, one guy in particular, that ran a similar business. I worked with his brother so I was familiar with what they did up there, so my assumption was that I had the basic skills and expertise to do the majority of the -- of what was needed. Plus a good part of what this business involved was contact with the funeral home customers. So that was an area I felt very strong with because of the number of years of business relationship that I'd had in past -- in the past.

Q: Did you talk to the friend of yours in New York ---

A: No.

Q: --- about his business?

A: No.

Q: So how many meetings did you have, or discussions did you have with the broker prior to meeting with Mr. Knight?

A: Phone conversations included?

Q: Yes, sir.

A: I don't know, maybe five to seven. I'm assuming that it wasn't just a we want it type conversation, there was some back and forth

information that was more than likely exchanged. It might have been less than that. Quite frankly, I don't recall.

Q: Okay. Were you asking the broker to go back to Mr. Knight and get additional documents or data for you to consider?

A: Possibly. There might have been questions, but I don't think there was any additional documents that was requested.

Q: Okay. Were these questions of the broker or questions that needed to be answered by Mr. Knight?

A: Of -- I would believe that Mr. Knight would have had the answer through the broker, we had no contact with him at that point, so.

Q: Describe -- do you recall the first meeting you had with Mr. Knight?

A: I don't.

Q: Do you recall meeting with him with the broker?

A: Do you know where it was? It might have been at that -- maybe at the broker's office. I don't recall, I really don't.

Q: And when I said do you remember the first meeting with Mr. Knight, do you recall meeting with Mr. Knight prior to, obviously, the

closing on this?

A: Yeah, yeah. We went up to his facility, my wife and I, I believe, we went up there prior to making the decision and I think talked about some various things inside. Some of the equipment and things that were involved with -- in the business. I really can't -- I don't recall the exact point -- as far as if it was -- I assume that we did meet with him before, so. But I don't recall.

Q: And the visit you and your wife took to his site, that was the first time you had actually physically seen the building or the business itself?

A: There wasn't much to see. I mean, I didn't buy the building, I didn't buy the -- you know, it was -- it was, you know, seeing a couple vans, and some stretchers, and maybe a couple types of bags that were involved in it, but that would have been the extent of it. And then just kind of a going back and forth -- the information, back and forth, exchanged I guess.

Q: Okay. What sort of information?

A: General things related to what he actually did. You know what -- one of the things that was --

with the way the business was originally listed, versus the -- what it actually was. It was listed as a transportation business and the broker had made the statement that it was -- it had garnered a good degree of interest but most people walked away once they found out it was dealing with transport of human remains, deceased human remains. So based off of all of that, it was more of understanding what really was involved because it's -- in regards to, you know, what his customers antici- -- what we could anticipate for customers, as far as the types, you know. I was more familiar with the funeral home side. And the learning about the coroners, and the US -- or not -- I mean USC aspect of the business then those -- that type of information was shared. As far as basic information, nothing -- no real specifics, but I don't recall a lot of it to be honest with you, so.

Q: Let me ask you, the time you actually made the site visit, you and your wife with Buddy Knight, had you already made the decision to purchase his business?

A: We might have made a decision to make an offer

but I don't really recall if we made a decision to actually buy it.

Q: Do you recall during that meeting with Mr. Knight where you and your wife visited his business, did you make an offer to him at that point?

A: No.

Q: Do you recall when you actually made that offer to him?

A: It would have been through the broker. But the answer is no. The time frame would probably have been October -- September, October, November of 2006.

Q: Do you recall whether your offer differed from the asking price?

A: It did.

Q: And do you recall how much?

A: No. It was -- our offer was less than his asking price.

Q: Okay. Do you recall how you came up with the dollar figure that you used as your offer?

A: That would be a question better suited for my wife. We talked about the given sales volumes, the revenue each business generated, and the assets that were involved in the business and

I guess that's probably how we came up with our offer.

Q: And when you say the revenue each business generated are you --

A: Sales dollars.

Q: Are you talking about the contracts he had?

A: Some, yes. Contracts plus whatever information he was sharing with us about the revenue generated from business outside the contracts.

Q: But when you use the phrase, the revenue each business generated, are you -- you're not referring to different businesses ---

A: Not --- okay. Not business to business, I probably -- more of a segment of the businesses. We got -- we had only general information to work with at that point. We had, I guess -- I would assume by that point we were given some financials -- enough financial information that we would -- that either would have been provided through the broker or we would have requested through the broker to come up with some of the business modeling that helped us formulate an offer.

Q: Okay. And who was doing that business modeling, was it your and your wife?

A: My wife.
Q: Just your wife?
A: Primarily.
Q: Okay.
A: I'm not a numbers person, sir. I mean I'm not -- that's not my strength.
Q: Well, let me ask you, were you observant of the process she went through to come up with those business models?
A: When I had to be.
Q: Well, what would she show you as part of her modeling?
A: I don't understand the question.
Q: When she was going through these business models, what -- did she show you physically any documents or calculations that she was making?
A: I would assume yes, but I don't recall specifics to what it was. You know, it might have been creating a -- I don't know what she created. I would assume it was -- got some form of a spreadsheet that would have gave us an estimation based off of the information we were provided versus the anticipation of what we would expect.
Q: Did she do this on a sheet of paper or did she

do this on a computer?
A: I don't remember, Reggie. I'm sorry, I don't recall.
Q: So any modeling, business modeling, or calculations that lead to the first offer price, that came from your wife and not you?
A: The financial aspect of it, yes. Right. We jointly made decisions in regards to -- based off of the information she would have created for our assumption of the business's value, so.
Q: Okay. Your wife was responsible for sort of the financial ---
A: Yes.
Q: --- aspect of figuring out what the price was going to be in terms of an offer. What did that leave in terms of your contribution to that offer price?
A: What did it leave? You mean what did I ---
Q: Yes, sir, what was your contribution to arriving at that initial offer price?
A: Probably very little because I trust her. I mean, I believe that she had -- she has the expertise to provide me with the information to say, can we afford to do this or not.
Q: Okay. Was it very little input on your part or

A: Minimal by comparison, on the financial aspect, yes.

Q: Okay. But as it relates to the offer price, the initial offer price, did you look at her number and say let's go lower than that or higher than that?

A: I don't remember.

Q: Did you base it on any valuation of the assets, for example?

A: That would have been a factor, I would assume. I mean, that would have been one of the factors involved.

Q: And my question is, was that input from you in terms of valuing assets, or was your wife solely the one valuing the contracts, valuing the return.

A: All right. I might have helped value the assets by looking up resale val- -- or cost, replacement values for some of the equipment that was being offered in the, you know, in the sale. We didn't have all this, all the particulars, but we had a good share of it, so. I mean number of stretchers of example, number of vans, age of the vans. So my contribution

would have likely been to -- I'm sure I would have gotten involved in that aspect of it because it's the part I knew more about than the -- I knew what a stretcher was for an example, I knew what a gurney or a Ferno carry board would be or whatever was listed, so.

Q: Okay. And we're going to get into a lot more detail on the actual purchase price later on but let me ask you, what happened to that initial offer?

A: What happened to it?

Q: Yes, sir. Was it accepted or rejected?

A: I think it was rejected. It wasn't accepted. Yeah, it was rejected.

Q: And what did you do as a result of that rejection?

A: I believe there was a counter that -- negotiations that took place.

Q: Was the counter offer less than the initial asking price?

A: I would assume so.

Q: So the initial offer by you for the purchase of the business was actually lower than the asking price?

A: Yes.

Q: And the counter offer back to you was lower than the initial asking price?
A: Yes.
Q: Okay. Let's talk about what you were negotiating over at that point in time. There were the hard assets so to speak, there were the stretchers, vans, is that right?
A: Yes, yes.
Q: And what else did you understand was included in that purchase price?
A: Well, okay. You said the vans, right?
Q: Right.
A: Okay. Three contracts and -- that was probably -- primarily it.
Q: Did your wife ever discuss with you a concept called intangible assets?
A: I don't recall.
Q: Have you ever heard of the term goodwill?
A: Uh-huh (affirmative response).
Q: Did you believe goodwill was included in that initial asking price as well as the prices you all were negotiating back and forth?
A: I -- can you define your goodwill?
Q: Well, in other words, just the reputation of the business, the relationships that Mr. Knight

had established ---
A: Yeah, okay.
Q: ---that you were inheriting ---
A: Then yes, there was goodwill involved.
Q: How did you value the goodwill?
A: I'm sure there was a consideration put in there at that point for it but I don't recall what percentage or what number was tied to goodwill. Don't know.
Q: Did your wife ever discuss with you for example, the tax implications of what you attributed to goodwill versus the hard assets.
A: Not to me, no.
Q: Your assumption is that goodwill was built into the price, the initial asking price as well as your initial offer?
A: Yes, I guess there would have to be. There is the value for an existing business to have goodwill, so yes.
Q: Is there anything else other than the hard assets, the stretchers, vans, and the goodwill that was included, to your knowledge, in the negotiations over price?
A: Not that I recall.
Q: There was a counter offer, you believe, made to

your initial offer. Was that counter offer accepted?

A: I'm not sure at what point we came to terms with the actual $590,000 price. I don't think there was that many back and forths, so. I can't tell you how many times though.

Q: To your knowledge the final purchase price, was that still lower than the initial asking price?

A: Yes. I don't recall what the initial asking price was but I know it was less.

Q: Was there a purchase price number that your wife told you that this deal would not be in your best interest?

A: I don't recall.

Q: You don't recall whether she told you that or you don't recall the number?

A: Quite frankly, neither. I would assume -- I'm assuming that we had a number in mind that we could not go below. We were novices to some -- to a great degree in regards to buying a business, but as far as her expertise towards evaluating it and analyzing the business this is what she did for a living, I mean the accounting aspect is what she did, so.

Q: Had she ever done business valuations prior to

this?
A: For purchase?
Q: For any purpose?
A: I would assume, yes.
Q: Okay. Where did your wife work at?
A: Where does she work?
Q: During this particular time period, where did she work?
A: She was working -- at that specific time she was working for AGY. Advanced Glass Fiber or Advanced Glass Yarn something or other.
Q: And where's that located?
A: Aiken, South Carolina.
Q: Has she ever worked for an accounting firm prior to this?
A: A public accounting firm?
Q: Yes, sir.
A: No.
Q: Has she ever worked for any other type of accounting firm?
A: Is corporate accounting?
Q: Yes, sir.
A: Yeah.
Q: Okay. Where did she work there? Is that at AGY?

A: Her -- the broadest, or the most years that she had worked anywhere was Corning, Incorporated.
Q: And what did she do for them?
A: Accounting. She was -- she had various titles and responsibilities in manufacturing and corporate, business accountings, you know.
Q: In which one of these jobs did you believe that she had gained experience doing business valuations?
A: Corning.
Q: And why do you believe that?
A: She was directly involved in acquisitions that Corning had made of some -- a few businesses that they were either did buy or considering buying and so that -- you know, I knew she had the know how.
Q: So did she ever discuss with you the initial asking price being a price that you all could not afford to make this purchase at?
A: Afford, I mean it was more than we cared to spend, so I would have -- if that's what you mean, then yeah, we had conversations that it wasn't -- it didn't hold the value that the asking price was -- that was being asked, so.
Q: At this point in time when you were discussing

with the broker the potential purchase of this business and your meeting with Mr. Knight, had you already created the entity that became known as Palmetto Mortuary?

A: No.

Q: When did you create that entity?

A: After the initial acceptance of our offer, I believe. It would have been in the November, December of -- probably in December of 2006.

Q: Who did the paperwork to create Palmetto Mortuary?

A: My wife.

Q: She did the incorporation papers?

A: Yes.

Q: And does she have an official role with Palmetto Mortuary?

A: Yeah. Title wise?

Q: Yes, sir.

A: She's vice president and treasurer.

Q: Any other officers?

A: Me.

Q: Other than you?

A: No.

Q: And your title is president?

A: Right, yeah.

Q: And so Palmetto Mortuary was created simply and solely to purchase Mr. Knight's assets, is that right?
A: Yes.
Q: At that point in time did you intend to purchase any other similar businesses to Mr. Knight's?
A: No.
Q: Did you ever have a discussion with Mr. Knight about a ten year business plan that you had?
A: Yeah.
Q: Okay. Can you tell me what that plan was?
A: It wasn't really a plan. It was more what I had in mind for me personally.
Q: Okay. Tell me about that.
A: Work my ass off for ten years then at the end of ten years decide what -- whether or not I had to continue or I could start getting others to do more of the work for me. Excuse me for stating the way I did , but ...
Q: Okay. Is this a business plan you discussed with your wife?
A: This -- yes, to some degree. I mean we've had numerous discussions about our lives because of how this business relates to our life. We're

separated most of the time by the fact that I've -- our business is here in Columbia, and I'm -- our residence is in Aiken. So, I mean, I -- I'm not down there as much as I would like to be. So it does impact that part of our decisions.

Q: Okay. But let's talk specifically about your business plan. You ---

A: Are you asking about a formal business plan?

Q: You ---

A: A ten year plan?

Q: You related to me that you had discussed with Mr. Knight a ten year business plan, is that right?

A: As a statement, but not as anything as an official ten year business plan.

Q: Okay. And you also explained to me that you and your wife had talked about a business plan for this new business, is that right?

A: A plan by the statement of goals. There was no formal plan, business plan that we had in place.

Q: Okay. What were the goals then, for this business plan?

A: Basically what I just said. You know, we would

-- you know, that based off of my age at the time of purchase, I was 52 years old at the time, I was just -- my decision was that I'd work full-time until I was 62, and then see where we stood up and determine where we were going to take the business from that point, whether we kept it or sold it or what we did with it.

Q: Did you have some general idea about how much you wanted to accumulate over that ten year plan?

A: I didn't put a number on it, no, sir.

Q: What were you going to make your decision on whether to keep or sell the business on?

A: When?

Q: What were you going to base that on?

A: How it affected our life, our ability to do that -- in our -- in this part of our life. There were a lot of factors that lead up to -- prior to this purchase of the transport portion of Knight Systems.

Q: Okay. Tell me about those.

A: We had relocated from Corning, New York. We came down with Corning, the business that we were involved in closed. We had a window of

opportunity for my wife to go back to New York, we chose to stay in South Carolina and fend on our own. From that point on we had multiple jobs and in order to get to a point where we could try to reestablish our lifestyle and income levels that we had had prior to the business in Summerville closing. So at that point this -- these are the types of factors that part of -- part of what we believed, that would help us get to that point was the additional -- the purchase of this business. So that, you know, the potential -- there was a higher potential for earnings there for me than I was going to get in the business segment. So these are parts of what -- we invested our life's savings into buying this business.

Q: How much did you invest, of personal life savings into this?

A: I -- our personal contribution of it was probably $150,000 or better. But I'm not totally guaranteeing that that was it.

Q: And where'd you get that 150,000 from?

A: I don't know, I just recall seeing -- seeing or -- I recall discussions of what we could

potentially put into this business.
Q: Was it out of retirement?
A: Some was savings, some were -- we ultimately got a business loan to buy the business. So, I mean, but we had to put a percentage of it out of -- we had to come up with some initial monies in order be -- even to be qualified, so.
Q: Okay. Your personal contribution to the purchase came from where?
A: Savings and possibly retirement plans. I don't recall.
Q: Do you recall how much you would have had in savings?
A: No. No, I don't.
Q: Is that something your wife handled?
A: Yes.
Q: So she accessed whatever accounts you had to come up with the personal contribution?
A: Right.
Q: And you don't know specifically where she got those from?
A: Got what?
Q: The monies.
A: You mean the accounts or ---
Q: Yes, sir.

A: No.
Q: Other than retirement account and savings account are there other funds that you would have tapped into?
A: Not that I recall.
Q: Are there other funds other than your retirement savings or retirement accounts or savings accounts that you are aware that you do possess?
A: No. That I'm aware of, no.
Q: Yes, sir.
A: No.
Q: Any other investments for example?
A: Outside of our home and vehicles and such like that?
Q: Yes, sir.
A: No.
Q: Did you take a loan out on your house?
A: No.
Q: Take a loan out on your vehicles?
A: To buy this business?
Q: Yes, sir.
A: No.
Q: Did you borrow any money from any friends or relatives?

A: No.
Q: Now, over that ten year period that you were describing when -- you purchased the business, you said you were 52 years old at the time?
A: Yes.
Q: And at 62 you were going to discuss with your wife whether you kept the business or sold the business, is that right?
A: It wasn't just a deadline time frame, it was more a -- it's an ongoing discussion. I don't say that it's been -- it was more of a targeted date in my mind.
Q: Okay. Over that time period, you said you wanted to see if you could get back to a certain standard of living that you had enjoyed when you both worked for Corning, I believe, is that right?
A: Yes, sir.
Q: Okay. Now, combined income, when you were both at Corning, what would that have been?
A: $200,000, I don't know. I don't know a number.
Q: You explained to me that you were making approximately $60,000, is that right?
A: I might have been making 80, I don't -- I really don't remember.

Q: You don't remember what your salary was ---
A: Yeah.
Q: --- at Corning?
A: Not specifically. I mean I assume that it was -- 60 is probably about right.
Q: Would your wife have been making about 140 at Corning?
A: Yes.
Q: Has she always made substantially more money than you?
A: Yes.
Q: Now, when she left Corning what did she -- did she get another job with another company immediately?
A: Huh-uh, she consulted.
Q: Do you know how much she made from consulting?
A: No.
Q: You have no idea what she made from consulting?
A: No.
Q: Was she consulting when you all decided to purchase Mr. Knight's business?
A: No.
Q: Okay. Where was she working?
A: AGY, like I told you earlier.
Q: Well, how much was she making at AGY?

A: 90,000.
Q: And you would have been making about 28,000?
A: I guess, yeah. I might have been -- it might have been more than that. I would assume I was making a little more than that at that point, but ...
Q: Is she still employed at AGY?
A: No, sir.
Q: What is she doing now?
A: She is a CFO for the National Wild Turkey Federation in Edgefield.
Q: How much does she make for that position?
A: 140, maybe 150.
Q: And how long has she been there?
A: Three years.
Q: So what amount of money were you looking to make between -- roughly, and I understand this was just a goal, but between the time of purchasing Mr. Knight's business and the time you reached 62 years of age?
A: As much as we could. I don't know if there was a real dollar amount tied to it.
Q: You didn't have sort of yearly goal that you wanted to get to?
A: Nothing that was discussed that I can recall.

Q: Did your business goals include acquiring other body removal businesses?
A: In that ten year period?
Q: Yes, sir.
A: No. It didn't. It did not.
Q: Did it include trying to expand the number of contracts or clients that ---
A: Yes, it did.
Q: --- Mr. Knight's business ---
A: Yes, it did.
Q: --- had? And what were your plans or methods going to be to expand Mr. Knight's business?
A: Through contact of existing customers that didn't -- that were not previously dealing with Mr. Knight.
Q: Since the purchase of Mr. Knight's business have you added customers that he didn't have already?
A: Yes.
Q: Okay. What customers were those?
A: Greenlawn -- specifics?
Q: Yes, sir.
A: Greenlawn Funeral Home, Woodridge Funeral Home, Thompson, South Carolina Cremation and Burial Society, Cremation Society of South Carolina.

I mean as far as established ongoing business, what I've just given you is probably the ones that made the biggest impact. We get calls on occasion from out of town customers that -- out of the Columbia/Lexington area that use you on occasion. But it's some we have out of town, regular business but it doesn't necessarily mean some of it was business that we acquired from him and some of it was business that we've added in since.

Q: And the business that you've added since, do you know how much revenue is generated from that new business?

A: Of what I just listed?

Q: Yes, sir.

A: Minimal now, I don't have all those businesses at this point.

Q: Okay. You said minimal now.

A: There was a period of time we held the business with those firms but I don't have all of them at this point. Or some I don't have at all, so.

Q: Okay. What time period -- and we'll probably back up and go specifically ---

A: Sure.

Q: --- with each one of them, but for example with Greenlawn, when did you have a business relationship with them?
A: 2007 -- or 2000- -- yeah, 2007.
Q: And how much revenue did you generate in 2007 from Greenlawn?
A: Just in that year?
Q: Yes, sir.
A: $5,000.
Q: Did you do business with them in 2008?
A: I did.
Q: Okay. Do you know what revenue you generated?
A: These would all be guesses.
Q: Yes, sir. We'll go back and ask for specific numbers.
A: $30,000.
Q: And did you do business with them in 2009?
A: Yes.
Q: How much revenue did you generate from them?
A: 30,000 to $40,000.
Q: Okay. What about 2010?
A: It would have been the same all the way through the end of 2012.
Q: So you did business with them in 2010, 2011, and through the end of 2012?

A: Yes, sir.
Q: And each of those years you would have done roughly 30 to $40,000?
A: That would -- yeah, that's probably the assumption.
Q: Okay. Are they still a client of yours?
A: No.
Q: What happened with that contract?
A: They -- it wasn't a contract.
Q: And what happened with that business relationship?
A: They were purchased by a corporate -- another corporation and they transitioned to some business in-house and some business to my -- from what I understand to another transport, removal and transport service in town, in the area.
Q: Okay. Do you know what business that is?
A: Crossroads.
Q: Do you know why they went with Crossroads?
A: No.
Q: Did you ever have any discussions with them about whether they were dissatisfied with your services?
A: Yes.

Q: And what was their response to that?
A: They were more than pleased with our services.
Q: Did you ask them why then they were choosing Crossroads versus your business?
A: They didn't tell me they were choosing Crossroads. They told me they were taking it in-house.
Q: And after that you found out that they were ---
A: Yes, sir.
Q: --- not only doing some in-house, but doing business with Crossroads?
A: Yes, sir.
Q: And did you ever contact them after you found out that they were doing business with Crossroads?
A: I have not.
Q: When did you find out they were doing business with Crossroads?
A: March of this year, 2013.
Q: Did you ever sell Greenlawn Funeral Home any body bags?
A: No. Well -- okay. Never? I don't believe -- I would say minimal if any. They typically provided their own. They would supply us with bags to do their -- any transport work that

required bags.
Q: If you sold them bags where would you have gotten those bags from?
A: If I had sold them ---
Q: Yes, sir.
A: --- I would have gotten them from Knight Systems.
Q: What would you -- and I understand, we can talk about this in a little bit but, Mr. Knight sold bags to you cheaper than he sold normally to retail customers, is that correct?
A: Sold us bags -- my understanding, yes.
Q: And would you resell at cost to Greenlawn or any other funeral home or would you do a markup?
A: Markup.
Q: Okay. And how much would the markup be?
A: I bought them for 8, I sold them for 16. Whatever that markup is.
Q: And you said Woodridge Funeral Home was another business ---
A: Right.
Q: --- you had as a client?
A: Same time period. They and Greenlawn were owned by the same people, so.

Q: So from 2007 to 2012 you had them as a client?
A: Uh-huh (affirmative response).
Q: And how much revenue was generated each of those years?
A: 15,000 a year, maybe. This is all guessing now.
Q: Is there any reason from 2007 that the amount of revenue generated from Greenlawn jumped from 5,000 to 30,000 in 2008?
A: From 2007 to 2008?
Q: Yes, sir.
A: Yeah, yeah.
Q: Why is that?
A: I only had them for a portion of the year.
Q: When did you get them in 2007?
A: Oh, probably in the fall of that year. And then they started giving us more. Initially we weren't doing all of their removals. And then we ultimately got -- we did all their transport, so.
Q: And how much did they pay you? Was there a set price per body removal?
A: Yes.
Q: Okay. How much would that be?
A: Do I have to answer these questions?

Q: Yes, sir.
A: 125.
Q: $125 per body?
A: Yes, sir.
Q: Is there a reason you don't want to answer that question?
A: I don't know what the outcome of this ---
MR. PRINGLE: I'll interpose here that -- certainly an objection, to the extent that the questions are asking confidential and proprietary trade secret information that's particular to my client, especially when the other party in the case is a direct competitor. I would object to that. And certainly based upon the questioning and where it goes in terms of current pricing and getting information that would not be -- it might not be discoverable except under a very tight protective order that I may very well ask him not to answer the question, or instruct him not to answer it, depending on where it goes.
MR. LLOYD: And certainly we can deal with that if we have to, with a protective order if it warrants it, but what I'm trying to find out right now is, that $125 per body was that the rate in 2007?

A: Pretty much.
Q: Has that pretty much stayed the same rate from 2007 to 2012?
A: Yes.
Q: During that time period, were they -- was Greenlawn providing you all of the body bags for those removals?
A: That was their intent. 99 percent of the time probably. There might have been exceptions that they didn't, that we would have charged them for a bag. They occasionally would run out of inventory for example. We would just use what we had in our inventory and charge them accordingly.
Q: Okay. And that would be the $16 you would charge?
A: Yeah.
Q: All of their invoices would reflect whether they -- if they were, for example, not charged a body bag price in the invoice, would that indicate that they had supplied their own bag?
A: Not necessarily.
Q: How would you keep track of, if you did, whether or not you were selling them a bag or whether they were supplying a bag?

A: Through our database.
Q: Your database indicates whether or not you sold Greenlawn a bag?
A: Yes, sir.
Q: And when you say your database, what type of record keeping is that?
A: It's -- we acquired it from Buddy and Knight systems in the purchase of the business, so that would have been part of the assets that I omitted from earlier. But what it does, it gives us the opportunity to create records for invoicing purposes and it keeps track of all the pertinent information for the work we do for each of the customers.
Q: To your knowledge are those invoices that relate to Greenlawn, are they invoices that you reviewed in preparation of Defendant's Exhibit One?
A: No.
Q: So those invoices related to Greenlawn have not been produced to the defense at this point to your knowledge?
A: I don't believe they were asked for.
Q: But that's the database that would tell me how many body bags you actually sold to Greenlawn

from 2007 to 2012?
A: The information could be -- could be re- -- could be pulled from that, yes.
Q: Is there any reason that you would have used your own body bag in servicing Greenlawn but not charged them for that body bag?
A: Would there be any reason that I would do that?
Q: Yes, sir.
A: Not by design. No, I would say no, not that I know of, not that I'm aware of.
Q: Woodbridge Funeral Home, that's here in Columbia?
A: Woodridge?
Q: Woodridge, I'm sorry.
A: It's in Lexington.
Q: Lexington. And again, the rate per -- is there a set rate?
A: It's the same apply. Take Greenlawn and put Woodridge next to it.
Q: $125 per body?
A: Exactly.
Q: And again, did you ever sell Woodridge any body bags?
A: Occasionally. I'm not for sure that -- well, let me think. Yeah, I could, we could be able

to provide that.
Q: And Thompson Funeral Home?
A: Yes, sir.
Q: Where's that located?
A: Lexington and West Columbia.
Q: Okay. What years were they a client of yours?
A: 2011, 2010 or 2011 to 2013. I don't remember exactly when it started up. Or -- you know.
Q: In each of those years what revenue was generated from that business?
A: Probably about 50,000 a year.
Q: For each year?
A: Yeah.
Q: And did you sell them any body bags?
A: Yes.
Q: Were those -- was that -- because as it related to Greenlawn and Woodridge, you said occasionally you would do that, did you sell more than occasionally to Thompson?
A: Yes.
Q: Okay. Do you recall how often you would sell a body bag to them?
A: Any time they required it.
Q: Again, I'm assuming there's a set price per body removable, is that right?

A: That is.
Q: Is it the $125 or is it a different rate?
A: That's -- that is accurate.
Q: And during your body removal or retrieval service for Thompson, did they ever supply their own body bags?
A: Not that I recall.
Q: And those body bags that you would have sold to Thompson, were they Mr. Knight's body bags?
A: Yes.
Q: They were always Mr. Knight's body bags?
A: Yes.
Q: And again, your database would indicate again that a body bag was used on each of those retrievals?
A: Whatever -- yeah, whatever applied.
Q: And would it also indicate on that, in that database where the body bag -- what type of body bag was used?
A: Uh-huh (affirmative response).
Q: So if it was Mr. Knight's body bag the database would indicate that?
A: No, it wouldn't. You said type.
Q: It wouldn't indicate the manufacturer of the body bag?

A: No, sir.
Q: How do you know that Mr. Knight's body bags were always used with Thompson?
A: Because that's all I bought. For that purpose.
Q: That's all you bought for that purpose, what do you mean by that?
A: His bag was the only bags that I bought for that -- for -- that purpose. For what we would have used for Thompson's.
Q: You said the South Carolina Cremation and Burial Society?
A: Yeah, it was small amount of business, nothing significant.
Q: What years were they clients?
A: 2009 to 2012, maybe 2011.
Q: How much revenue was generated with them?
A: Minimal, maybe you know 5,000 a year.
Q: Would you use body bags with them?
A: Would I?
Q: Yes, sir.
A: Sometimes yes, sometimes no.
Q: Okay. When would you use body bags?
A: When they required them for home removal, for example nursing home removals. Those type of things, typically.

Q: And would you get body bags from them or would you supply the body bag?
A: We would sell the bag that we acquired from Knight.
Q: And again, any bag that you used with South Carolina Cremation and Burial Society would have been a Knight Systems bag?
A: Yes, sir.
(Off the record discussion.)
Q: Other than South Carolina Cremation Burial Society, who else were clients that you brought in new?
A: McSwain-Evans.
Q: Is that a funeral home?
A: Yeah, they're all funeral homes.
Q: And when were they a client?
A: 2011 until now, current.
Q: How much revenue generated from them?
A: Six, $7,000 a year maybe.
Q: Anybody else?
A: I'm sure there's other, Reggie. Without looking at the customer -- you have to understand part of it. When I bought the database, some customers were existing customers with minimal or no activity. And

they still were on the customer list but they were not necessarily current customers to what we had bought. So part of it was the necessity to go out and re-nurture and try to establish business with them, so yeah, there's other ones, the occasional here and there ones that -- so, I mean ...

Q: You've indicated ---

A: I don't know what you're trying to get towards, so I mean -- go ahead. I indicated?

Q: I'm not trying to get to anything Mr. Lintal.

A: Okay.

Q: I'm trying to understand this case. You'd indicated earlier that some of these businesses that we just discussed may no longer be clients, is that right?

A: Some of the businesses that we discussed?

Q: Greenlawn and ---

A: Like Thompson ---

Q: --- Woodridge ---

A: --- Greenlawn ---

Q: --- Yes.

A: --- and Woodridge, right.

Q: Which ones are no longer ---

A: Those three.

Q: All thyree of those?
A: Yeah. All for the same reason.
Q: Is Thompson owned by the same company ---
A: Yes, it is.
Q: --- that owns Greenlawn and Woodridge?
A: Yes, sir.
Q: And South Carolina Cremation and Burial Society is still a client?
A: No, they're owned by the same people as well.
Q: All -- so all four of those are gone? McSwain-Evans, are they still ---
A: No. They're independent. We have them still.
Q: Okay. Was Shives Funeral Home a client?
A: They were on the customer list.
Q: Have you done any --
A: Yeah, we do business with Shives, yeah.
Q: How much business do you do with them?
A: Twenty to 25,000 a year maybe.
Q: Do you sell them body bags?
A: Sometimes. They prefer not to have the bags, bodies in bags. So we don't necessarily use bags for their transport.
Q: And if you sold them any bags would those have been Mr. Knight's bags?
A: Yes, they would.

Q: And again it's a flat fee charge per removal?
A: Uh-huh (affirmative response).
Q: Your driver's records, when the driver goes to a site to remove a body, do those records indicate whether or not he's taking a bag with him to sell to the customer?
A: I don't understand your question.
Q: Your -- somebody goes to pick up the body, right?
A: Yeah.
Q: Okay. When goes to that site, is your normal practice that he gives them an invoice at that particular time?
A: A delivery slip.
Q: Okay. He gives them a delivery slip and what's on that delivery slip?
A: The customer name, where we did the removal from, the delivery location, the name of the deceased, the transit permit if there is one, the times that they took for calls and whether or not there was a bag used. Along with the name -- the initials of the individual that did the work.
Q: And the bag, if there is an indication of a bag, that means that the driver took a bag out

of your inventory to that site, is that right?
A: Uh-huh (affirmative response).
Q: If the funeral home, for example, he was going to was supplying their own body bag, would the slip indicate in any way that they were providing the body bag or that he did not to need to provide a body bag?
A: Yes. It's supposed to. We don't have that any longer, so it would have during the period that that took place.
Q: When did you all stop using the delivery slip?
A: No, not the delivery slip. We don't do business with Greenlawn, so Greenlawn was the only -- Greenlawn, Woodridge, they were the ones that supplied -- they were the two that supplied us bags. The were the only ones.
Q: So everybody else other than those two you always supplied bags for?
A: If we use a bag.
Q: And all of those would have been Mr. Knight's bags?
A: Yes.
Q: And just so that I understand, the delivery slip -- do you keep those in archives or keep some sort of ---

A: Yes.
Q: --- record of those? So since you purchased the business you've retained any delivery slips that you've used?
A: At least five years worth, so. Whatever the legal limit for holding, that we're required for by the state or whatever.
Q: Are you aware of any delivery slips that you've destroyed?
A: I'm not aware of any so they more than likely have everything from day one.
Q: So the delivery slips should match your totals that you've produced in terms of the number of bags you've purchased from Mr. Knight?
A: In theory, but that's not necessarily the case. I mean there could have been bags that were given away or were not accounted for. I can't say that with 100 percent accuracy that they would be absolutely correct.
Q: But there would be ---
A: But for the most part, yes.
Q: --- there would be some minimal ---
A: There should be a ---
Q: --- difference?
A: --- check and balance that I could created by

it.

Q: And like you said, if you gave them away that wouldn't be indicated ---

A: I mean ---

Q: --- and ---

A: It's such a small item that, you know, there's value but it's not -- it wasn't a significant value by comparison to the other things that we were -- it was a tool for -- that we used for the work we did.

Q: But you were purchasing those bags from Mr. Knight at $8 per bag and charging your clients $16 per bag?

A: Yes.

Q: Where do you keep those delivery slips?

A: At my home.

Q: Are they all boxed together?

A: Yes, they're organized.

Q: In other words if we were asked to produce, asked you to produce copies of those ---

A: Of every one of them?

Q: --- you would be able to go to one -- potentially we may do that, but you would be able to go to one site to pull those, is that right?

A: One maybe two, but yeah.
Q: Any difficulty you can think of sitting here today at being able to retrieve those delivery slips?
A: The retrieving no. Making copies, yes. That's a lot of invoices. There are a lot of slips.
Q: Why don't we let y'all take a break.
(A short break was taken at this time.)
Q: Mr. Lintal, did your attorney play for you a recording of a conversation that you had with Mr. Knight regarding your purchase of infant bags from someone else?
A: Yes.
MR. PRINGLE: Let me just interpose here.
A: Ooops.
MR. PRINGLE: No, no, no, you answer every question. I was just going to interpose you know sort of, maybe it's characterized as an objection to the form but certainly to just lodge and to hold that, you know, whatever objections to the actual use of the tape ---
MR. LLOYD: Sure.
MR. PRINGLE: --- at the appropriate time that violates every known rule of evidence as well as the Magna Carta going back to the history of

the legal system. But I'll just make all of those and bring them all forward but just, you know, ---

MR. LLOYD: Sure.

(Off the record discussion)

Q: And that's something, Mr. Lintal that your attorney will address at some point, but did you recognize the voices on that recording?

A: Yes.

Q: And was that you and Mr. Knight involved in that conversation?

A: Yes.

Q: Do you recall the circumstances around the time line of when that conversation would have occurred?

A: The date?

Q: Approximately, I know you don't remember.

A: September 16th. I can tell you, September 16th, 2011 -- no, June 16th, 2011.

Q: And how do you know that it was June 16th?

A: It was the day before the Richland bid was due.

Q: Since your purchase of Mr. Knight's business, has Palmetto Mortuary purchased any other body removal businesses?

A: Yes.

Q: And which ones are those, now?
A: Capital Transportation.
Q: Is that the only one?
A: Yes.
Q: Did you go through a broker to purchase Capital?
A: No.
Q: How did that purchase come about?
A: I was approached by the owner, Archie Maddox. And we discussed what he had, what he wanted, and negotiated from there.
Q: Did you go through a similar or different sort of business valuation process that you went through with Mr. Knight's business?
A: As far as the process?
Q: Yes, sir.
A: Likely similar.
Q: Again, would your wife have been sort of the one doing the business modeling?
A: A good bunch of it, yeah.
Q: Did you take any greater role in arriving at the purchase price of that business than you did with Mr. Knight's business?
A: Yeah, probably. Like it was a little more familiar with the -- what it's potential was

for what it gave us versus the -- my experience was played in more to it, I guess, in the decision process.

Q: Now, would that business -- did you do any modeling of the business purchase on paper or computer or did you just do this in your head?

A: I -- like -- you know, we did some -- I'm sure we did some modeling on paper but whether or not we've kept it is another question because it was a much simpler process.

Q: Is there a non-compete clause in that purchase agreement?

A: There is.

Q: Let me ask you, how did you value the non-compete clause in the purchase agreement with Capital Transportation?

A: I don't know if we put a financial amount to it quite frankly. I mean, in our modeling process?

Q: Yes, sir.

A: No, I -- it wasn't -- there way -- it wasn't any bone of contention for him because he wanted to sell the business so he was willing to -- so it had minimal value in this particular instance.

Q: And how did that differ from your negotiation with Mr. Knight regarding that non-compete clause?
A: At the time we felt it was the same, that it had minimal -- because he expressed his desire to get out of the business.
Q: Had you ever discussed with Mr. Knight prior to the closing, the inclusion of a non-compete in the purchase agreement?
A: I'm sure it was discussed.
Q: Do you recall when it was discussed?
A: No, I don't recall.
Q: Do you recall who might have been present when you discussed it?
A: Prior to the closing?
Q: Yes sir.
A: No, I don't recall. I mean the primary parties were myself, my wife, and the broker, and so it could have been any combination of those three.
Q: Okay. Did you ever, to your knowledge, have any discussion with yourself, the broker or your wife with Mr. Knight regarding the non-compete prior to the closing?
A: That I recall?
Q: Yes.

A: I don't recall.
Q: In the discussions with your wife and/or the broker, how did you all value the non-compete? Come up with a dollar figure for example.
A: I am not sure if it was really considered in the value, dollar value. I know it was something that we required and were insistent upon.
Q: Let's talk about the closing. The actual asset purchase agreement, that included a non-compete, for example, in it, had you shown -- had you gone back and forth with Mr. Knight regarding varying drafts of that agreement?
A: I believe his lawyer and our lawyer had exchanged documents at some point prior to the closing, yes.
Q: So it was your understanding that the document had been shared with Mr. Knight prior to that closing?
A: I believe so. To my understanding, yes.
Q: At any point during the process of coming up with that final draft of the asset purchase agreement had there been requests or offers by Mr. Knight that he wanted certain things included or taken out that you all responded

to?
A: That he requested?
Q: Yes, sir.
A: Prior to the final draft?
Q: Yes, sir.
A: Yeah, yes.
Q: Okay. What were those?
A: He wanted the term of the -- term of our requirement to buy the body bags listed to be equal to the amount of the term of our non-compete. So in other words ten years versus ten years. The original contract as I recall, the original document, it was a three year period.
Q: The non-compete was a three year?
A: No, the -- no, I don't recall what the non-compete was. I think it was five. But we were required to buy bags for three years as it was originally written, as I recall.
Q: That, for lack of a better description, let's just call it an exclusivity provision. You were going to purchase bags exclusively from Mr. Knight, is that right?
A: That was the intent, yes.
Q: Now, when did y'all first -- you and Mr.

Knight, when did y'all first have the discussion about your new business purchasing solely from him any body bags?

MR. PRINGLE: I'm going to just throw in, just a continuing objection to the form, just based upon the idea that the final document says what it says. But for what that's worth, that the document speaks for itself. But, continue.

A: Say it again, please.

Q: Okay. At what point prior to the closing did you and Mr. Knight discuss your new business, Palmetto Mortuary, purchasing body bags only from his body bag business?

A: Our assumption, it was -- it was probably in all aspects. Before, when it was first drafted, when we came to the ultimate draft of the document. Our understanding was that we were entit- -- we were -- our intention was that we would be buying all bags from him. He said he could supply everything, every bag that we would ever need for this business.

Q: Okay. And when did y'all have that discussion?

A: Well, a good part of it took place during the day of the negotiation of the -- I mean, he -- he had expressed that right from the beginning

but the bag portion he wanted to keep and, you know, we -- our -- okay. Primarily -- I mean, I do recall it being part of the talk during the day that we were -- we drafted the final copy and signed the document, so.

Q: Okay. Was the language regarding your requirement to purchase body bags solely from him, was that already in the document when Mr. Knight arrived at the closing?

A: The document -- well, it -- it changed during the course of the closing. So ...

Q: What changed during the course of the closing?

A: The -- the -- what was in that particular portion of the agreement. The term, for example, is ---

Q: The length of the exclusivity?

A: Right.

Q: But was it Mr. Knight who insisted that that exclusivity provision be included in the Asset purchase agreement?

A: He was insistent on it. I mean he wanted -- yes. I mean he -- that was part of what he wanted, yes.

Q: And was that insistence communicated to you prior to the closing or at the closing?

A: I don't recall. I know at that point it was definitely communicated.

Q: So, is your testimony today that Mr. Knight wanted that provision included in the agreement that you purchase body bags only from him?

A: To the best of my recollection. We had no objection to it at that point in time. Based on -- okay, go ahead.

Q: My question is, is it your recollection that Mr. Knight wanted that provision inserted into the agreement?

A: As part of the negotiation, I believe it was -- it would have been what he would have requested. I don't recall whether or not he directly specified that exact verbiage be put in there or if it was just written up for approval. As I recall, the document was not final and settled until we both had the opportunity to change at that day of closing. We didn't have any -- we could not detect any objection, we being my wife and myself, didn't really -- didn't have any reason to believe there would be any reason that -- other -- that all bags, that he couldn't supply all bags. Especially, you know, specifically the ones

listed on the document.
Q: Okay. Let's go at it this way, when did you first learn that Mr. Knight had a body bag business?
A: The very first that we talked with him about -- I mean it was a known process right from the beginning because the -- I'm sure it was the broker that initially said that he had two parts to his business, of which he was only going to sell one.
Q: And at some point you go physically to where his business was located with your wife, is that right?
A: Yes.
Q: And did you happen to tour the area where he manufactured body bags?
A: Not that I recall.
Q: So you ---
A: I don't know. I don't believe we did.
Q: Okay. So to this day you've never seen the area that he manufactures body bags?
A: To this day?
Q: Yes.
A: No, I have seen it since. I've never seen him do it, but I've seen the area.

Q: Okay. If it wasn't during that visit when you went to the site, was it after you purchased -- -

A: Yes.

Q: --- the business?

A: Yeah.

Q: Okay. There's a provision in the agreement as well that essentially gives you right of first refusal should he decide to sell the body bag business, is that right?

A: Yeah.

Q: Okay. How did you know you wanted to purchase the body bag business if you'd never seen it?

MR. PRINGLE: Object to the form, answer the question.

A: I -- how did I know I would want to buy it?

Q: Yes, sir.

A: Well, it seemed to make sense only based off the fact that it worked for him. It was a related entity that could relate to what we -- we didn't intend to do a lot, make a lot of changes to the way he was operating his business. The difference being is we were not going to have -- be supplying ourselves with body bags at that point. That was the biggest

distinction between it.

Q: Had you had any discussions prior to the purchase of Mr. Knight's business about the revenue he generated from the body bag business?

A: Was there any -- there was never, that I recall, any specific to what revenue the body bag generated. We never made an offer for -- the offer was final refusal. If I recall the way that the verbiage was in there. It didn't say that he couldn't sell anyone else.

Q: Right.

A: It says that if we had the opportunity -- if he were to sell it, we were given the opportunity to meet or beat the price should we chose to.

Q: Was there a value placed on that?

A: No, no, not at that point. We were intent on one part of this business and it was what we bought.

Q: And again, was it your idea or Mr. Knight's idea to put that right of first refusal?

A: That was our idea.

Q: And so that was already in the agreement when Mr. Knight came to the closing?

A: I believe so.

Q: And again, the discussions about your new company only purchasing body bags from Mr. Knight's business, body bag business, that was a discussion that according to you, you only had at the closing?

A: No. I'm sure we talked about it prior to that. I -- sir, I didn't believe that the body bags were -- and I still -- I did not believe that the body bag was a significant portion of what this business was. My understanding was that the revenues that the removal and transport portion of this company generated as compared to what the -- generate -- revenue generated in the body bags was tremendously different. So the body bag was more of a -- would have been more of an add-on if we chose to do it later on. We didn't -- this -- it's not a high value item, so. And I didn't believe -- I mean, I didn't know what volumes he had. We never really discussed that. I've heard times that, you know, he's had windfalls with Katrina and different things that -- events that occurred, but as an ongoing customer base, my belief is that we were probably as big -- his -- potentially his largest customer as an ongoing

-- as on ongoing customer. But I was more than willing to do the business with him, so.

Q: Okay. And what I'm trying to understand from your perspective is why, within this asset purchase agreement, him selling his business to you, was it important from your standpoint to ---

A: It wasn't.

Q: --- require ---

A: The opt- ---

Q: Well, let me finish the question.

A: Okay.

Q: To require in the agreement that you solely purchase body bags from him.

A: I don't believe that it was a significant fact to us.

Q: Had you seen any prior drafts of the purchase agreement, prior to the closing, that had that language in the agreement?

A: I don't recall. It very likely was in there, but I don't ---

Q: How many drafts of the eventual purchase agreement do you recall seeing prior to the final version?

A: Maybe two. I don't recall exactly what was

changed in it, so. Maybe two, I don't know. I don't recall the number.

Q: Would you ever mark up those drafts?

A: Would I ever?

Q: Yes, sir.

A: Yeah, I assume. I mean, yeah, sure I would have read it and marked up. Yes.

Q: And what would have done with those markups?

A: Likely passed them back to the lawyer.

Q: Did you keep them?

A: Communication was between us and our lawyer here, at Ellis Lawhorne.

Q: Did you keep any drafts?

A: I don't believe so.

Q: Do you think your wife kept any drafts?

A: I don't know.

Q: Does she also have input in marking up any of those drafts?

A: Certainly.

Q: And do you recall what she would have made suggestions or comments about?

A: I don't know. I don't -- not specifics. The term of the non-compete was probably the biggest things that we would have been discussing, you know, on that part.

Q: And by we, you're talking about ---
A: She and I.
Q: --- your wife and you?
A: Yes.
Q: What discussions did you have with your wife about the non-compete?
A: Whether it was adequate for our benefit, whether or not it sufficed in making the -- both parties protected, if you will, from the standpoint of the business transaction.
Q: The length of the non-compete, who came up with the length of that?
A: The final version?
Q: Yes, sir.
A: It was our input on the ten year.
Q: Our being?
A: My wife, myself and our lawyer.
Q: Was there -- previous to that was there a shorter time period in the non-compete?
A: There was.
Q: What was the time period?
A: I believe it was three years. It might have been -- I -- it might have been -- I believe it was five years, quite honestly. I don't recall exactly what it was.

Q: And the previous number where there was three or five years ---

A: Uh-huh (affirmative response).

Q: --- is that a number that you and your wife came up with?

A: I believe -- I think it was the lawyer -- our lawyer came up with it more than likely and it was up to us to decide, you know, whether or not it was adequate.

Q: Okay. What discussions did you and your wife have regarding, whether it was three or five years, that particular time period?

A: Well, we wanted -- you know, we wanted as many as we could feasibly have just to protect our -- our goal was to protect ourselves. Buddy had -- okay, let me go back. Our conversation was that we were trying to protect ourselves through two contract cycles. Of which the contracts came due at -- the three contracts that had time frames on them had -- they came due at different periods of time. So, we -- our ultimate goal was to try to make sure that we got the current -- the contract we were currently in plus one to two more times that we were protected against the potential of Buddy

coming back into the business.
Q: Why did you and your wife fear Buddy coming back into the business?
A: Buddy had a very strong reputation for the three businesses that the contracts pertained to. The contracts were the whole value to this business in regards to what types of guaranteed revenues that we were going to be able to generate. So we wanted at all costs to try to protect that for as long as we could.
Q: And the value of those contracts made up your ultimate purchase price, is that right?
A: The majority, yeah.
Q: The majority.
A: The vast amount. And it was allocated accordingly in the -- in the way that it was -- you could see it in the breakdown in the asset agreement.
Q: And, as you said, Buddy's reputation, as it related to those contracts and just in the industry in general, had some value to you to keep him out of competing against you, is that right?
A: Yes. Mostly for the contracts, but yes.
Q: And again, your calculation was to try and get

through two contract cycles, is that right?

A: That was our goal. I mean it was -- that was ultimately what was ---

Q: And during the course of that did you and your wife, again with her business accounting background, did you -- how did you all discuss or come to terms with what value you would assign on paying for that non-compete?

MR. PRINGLE: Object to the form, answer the question.

A: Repeat that again. I didn't understand.

Q: Okay. You told me earlier that your wife and her accounting background ---

A: Right.

Q: --- and her background at Corning ---

A: Right.

Q: --- particularly as it related to business acquisitions and potential business acquisitions, factored a great deal in coming up with the ultimate purchase price, is that right?

A: Uh-huh (affirmative response).

Q: And during the discussions with your wife about the importance of Buddy not competing with you, as it related to those contracts, what

discussions did you and your wife have specifically about the value that you were willing to pay for that non-compete?

MR. PRINGLE: Same objection, answer the question.

A: I don't recall the -- in our discussion, there being a value on the non-compete. I mean as far as a dollar value. It was -- it was very important to us because without the non-compete we wouldn't have bought the business, okay. I mean, so it held a great value to us. So, the -- but I don't know if we looked at in a dollar and cents point of view that this non-compete has a certain value to the contract. We estimated and anticipated somewhat of what the term of the given contract based off of the history that we were provided would -- i.e. the number of calls per year, that was done for Richland County for example. Given equal circumstances and business speculation you could -- you'd have to decide whether or not things will stay the same, things will grow and base your decisions off of that. Will cost go up? So there were a lot of factors that played into it but as far as the non-compete, without those -- the whole value to the business that

we bought from Buddy was those three contracts. That was the vast majority of what it's value held. And because of the fact that it kept us, got us in and kept us in the game. We had no clue going into this if we would have one funeral home customer after the closing of that date. We had no guarantees on it. So, the non-compete part was very important from the standpoint of protecting those contracts as -- for as well as we could and as long as we could.

Q: So was any part of your purchase price offer, did it include compensation to Mr. Knight for ---

A: I don't recall specific ---

MR. PRINGLE: Object to the form, answer the question.

A: I don't recall specifically that that was -- it was broke down in that way. I don't recall.

Q: When you and your wife rejected the three or five year term of the non-compete in your -- to your recollection, did the purchase price offer to Mr. Knight increase any to go from three or five years to ten years?

MR. PRINGLE: Same objection, answer the question.

A: The price did not change to the best of my knowledge.
Q: So was there any added benefit to you from going from three or five years to ten years?
A: Other than what I just said?
Q: Yes, sir.
A: I don't believe so. I don't think that that was the goal behind that.
Q: But to your recollection the compensation to Mr. Knight did not increase by going from three or five years to ten years?
A: I don't agree with that.
Q: Okay. What value did Mr. Knight get for going from three or five years, whichever it was, to ten years?
A: Well, the original contract did not list the pricing for the bags. It was a cost plus scenario. We have no clues about it's cost.
Q: I'm not talking about the body bags, I'm talking about the non-compete agreement. You went from three or five years, whichever was in the original ---
A: Yes, sir.
Q: --- draft of the agreement for the non-compete.
A: Right.

Q: When you insisted upon, you and your wife insisted upon the non-compete of ten years, was there any discussion by you and your wife, with anybody, and I'm not asking you certainly to get into attorney-client privilege, but did you have any discussion either amongst yourselves or with anybody else about increasing compensation to Mr. Knight for that increase in the term of the non-compete?

A: Not that I recall.

Q: Now, you said that -- and I don't want to mis-characterize you -- what value did you place on the body bag business?

MR. PRINGLE: Object to the form, answer the question.

A: As part of our asset purchase agreement?

Q: Yes, sir.

A: It had none, minimal if any.

Q: Okay. And ---

A: It was more -- it was more an offering that we put in there should he accept the terms of that. It was really non-committal on either side because it was written, as far as we -- as I believe it to be. Because there was nothing saying that we had exclusive rights to it.

There was no exclusivity into that part of it other than the fact that we had a chance to buy it if he sold it.

Q: And I didn't -- are you aware of whether or not there's a value attached to ---

A: I'm not aware.

Q: --- that body bag business in the asset purchase agreement?

A: There -- none by our -- none from our point of view as best I could tell you.

Q: Okay. So you're not aware that there is any price set in the purchase agreement for the body bag business?

A: Huh-uh (negative response).

Q: Is that a no?

A: Not that I recall.

Q: And was that something that you would have been involved in reviewing or your wife?

A: I don't think we put any value on it so we didn't really review it.

Q: Now, as it relates to the process of actually closing this deal, you said you put $150,000, roughly, into it of your own personal assets, is that right?

A: We put something in. I'm not exactly sure of

the dollar amount, but let's use that number.
Q: Would it have been over $100,000?
A: I think so.
Q: And was that -- describe for me, if you will for the record, when you say you put personal assets in of roughly $100,000, maybe, and up to $150,000, was that paid to the bank or was there an infusion of that investment into the business itself?
A: It -- I would assume it was an infusion into the business itself, so -- I don't recall us paying it to the bank, so.
Q: Did you have to put up any kind of collateral for the loan from the bank?
A: Minimal, if we did any. I mean, it -- that's where I believe we probably put in a portion of it through the -- we more than likely paid some monies in through the bank because they were willing to do it with little or no collateral. I don't recall any collateral that we had to put up. The business assets were gonna -- became the collateral, so.
Q: And the business assets ---
A: The vans, were the primary things that they used as assets against the -- which is minimal,

it was a very small value. But it was a very safe contract that they felt comfortable with based off of the fact that the three contracts existed.

Q: How much did you borrow from the bank for this particular transaction?

A: I would say an excess of $400,000, but I don't know the exact amount.

Q: And to your knowledge the only collateral that the bank required was the vans?

A: As far as I recall.

Q: And where did you get a loan from for this deal?

A: Community Bank, I think it was the name of it. It's changed -- it changed names so I'm not really sure where it was.

Q: Did they finance your purchase of Capital Transportation?

A: No.

Q: How did you purchase Capital Transportation?

A: Through BB&T.

Q: And what was the loan on that?

MR. PRINGLE: I'm just going to lodge an objection for relevance, but answer the question.

A: Well, it was a consolidation of two loans. We

transferred our monies through them. So the exact amount we borrowed I'm not quite for sure. I think it was -- it was likely around 80,000 to 90,000 -- 80,000 to $100,000.

Q: Do you know what the debt service on the loan from Community Bank is per year?

A: Current?

Q: Yes, sir.

A: Zero.

Q: Has that all been payed back?

A: No. We transferred it to BB&T.

Q: Well, what is the debt service on that original amount borrowed?

A: I don't know. You'd have to ask my wife that, sir.

Q: She would know that?

A: Better than I.

Q: Had you approached any other financial institutions about borrowing the purchase price of Mr. Knight's business?

A: Possibly.

Q: Were you ever turned down by any financial institutions regarding this?

A: I don't believe so.

Q: Did you at any point ever have a discussion

with Mr. Knight about seeking help at acquiring a loan to purchase his business?

A: I don't recall if I inquired about it but he helped us, if you will, from the standpoint of putting us in contact with his banker, so.

Q: And were you seeking that or accepting that assistance with his banker because other banks had turned you down already?

A: They might have, I don't recall. Or we didn't like the terms or the -- I don't recall the whole circumstance behind it, so.

Q: Who would have made the loan applications at any of these institutions?

A: My wife.

Q: So your wife handled any loan applications?

A: Yes.

Q: And did she ever share with you having -- that she was having any trouble getting a loan?

A: Not that I recall.

Q: How did it come that you had this discussion with Mr. Knight about either accepting or seeking help from his banker?

A: I don't recall the discussion, so I mean it's -- we had a lot of discussions through the course of that time, so once -- so I don't

recall.
Q: What assistance did you provide to your wife as she made applications for a business loan?
A: Minimal. I -- she did the financial aspect of this.
Q: Do you know what you filed -- what you reported as income on your income taxes last year?
A: I do not.
Q: Who normally handles your filing of your income taxes?
A: My wife.
Q: You don't use an outside accountant or service?
A: Not that I -- no, I don't believe so.
Q: Do you actually sign your returns?
A: No. It's all filed electronic.
Q: So you have no idea what your income was last year?
A: Truthfully?
Q: Yes, sir.
A: No.
Q: Do you file joint returns or individually?
A: I believe it's joint.
Q: And does she handle all the filings for Palmetto Mortuary?
A: She does.

Q: When you sell body bags to funeral homes, like Greenlawn for example when you were doing that, did you ever consider that as competing against Mr. Knight's business, body bag business?
A: No.
Q: Why is that?
A: It was part of his -- we continued on with his business practices and -- that he had had prior to the sale to us of which we utilized his model, and his formula, and it was a part of the -- part -- if I didn't -- if I was competing with him for those bags, then I would have no reason to buy bags from him. So, I mean, where else would they go? Does that answer your question? I mean, I'm not trying to be -- we had bags for a specific reason to sell. But I did not consider it to be competitive to him.
Q: Would those folks, if they didn't purchase bags from you, do you know some other body bag manufacturers that they would have gone to?
A: There's multitudes. I mean there's hundreds -- well maybe not hundreds, but there's a lot.
Q: And that's what I'm a little curious about the exclusivity provision in the purchase

agreement. If there are so many manufacturers of body bags, why were you willing to lock yourself in for ten years of purchasing only from Mr. Knight?

A: Once again, I didn't -- we didn't think it was a big portion of this contract. It wasn't -- it was an add on to the -- it was a tool to provide the services that we were ultimately trying to perform, which is the removal and transport portion that -- of the mortuary businesses that we were serving.

Q: Did you price compare Mr. Knight's body bags to any of those other hundreds of body bag manufacturers?

A: At what point, ever?

Q: At the point prior to the closing where ---

A: No.

Q: --- that provision was put in there?

A: No, we did not. We did not have a set price on the bags at the point that we were negotiating. It was always at a cost plus that he was going to be selling them to us for, at least from that point. And he -- we've been assured -- he'd given us assurances that he was competitive so we continued the negotiation on

that promise. But it was always one of those areas that we weren't quite sure of and uncomfortable with because we didn't know his cost.

Q: Okay. Did you do any research to see what body bags were priced at from any of his competitors?

A: More than likely we look at them and what bags would be bought for so I can't say we did not. I don't recall having any records or documentation of that. But we -- yes, we did some due diligence to try to come up with what was a fair and marketable price for bags that would be purchased.

Q: Is that something you did personally or is that something your wife ---

A: I would have done that.

Q: And what -- how did Mr. Knight's prices compare to the rest of the market?

A: Once again, at that point, we didn't -- I didn't know what he was selling them to us -- what he was going to be selling them to us for.

Q: And how did that figure get into the purchase sale agreement?

A: He came up with it. It was -- he contributed

that as his portion of the --

Q: And the first time you saw that figure was at the closing?

A: The day of the closing. We might have had a general idea based off of prior conversations, but there was nothing locked into it other than what I recall being the cost plus provision in the prior version of the asset purchase agreement.

Q: And again, at some point had you had discussions with your wife about that particular provision being in the agreement, prior to the closing?

A: Which particular provision?

Q: The exclusivity provision.

A: I don't think either of us objected to it because once again we felt that -- we were being assured he could take care of all of the needs of what we were doing. So it wasn't a major point from our point of view. It was a small, small portion of what we were going to -- it was a needed item but it wasn't a necessity from a standpoint of buying body bags from him or for elsewhere. But part of the negotiation was to give something back for what

we wanted, giving him the exclusivity or the terms that are put in there were part of what we were willing to do from the standpoint of -- to make sure that we had, you know, the terms and such that we were looking for, price and terms.

Q: What's your understanding under the non-compete agreement of the geographical restriction on Mr. Knight competing against you?

A: It was agreed upon in there that the -- I believe the mileage is 150 mile radius. I mean I can -- I don't have a copy. You ...

Q: Did that ever change as far as you recollect during the course of the negotiations?

A: I don't recall. I don't recollect if it did.

Q: So, the only thing as far as you recall sitting here today that did change was the length of the non-compete went from three or five years to ten years?

A: Just in the non-compete?

Q: Yes, sir.

A: I -- yes, I guess so.

Q: And again, that was at your and your wife's insistence?

A: I don't recall what all brought it upon. There

was something else that was involved in it and I can't remember exactly what it was -- what brought it upon. So I wouldn't agree totally with what you were saying. There was something else that -- that was causing this to be us wanting it and being more insistent upon it. And part of it came down to his ability to value the business.

Q: Okay. You're going to have to explain that to me.

A: I can't explain it. I truly can't. If you -- not to be short, if you want an explanation, you're going to have to ask my wife to be deposed because that part -- that part was truly between her and our lawyer at that point.

Q: Okay. I intend to depose your wife, but what I'm trying to get to is your understanding of -- and really I'm trying to understand your last statement. You said there was some issue about the valuation of the non-compete?

MR. PRINGLE: I'm going to continue to -- continue to lodge the objection about the negotiations and whatever were involved in the negotiations because you have a final document that's signed by both parties, but answer the question.

A: In order to adequately answer that, we'd have to look at both documents to see what was changed. There was some other reason for the way the assets were going to be or the -- how the monies were going to be divvied up or paid off. I don't recall. I mean honestly you're in an area that I'm totally deer in the headlights with. I don't really recall what changed on it. I'm sorry, sir.

Q: Just so that I understand, the person who would have those answers as related to the valuation of the non-compete or what you termed a minute ago as difficulties at valuing the business itself ---

A: Whatever, yeah.

Q: --- that would be your wife that I would have to get those answers from?

A: She would be your best source on our -- from our side, yes.

Q: And other than you, from your standpoint, is there anybody else other than your wife who I would go to for answers on how you valued this business or did business modeling on this proposal?

A: Not that I recall. The lawyer would have been

the other -- only other one that would have had some kind of a personal input into it.

Q: What lawyer was that?

A: Can I ask? 'Cause I don't remember ---

MR. PRINGLE: Can we go off the record for a second.

(Off the record)

Q: Mr. Lintal, we've been talking about your wife, and I've never asked, what's her name?

A: Ellen.

Q: And did you -- the lawyer that you're referring to, was that the same lawyer you dealt with throughout the negotiations on this agreement?

MR. PRINGLE: Yeah, it was Chris Rogers ---

MR. LLOYD: Okay.

MR. PRINGLE: --- who used to be part of this firm.

Q: And, Mr. Pringle and I can talk about this on a different occasion, and certainly the document speaks for itself, but the negotiations and changing of terms, at least from your side of the table, would have come either at Mr. Rogers' suggestion, your suggestion or your wife?

A: From our part -- our side of it?

Q: Yes.

A: Yes, sir.

Q: And would there have been anybody else involved in the negotiations from your side?
A: No, not that I recall.
Q: Other than the infant bags that we'll talk about in just a minute, had you ever purchased any other body bags from any manufacturer other than Mr. Knight?
A: Prior to the infant bags?
Q: Yes, sir.
A: No, not that I recall.
Q: There's never been any other bags that you've purchased?
A: Not before the infant bag.
Q: After the infant bag were than any other bags you purchased from other?
A: Yes, yes, there were.
Q: And who did you purchase those bags from?
A: Medical Products or South- -- well, let's see, Southland. Let's see, Medical Products I think was it and then there was Evident, Evident something or other. Evident Supply, whatever. You've got the invoices for those.
Q: And your testimony is that -- let me ask you this way, when did you start purchasing body bags from Medical Products and Evident?

A: So, not Southland? You've got Southland in there too, right?
Q: Yes, sir.
A: You want to start with Southland?
Q: Yes, sir.
A: 2000- -- January of 2008, I think.
Q: And what bags did you purchase from Southland ---
A: No, wait a minute, I'm sorry, I made a mistake. April of 2008. And the initial bag that I bought was a pediatric sized body bag.
Q: How many did you recall purchasing?
A: One.
Q: Did you purchase any other bags from Southland in 2008?
A: Yes.
Q: How many?
A: Thirty.
Q: Were those all pediatric?
A: No. They were all infant.
Q: And why did you, in April of 2008, why did you start purchasing infant bags or pediatric bags from Southland?
A: The Lexington County, Randy Martin from Lexington County Coroner's Office had been --

had asked about having a smaller bag suitable for infants.

Q: Randy Martin?

A: Yes, sir.

Q: And I told him I'd check into it.

A: And what did you do to check into it?

Q: I talked with Buddy Knight about it, at a time when I was picking up an order. There was period of time in there that I'm not exactly sure as to when the conversation was, but I told him what they had asked for and asked if, you know, if it was a bag he had. And he didn't really express any interest in it and said that he'd always wrapped them in sheets and that's the way I should do it, so. But it wasn't the way he wanted, that wasn't what they were asking for, the coroners were asking for.

Q: Did you ever ask Mr. Knight to manufacture you a pediatric or infant bag?

A: I didn't ask him to manufacture the bag. I didn't -- at that point in time, I didn't know -- quite frankly did not know what bags he made and what bags he bought, so I went there and had -- I knew some that he made. I knew he made the odor proof bag. But I knew that the

light weight, heavy weight and the -- light weight and heavy weight bags that I primarily bought were outsourced by him as well, so not bags that he necessarily would manufacture.

Q: So whether he manufactured pediatric or infant bags, did you ever ask him to order you pediatric or infant bags?

A: I asked him, yes. I asked him if he had them or could get them or to check into it and he said it wasn't worth -- he told me basically that it wasn't worth -- the volume wasn't worth messing with them.

Q: And this was a conversation you had with him in ...

A: After January of 2008. Okay. I believe it was the 31st of 2008, January 31st, 2008.

Q: So January 2008 or there about, Randy Martin -- -

A: Prior to that he'd asked -- requested.

Q: So he asked you about that prior to January 31st or --

A: Yes, Randy did.

Q: 2008 or 2007?

A: I don't recall the exact date. I recall the call that we were on and the circumstances

behind it, so. And, you know, it was out -- part of it was out of frustration on his part based off of what we were having to deal with, but he still -- it was -- he said it was part of what he felt they needed to look into.

Q: And do you recall about when in 2008 you had this conversation with Buddy? Are you saying it was January 31st?

A: I believe was because that was the day I picked up the bags in that particular month, based off of invoicing. So I'm pretty confident ---

Q: So this was a conversation you had at Mr. Knight's business?

A: Yes, yes, yes.

Q: And describe for me again what is it that you related to him about these infant and pediatric bags and what did he say to you?

A: I explained to him or told him what Randy had asked for and that they didn't like the idea of us wrapping them in a sheet and putting them into an adult sized bag because they tended to get lost in the bag when they -- if they had to do an autopsy or take the body back out. So they -- he wanted a smaller bag to make it more conducive to the size of the -- the infant.

And at that point I wasn't for sure that even a bag existed. I hadn't researched it. So it wasn't until after that that I came upon it and decided to get one in to see if that's kind of what they were talking about, so.

Q: Okay. And what research did you do?

A: Internet.

Q: Okay. And is the first place you found a pediatric bag was Southland?

A: It was one of them. I mean it -- it was a supplier I was using for other items, for gloves and other items that I was buying and still do, so.

Q: And so over the course of 2008 you purchased 31 bags ---

A: That's it.

Q: From Southland?

A: Yes.

Q: And again, when did you start purchasing infant and pediatric bags from Evident?

A: Nev- -- oh, no, Evident was another bag.

Q: What kind of bags ---

A: Southland, those bags by the way are the only bags -- infant bags that were purchased by us. The 31 bags.

Q: From Southland?
A: 31 bags.
Q: So in 2009, you didn't purchase any infant bags?
A: No, sir.
Q: In 2010 you didn't purchase any infant bags?
A: No, sir.
Q: 2011 you didn't purchase any infant bags?
A: No, sir.
Q: 2012 no infant bags?
A: No, sir.
Q: And through 2013 you've purchased no infant bags?
A: No, sir.
Q: And is that because you've not needed to use an infant bag or have you been using adult bags?
A: I've not needed an infant bag.
Q: What bags did you purchase from Evident?
A: I purchased a case of water retrieval bags.
Q: When did you do that?
A: March of 2009. March 6th, 2009.
Q: And why did you go to Evident for those water retrieval bags?
A: I misunderstood Buddy to tell me that he didn't make or he didn't have -- make the bags -- he

didn't have them anymore is the way I recall it being stated.

Q: When did you have that conversation with Mr. Knight?

A: Probably in February of that -- because we were getting into -- I was concerned we were coming up on the summer months when those bags would be more likely to be used. And I didn't at that point realize he even made the bags, quite frankly.

Q: Did you inquire from him as to if he did?

A: I did. And like I said, I misunderstood. Whether I was going to buy them that day or at a future date, I can't recall, but I -- it -- I -- I did buy the bags, so I mean ...

Q: And again that conversation, was that conversation at Mr. Knight's business?

A: Yes, it was. We always picked up our bags up at his place.

Q: And how many water retrieval bags came in that box?

A: Six.

Q: And in 2000 -- are those the only bags you brought from Evident in 2009?

A: The only bags I ever bought from Evident.

Q: You've never purchased any other bags from ---
A: Never bought another water retrieval bag from anyone else.
Q: Have you used a water retrieval bag?
A: Well, I can't say that. Yes, I have. Have we used one?
Q: Yes, sir.
A: Sure.
Q: Okay. Where'd you get that one?
A: I had supplies of these, so I mean ...
Q: So you're still using the six you purchased in 2009?
A: No, no. I have since bought, just since -- I bought another -- maybe another six, I don't recall, since this whole thing -- just recently, within the last couple months, but that's not pertinent to this.
Q: So from Evident you purchased six water retrieval bags?
A: Yes, sir.
Q: And that's the sum total of all bags you've ever purchased from Evident?
A: As far as I can re- -- yes, it is.
Q: And from Medical Products what bags did you purchase?

A: During this time frame was six -- or let's see four extra large heavy weight, heavy duty body bags, and then one -- which is one box. Oh, wait a minute. Yeah. And it was four -- four of the extra large and six of the heavy weight.
Q: And can you describe for me the circumstances that caused you to purchase those bags from Medical Products?
A: Yeah. I was trying to -- I had tried to buy three extra large heavy weight bags from Buddy and he had -- was only able to supply me with one and said that we were using them too fast. So he wasn't sure when he was gonna have more of them in. That wasn't a bag that he made or offered to make, so.
Q: Okay. And when did you start purchasing these bags from Medical Products?
A: In July of 2010.
Q: From July of 2010 until you filed this lawsuit had you purchased any other bags from Medical Products?
A: From that time to later?
Q: Until you filed this lawsuit.
A: Yes.
Q: When did you have occasion to purchase more

bags?
A: In September of 2011.
Q: And what bags did you purchase then?
A: A medium weight -- a medium weight body bag.
Q: And why did you purchase that?
A: Quite frankly, I -- had already -- I was told -- I was denied by Buddy to get bags because I was told that the light weight bags were unavailable, and on the 6th of September and I had to have something to hold me over for after that fact.
Q: September 6th of ---
A: 2011.
Q: --- 2011? Okay, let's break this down. In 2010 you purchase bags from Medical Products, this is the first purchase you make of body bags from them?
A: Yes.
Q: Okay. Tell me about the conversation you had with Mr. Knight regarding his ability to produce those bags for you and subsequently the need for you to go to Medical Products.
A: I tried -- I put -- I put an order in or attempted to order from him three bags, three of the extra large ---

Q: Again, was this an oral conversation or was this a written order form?

A: I'd have to look and see but I can't -- a lot of them were oral, but -- or it could have been then I told him I needed them and I only put one in. I know I was trying to gain inventory or put some in stock so I had a backup because we probably only had one left. I don't recall the exact circumstances. But he said he was down to his last one and would have to order, so. So, I didn't feel confident that we were gonna get them at any time -- in any particular -- I didn't really know when he expected them to come in. It was a very vague conversation from his point of view.

Q: Did you ask him specifically when he would be able to produce those bags for you?

A: No.

Q: Did you ask him if he could order those bags for you?

A: He said he was going to order them but it took time because they were coming from China. That's the best I can remember.

Q: Where was Medical Products getting their bags from?

A: Their warehouse, wherever that is, here in, probably in Texas.
Q: And how soon after you ordered those bags did they ---
A: Two to three days.
Q: --- provide those bags for you?
A: Two to three days.
Q: And when did you use those bags?
A: I'm not sure I've used all of them up to this point. I mean I've -- no, I have. All of the extra larges are gone.
Q: How long did it take you to use up all those extra larges?
A: I don't recall.
Q: A month after you ordered them?
A: I don't recall.
Q: Do you have any general time span of how long it took you to use up those body bags?
A: Well, actually -- no, let me think. Of those four -- quite frankly I might still have one of them. I don't recall exactly what I have in my -- of these. It -- the whole purpose behind these bags is, it's not how many you use, as much as that you have them available when you need them. And with the volume of coroner

calls we were doing at that given time, I would have used them by now. Definitely would have used them by now if we continued to do the Richland contract. But without that, that's the outlet for it, for this particular bag. It's not a ---

Q: You lost the ---

A: --- bag you would typically use.

Q: --- Richland contract when?

A: We quit doing -- well, we were -- we quit doing business with them in September of 2011.

Q: With Richland County?

A: Yes, sir. And at that point we were doing no business with Lexington County either.

Q: And why did you lose the Lexington County ---

A: Price.

Q: --- business?

A: Price.

Q: What do you mean price?

A: I was under -- our pricing was under-bid.

Q: By who?

A: Capital Transportation.

Q: Who told you that price was the reason you lost the Lexington County?

A: Lexington County gave us the -- each -- the

bid, the bid tabulations.
Q: Did you ever enlist Mr. Knight to assist you in trying to get that business back?
A: Of course, yes.
Q: Was there any other issues related to your relationship with Lexington County, either the coroner's office or the County Council that lead to you losing that business?
A: That lead to me losing that?
Q: Yes, sir.
A: Not when they initially told me that I'd lost it. County Council got upset because of a letter that I wrote, but it didn't -- I didn't -- to the best of my knowledge it did not pertain to their final decision on not allowing me in, because I'd already lost it at that point.
Q: And what did you ask Mr. Knight to do, to assist you in trying to get that back?
A: I -- he offered to talk to Harry Harman and probably Bobby, one of the councilmen, Bobby Keisler, about it, and see if there was anything he could do to assist us.
Q: Going back to your comment just a moment ago, you said had you continued to have the Richland

County contract you would have used all of the Medical Products bags by now?

A: I would have assumed that we would have. There were -- on an average we did enough of the larger people that it would require these four. We probably used more of the -- more of those than we needed to due to other circumstances, so I mean it was -- so, maybe we did use more than we absolutely had to, of the extra large heavy weight.

Q: And so the best you can tell me is that you used those bags purchased from Medical Products somewhere from three days, two or three days after you ordered them, through the time period that you lost the Richland County contract?

A: Yes.

Q: Do you have any recollection sitting here today that would narrow that time span down at all?

A: No.

Q: And in September 2011 you said you ordered a medium weight bag from Medical Products?

A: Thirty.

Q: You ordered what?

A: Thirty.

Q: Thirty bags, okay. Why did you order those

bags from them?
A: Because I could no longer get them from Knight Systems. Under the terms of the contract that we'd had in place. He was -- I was told they were not available by him.
Q: That he wasn't going to sell them to you?
A: No, that they were not available at the time that I was trying to order them.
Q: Okay. But that --
A: I tried ordering three bags, three style of bags. The light weight, black heavy weight and an odor-proof bag.
Q: But I'm talking about specifically in September of 2011 ---
A: Wait, what month?
Q: You said in September 2011 ---
A: Right.
Q: --- you purchased 30 medium weight bags ---
A: Yes.
Q: --- from Medical Products.
A: I believe it was 30. I don't have it on this sheet, so.
Q: Okay. And now I'm trying to figure out why you went to Medical Products for those particular bags.

A: I needed a bag that would -- I didn't -- at the point in time I was not sure whether or not I had -- when I tried to order the bags that -- and was denied, then I -- at that point I was -- I still -- I was still doing work for Richland County, and I wasn't sure how long it was going to continue. I hadn't been informed that I was out of the contract. So I ordered bags that would hold me over until I figured out what we were going to do.

Q: Mr. Lintal, I'm trying to still find out what conversations that you had with Mr. Knight regarding him being able to provide you with those medium light weight bags.

A: Medium and light weight? Medium, say that ---

Q: Medium weight bags, I'm sorry.

A: Okay. It wasn't a bag that he listed as a carried item at that given point in time.

Q: Did you talk to him about it?

A: Why? He was already turning me down on the light weight bags that I was actually going to use these in place of. This was -- this was a bag that could go either way for the medium weight application or the light weight application.

Q: Is that a ---
A: Or for the heavy weight or the light weight in some cases.
Q: So no, you did not talk to him about it?
A: I don't ...
Q: I'm sorry?
A: No, I did not.
Q: Now, you said he had already turned you down as to what bags?
A: Light weight.
Q: Light weight bags?
A: And heavy -- and odor-proof bags.
Q: Okay. And when did he again specifically turn you down as to those?
A: September 6th.
Q: Of 2011?
A: (Nods head affirmatively.)
Q: And was he refusing to sell them to you in 2000- -- September 6th of 2011 or was he saying he did not have them in stock?
A: They were not available, is what the answer was. And also the pricing I had -- I was instructed to refer to the website for my future pricing. To his website for my future pricing.

Q: Because he was not providing them to you anymore at the discount price?
A: I explained to you what the -- what it said in his response, so.
Q: Was this a written response?
A: Yes, it was. It was an email.
Q: Did you normally make most of your orders by email?
A: Typically, yes.
Q: So most --
A: Well, typically yes. It wasn't 100 percent. It got to a point where later that it pretty much was 100 percent, that they were by order. But quite often I would try to call him and give him a heads up so that we could get things staged if -- to give him time to do it. If he needed time to get them from his warehouse.
Q: And how much time would you typically try to give him a heads up?
A: Two to three days if I could. I mean it was -- it wasn't like these were items that I -- I tried to keep an inventory, but I wouldn't always stay up with my inventory to match his inventory. So I didn't always know what he had available. I knew he always had available the

light weight and heavy weight bags whenever I needed them. They were -- quite often if I ordered odor-proof bags I'd have to go back and get them later on or send one of my guys to do it, because he would not have them in stock.

Q: And in September of 2011, September 6th of 2011 you still had the Richland County contract?

A: Yep.

Q: And you're saying as of September 6th, 2011, Mr. Knight was no longer willing to sell to you under the terms -- body bags under the terms of the ---

A: Right.

Q: --- exclusive provision in the purchase agreement?

A: According to what he -- how he responded to the email request for bags that we had put in.

Q: And that was the September 6th email?

A: Uh-huh (affirmative response).

Q: So prior to the RFP with Richland County that Mr. Knight submitted and a follow up letter saying that he was no longer making those -- the bags, odor-proof bags available to the general public, you had already at that point been told that you were no longer allowed to

purchase from him?

MR. PRINGLE: Object to the form, answer the question.

A: Say that last part again. I just don't ---

Q: The letter that Mr. Knight ---

A: I -- yeah.

Q: --- sent to the Richland County in response to their RFP, where he informed Richland County that -- coroner's office, that he would no long sell those body bags retail. Do you recall that letter?

A: Yeah.

Q: That wasn't the first time you had been made aware that he was no longer -- Mr. Knight was no longer selling bags to you?

MR. PRINGLE: Object to the form, answer the question.

A: Not -- no, I believe you're correct. Yep, I believe I was informed. I believe he had it for me that -- that -- trying to recall the circumstances.

Q: In other words by the time he sent that letter to Richland County, you were already under the understanding that he was not selling bags to you, is that right?

A: Yes. Or I wasn't -- yeah, right, yes. Yes.
Q: And you again say that that knowledge came from an email from Mr. Knight to you?
A: The email was later. The email was in September. You're talking about events that happened in -- no wait a minute, you're right, it is September. Yeah, right. No, you're right, it is September. It's September, right. So, yes, the answer is yes.
Q: The answer is yes, you were aware prior to his sending the letter to Richland County that you were no longer able to purchase bags from him?
A: No, that was in -- okay, wait a minute. That was in June. I believe so.
Q: And did you purchase bags from Medical Products in August of 2011?
A: Uh-huh (affirmative response). More than likely.
Q: And the purchase in August of 2011 is not on your time line of events, is that correct?
A: I didn't carry it out that far. Well, August I did, you're right. Okay. No, I didn't put it on there.
Q: Is there any reason it's not on here?
A: I, quite frankly, probably forgot to look at

that part of it, so. I didn't realize at the time this was gonna be used for evidence or in this part of the proceeding. I did this for my intent -- for my purpose to try to be able to keep sequences, time line and place.

Q: And you wanted to use what's -- Defendant's Number One is what we're talking about, is that right?

A: Yeah, that's right.

Q: And you wanted to use this to help you keep the events ---

A: Yeah.

A: --- as you said, in sequence?

A: This is very confusing to me, so.

Q: So you would understandably want to include all of the ---

A: Right.

Q: --- purchases you made of body bags?

A: It was an omission on my part that that would not be there.

Q: Is there any reason why the invoices you referred to in creating Defendant's Exhibit One would not have included the August purchase of body bag -- August 2011 purchase of body bags from ---

A: Medical Products?
Q: --- Medical Products?
A: It was likely an omission on my part.
Q: Were those -- would those invoices have been at a location different from the invoices that you did include on this time line?
A: Possibly, or just out of sequence with the rest of it.
Q: Could there be other invoices that are either out of sequence or not kept with these invoices that are referenced on Defendant's One?
A: I -- it could be, but I don't believe so. We've given the evidence to -- as you can tell that you've already got, that -- of all purchases that we made.
Q: Well, explain to me why you felt a need to purchase bags from Medical Products in August of 2011?
A: Once again, I needed bags and was unsure if they were available. I was upset with Buddy as well. He took -- he bid on a contract that I did not believe he should have been bidding on. I didn't believe that I had done anything that justified his ability to enter into that and -- or substantiate it to that point, so.

Q: Are any of the conversations that you've referenced, April of 2008, March of 2009, July of 2010, September of 2011, August of 2011, where you say Mr. Knight either couldn't provide the bags to you in a timely manner or couldn't provide them to you at all, were any of those conversations memorialized in either an email, a letter, or any other written form of communication?

A: No.

Q: So the only times that you've had to go to some other supplier of body bags are as a result of a conv- -- oral discussion with Mr. Knight where you say he said to you that he could not provide those bags?

A: Yes, three occasions.

Q: Now, you referenced earlier that you had listened to a tape between, and I believe you gave me the date actually of June 16, 2011?

A: My belief, yes.

Q: And you said that those were in fact your voice and Mr. Knight's voice on there, is that right?

A: Yes.

Q: Well, during the course of that conversation, and take this as my characterization, I

understand you may not agree with my characterization, you were discussing with Mr. Knight the fact that you didn't realize that he could make infant bags, is that right?

A: That I didn't realize?

Q: Yes, sir.

A: I did say that.

Q: Now that was a conversation you had in 2011, June of 2011 with him. Back in April of 2008 you said that you had a discussion with Mr. Knight regarding pediatric and infant bags, is that right?

A: Same bag, yep.

Q: Now at that time in 2008 did he tell you he would not make or could not make pediatric or infant bags?

A: No, he did not.

Q: Is there anything between April of 2008 and June 16 of 2011 that lead you to believe that he could not or would not make pediatric or infant bags?

A: Give me the dates again, 2008?

Q: April of 2008, you said the Mr Knight ---

A: I ---

Q: --- in April of 2008 ---

A: Right.
Q: --- he doesn't say ---
A: Okay.
Q: --- anything to you to lead you to believe that he cannot make or cannot get you infant or pediatric bags, is that correct?
A: No. I never had the occasion to purchase them again.
Q: That's not my question.
A: I understand.
Q: My question is in April of 2008, did Mr. Knight inform you in any way that he could either not make or produce for you or go purchase somewhere else and provide to you infant or pediatric bags?
A: No.
Q: Now in June 16 of 2011, to your recollection is when that recorded conversation happens, is that right?
A: Uh-huh (affirmative response).
Q: And in that conversation, you acknowledge or at least express, again my characterization not yours, surprise that Mr. Knight can in fact provide infant or pediatric bags, is that fair?
A: Uh-huh (affirmative response).

Q: Is that a yes?
A: Yes it is, yes, sir.
Q: Okay. Now, between April of 2008, and June 16 of 2011, either from Mr. Knight or any other source, were you provided any information that would have lead you to believe that Mr. Knight could not produce or manufacture or get you infant or pediatric bags?
A: The only -- the only -- no, I -- that he could do neither, no.
Q: And I'm assuming you're saying that no information came to you that would suggest that he could not produce or manufacture those bags?
A: I was told that he had made one bag that was rejected by Lexington County but that's -- that was the only -- that was all hearsay, so I don't ---
Q: Who told you that?
A: It was through Capital Transportation.
Q: Who told you that?
A: I believe it was Archie Maddox.
Q: So Archie Maddox told you that Mr. ---
A: After ---
Q: --- Knight had produced an infant or pediatric bag that had been rejected by Lexington County?

A: That was what I was told.
Q: Okay. When did he tell you that?
A: Probably at the time that we bought the business, so that was -- but I als- -- I'd heard about it prior to that also, from the -- Randy Martin at the coroner's office.
Q: At the time you purchased the business ---
A: Yeah
Q: --- from Mr. Knight ---
A: Right.
Q: --- Mr. Maddox told you that Mr. Knight ---
A: No. When I purchased ---
Q: Capital?
A: --- Capital ---
Q: Okay, I'm sorry.
A: --- which was later on, which would have been 2000 and what, 13?
Q: Okay. 2000 and ---
A: Or 2012.
Q: 2012 Mr. Maddox told you that Mr. Knight had produced an infant or pediatric bag that had been rejected by Lexington County?
A: That's what I was -- it was in -- it was discussed. He had produced one at least to my understanding for someone from the -- from

there. It was at the time that none of the current employees was available or working there, as far as I recall, so.

Q: Okay. The purchase of Capital happened in 2012?

A: I believe so, yeah.

Q: Okay. Under what circumstances lead to you and Mr. Maddox to be having a conversation in 2012 about Mr. Knight producing infant or pediatric bags?

A: It was part of the discussion based off of the -- what had happened in the time frame when Capital took the business from us and came up in conversations that they had tried to acquire these bags from Buddy and back in, well let's see, 2009 that -- that they tried to buy -- they requested -- that was part of the -- the infant bags were one of the items that they were responsible to provide Lexington County if they needed them.

Q: I just want to be sure I understand. In 2012 Capital Transportation, through Archie Maddox, told you that Mr. Knight had produced a, back in 2009, a pediatric or infant bag that had been rejected by Lexington county coroner's

office?
A: That was my understanding. I mean, it was made out of a heavier weight material.
Q: Okay. Now did he have that discussion with you prior to June 16 of 2011?
A: No.
Q: Again, what was the source -- what created this conversation in 2012 about infant or pediatric bags that may or may not have been made by Mr. Knight?
A: Probably when I took on inventory that we bought as part of the acquisition and there were infant bags in that inventory. So there were -- I acquired infant bags from him as a result of the sale of his current inventory. So it likely came up from that but I don't recall the exact reasons that it came about.
Q: And you indicated that Randy Martin may have said something to you about ---
A: In passing, at some point after -- in the course of that first year that Capital had their business.
Q: Again is that somewhere between April of 2008 and June 16 of 2011?
A: Yes. Yeah, it is.

Q: And what was the conversation? Describe that conversation between you and Mr. Martin.
A: It was more about his discontent with Capital's -- with Capital's service at that point and the items that -- the struggle that they had on some of the things that they were trying to buy. You know, that they had switched some items and the initial part of it they were -- they'd come up with this -- it was just -- it was just more of an overall description of them at that point in time and their mis- -- their lack of understanding I believe of what they were really doing for the coroner's office. And as an example I -- you can ask the circumstances behind it, I mean ---
Q: Well, that's what I'm trying to get to and I'm not sure I understand.
A: Right. Why was it brought up?
Q: Between April of 2008 and June 16 of 2011, somewhere in that time period ---
A: Yes.
Q: --- we can narrow it down a little bit, you and Randy Martin are talking about Capital Transportation?
A: Yes.

Q: And during the course ---
A: It was after I lost the business.
Q: Right. During the course of that conversation you and Mr. Martin have a conversation about Mr. Knight having produced an infant bag?
A: Right, okay, yeah. Someone had produced it -- they had provided a bag that came from there, is the way I was -- it was explained to me, of which it was a heavy weight. I never -- I never saw the bag so, you know, it could be all hearsay and it might not even be worth even having a discussion ---
Q: I'd like ---
A: --- but it led me to have beliefs on certain things as a result of that, so.
Q: We probably need to narrow this down then.
A: Yes, please do.
Q: This is a period of time when you lost the Lexington County Coroner's Office business. Do you recall ---
A: July of 2009 would be my best guess.
Q: Somewhere around July of 2009?
A: July '09, yeah.
Q: You have a conversation with Randy Martin?
A: Right.

Q: About their dissatisfaction with Capital Transportation?
A: Initially, they had -- yeah. Yes, that is right.
Q: And somewhere around July or August of 2009, during that conversation about Capital Transportation, Mr. Martin discusses Mr. Knight's purported manufacture of a pediatric or infant bag?
A: Yes.
Q: And what was your understanding of -- from Mr. Martin about Mr. Knight's infant or pediatric bag?
A: He said he rejected it because it was too heavy of a material for what they were looking for. They -- he was looking for something comparable to a light weight bag and this was in a heavy weight style of material from my understanding. So that was all I can recall him saying in that regard. And I don't have it documented either, so.
Q: Your recollection is that he specifically said Mr. Knight had manufactured that bag?
A: They said it -- his point was they had gotten it from Buddy, whether he made it or bought it

and supplied it.
Q: So in June, by June 16 of 2011 when you and Mr. Knight are having this conversation, you were aware at that point that Mr. Knight could make infant bags?
A: Acceptable, no.
Q: My question was not whether is was acceptable or not.
A: Whether he could or could not make them?
Q: Yes, sir.
A: I knew he had attempted to make them, but as far as commercially acceptable I wouldn't -- I -- it really hadn't come to my -- come to mind. I bought the bags one time.
Q: Mr. Knight ---
A: Yeah, I know.
Q: --- I mean Mr. Lintal, my question is simply this. On June 16 of 2011, you weren't of the impression at that point in time that Mr. Knight could not produce or manufacture an infant or pediatric bag, is that right?
A: Say it one more time.
Q: By June 16 of 2011, you had firsthand knowledge from Mr. Martin that Mr. Knight in fact could produce a pediatric or infant bag?

A: Okay, yes.
Q: So it was no surprise to you, and we'll set aside for a moment whether you thought it was an acceptable bag or not, but any suggestion by you that you weren't aware that he could produce an infant bag would have been erroneous, is that correct?
A: Okay, yes.
Q: At any point after that conversation with Randy Martin in 2009 did you ever go back to Mr. Knight and say, hey, I understand you can make infant bags but they don't want them to be as heavy as they are?
A: No.
Q: Is there any reason you didn't re-approach Mr. Knight about making or providing you with infant bags?
A: I never bought them again, after that date.
Q: At some point you got the Lexington County contract back, is that ---
A: Yes, sir.
Q: And was Lexington County still requiring or asking you to provide infant bags?
A: No.
Q: They were no longer requiring or asking you to

do that?

A: I don't supply -- I have the Lexington contract now, and I don't supply them an infant bag at all.

Q: Is that a change in their preference or are you just not providing infant or pediatric bags?

A: It's a change in their preference.

Q: And who made that policy change?

A: I don't know. They did.

Q: Who informed you that you were not going to be required to use infant or pediatric bags?

A: Probably -- someone from the coroner's office, may- -- likely Randy Martin. They don't -- they get them from the hospital now. So the hospital supplies them these bags so they don't require us to do it. They get them for free, so -- is the way it was told to me.

Q: Infant bags?

A: Uh-huh (affirmative response).

Q: And are you aware of when they started getting those from the hospital?

A: Before I -- in that period of time between when I lost the business and when I reacquired it through purchasing Capital. So some time in that two year time frame.

Q: Have you had the occasion to use one of those hospital supplied infant bags?
A: More than likely, yeah. Yes, I would say we've transported an infant in that period of time.
Q: And do you know where they get those bags from?
A: No, I do not.
Q: Are they light weight infant bags?
A: Light weight, they're real light weight infant bags.
Q: So you, prior to June 16, 2011, you knew that somewhere out there in the world somebody manufactured a light weight infant or pediatric bag?
A: Uh-huh (affirmative response).
Q: Is that a yes?
A: Yes, it is. I'm sorry.
Q: And again, during that June 16, 2011 conversation with Mr. Knight you never make reference to asking him whether he can produce a light weight infant bag?
A: I believe I did ---
MR. PRINGLE: Objection ---
A: Yeah.
MR. PRINGLE: --- to the form, answer the question.
A: I believe I did ask him that question.

Q: Okay.
A: I mean it -- he didn't have any interest in it at that point from what -- the way -- he was more interested in having me persuade Lexington County to do it the way they had always done it than he was in trying to provide them something else that was going to maintain such a low volume of -- for him to inventory or make.
Q: Are you talking about June 16 of 2011?
A: No, I'm talking about back in -- I'm sorry, I got the dates mixed up. I'm getting tired again here, so.
MR. PRINGLE: Can we take a break?
MR. LLOYD: Yeah.
(A short break was taken at this time.)
Q: Let me just make sure so the record is clear, you said that Mr. Knight never refused to produce or provide you with infant bags prior to June 16 of 2011, that's right?
A: Right.
Q: And as to any other bags, heavy weight, medium weight, light weight, he never refused to produce or provide you any of those bags prior to June 16 of 2011, is that right?
A: Never refused, yes.

Q: And you said Lexington County started supplying you bags when you got the contract back with the coroner's office, is that right?
A: They started supplying me bags?
Q: Yes, sir.
A: No.
Q: The infant bags?
A: They -- my understanding is they have them available for use. If not we have -- we still have some, so it's not --
Q: Since you've got the contract back at Lexington County ---
A: I can't recall if we've supplied them or if they have.
Q: You said earlier that they were at least providing infant bags from the hospital, is that right?
A: Uh-huh (affirmative response).
Q: Is that ---
A: They were provided, yes.
Q: And were they providing any other bags, for example, medium weight bags?
A: No.
Q: Have they provided you any odor-proof bags?
A: No. They -- just so you're understanding, they

don't provide them to me anyhow. If they carry them that's theirs, they keep their inventory separate from what I carry, so.

Q: And when you say they you're referring to the --

A: They, Lexington County.

Q: --- Coroner's Office?

A: The Coroner's Office.

Q: So whenever you're servicing a call for Lexington County Coroner's Office, do you use your own bags or do they provide bags to you?

A: It depends, we use some of ours and we use some of theirs.

Q: What bags do you use of theirs?

A: The heavy weight.

Q: Why do you use their heavy weight?

A: If they -- it's their choice. They being the coroner, the deputy coroner at the scene.

Q: Is it their choice to always use their own heavy weight bag?

A: No.

Q: Do sometimes they use your heavy weight bags?

A: Yes, quite often.

Q: What's the difference between your heavy weight bag and their heavy weight bag?

A: Currently?
Q: Yes, sir.
A: They're a different style, we have -- there's not a significant -- they're both classified -- fall into the heavy weight category, so.
Q: Have you purchased any -- from the time you purchased Mr. Knight's business until you filed this lawsuit, have you ever purchased any odor-proof bags from anybody other than Mr. Knight?
A: Have I ever purchased, no. I don't know of any -- no, I did not.
Q: And the -- just so that I'm clear, I know we discussed this a little bit earlier, is it your testimony that the exclusivity, and again I'm just using that phrase, your agreement under the sale purchase -- asset purchase agreement with Mr. Knight, the provision that requires you to purchase bags from him, is it your testimony that that in any way was compensation to him or consideration to him for the non-compete agreement?
MR. PRINGLE: Objection, answer the question.
A: I don't recall. I believe it was but I can't recall.
Q: So you believe that was a concession made by

you and your wife in exchange for at least the terms of the non-compete agreement?

A: It played into it, I don't know how it played in, but --

Q: Who would know?

A: I don't know. I assume my wife would have a better handle on that than I would. I'd have to look -- I'd have to look back if we still have both versions of the draft and the final version to see what was actually in it. My wife would probably have a ---

Q: Well I'm talking about the very final contract between you and Mr. Knight.

A: What was your question?

Q: The provision that requires you to purchase body bags from Mr. Knight ---

A: Uh-huh (affirmative response).

Q: --- was that in any way, in addition to whatever price was attributed to the non-compete, was the exclusivity provision considered by you to be consideration paid to him in any way for that non-compete?

MR. PRINGLE: Same objection, answer the question.

A: Yes. I guess, yes.

Q: Have you sold any bags to -- I know we

discussed earlier two funeral homes. Have you ever sold any bags to any coroner's offices?

A: That I wasn't -- yes. Likely, there is -- yes, we have sold bags.

Q: Which coroner's offices have you sold bags to?

A: Since when now?

Q: Since the time you purchased Mr. Knight's business.

A: Richland, Lexington.

Q: And do you recall how many bags you've sold to Richland?

A: No, sir.

Q: Do you have any records at your office that would indicated how many ---

A: Sure ---

Q: --- you sold?

A: Yes.

Q: Have you sold any bags to Lexington?

A: Yes.

Q: And ---

A: Same.

Q: --- you again have records at your office that would indicate how many you sold?

A: Yes.

Q: Other than the funeral homes that we talked

about earlier, Richland County Coroner's Office and Lexington County Coroner's Office, have you sold any bags to anybody else?

A: Yes, yes.

Q: Do you know who those entities were?

A: Either funeral homes, I don't recall if there were any -- any other coroner's offices that would have bought any type of bag directly from me, I don't believe so. So I'd think it would just be varying funeral homes.

Q: And again, those records that you have at your office would indicate everybody that you've ever sold body bags to?

A: They should, yeah.

Q: And where are those records located now?

A: On my computer.

Q: And where's your computer located?

A: Currently it's in West Columbia, at our home in West Columbia.

Q: Does your wife handle any of the day to day business record keeping for your business?

A: No, I do.

Q: You handle all business record keeping?

A: Yeah, pretty much.

Q: Are all of your business records, either on

your computer or at your, I know earlier you mentioned your home in Aiken, are they at one of those two locations?

A: I believe so, yes.

Q: Just so I understand, your wife is the one who handled all of the loans for the purchase of Mr. Knight's business as well as Capital Transportation?

A: Yes.

Q: So she's the -- she's a better person than you to give us facts and details about any financial ---

A: Yes.

Q: --- dealings with those ---

A: Yes.

Q: -- institutions? And again, the two people who told you about Mr. Knight producing an infant or pediatric bag for the Lexington County Coroner's Office, that would have been Archie Maddox and Randy Martin?

A: To the best of my knowledge, yes.

Q: Did you ever consider the purchase of any of these bags to be a breach of the exclusivity provision?

A: No.

Q: And why is that?
A: They -- they were either bought for, my understanding, of not being available from Knight's or for potential quality issue, to address a quality issue.
Q: Okay. Let's talk -- take those one at a time. When you say they weren't available, we established earlier he never refused to provide you those, is that correct?
A: That's correct.
Q: And when you say they weren't available because, as you described earlier, you may call him and say I need a certain type of bag, and I need them in two or three days, is that right?
A: Yeah.
Q: And was that ever to service a particular client or was that just an always restock your inventory?
A: Typically restock inventory.
Q: So if you wanted bags to restock your inventory, his ability to produce those within a two or three day period for you was necessarily contingent upon when you called him, is that right?

A: Yeah, yeah. Yeah.
Q: Now what quality issues did you have that required you to purchase bags from someone else?
A: The heavy weight -- black heavy weight bag that he was providing, we had zipper failures when the girth of the individual -- either the girth of the individual or the weight of the individual exceeded what the zipper's ratings were. And we would have to put a second bag on those individual cases.
Q: Okay. How many times did that happen?
A: Without looking I couldn't tell. It was -- Buddy had always provided replacement bags, for any of those that that happened with.
Q: You don't recall when that happened?
A: It happened all the time. I mean not all -- it wasn't every case, but I mean it was a case by case basis. It might be one in a month, or one in three months, or four or five in a month. I mean I don't know that I even documented all or my guys documented all of them, but it happened, so.
Q: So he would provide a second bag for you, is that right?

A: He'd give me a second bag because we would have to put that person into a second bag after we'd already put them in one so they'd go to transport in two bags. Sometimes it happened that we put them in at the scene, sometimes we'd do it at the hospital, but it all depended on the situation.

Q: Okay. And would your records reflect when you had to place an individual in a second bag?

A: Pretty much, yes. Yes, yes. I don't know. It wasn't a high number of incidents, but ...

Q: When did that start happening?

A: Probably January of 2007.

Q: So in January of 2007 you started having zipper problems?

A: Uh-huh (affirmative response).

Q: And where would you get heavy duty bags that didn't have those zipper problems?

A: From Knight's. I -- keep going.

Q: So ---

A: He had -- he had more than one style of bag that would be used. The best bag for the coroner cases where these were required was a black heavy weight bag.

Q: Okay. I guess my question though is,

originally you said that there were two reasons you went ---

A: Uh-huh (affirmative response).

Q: --- to other suppliers for body bags. One was when they were not available from Mr. Knight.

A: Uh-huh (affirmative response).

Q: And we covered that. And then number two you said there were quality issues that caused you to go to some other supplier.

A: One time, yes.

Q: So one time you went to another supplier?

A: Yes.

Q: And who was that supplier?

A: Medical Products, I believe.

Q: And that was in July of 2010?

A: Yes, sir.

Q: According to your outline?

A: To the best of my recollection, you have invoices that should reflect that.

Q: And you indicated earlier that had bought four heavy duty bags, is that right?

A: Extra large heavy duty.

Q: And six heavy duty?

A: Yes, or a case of each is how it ...

Q: And the purchase of those two cases was because

they had a better quality zipper?

A: In this particular bag, yes, yes. In the heavy weight bag, yes.

Q: Now you indicated the Mr. Knight had different versions of the heavy duty bag, is that right?

A: Yes, sir.

Q: Were you unable to use the version of his bag that didn't require you to double bag a very heavy individual?

A: In -- in light of times -- in many cases, yes, that was not much better from that standpoint. It had that -- he -- the zipper was adequate but the handles would rip out on those bags if the person was too heavy.

Q: And you never had those problems with the bags from Medical Products?

A: No.

Q: Did you discuss that with Mr. Knight?

A: Oh, yeah. Yes.

Q: And what was that discussion?

A: He'd replace them.

Q: So one reason you went to Medical Products is because the zippers would not support the girth of certain individuals and also because sometimes the handles would rip?

A: Yes. Yes, depending on the bag, yes, that is correct.

Q: Now, prior to July of 2010 and after July of 2010 when you purchased those two cases of heavy duty bags, what bags would you use for very heavy individuals?

A: The bags that we were purchasing from Buddy, from Knight Systems.

Q: Why did you go back to Mr. Knight's heavy duty bags?

A: I never left him. That wasn't my intention. I needed -- I needed an inventor- -- I felt I needed an inventory of the extra large heavy weight that I -- in this one instance because we, you know, we had been using so many of them that I was concerned that -- I didn't want to be without any. So I hit -- we had depleted our inventory at the same time he depleted his, so I went -- I felt that I needed to have something available. This -- the -- and while I was ordering the other, I thought that it'd be worth seeing if the zipper was the only issue with that particular in that black bag that he had been providing. So we got these in the case that we could use, the heavy weight

instead of the extra large heavy weight bag. Because there was a significant price difference between what I was paying from Knight's for those two bags. At the time one of the bags was $20, one bag was $100. So they didn't particularly like me using a bag that cost me $100 for their calls, that I'd have to upcharge them to -- that I would upcharge for that purpose.

Q: And how much did those bags cost from Medical Products?

A: I don't recall. 53.44 was what I paid for those bags.

Q: And again, this sort of goes back to the original asset purchase agreement. For those bags, for example, had you done any price comparisons between what Mr. Knight was charging and what others were charging?

A: The price wasn't the object in this case. I wasn't trying to undercut or shop his price.

Q: My question is ---

A: Did I ---

Q: --- prior to entering into the exclusivity provision of the asset purchase agreement had you done any price comparisons of his heavy

duty bags versus others out there ---
A: Not ---
Q: --- whether in the country or outside?
A: Not that I recall. I more than likely did but I don't recall being -- I would have -- I don't recall, but -- I -- let's say yes, I more than likely did look at them, so.
Q: How long did it take you to use those heavy duty and extra large heavy duty bags from Medical Products?
A: I could still have them in inventory, but I don't know. They might still be in my inventory. They get intermixed with the others. We had those put aside until -- so I can't say if they're still there or not.
Q: What kind of inventory would you normally attempt to keep?
A: Now or when this was going on?
Q: At the time you were going to purchase bags from others, other than Mr. Knight.
A: Light weight bags we would probably keep about 200 bags on hand. 200 to 250 bags, maybe even more. Heavy weight probably about 50 to 60 or -- let's say heavy weight, no, there'd be probably 100 heavy weight. The water retrieval

pouch, two to three. That varied, I'd say two to three. And the odor-proof bag probably about six to eight, or five to eight. I'd order them five at a time typically.

Q: Did you have a sort of routine interval of when you would order bags in order to restock your inventory?

A: No, none, not definitive.

Q: So you would normally try to order in order to maintain 200 to 250 light weight bags in your inventory?

A: Yeah. I'd -- it would fluctuate up and down from that level, but yes. So I would try to order to maintain.

Q: And you would normally try to keep 100 heavy weight bags in inventory?

A: Yeah, 50 to 100 you could probably say. No, it would probably be closer to 100. Yeah, that's a fair -- fair assessment.

Q: And based on the volume of business you were doing from the time you purchased the business until this lawsuit, how often would you have to order, would you order once a month?

A: Some months -- sometimes -- anywhere from 10 to 12 times a year is probably a fair estimate.

That frequency went down when we lost Lexington but we still maintained a lot of inventory.

Q: I just want to be clear, as I'm looking at your time line of events. In late 2007, early 2008 when Randy Martin asked you to check into infant bags, did he tell you at that point that Mr. Knight had made an infant bag previously?

A: No.

Q: Did Randy Martin know that you had an agreement with Mr. Knight ---

A: Yes, he did.

Q: --- that you would get his bags from -- your bags from him?

A: Yes, he did.

Q: How did he know that?

A: Any one of us could have told him. So they -- he probably -- he'd heard it from me, if no one else. I assume he heard it from Buddy as well but I can't speak for that.

Q: In late 2007, early 2008 would he have known that you had an agreement to get your bags from Mr. Knight?

A: Yes, I believe so.

Q: Did Archie Maddox ever know that you had an exclusive agreement to purchase bags from Mr.

Knight?

A: At that -- at what point in time?

Q: At any point.

A: Yes.

Q: And when did he find out, to your knowledge, that you had an exclusive agreement to purchase bags from Mr. Knight?

A: Probably June, July of 2009.

Q: And how did he come to learn that?

A: When he was tempted to buy the body bags from Buddy, the infant bag from Buddy, along with the other bags that they were acquiring for the coroner's office. That would be my assumption as the first.

Q: Did he learn of that agreement to purchase body bags from Mr. Knight from you?

A: No. I can't speak that that's -- you asked me when I would assume that he knew, is the way I understood the question, and that's when I would have guessed that that would've been the first one.

Q: What made you assume that sometime in 2009 Archie Maddox would have learned that you had an agreement with Mr. Knight to purchase your body bags from him?

A: Because of a discussion that Buddy had with me about the infant bags that asked if I had been supplied -- if I had been buying bags from somewheres else.

Q: When did he have that -- when did Mr. Knight have that discussion with you?

A: My assumption -- let's see, it was after the -- after the -- we lost Lexington contract, so it would have been June, July, August. I mean in the summer of 2009, or the fall of 2009.

Q: Okay. What about Mr. Knight's conversation with you about that issue leads you to believe that Archie Maddox learned that you had an exclusive agreement with Mr. Knight to purchase all your body bags from him?

A: Are you saying -- state that again please?

Q: You referenced that sometime in 2009 after you've lost the contract with Lexington County Coroners Office, you have a conversation with Mr. Knight where Mr. Knight asks you if you had been purchasing bags from someone else, is that right?

A: Yes.

Q: What about the conversation between you and Mr. Knight about whether or not you've been

purchasing bags from somebody else, to your knowledge would have alerted Mr. Maddox to the fact that there was an exclusive agreement between you and Mr. Knight?

A: I just -- I recall that it was mentioned in our conversation between he and I, so.

Q: And when you say he and I?

A: Buddy -- between Buddy and I.

Q: And you said ---

A: It's not documented.

Q: --- in 2009 Mr. Knight asked you if you'd been purchasing bags from someone else?

A: Uh-huh (affirmative response).

Q: Is that right?

A: Yes, sir.

Q: And what was your response to him?

A: I told him I had bought infant bags.

Q: Why did you not tell him about the heavy duty bags or light weight bags or medium weight bags that you had also purchased?

A: Well, I hadn't bought any of those at that point. This is in 2009.

Q: Right.

A: I had bought the water retrieval bag, and that's probably what -- well, that he knew

about because of a -- I knew he knew about that one, so. And we talked -- we had discussed that. But as far as the infant bags, I didn't deny it and recall offering to reimburse him for the bags, so -- the cost of what I had in the infant bags.

Q: This conversation in June of 2009, Mr. Knight asks you if you've been buying bags from someone else other than him?

A: Yep.

Q: And you tell him, yes, I bought infant bags?

A: And -- yeah. Right, yes.

Q: Did you also tell him that you bought water retrieval bags?

A: To the best of my recollection, the water retrieval was involved in another conversation.

Q: Different from this June ---

A: Yeah.

Q: --- 2009 conversation?

A: Right, yes.

Q: Okay. So was that conversation before June 2009 or after June 2009?

A: It was right -- it was in the same time frame. I don't know -- I don't recall the exact date.

Q: So your testimony is that on two occasions Mr.

Knight asked you if you'd been purchasing bags from someone else?

A: Yes.

Q: And in both instances did you tell him yes you had purchased bags?

A: Yes.

Q: One of those conversations was about pediatric or infant bags ---

A: Yes.

Q: --- and the second conversation was about water retrieval bags?

A: Yes, sir.

Q: And what was Mr. Knight's response to your acknowledgment that yes you had been purchasing those bags?

A: He never offered -- there never was accepting of my offer for reimbursement, so it was kind of a moot point at that point.

Q: Okay. Did he say I can provide you with water retrieval bags?

A: Yes.

Q: And at that point did you promise to continue purchasing any future water retrieval bags from ---

A: Yes, I did.

Q: And in 2009 did he say I can make you infant bags?
A: No. If he did I don't recall. I don't recall if he did or didn't in that particular case.
Q: Now again, in 2011 you all have this conversation again about infant bags, is that right?
A: Yep.
Q: And at that point in time is it your testimony that Mr. Knight as of June 16, 2011 already knows that you've been purchasing infant bags from someone else?
A: Yes. Yes.
Q: And that's because of the conversation you had in June of 2009?
A: Yes.
Q: So it shouldn't have been a surprise to him in June of 2011 that you had been purchasing bags from someone -- infant bags from someone else?
A: I don't believe it was a surprise to him, no, in June of 2011.
Q: Because you had specifically told him that you were purchasing those bags?
A: I believe so, yes.
Q: And again, in June of 2011 were you surprised

that he said I can make you infant bags?
A: No.
Q: Why were you not surprised?
A: I knew he could make bags. By that point I understood what -- that he had wider capabilities, whether -- than -- he could -- he could make anything -- you can make a bag, whether it's an acceptable bag or not. I didn't know if he had the capabilities of making a light weight infant bag. And that's what this original topic was all about.
Q: And y'all didn't have that conversation in June of 2009 as to whether he could make a light weight bag?
A: June of 2009?
Q: Yes, sir.
A: No.
Q: In June, I believe it would have been June 16 of 2011, is it your recollection that you told Mr. Knight that you didn't realize that he could make an infant bag?
A: Yes.
Q: So, based on your testimony here today, that wasn't a true statement on your part, is that right?

MR. PRINGLE: Object to the form, answer the question.
A: Yes.
Q: Yes, that was an untrue statement on your part?
A: In that context, yes.
Q: In what context was it a true statement?
A: Well, from the context of, I got hijacked with the whole conversation and ---
Q: Describe for me what you mean by you got hijacked?
A: I didn't feel like that -- that whole thing -- that whole conversation came at a time where we were -- you know, I was bidding Richland County. I was unsure of what his -- what would -- what he was going to do. So, I mean, all of these things up until that point it's -- it was -- I didn't know where -- we had never -- we had this conversation before, so I didn't know why it was being brought up again. Even though I made the statement that I didn't know that he could make these bags, it -- that -- it was not accurate from that standpoint. I'm sure he could make it. Whether or not it would be acceptable would be the other question, so.
Q: So is your testimony here today that both you

and Mr. Knight in June of 2011 were having a conversation as to whether or not you realized that he could make infant bags. And your testimony is that you both realized that neither of you were telling the truth about either's awareness about this whole topic?

MR. PRINGLE: Objection to form, answer the question.

A: This bag was such an insignificant issue. I don't know -- I could not understand why it was keep- -- it kept coming back up.

Q: If it was an insignificant issue, why did you lie to him and tell him that you did not know he could make an infant bag?

MR. PRINGLE: Object to the form, answer the question.

A: I'm uncertain because I -- I -- I wasn't hiding anything from him in that regard. I told him that I had bought bags, he knew that I had bought bags, so I didn't know where it was coming from. It was more -- it was probably an inaccurate statement on my part, so.

Q: What was an inaccurate statement?

A: Saying that I didn't know that he could make it. I didn't know what he -- for sure what he

could and could not make. I never knew of any light weight material that he worked with of any of the items that we bought that -- there was always a heavier gauge vinyl of the items that we bought with the exception of one thing, and that was a mesh item in a water retrieval pouch.

Q: Just so that I'm not confused, after the purchase of this business did you ever ask Mr. Knight if he could make a light weight infant bag?

A: I'm saying yes.

Q: Prior to June 16, 2011?

A: Yes.

Q: And based on your recollection that you did ask him if he could make that, did he inform you that he could make them light weight?

A: I'm sorry, I misspoke. I do not believe that I asked him if he could make it. I think the conversation was more of could he provide it. Back in June of 2009. I did not -- I think it was June of 2009, or 2008. Or -- yeah. January 2008. I wasn't -- at that point in time I was uncertain of what his capabilities were, manufacturing wise. What he could make,

what he could not make, what he purchased.

Q: Okay. Did it make a difference as to whether he had to manufacture it or whether he would have to purchase it?

A: No.

Q: And it didn't make a difference because you'd already agreed in the purchase of his business that you were going to buy body bags from him irregardless of whether he could make it or purchase it?

A: That -- okay. Of the bags that he had available.

Q: No, sir.

A: Of the bags that -- I know, all ---

Q: I'm asking you, was it your understanding at the time of the purchase of his business that you were going to purchase all body bags from him, regardless of whether he could manufacture them or whether he would have to himself purchase them?

A: At the time, yes.

Q: And at any point during the course of your relationship with Mr. Knight from the time of the purchase up until you filed this lawsuit, did you come to understand that the terms of

that agreement had changed, that unless he could manufacture them, you didn't have to purchase them from him?

A: No.

Q: So you still, up until the time you filed this lawsuit, believed that whether he had to purchase them or he had to manufacture them, that you were under an obligation to purchase all body bags from him?

A: No, I don't agree with that.

Q: Okay. What was your understanding of the agreement then?

A: That the -- the contract speaks for itself. That there was no ---

Q: That's not my question to you, Mr. Lintal.

A: That's ---

MR. PRINGLE: Let him answer the question please. Answer the question.

A: The bags that were listed on there were the only bags that were -- we were obligated to buy.

Q: Your ---

A: Obligated.

Q: You finished?

A: Yes.

Q: Your understanding of the agreement is, that if there was not a bag listed on that -- and by listed we're talking about the prices, is that right?

A: Description and prices.

Q: And if it's not listed there, you weren't obligated to purchase it from him?

A: I didn't feel that that was -- I -- yes, I guess it led to -- that's the way the contract was spelled out.

Q: When did you realize or come to view that as the agreement?

A: I don't recall.

Q: Was it after the purchase?

MR. PRINGLE: Object to the form, answer the question.

A: I'm not sure if it was before or after. More than likely after is when I would have made that assumption.

Q: So your position is that the prices, for example, the different types of bags that are listed in the purchase agreement, if there was not one listed with a price that you were not obligated to purchase that bag from Mr. Knight?

A: Yes.

Q: So the only bags you were obligated to purchase would have been heavy duty body bags?
A: No. Light weight, heavy duty ---
Q: Going to go through the list.
A: Okay.
Q: You were required to purchase heavy duty body bags?
A: Yes.
Q: You were required to purchase light weight body bags?
A: Yes.
Q: You were required to purchase odor-proof body bags?
A: Yes.
Q: You were required to purchase water retrieval body bags?
A: Yes.
Q: You were not, under your interpretation, were not required to purchase pediatric or infant body bags?
A: Right, yes.
Q: Any other type of body bags you were not required to purchase?
A: None that I re- -- I don't know what else I -- let's see. Well, extra large heavy weight.

Q: Extra large heavy weight?
A: Right.
Q: Okay. From January of 2008 to June of 2009 and again in June of 2011, those are three different conversations that you told me you had with Mr. Knight about purchasing infant bags, is that right? Or being able to supply you with infant bags?
A: Yes.
Q: Okay. At any point did you ever tell him, in any of those conversations, that you weren't required to purchase those bags from him?
A: No. No. No.
Q: At any point during those conver- -- in any of those years, 2008, 2009, 2011, did you ever have any conversations with him where you said I don't have to purchase extra -- some extra heavy duty?
A: It's extra large heavy duty. No.
Q: Extra large heavy duty?
A: No.
Q: Now why did you leave those bags out of the agreement?
MR. PRINGLE: Object to the form, answer the question.

A: I didn't leave them out.
Q: Did you know that extra ---
A: No.
Q: --- heavy duty existed?
A: No, I did not.
Q: Did you know that infant bags existed?
A: I did not.
Q: Did you know --
A: As a usable item for this business, I did not know. We referred to his expertise to come up with a list of what bags we would be needing.
Q: Did he give you a list and say these are the bags you're going to need?
A: As best I -- I don't recall.
Q: Did y'all ever have discussions with him about what bags you would need?
A: Sure.
Q: Okay. When did you have those discussions?
A: Prior to the contract, after the contract.
Q: Did you have those discussions when you went to visit his site?
A: More than likely, sure.
Q: Did you look around at the types of bags he had in inventory?
A: I did not. We never saw his inventory.

Q: So he said, to your knowledge, that you were supposed to, at least in the agreement, said you were supposed to purchase all body bags from him. Your understanding of the agreement is that that did not include those two specific bags?

MR. PRINGLE: Object to the form, answer the question.

A: Yes.

Q: And again, that's based on the fact that they're not listed in the agreement?

A: Yes.

Q: Any other reason?

A: No. None that I can think of, let's put it that way.

Q: And again, this conversation you have in June of 2011 about infant bags, your testimony is that even though you're lying to him ---

MR. PRINGLE: Object to the form.

Q: --- and I don't mean that in an insulting way, but by your own admission you're not telling him the truth when you say you didn't know he could make those bags ---

A: Yes, sir.

Q: --- is that right? But you never actually have

a discussion with him in June of 2011 about the fact that you're not required to get those bags from him anyway?

A: No.

Q: If you weren't required to get those bags from him, you said it kept coming up as a subject matter in discussions, is that right?

A: Uh-huh (affirmative response).

Q: Now, at any point did you think to yourself why does this keep coming up, because I'm not required to buy those from him anyway?

A: Yes.

Q: Okay. In June of 2009, did you ever tell him, hey, why are you asking about that, I'm not required to buy those bags from you?

A: No.

Q: It never came up?

A: No, sir.

Q: Why were you going to reimburse him the costs of the infant bags if you weren't required to purchase them from him?

A: Conscious effort, more than anything else, to keep our business relationship intact. We had -- we'd had an amiable relationship and these were issues that would stand in the way of that

relationship that I wanted to continue. I had no reason to buy bags from elsewhere so long as they sufficed to the needs of what we had.

Q: Well, if you didn't think you were required to buy infant bags from Mr. Knight and according to your testimony earlier Mr. Knight didn't seem particularly interested in producing or providing infant bags, why did you think that the fact that you were buying infant bags from somebody else, that that would jeopardize your business relationship with Mr. Knight?

A: Because he would take it just the way that he did. That it was a -- I wasn't giving him all -- everything that I could. And -- we had to have ongoing conversations. It was more about being able to get along than anything else in that regard. He was a mentor to me for a good number of years, you know, and provided me with advice and help and assistance on things like what you said about going to Lexington. Initially with telling me some of the, you know, people, the players that were involved. All the background of what you would expect from buying a business. But I never got one person that I was introduced to by him through

the course of the whole time that -- of when we first went in to this business. So the ongoing part of the business was something that was very important to me. This was such a small amount of dollars that I could not see why there was any significance to any of these activities that would take place.

Q: Thank you, Mr. Lintal. My question to you again is, if in fact you didn't believe you had to purchase infant bags from Mr. Knight, and your characterization of Mr. Knight's opinion about this was that it isn't that big of a deal to him, why were you -- why did you ---

A: To him or to me?

Q: To him.

A: Okay.

Q: Why did you believe that the fact that you were purchasing infant bags from someone else, that that would cause some rift in your business relationship or somehow jeopardize your working relationship with Mr. Knight?

MR. PRINGLE: Object to the form, answer the question.

A: I did believe it was a bigger issue to him.

Q: You did believe it was a bigger issue ---

A: Yeah. If I had said someplace -- I believe that any of these would be a big issue to him, not that I had tried to deceive it but -- when I went to him to try to buy those bags, he didn't have -- he had no interest in it. Maybe it was the time of the moment, but I don't know what the reason was at that point in time.

Q: When did you come to believe that it was a big deal to him?

A: When it kept coming up.

Q: And at any point during that time, when it kept coming up, because you've told me about three conversations y' all have had about infant bags.

A: Yeah.

Q: Okay. Did it come up more times than those three?

A: No, not that I recall.

Q: So when you say it keeps coming up, the one time was in January of 2008?

A: Uh-huh (affirmative response).

Q: And you brought it up?

A: Right, when I was re- -- trying to find out what they even were.

Q: Okay. June of 2009, you said Mr. Knight

contacted you or had a conversation with you where he asked you if you had purchased bags from someone else?

A: Right.

Q: Did he bring up infant bags?

A: That's what it was in regard to, because --

Q: My question is did he ---

A: Yes.

Q: --- ask you if ---

A: Yes.

Q: --- you purchased other bags ---

A: Yes.

Q: --- and he asked you specifically about ---

A: Yes.

Q: --- infant bags?

A: Yes.

Q: He asked you specifically about infant bags?

A: Yes, right.

Q: And at that time, because it had come up in June of 2009 during that conversation, did you say, hey, I didn't think it was big deal to you or ...

A: Yes.

Q: Okay. And what was his response to you to that?

A: It was more don't do it again, you know. It wasn't -- I don't recall the exact answer but it was the kind of an issue that I thought was going away.

Q: Okay. If he ---

A: I had offered to -- I had offered to reimburse on what I paid -- it was less than $200 that I had into all those bags that I had purchased.

Q: If he told you don't do that again, don't purchase infant bags from somebody else again ---

A: Right, yes, sir.

Q: --- why did you not tell him at that point, well under the agreement I'm not required to purchase infant bags from you?

A: I don't know. No, I didn't, it didn't seem like a major issue to me.

Q: In June 16, 2011 did he bring up the infant bags again?

A: Yes.

Q: And again, to not jeopardize your working relationship with Mr. Knight you declined again to say to him, hey I'm not required to purchase these bags from you?

MR. PRINGLE: Object to the form, answer the

question.

A: Yes. I declined, I did not bring that out again.

Q: And you believe that your purchase of bags from somebody else, of infant bags was going to jeopardize your working relationship with Mr. Knight?

A: Uh-huh, yes.

Q: And in what way would it have jeopardized your working relationship with him?

A: By him using it against me to say that I -- to accuse me of breaching the contract, our contract.

Q: When did you first think he would use that to say that you had breached the contract?

A: That day.

Q: June 16 of 2011?

A: Yeah.

Q: Did you consult your attorneys about that provision at that point?

A: Shortly after, I don't recall exactly when it was -- it was after that, yes.

Q: What did he say that made you think he was going to accuse you of breaching the contract?

A: I don't recall.

Q: But he said something specifically in that June 16, 2011 conversation that lead you to believe that he was going to accuse you --

A: Okay, wait a minute --

Q: Let me finish my question.

A: Okay.

Q: That he was going to accuse you of having breached the contract between you and him?

A: Yes.

Q: Prior to that conversation of June 16, 2011, did you have any reason to believe that Mr. Knight was considering your purchase of infant bags from other sources as a breach of the contract?

A: No. Not that I recall.

Q: So the first time you actually have this notion that, hey maybe I breached the contract, is whatever transpired in this conversation between you and Mr. Knight on June 16, 2011?

MR. PRINGLE: Object to the form, answer the question.

A: I'm not sure. I mean -- I -- that's the first that I felt definitively that it was going to be -- become an issue. I believe I had heard rumors that he was considering doing something

but I had no proof of anything at that point. I had not talked with him.

Q: What rumors had you heard?

A: That he was gonna find a way to bid the contract.

Q: Bid what contract?

A: The Richland County contract.

Q: Where'd you hear those rumors?

A: I don't recall.

Q: Do you recall when you heard that, the rumor that he was going to bid for the Richland County contract?

A: I would say prior to that date, but it would -- it had to have been prior to that date. Wait a minute. You're talking September now? No, we're talking June.

Q: We're talking June 16 ---

A: Yeah.

Q: --- 2011.

A: No, okay. Yeah, it was prior to that. So probably within, you know, within 10, 15 days before that.

Q: 10 to 15 days prior to June 16, 2011 you had heard that he may bid for the Richland County contract?

A: I -- right.
Q: You don't recall who told you that?
A: No. I believe it was somebody within the Richland County coroner's group. I couldn't -- I wouldn't testify as to who or ---
Q: When you say it was somebody within the Richland county coroner's group, within the office?
A: Likely one of the deputy coroners. They would have been the only ones with that kind of knowledge.
Q: What was your reaction to hearing this rumor that he was going to bid for the contract?
A: I was unsure, uncertain. I wasn't certain how he could -- how it could come into play, so.
Q: So on June 16, 2011 when you had this conversation with Mr. Knight where you believe that he has either said directly or given you some indication that he's going to use this purchase of infant body bags from other sources to accuse you of breaching the agreement, at that point in time you have some knowledge that, at least by rumor, that he may be bidding for the Richland County contract?
A: Uh-huh, yes.

Q: And at that particular time, June 16, 2011, did you confront him or ask him about whether or not he was going to bid on that contract?
A: I believe I did.
Q: And you believe you did ---
A: Yes.
Q: --- ask him about that?
A: Right.
Q: And that was during the same conversation we were referencing earlier ---
A: No.
Q: --- that was recorded?
A: It was not in the recording.
Q: Okay. Was it --
A: -- of which I had no knowledge that I was being recorded.
Q: Was it while he was physically there or after he left?
A: I don't recall. It was in that time frame. I thought it was on my premises but ---
Q: Did you call Mr. Knight after he left on one or more occasions to again talk about this infant bag situation?
A: I don't believe so.
Q: So again, June 16, 2011 when you're referencing

this issue about not knowing whether he could produce infant body bags, either manufacture them or provide them to you, at that point that is the point in time where you believe that he's going to use that issue to say you've breached the contract and then bid on the Richland County contract with the coroner's office?

A: I was getting sus- -- more suspicious, yes. So yes.

Q: And what did you do after this conversation with Mr. Knight? Did you talk to anybody about your suspicion?

A: My wife.

Q: What did you tell her?

A: That I was assuming he was gonna try -- he was going to bid the contract.

Q: Did you tell her why you thought he might do that?

A: Not specific.

Q: What was her response?

A: We couldn't figure out how he could, but ...

Q: Did you believe that if he raised the issue of your purchase of infant body bags from other sources as a breach of the contract, that he

would have no longer an obligation to not compete against you?

A: Did I believe -- say that again?

Q: In other words, did you believe after this conversation on June 16, 2011 where you say that Mr. Knight -- at least your impression was that Mr. Knight was going to use this infant body bag issue as an allegation of breach on your part, that that was the reason why he was going to try and get out of the contract and thereby bid on the Richland County ---

A: Yes.

Q: And did you share that with your wife?

A: Yes.

Q: And what was her response to that?

A: We didn't believe that it could happen, but -- she didn't believe it could happen, so ---

Q: And in your, this conversation that you believe you had with Mr. Knight that wasn't recorded, where you confronted him about the rumor that he was bidding on the Richland County contract, did you bring up this issue of this alleged breach by you of the body bag provision?

A: The alleged breach of what?

Q: Did you raise to him whether or not he was

considering accusing you of having breached the agreement by purchasing infant bags from somebody else?

A: I would say yes. As I recall, yes.

Q: And at that time did you tell him that you weren't required to purchase infant bags from him?

A: No, no.

Q: What was your defense, so to speak, for lack of a better term, to him regarding what you thought was the specific grounds that he was going to raise to get out of the contract?

A: He never -- never said that he was going to get out of the contract.

Q: But you thought that he was going to use this infant bag, body bag issue as an alleged breach by you, is that right?

A: I believed that, so yes, was the case.

Q: And you said you raised that with him in this conversation that wasn't recorded?

A: Right, yeah.

Q: Okay. And did he respond and say anything about ---

A: He didn't ---

Q: --- no you're not in breach or ---

A: No, he claimed that I breached the contract at that point.
Q: And this would have been on June 16, 2011?
A: As best I recall. It was in that time frame. If not, it's right in that time frame.
Q: Okay. And he told you somewhere around that time frame either on June 16 or shortly thereafter that he believed that you had breached the contract because you had purchased infant bags from somebody else?
A: I don't recall it being said as infant.
Q: Okay. Any ---
A: Bags.
Q: --- kind of bags?
A: Bags.
Q: And at that point in time what did you do to try and disabuse him of the notion that you had breached the contract?
A: I tried to once again reimburse him for what I felt the only obligation I had in this particular case. I didn't feel it was significant, from the standpoint of who I bought it from as long as the monies were funneled to the right party. It was an insignificant amount.

Q: Why didn't you just tell him, I don't believe I'm required to purchase those bags from you?
A: Because out of good -- on good conscience I really felt that it was the right thing to do. Whether or not I felt that I was obligated to do it, I thought it was the right thing to do.
Q: Okay. At this point in time though you believe that he's trying to get out of this agreement between you and him and therefore get back into the body removal business and compete with you as it relates to the Richland County contract, is that right?
A: Yes, sir.
Q: And your only reason for not raising with him any of these issues about you're not required under the agreement to purchase those bags from or this is not a breach of the agreement is because you have a good conscience of not wanting to offend him or something?
A: I didn't want to offend him. That was never -- none of this -- none of my actions were intended to be against Buddy on that part of it ---
Q: But at that point in time you believe in your heart and you've already had this discussion

with your wife, that Buddy is about to get back in the business and compete with you.

A: I hadn't had -- okay, yeah, right. You're right and I believed at that point that he was and until we addressed it yes.

Q: Okay. And during that conversation where you address it sometime after June 16 of 2011 you never discuss with him your belief that you are not in breach of the agreement?

A: I never said that -- I never admitted to being in a breach of the agreement.

Q: That's not my question. My question is did you ever raise to him, based on your belief that he's using this issue of the body bag purchases to get out of the agreement, that that could not constitute a breach of the agreement because you were not obligated to buy those bags from ---

A: Between what period, time period?

Q: Any time after June 16, 2011 when you had the idea that he was going to use that as an issue to get out of it.

A: I did not. I did not bring it up.

Q: But you did talk to your wife about it?

A: Yes.

Q: And you told her that he was, you believe that he was going that specific issue ---
A: He was gonna try to use it.
Q: And did you talk to anybody else?
A: I didn't know what else he would be using to get back into -- to get into it.
Q: Did you talk to anybody else about that particular issue other than your wife?
A: I don't recall, I don't recall. The lawyer ---
Q: You called your lawyer and told him about the rumor or ...
A: No. At that point we had already lost the business -- or not -- we hadn't -- no, I'm sorry. We hadn't lost it, because I never got told on it until I think it was the tail end of -- I think it was -- no, it was the first week of September or second -- first, second week of September is when, as best I recall. I don't remember exactly the dates that they announced that.
Q: Sometime between June 16, 2011 and September when Richland county announces who won the bid, you don't talk to anybody about whether or not you may or may not be in breach of the agreement?

A: I had no reason to bring it up. Other than the question of asking -- being asked how could he bid it. By you name who, I mean it's ---

Q: When did you find out that he had in fact bid on the contract?

A: Shortly after the contract came out. I don't know how that -- how the -- how it came available to me but someone knew. Through the offices or whatever.

Q: And when you found out that he had in fact bid on the contract did you have any conversations with Mr. Knight directly about it?

A: Not that I recall.

Q: Did you have any further conversations with your wife about him bidding on the contract?

A: Yes.

Q: And what were those conversations?

A: Trying to figure out what we were gonna do next, if we lost it. We had no clue if we were gonna win it or not win it.

Q: Did y'all discuss this alleged or perceived breach that you thought Mr. Knight was trying to use against you?

A: I'm sure it was brought up.

Q: Now, at that point did you seek any legal

counsel or other counsel from some professional about whether or not you had breached the contract?

A: No, not until July, August. It was in -- I don't know when we first had our conversation. I don't recall the exact date. I have it somewheres, but ...

Q: Did you have a conversation -- did you seek an opinion or a consultation about whether or not you were in breach of the agreement prior to Mr. Knight being awarded the contract?

A: No.

MR. LLOYD: I'm going to step out for second. I'll see if we might be close.

MR. PRINGLE: Okay, sure.

(A short break was taken at this time.)

Q: Just so that I'm sure, Mr. Lintal, the provision in the agreement between you and Mr. Knight that required you to purchase body bags from him, at any time prior to filing this lawsuit, did you seek, after the closing, between the time of the closing and between the time of filing this lawsuit, did you seek legal counsel as it related to the interpretation of what bags you were required to purchase from

Mr. Knight?

MR. PRINGLE: Object to the form, do not answer the question. That's clearly attorney-client privilege.

MR. LLOYD: Well, the -- I'm not asking you what ---

MR. PRINGLE: Huh-uh (negative response).

MR. LLOYD: --- they told you, I'm asking you ---

MR. PRINGLE: No.

MR. LLOYD: --- did you seek legal counsel?

MR. PRINGLE: No, do not answer the question, we'll seek protective order if we need to on that.

MR. LLOYD: We'll move to compel on that at the same time, deal with the protective order on that.

MR. PRINGLE: You mean before filing the lawsuit, is that what you're saying?

MR. LLOYD: Uh-huh (affirmative response).

MR. PRINGLE: You can answer the question.

A: Before filing?

Q: Your lawsuit.

A: Yes.

Q: When did you seek legal consultation regarding whether you were required, under that provision, and that provision we're talking about is 3.4.8 Seller's Related Business. At what time period did you seek legal counsel or

opinion as to your obligations under that? And again I'm not asking you what the discussion was ---

A: The fall, the fall of that year.

Q: Of 2011?

A: Right.

Q: Was that before or after Mr. Knight was awarded the contract?

A: I believe ---

Q: I'm sorry?

A: I believe it was after. Honestly I -- my head is scrambled now.

Q: Is there any record that would refresh your memory as to when you sought that counsel?

A: Yeah, I can produce, if need be, the date, the time and whatnot.

Q: Well ---

A: I don't know what initial -- it was, yeah.

Q: Again, I'm not asking you what you discussed with your counsel, don't produce anything like that to me. What I'm asking is is there something you could refer to that would indicate the date or time period that you sought that legal counsel?

A: Okay. It was before the contract. Before he

was awarded.
Q: Okay. And you just looked at ---
A: I'm confident that ---
Q: --- your time line?
A: I'm confident of that, so.
Q: Okay. What's in your time line that refreshed your memory?
A: I recalled at what point it was.
Q: Okay. What point was that?
A: It was between June and September on the time line.
Q: And was that before or after you learned that Mr. Knight had submitted a bid?
A: After.
Q: And again, before or after you realized that he was awarded the contract?
A: Before.
Q: Sometime between ---
A: Submission.
Q: --- the time submission and the time of award?
A: Yes.
Q: And again, is there anything between June 16, 2011 and the time that you did consult with counsel that at least allowed you to know definitively that Mr. Knight was accusing you

of having breached that particular provision of the agreement?

A: No.

Q: Okay, thank you.

MR. LINTAL - EXAMINATION BY MR. PRINGLE:

Q: Mr. Lintal, there's a lot of discussion about the conversation that took place on or about June the -- and I want to refer to Exhibit One while I'm talking to you -- the June 16th, 2011 conversation you had with Mr. Knight, correct?

A: Yes.

Q: And when did you learn that Mr. Knight had taped that conversation?

A: Within the last 60 days, 30 to 60 days.

Q: Did you learn about this, that he had taped it before or after I took his deposition?

A: After.

Q: Okay. And so the tape was made without your consent?

A: Yes, it was.

Q: Okay. It was never -- Mr. Knight never told you that he was going to tape you?

A: No, he didn't.

Q: Okay. And there's -- you had a lot of discussion with Mr. Lloyd about a statement of

something to the affect that, I didn't know that you could make that bag. Is that a fair characterization of what this discussion was about?

A: Yes.

Q: About what the discussion was about?

A: Yes, yes.

Q: Okay. Referring back to that Exhibit, all of that conversation about that bag referred back to January 31st, 2008 or thereabout, after Lexington asked you to find another bag or another solution?

A: Yes.

Q: So it was all in the context of your having gone to Mr. Knight and telling him that your client needed another solution?

A: Yes.

Q: Okay. At that time he said it's not worth getting small bags for the few infants that we deal with, correct?

A: Yes.

Q: At that time he didn't say, oh, I can make one for you?

A: No.

Q: He didn't say, I can get one for you?

A: No.
Q: He responded to your need for bags by saying, it's not worth getting them?
A: Yes.
Q: So that was the context about all that?
A: Yes.
Q: So in that time, when you needed those bags, when you asked him for a solution for those bags, he -- you didn't know whether he could make the bag?
A: That's correct.
Q: Okay. So whether you learned subsequently about whether or not he could make that bag was really immaterial for purposes of when you needed those infant bags?
A: Yes.
Q: Okay. And indeed, either the day after or very soon after Mr. Knight surreptitiously and without your consent taped you, he indeed did bid on the Richland County contract?
A: That's correct.
Q: The contract that you held?
A: That's correct.
Q: The contract that you'd specifically purchased or had assigned from him?

A: That's correct.
Q: Okay. The provision that we're talking about here, Section 3.4.8, that there's so much discussion about seller's related business, which party to the contract insisted that that provision be in the contract?
A: What is the provision again?
Q: The bags, who insisted that they be in the contract?
A: We did.
Q: You insisted that the provision to buy the body bags --
A: Oh, no, not to buy the body bags, but as far as the listing ---
Q: Okay.
A: --- of them. Yeah. The provision was his.
Q: Okay. That you had to buy that from him?
A: Knights. Right, that was his.
Q: Okay.
A: I'm sorry, I misunderstood the question.
Q: All right. And as you testified earlier the things that you were most interested in were the length, certainly the price and the length of the non-compete?
A: Certainly.

Q: Okay. So in each instance, and just go back through your time line and look at your time line with me, you bought infant bags from somebody else because he says it's not worth getting small bags for the few infants that we deal with, correct?

A: Correct.

Q: You bought water retrieval bags, six water retrieval bags, because at least your initial understanding was that Buddy didn't have the water retrieval bag any longer?

A: Right, yes.

Q: And after you bought those infant bags, I'll go back, but after you bought those infant bags, you continued to buy bags from Buddy Knight?

A: Yes.

Q: After you bought the water retrieval bags in February of 2009, you continued to buy bags from Buddy Knight?

A: Yes.

Q: Okay. And you continued to buy water retrieval bags from Buddy Knight following that February 2009 purchase?

A: Yes.

Q: And you offered to reimburse him for the infant

bags?

A: Yes. And the water retrieval.

Q: And the water retrieval bags. You bought some bags in July of 2010. Following that purchase did you continue to buy bags from Buddy Knight?

A: Yes.

Q: Okay. And what was the total amount, the total price of bags that you bought from suppliers other than Mr. Knight?

A: $885.47.

Q: And how does that relate to the total amount, broad brush of bags that you bought from Mr. Knight over the course of the contract?

A: Insignificant.

Q: Okay. There was some discussion about some bags that you sold to coroners and to funeral homes. The agreement requires -- required that you buy bags from Mr. Knight, doesn't it?

A: Yes.

Q: It doesn't have any prohibition on selling bags to anyone else?

A: No.

Q: As long as those are Mr. Knight's bags?

A: Correct.

Q: Okay. And so whatever bags you may have sold

to funeral homes, coroners, the man on the street, or anybody in this room wouldn't be a violation of your agreement with Mr. Knight, would it?

A: No.

Q: Okay, that's all I have.

MR. LINTAL - RE-EXAMINATION BY MR. LLOYD:

Q: Let's follow up to a couple of questions from Mr. Pringle. By June of 2011, Lexington County Coroner's Office no longer was requiring you to use or provide infant bags, is that right?

A: June of 2011?

Q: Yes, sir.

A: I would not know. I wasn't servicing them at that time.

Q: Lexington County you were not servicing at that time?

A: No.

Q: When did you start servicing Lexington County again?

A: 2012, after we bought the Capital business.

Q: You stated that that provision regarding the body bag purchasing being all solely from Mr. Knight, you said that they insisted upon that being in the agreement, is that your testimony?

A: Yes.
Q: Was it your understanding that Mr. Knight never saw that purchase agreement including that provision until he got to the closing?
MR. PRINGLE: Object to the form, answer the question.
A: Yes.
Q: Yes, that was his first time seeing the agreement?
A: The actual agreement. My -- I wouldn't know what information he was given by his attorney prior to that one. They were exchanging documents for -- prior to the final day.
Q: Who told you that they were exchanging documents with Mr. Knight?
A: I believe our lawyer did. I -- my -- by assumption. I mean how else could you come into an agreement without having a document agreed upon?
Q: Well, that's a good question, because if Mr. Knight never saw the agreement prior to that, is it still your testimony that he insisted upon the inclusion of that provision?
MR. PRINGLE: Object to the form, answer the question.

A: I can't -- I don't -- I can't be -- I don't know that he didn't see that before that. I have no knowledge of that.

Q: Well, my question is then, where do you get the understanding of what source of information ---

A: I don't know.

Q: --- that Mr. Knight insisted upon that provision being in the agreement?

A: I can't say that he insisted on it. I would I say that it would have been to his advantage so that would be why I would believe that he was the one that would have wanted it in there.

Q: Okay, thank you.

(There being no further questions, the deposition concluded at 5:08 p.m.)

SIGNATURE

I have read the foregoing deposition and confirm that it is a true and accurate transcript of my testimony. Any errors I may have noticed have been listed below and returned to the court reporter for checking against the tapes.

Donald J Lintal

DONALD J. LINTAL

Date: 8/29/13

Page	Line	Correction	Reason for Change

*Stands as transcribed. All other corrections are acknowledged and accepted as errors in the transcript. Jennifer Nottle, Court Reporter

Re: Palmetto Mortuary Transport V. Knight Systems

jn

CERTIFICATE

This is to certify that the deposition of **DONALD J. LINTAL**, consisting of two hundred eleven (211) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 14, 2013.

Jennifer Nottle
Court Reporter

Notary Public for South Carolina
My Commission Expires: 7/11/2023

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 22, 2015

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James Randall Davis, Special Master/Referee

Appellate Case No. 2014-001819

Palmetto Mortuary Transport, Inc., ...Respondent,

v.

Knight Systems, Inc. and Robert L. Knight, ...Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal, on Palmetto Mortuary, Inc. by hand-delivering a copy of it to Respondent's attorney of record, John J. Pringle, Jr., at his office, 1501 Main Street, 5th Floor, Post Office Box 2285, Columbia, South Carolina 29202-2285, on January 28, 2015.

January 28, 2015

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SC Court of Appeals

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January 29, 2015

Hon. Jenny Abbott Kitchings
Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

RE: Palmetto Mortuary, Inc., Respondent v. Knight Systems, Inc. and Robert L. Knight, Appellants, Appellate Case No. 2014-001819.

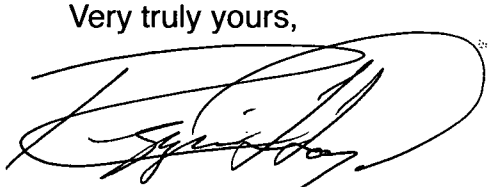
Dear Ms. Kitchings:

Enclosed for filing in the above referenced appeal, please find the original (unbound) and seventeen copies of each of the following: (1) Appellants' Final Brief, (2) Appellants' Reply Brief, and (3) the Parties' Record on Appeal. Please file the original and fifteen copies of each document and return two clocked copies of each document to me.

Thank you for you assistance. If you should have any questions, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,



Reginald I. Lloyd

Enclosures

cc: John J. Pringle, Jr. (via hand-delivery)
Attorney for the Respondent

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JAN 29 2015

SC Court of Appeals