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MAY -2 2016

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from The Administrative Law Court
Ralph King Anderson, III, Administrative Law Judge

Court of Appeals Opinion No. 5379
Supreme Court Case Tracking No. 2016-000829

Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Frederic Brown, #289602, Timothy Brown, #238461, Terrell Buchanon, #277262, Christopher Buch, #200690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279987, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultri, #276527, Matin Muntaqim, #266870, Tony Pitts, #280597, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472, Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareua, #128014, Quentin Baker, #297868, Frank Corley, #292975, James

Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #292264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #20028, Michael Baylor, #265682, Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlan, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugine, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Respondents,

v.

South Carolina Department of Corrections, Petitioner.

PETITION FOR WRIT OF CERTIORARI
BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

APPENDIX
VOLUME 7 OF 14

Lake E. Summers
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
Office: (803) 254-3300
Fax: (803) 254-0309
E-mail: summers@mtsolawfirm.com

Counsel for SCDC

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Jenkins, Peter C.

SCDC NUMBER: #257321 NOV 04 2004

INSTITUTION: Lieber Corr. Inst. PP

HOUSING UNIT: Cooper B-56

WORK ASSIGNMENT: PI-2/Dorm Worker

Office Use Only
Grievance No. LCI 0620-04
Code: General MF
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

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

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

Peter Jenkins 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Inmate Released 10-19-05 GA. 01.12 Sechr. 19.1 to Federal Inst.

Signature Date

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

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2735

SCDC 10-5A (November 1997)

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
JENKINS, PETER	257321 RELEASED 10/19/05	LCI-0620-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your participation in the prison industries project at Lieber started on December 6, 1999 and ended on May 5, 2003.

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

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

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

Inmate Name	SCDC #	Grievance #
JENKINS, PETER	257321 RELEASED 10/19/05	LCI-0620-04

21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

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

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

Moreover, you filed your Step 1 grievance just less than five (5) years after SCDC first paid you for your participation in the project located at Lieber, over 16 months after your participation in this project concluded, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

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

Inmate Name	SCDC	Grievance #
JENKINS, PETER	257321 RELEASED 10/19/05	LCI-0620-04

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

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

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

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

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

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

Inmate Name	SCDC #	Grievance #
JENKINS, PETER	257321 RELEASED 10/19/05	LCI-0620-04

other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

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

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Peter C. Jenkins, #257321

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 00-ALJ-04-_____-AP

Notice is hereby given that Peter C. Jenkins does hereby appeal the final decision of the South Carolina Department of Corrections dated 1-28-08 and received on 2-1-08, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. §1-23-380(A)(6)): Grievant seeks back wages contesting SCDC policy/procedure of paying below prevailing/negotiated wages and under §13.9 there was no time limit to file. Grievant had reasonable cause under §13.9 as right to grieve did not accrue until Adkins/Wicker and he filed within reasonable time. Applying §13.1 denied grievant reasonable time to file and thus due process. SCDC failed to plead §13.1 in step 1 and filed/considered Amendments/Exhibits on the merits and thus waived §13.1. Grievant proved all elements of claim and disputes work period(s) alleged by SCDC. Dr. Benich's report is the only evidence of prevailing wages in record and grievant is entitled to prevailing/negotiated wages. To extent grievant worked OT he is enticled to it under SCDC policy. Grievant claims pre/post judgment interest, costs and attorney fees. Darrell Williams' 9-22-04 grievance, and many others, was filed individually and on behalf of all inmates and SCDC should process grievance for all who worked in program regardless of filir

Peter C. Jenkins
Appellant's Name
c/o Mrs. Masie Lewis
3620 North West 8th St.
Mailing Address

Ft. Lauderdale, FL 33311
City, State, Zip Code
none available
Telephone Number

Signed

2-6-08
Dated:

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

2740

(See reverse side for instructions)

STATE OF SOUTH CAROLINA	IN THE ADMINISTRATIVE LAW COURT
PETER C. JENKINS, #257321	
GRIEVANT/APPELLANT,	
VS.	CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	
RESPONDENT/APPELLEE.	

I certify that on the 22nd day of Feb., 2008, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

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

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

(2) One copy was mailed pursuant to Directive to SCDC Policy GA-01.12, §4.3, effective Jan. 30, 2008, to:

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

Douglas H. Westbrook

2741

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Wilbur Jordan
SCDC NUMBER: 272264
INSTITUTION: Lieber C.I.
HOUSING UNIT: Cooper A-55
WORK ASSIGNMENT: PI 2 Plant

Office Use Only
Grievance No. Lieber 0654-04
Code: General NG
Policy
Disc. Hear.
Class.
Date Received SEP 29 2004
IGC Initials LC

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

The department is asked to Review and determine whether I am entitled to Receive back wages due to me From working at Lieber prison Industry program when they only paid me. 35 cent and hour and not prevailing wage as Required under south carling code ANN. SEC. 24-3-430 A-7 as well a Fact that From Oct 7-02 - 04 They denied me prevailing wage

ACTION REQUESTED: All money due To me be paid at prevailing and over Time Rate and prevailing wages be paid Now.

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

Wilbur Jordan 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carter 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2742

N/A
Grievant Signature Date

WARDEN'S DECISION AND REASON:

See attachment

Warden Signature Date Oct 27 04

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

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2743

Inmate W Jordan, # 272264 2C10628/04

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

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

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

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

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

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

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

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

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

2744

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

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

Therefore, I, again, deny your grievance.

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

2765

JORDAN LCI-0654-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 7, 2002 and that you concluded your participation in this project on November 3, 2004.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

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

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

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

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specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

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

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of the documents submitted in support of your Step 1 grievance form clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004.

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

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

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

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

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

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

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

Therefore, I, again, deny your grievance in its entirety.

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AMENDMENT TO GRIEVANCE OF WILBUR JORDAN, #272264

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

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 3755.20 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Wilbur Jordan 10-11-05
(Grievant Signature) (Date)

* Attached are Exh. A, 0786; C, 0081,0086; F, 1179-1180; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Wilbur Jordan

SCDC NUMBER: #272264

INSTITUTION: Lee

HOUSING UNIT: Richland - A-247

WORK ASSIGNMENT: P.I.

OCT 12 2005

Office Use Only
Grievance No. _____
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received 10/12/05
IGC Initials _____

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

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

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4/hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct, and back wages are owed.

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

Wilbur Jordan 10-11-05
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

NO Attachments 3 pages in grievance. Grievance is a copy of a Step 2 IGC does not accept copies no Step 1 attached Return to FM today

10/12/05
Signature Date

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

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2750

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No: LCI 0654-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received 5/18/07
IGC Initials MJ
✓ 16A - ABH 7-13-07

INMATE NAME: Wilbur Jordan
SCDC NUMBER: 272264
INSTITUTION: LEE Correctional Institution
HOUSING UNIT: DARLington - unit 2223I
WORK ASSIGNMENT: YARD DEtail

RECEIVED MAY 18 2007 INMATE GRIEVANCE

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

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

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4/hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct, and back wages are owed.

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

Willie Jordan 5-15-07
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

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

8-2-07
Grievant Signature Date IGC Signature Date
LaChance

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2751

SCDC 10-5A (November 1997)

JORDAN LCI-0654-074

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 7, 2002 and that your participation in this project ended on November 3, 2004.

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

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

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

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

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.
Moreover, you filed your Step 1 grievance nearly two (2) years after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

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

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

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

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

2752

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Jordan, Wilbur	272264	LCI-0654-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 7, 2002 and that your participation in this project ended on November 3, 2004.

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

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

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

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

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

Ackerman 5-6-11 2390

Inmate Name	SCDC#	Grievance #
Jordan, Wilbur	272264	LCI-0654-04

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wilbur Jordan, #272264,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.: _____

Notice is hereby given that Wilbur Jordan does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 8-2-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

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

Wilbur Jordan
Appellant's Name
Lee C.I.
990 Wisacky Hwy
Mailing Address
Bishopville, SC 29010
City, State, Zip Code
none
Telephone Number

D H Westbrook
Signed
8-6-07
Dated

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

2755

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
WILBUR JORDAN, #272264	)	
Grievant/Appellant,	)	
vs.	)	CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
Respondent/Appellee.	)	

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

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

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

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

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

Douglas H. Westbrook

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Alfred D. Joyner
SCDC NUMBER: 260442
INSTITUTION: Lieber C-I
HOUSING UNIT: Wando - A - 223 ✓
WORK ASSIGNMENT: School

Office Use Only
Grievance No. Lieber 0636-04
Code: General MV
Policy
Disc. Hear.
Class. SEP 22 2004
Date Received
IGC Initials CC

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

The department is asked to review and determine. Whether I am entitled to receive back wages which are due to me from working at Lieber Prison Industries Program when they only Paid me .35¢ an hour and not Prevailing wage as under South Carolina Code Ann. Sec. 24-3-430(A-7) as well as fact they were getting $4.00 an hour and still did not give me my money from 1998 - 03 they denied me. Prevailing wage

ACTION REQUESTED:

That all money due to me be Paid at Prevailing Wage as well as overtime rate, more over, the Prevailing wage be Paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

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

Alfred Joyner 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

[signature] 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2757

N/A

Ackerman 5-6-11 2394

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date Oct. 28, 04

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

Grievant Signature Alfred Haynes 10-28-04 Date

IGC Signature L. Carter 10/29/04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2758

Inmate A. Joyner, #260442 LC10636-01

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

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

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

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

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

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

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

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

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

2759

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

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

Therefore, I, again, deny your grievance.

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

2760

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI 0630-06
Code: General
Policy
Disc. Hear.
Class.
Date Received NOV 0 4 2004
IGC Initials

INMATE NAME: Alfred Joyner
SCDC NUMBER: 260442
INSTITUTION: Lieber
HOUSING UNIT: Wando-D-277
WORK ASSIGNMENT: School ABSE

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

Adkins + Wicker do require payment of prevailing wages. Grievants were employed by NTI, and SCDC was within its "Agency" paying our wages. Adkins & Wicker further allow this issue of payment of wages under SC Code 24-3-430 to be grieved pursuant to SCDC's grievant procedures. Grievance incorporates by reference all exhibits attached to grievance filed by Darrell Williams and Attorney Douglas Weekbrook dtd 4-12-04

Alfred Joyner 11-1-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

6-19-07
Signature Date

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

Alfred Joyner 7-16-07
Grievant Signature Date

7/16/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2761

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Joyner, Alfred	260442	LCI-0636-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on December 13, 2001 and ended June 26, 2003 and that your second voluntary work assignment in this project began on May 16, 2005 and ended March 22, 2006.

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

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

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

Inmate Name	SCDC #	Grievance #
Joyner, Alfred	260442	LCI-0636-04

21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

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

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

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

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

Moreover, you filed your Step 1 grievance over 3 ½ years after SCDC began paying you for your participation in the project located at Lieber during your first work assignment there, nearly 16 months after your first work assignment in this project ended, and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

Inmate Name	SCDC #	Grievance #
Joyner, Alfred	260442	LCI-0636-04

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

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

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

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

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

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

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

Inmate Name	SCDC	Grievance
Joyner, Alfred	260442	LCI-0636-04

South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

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

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Alfred Joyner, #260442,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

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

Alfred Joyner
Appellant's Name

Ridgeland C.I.
Mailing Address

P.O. Box 2039

Ridgeland, SC 29936-2039
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

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

(See reverse side for instructions)

2766

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ALFRED JOYNER, #260442	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	

I certify that on the 25 day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

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

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

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

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

Douglas H. Westbrook

2767

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Keith L. Kelly INMATE GRIEVANCE FORM

STEP 1

Office Use Only
Grievance No. Lieber0773-0
Code: General RKY
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials

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

INMATE NAME:
SCDC NUMBER: 257556
INSTITUTION: Lieber MacDougall
HOUSING UNIT: Cooper A-25 12
WORK ASSIGNMENT: P.I. 2

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

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

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

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 2004 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Keith L Kelly 9-27-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Cauthen 10/28/04
IGC Signature Date

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

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

2768

WARDEN'S DECISION AND REASON:

SEE ATTACHED

Warden Signature 5-15-07 Date

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

Grievant Signature 5-22-07 Date

~~IGC~~ IGI Signature 5.15.07 Date

Seen by: Georgina Ramsay 5/22/07

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

J/K K. Kelley #257552 CC10773-04

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

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

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

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

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

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

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

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

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

2770

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

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

Therefore, I, again, deny your grievance.

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

2771

AMENDMENT TO GRIEVANCE OF KEITH KELLY, #257556

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

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 1747.34 hours in 2000 at $10.66 per hour; 1575.60 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 9600.30 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0786; C, 0081,0086; F, 1185-1187; H, 1-3.

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

2772

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Keith Kelly, #257556,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

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

Keith Kelly
Appellant's Name

MacDougal C.I.
Mailing Address

1516 Old Gilliard Rd.

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-11
Dated

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

(See reverse side for instructions)

2773

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
KEITH KELLY, #257556	)	
Grievant/Appellant,	)	
vs.	)	CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
Respondent/Appellee.	)	

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

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

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

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

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

Douglas H. Westbrook

2774.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Joseph Kelsey individually, and on behalf of all inmate employees listed on attached Exh. A * (IE's) INMATE GRIEVANCE FORM STEP 1

INMATE NAME:

SCDC NUMBER: 217218

INSTITUTION: Lieber

HOUSING UNIT: Cooper - B37

WORK ASSIGNMENT: Prison Industries

Office Use Only
Grievance No. Lieber 0733-04
Code: General VM1
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 837.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

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

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

Grievant Signature 9-27-04 Date

ACTION TAKEN BY IGC:

See Warden's response.

IGC Signature 10/28/04 Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2775

N/A
Grievant Signature Date

Ackerman 5-6-11 2412

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

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

Grievant Signature 11/3/04 Date

IGC Signature 11/3/04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2.776

J.M. J. Kelsey, #217218 LC10733-04

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

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

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

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

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

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

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

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

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

2777

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

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

Therefore, I, again, deny your grievance.

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

2778

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Joseph Kelsey
SCDC NUMBER: 217218
INSTITUTION: Lieber NOV 0 8 2004
HOUSING UNIT: Cooper-B 37 PP
WORK ASSIGNMENT: Prison Industries

Office Use Only
Grievance No. LCI 0733-04
Code: General MV
Policy
Disc. Hear
Class.
Date Received NOV 08 2004
IGC Initials

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

Adkin & Wicker do require payment of prevailing wages. Grievants were employed by W.T.I,and S.C.D.C was W.T.I's "Agent"in paying our wages.Adkins & Wicker further allow this issue of payment of wages under S.C. code 24-3-430 to be grieved pursuant to S.C.D.C grievance procedures. Grievants incorporates by reference all exhibits attached to grievances filed by DARRELL WILLIAMS an ATTORNEY, DOUGLAS WESTBROOK on 9-22-04.

Grievant Signature 11/4/04 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 5/4/07 Date

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

Grievant Signature 5-22-07 Date
IGC Signature 5/22/07 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2779

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Kelsey, Joseph	217218	LCI-0733-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 4, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on May 30, 2000 and that your participation in this project ended on October 5, 2001.

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

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

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

Inmate Name	SCDC #	Grievance #
Kelsey, Joseph	217218	LCI-0733-04

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

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

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

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

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

Moreover, you filed your Step 1 grievance over four (4) years after SCDC first paid you for your participation in the project located at Lieber, approximately three (3) years after your participation in the project at Lieber ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

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

Inmate Name	SCDC#	Grievance #
Kelsey, Joseph	217218	LCI-0733-04

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

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

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

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

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

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

Inmate Name	SCDC#	Grievance #
Kelsey, Joseph	217218	LCI-0733-04

other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

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

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

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Joseph Kelsey, #217218,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

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

Joseph Kelsey
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-07
Dated

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

(See reverse side for instructions)

2784

Ackerman 5-6-11 2421

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
JOSEPH KELSEY, #217218	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS;	)	
	)	
Respondent/Appellee.	)	
	)	

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

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

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

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

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

Douglas H. Westbrook

2785

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Key, Michael

SCDC NUMBER: 268890

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Cooper B-B ✓

WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. Lieber 0767-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received SEP 28 2004
IGC Initials LC

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

From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, Williams Tech/Lieber were required by South Carolina Code §24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $6.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001(Exh.G,H). Since July 2001, Williams Tech/Lieber were required to pay IE's the negotiated wage of $4.00/hr.(Statutes at Large/No.66,§37.31,eff.July 1, 2001 Exh.B,C). In fact, Williams Tech/Lieber's policy was to pay IE's, in most cases, under $1.00/hr. The September 30,1999 contract specifying a wage of $4.00/hr. the names and employment periods of all 1000+ class members from 1999 to June 2004(Exh. D,E,C,A, and F).
"Exh. denotes exhibits attached to Darrell Williams' grievance, which are incorporated by reference herein."

ACTION REQUESTED:

That IE's be paid back wages at the prevailing rate for 1999 to July 2001 and at $4.00/hr. for July 2001 to present, and in the future; all as determined from exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20,2004 at Lieber in Jack Stabut's custody. ~~IE's also request pre/post judgment interest, costs, and attorney fees.~~

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

IE's have verbally requested Williams Tech/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et.al. v. SCDC et.al., Case No.02-CP-18-134 now pending) which was certified a class action representing the class identified in Exh. A. On August 23,2004, the South Carolina Supreme Court held in the Adkins and Wicker cases that §24-3-430's IE's could file a grievance for back wages.

Michael E. Key 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Carlton 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2786

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

WARDEN'S DECISION AND REASON:

See Attachment.

Oct. 28 07
Warden Signature Date

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

Grievant Signature 11/2/04 Date

IGC Signature 11-2-04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2787

Jim M. Key #240890 LC10767-04

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

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

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

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

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

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

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

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

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

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

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

Therefore, I, again, deny your grievance.

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

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AMENDMENT TO GRIEVANCE OF MICHAEL KEY, #266890

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

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 783.52 hours in 2000 at $10.66 per hour; 1655.04 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 10,214.01 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Michael E. Key 2/4/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0786; C, 0081,0086; F, 1190-1192; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	JONES, RICHARD	243944	C B 47	2	2/28/00	2/23/01
MI 1B	JONES, RONNIE	272350	C A 45	1	3/2/01	12/8/03
	JONES, TERRANCE	270105	E A 17	1	8/2/01	10/3/01
MI 3	JORDAN, JR. HAROLD	253102	WD286	1	6/26/03	7/14/03
MI 3	JORDAN, WELBURT	272264	C A 55	1	10/7/02	6/24/04
MI 3	JOYNER, ALFRED	260442	C B 37	1	12/17/01	6/26/03
	JUNE, RONNIE	250792	MX 0	1	11/26/01	12/12/01
	JUSTUS, KENNETH	253669	C 0	1	12/10/99	1/5/00
MI 3	JUSTUS, T	244486	C A 0	0		9/13/99
	KAZEE, WILLIAM	274558	C A 22	1	5/16/01	5/22/01
MI 3	KEENON, CURLY	204551	C B 40	1	12/20/01	6/10/04
	KEITH, KEVIN	174394	C A 36	1	4/10/00	10/25/00
MI 3	KELLY, KEITH	257556	C A 25	1	2/15/00	6/24/04
	KELLY, STEPHON	246447	C A 18	1	6/28/00	11/16/00
MI 3	KELLY, TRAVIS	279931	E A 34	2	10/9/02	11/5/02
	KELLY, WILLIE	262985	C A 2	1	1/10/00	3/12/02
MI 3	KELSEY, JOSEPH	217218	E B 21	3		3/29/04
	KELSEY, JOSEPH	217218	C A 60	2	5/30/00	10/5/01
	KENNEDY, JAMES	180191	MX 0	2	1/6/00	12/18/01
	KENNEDY, JAQUAN	234198	C A 27	1	5/31/01	6/12/01
MI 1B	KEY, MICHAEL	266890	C B 8	1	7/21/00	6/24/04
	KIDD, BILLY RAY	146153	A B 28	1	6/15/00	6/20/00
	KIMAR, MARCUS	249739	A B 26	1	6/6/00	6/30/00
	KINARD, JOSEPH	82115	S B 38	2	9/10/01	9/18/01
MI 2	KINARD, WILSON	186834	C A 43	2	3/1/01	12/16/02
MI 2	KING, CHRIS	199604	C B 6	1	11/27/00	5/2/03
MI 2	KING, CHRIS	199604	C B 6	3	9/24/03	11/5/03
[redacted]						
MO 1E	KING, GILBERT	237945	C A 34	1	3/27/00	6/24/04
MI 1B	KING, GILBERT	237945	E B 33	1	3/27/00	10/3/02
MI 3	KING, J.	196996	C A 0	0		9/25/00
	KINLAW, HAROLD	260000	C A 50	1	11/15/99	10/17/00
MI 3	KINSLER, GARY L.	178344	A A 34	3	6/1/04	6/14/04
	KLARMAN, ARTHUR	183288	C 0	1	11/4/99	5/8/00
MI 3	KNAPP, JASON	271149	E A 26	2	10/1/02	10/23/02
MI 3	KNIGHT, DENNIS	286981	C A 2	1	7/3/03	2/20/04
	KNIGHT, DERALD	274210	E A 21	1	7/2/01	7/23/01
	KNIPP, ROBERT	272794	C B 17	1	3/15/01	8/2/01
MI 3	KNOTTS, LaFAYETTE	275052	C B 25	2	8/20/02	8/29/02
	KNOWLTON, WAYNE	279114	S B 53	1	12/20/01	1/17/02
	KNOX, MARK	215929	C B 25	1	8/4/00	4/20/01
	KRIELING, RORY	241160	S B 18	3	4/5/02	4/5/02
	KRISKOV, MARK	246668	C B 17	1	7/20/00	3/20/01
	LADSON, JONAS	260232	A A 27	1	9/30/99	11/1/99
MI 3	LADSON, RODNEY	262438	C B 55	1	6/19/00	4/6/04
	LADSON, SAMUEL	211285	S B 47	1	9/27/01	3/5/02

PLAINTIFF'S EXHIBIT

A - 0786
June 2004

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

PLAINTIFF'S EXHIBIT C

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

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

3.3 Mutual Duties of the Parties:

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

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

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

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

ARTICLE 4 General Terms and Conditions:

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

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



Ackerman 5-6-11 2430

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amounts
180191	KENNEDY	JAMES	E.	20000703	0.35	28.00	9.80
180191	KENNEDY	JAMES	E.	20000703	0.25	14.57	3.64
180191	KENNEDY	JAMES	E.	20000717	0.50	107.00	53.50
180191	KENNEDY	JAMES	E.	20000731	0.50	97.35	48.67
180191	KENNEDY	JAMES	E.	20000814	0.50	113.85	56.92
180191	KENNEDY	JAMES	E.	20000828	0.10	75.00	7.50
180191	KENNEDY	JAMES	E.	20000828	0.50	126.50	63.25
180191	KENNEDY	JAMES	E.	20000911	0.50	98.40	49.20
180191	KENNEDY	JAMES	E.	20000925	0.50	126.50	63.25
180191	KENNEDY	JAMES	E.	20001009	0.50	115.25	57.62
180191	KENNEDY	JAMES	E.	20001023	0.50	142.90	71.45
180191	KENNEDY	JAMES	E.	20001023	0.35	7.50	2.62
180191	KENNEDY	JAMES	E.	20001106	0.50	126.50	63.25
180191	KENNEDY	JAMES	E.	20001120	0.50	113.85	56.92
180191	KENNEDY	JAMES	E.	20001204	0.50	101.20	50.60
180191	KENNEDY	JAMES	E.	20001218	0.50	136.50	68.25
180191	KENNEDY	JAMES	E.	20010101	0.50	63.25	31.62
180191	KENNEDY	JAMES	E.	20010115	0.50	100.00	50.00
180191	KENNEDY	JAMES	E.	20010129	0.50	127.35	63.67
180191	KENNEDY	JAMES	E.	20010212	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010226	0.50	113.20	56.60
180191	KENNEDY	JAMES	E.	20010312	2.63	1.00	2.63
180191	KENNEDY	JAMES	E.	20010312	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010326	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010409	0.50	160.15	80.07
180191	KENNEDY	JAMES	E.	20010423	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010507	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010521	0.50	146.00	73.00
180191	KENNEDY	JAMES	E.	20010604	0.50	127.35	63.67
180191	KENNEDY	JAMES	E.	20010618	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010702	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010716	0.50	127.35	63.67
180191	KENNEDY	JAMES	E.	20010730	0.50	127.35	63.67
180191	KENNEDY	JAMES	E.	20010813	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010827	0.50	141.50	70.75
180191	KENNEDY	JAMES	E.	20010910	0.50	140.85	70.42
180191	KENNEDY	JAMES	E.	20010924	0.50	156.50	78.25
180191	KENNEDY	JAMES	E.	20011008	0.50	156.50	78.25
180191	KENNEDY	JAMES	E.	20011022	0.50	156.50	78.25
180191	KENNEDY	JAMES	E.	20011105	0.50	156.50	78.25
180191	KENNEDY	JAMES	E.	20011119	0.50	159.50	79.75
180191	KENNEDY	JAMES	E.	20011203	0.50	125.20	62.60
180191	KENNEDY	JAMES	E.	20011217	0.50	166.50	83.25
234198	KENNEDY	JAQUAN		20010702	0.50	11.60	5.80
266890	KEY	MICHAEL	E.	20001009	0.50	135.04	67.52
266890	KEY	MICHAEL	E.	20001023	0.50	148.99	74.49
266890	KEY	MICHAEL	E.	20001106	0.50	99.49	49.74
266890	KEY	MICHAEL	E.	20001120	0.50	104.97	52.48
266890	KEY	MICHAEL	E.	20001204	0.50	90.04	45.02
266890	KEY	MICHAEL	E.	20001218	0.50	139.39	69.69
266890	KEY	MICHAEL	E.	20010101	0.50	65.60	32.80
266890	KEY	MICHAEL	E.	20010115	0.50	98.42	49.21
266890	KEY	MICHAEL	E.	20010129	0.50	115.22	57.61
266890	KEY	MICHAEL	E.	20010212	0.50	128.58	64.29

PLAINTIFF'S EXHIBIT

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A.-1190
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
266890	KEY	MICHAEL	E.	20010226	0.50	88.51	44.25
266890	KEY	MICHAEL	E.	20010312	0.50	138.87	69.43
266890	KEY	MICHAEL	E.	20010326	0.50	133.02	66.51
266890	KEY	MICHAEL	E.	20010409	0.50	151.31	75.65
266890	KEY	MICHAEL	E.	20010423	0.50	129.27	64.63
266890	KEY	MICHAEL	E.	20010507	0.50	149.13	74.56
266890	KEY	MICHAEL	E.	20010521	0.50	164.87	82.43
266890	KEY	MICHAEL	E.	20010604	0.50	118.25	59.12
266890	KEY	MICHAEL	E.	20010618	0.50	104.78	52.39
266890	KEY	MICHAEL	E.	20010702	0.50	134.81	67.40
266890	KEY	MICHAEL	E.	20010716	0.50	106.98	53.49
266890	KEY	MICHAEL	E.	20010730	0.50	129.48	64.74
266890	KEY	MICHAEL	E.	20010813	0.50	173.95	86.97
266890	KEY	MICHAEL	E.	20010827	0.50	108.08	54.04
266890	KEY	MICHAEL	E.	20010910	0.50	115.12	57.56
266890	KEY	MICHAEL	E.	20010924	0.50	81.11	40.55
266890	KEY	MICHAEL	E.	20011008	0.50	190.66	95.33
266890	KEY	MICHAEL	E.	20011022	0.50	166.31	83.15
266890	KEY	MICHAEL	E.	20011105	0.50	123.59	61.79
266890	KEY	MICHAEL	E.	20011119	0.50	113.11	56.55
266890	KEY	MICHAEL	E.	20011203	0.50	101.46	50.73
266890	KEY	MICHAEL	E.	20011217	0.50	162.34	81.17
266890	KEY	MICHAEL	E.	20011231	0.50	51.37	25.68
266890	KEY	MICHAEL	E.	20020114	0.50	105.58	52.79
266890	KEY	MICHAEL	E.	20020128	0.50	126.99	63.49
266890	KEY	MICHAEL	E.	20020211	0.50	153.55	76.77
266890	KEY	MICHAEL	E.	20020225	0.50	138.98	69.49
266890	KEY	MICHAEL	E.	20020311	0.50	78.12	39.06
266890	KEY	MICHAEL	E.	20020325	0.50	118.37	59.18
266890	KEY	MICHAEL	E.	20020408	0.50	103.14	51.57
266890	KEY	MICHAEL	E.	20020422	0.50	151.31	75.65
266890	KEY	MICHAEL	E.	20020506	0.50	170.70	85.35
266890	KEY	MICHAEL	E.	20020520	0.50	166.07	83.03
266890	KEY	MICHAEL	E.	20020603	0.50	144.41	72.20
266890	KEY	MICHAEL	E.	20020617	0.50	170.20	85.10
266890	KEY	MICHAEL	E.	20020701	0.50	154.64	77.32
266890	KEY	MICHAEL	E.	20020715	0.50	139.03	69.51
266890	KEY	MICHAEL	E.	20020729	0.50	158.28	79.14
266890	KEY	MICHAEL	E.	20020812	0.50	166.24	83.12
266890	KEY	MICHAEL	E.	20020826	0.50	184.80	92.40
266890	KEY	MICHAEL	E.	20020909	0.50	204.46	102.23
266890	KEY	MICHAEL	E.	20020923	0.50	191.66	95.83
266890	KEY	MICHAEL	E.	20021007	0.50	165.90	82.95
266890	KEY	MICHAEL	E.	20021021	0.50	164.50	82.25
266890	KEY	MICHAEL	E.	20021104	0.50	181.46	90.73
266890	KEY	MICHAEL	E.	20021118	0.50	179.51	89.75
266890	KEY	MICHAEL	E.	20021202	0.50	149.64	74.82
266890	KEY	MICHAEL	E.	20021216	0.50	152.30	76.15
266890	KEY	MICHAEL	E.	20021230	0.50	115.14	57.57
266890	KEY	MICHAEL	E.	20030113	0.50	120.83	60.41
266890	KEY	MICHAEL	E.	20030127	0.50	141.30	70.65
266890	KEY	MICHAEL	E.	20030210	0.50	172.74	86.37
266890	KEY	MICHAEL	E.	20030224	0.50	179.60	89.80
266890	KEY	MICHAEL	E.	20030310	0.50	144.64	72.32

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June 2004

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
266890	KEY	MICHAEL	E.	20030324	0.50	183.10	91.55
266890	KEY	MICHAEL	E.	20030407	0.50	149.50	74.75
266890	KEY	MICHAEL	E.	20030421	0.50	130.82	65.41
266890	KEY	MICHAEL	E.	20030505	0.50	101.25	50.62
266890	KEY	MICHAEL	E.	20030519	0.50	123.58	61.79
266890	KEY	MICHAEL	E.	20030602	0.50	103.23	51.61
266890	KEY	MICHAEL	E.	20030616	0.50	134.99	67.49
266890	KEY	MICHAEL	E.	20030630	0.50	121.45	60.72
266890	KEY	MICHAEL	E.	20030714	0.50	132.28	66.14
266890	KEY	MICHAEL	E.	20030728	0.50	117.13	58.56
266890	KEY	MICHAEL	E.	20030811	0.50	117.65	58.82
266890	KEY	MICHAEL	E.	20030825	0.50	129.24	64.62
266890	KEY	MICHAEL	E.	20030908	0.50	106.84	53.42
266890	KEY	MICHAEL	E.	20030922	0.50	121.18	60.59
266890	KEY	MICHAEL	E.	20031006	0.50	102.83	51.41
266890	KEY	MICHAEL	E.	20031020	0.50	105.74	52.87
266890	KEY	MICHAEL	E.	20031103	0.50	111.53	55.76
266890	KEY	MICHAEL	E.	20031117	0.50	133.40	66.70
266890	KEY	MICHAEL	E.	20031201	0.50	97.15	48.57
266890	KEY	MICHAEL	E.	20031215	0.50	72.24	36.12
266890	KEY	MICHAEL	E.	20031229	0.50	121.25	60.62
266890	KEY	MICHAEL	E.	20040112	0.50	85.44	42.72
266890	KEY	MICHAEL	E.	20040126	0.50	115.27	57.63
266890	KEY	MICHAEL	E.	20040209	0.50	129.14	64.57
266890	KEY	MICHAEL	E.	20040223	0.50	145.06	72.53
266890	KEY	MICHAEL	E.	20040308	0.50	132.28	66.14
266890	KEY	MICHAEL	E.	20040322	0.50	147.15	73.57
266890	KEY	MICHAEL	E.	20040405	0.50	137.56	68.78
266890	KEY	MICHAEL	E.	20040419	0.50	114.63	57.31
266890	KEY	MICHAEL	E.	20040503	0.50	109.78	54.89
266890	KEY	MICHAEL	E.	20040517	0.50	123.59	61.79
266890	KEY	MICHAEL	E.	20040531	0.50	140.08	70.04
186834	KINARD	WILSON	J.	20000703	0.35	30.97	10.83
186834	KINARD	WILSON	J.	20000717	0.50	81.79	40.89
186834	KINARD	WILSON	J.	20000731	0.50	147.11	73.55
186834	KINARD	WILSON	J.	20000814	0.50	96.88	48.44
186834	KINARD	WILSON	J.	20000828	0.50	123.92	61.96
186834	KINARD	WILSON	J.	20000911	0.50	71.63	35.81
186834	KINARD	WILSON	J.	20000925	0.50	131.91	65.95
186834	KINARD	WILSON	J.	20001009	0.50	96.76	48.38
186834	KINARD	WILSON	J.	20001023	0.50	77.07	38.53
186834	KINARD	WILSON	J.	20010521	0.50	126.67	63.33
186834	KINARD	WILSON	J.	20010604	0.50	80.33	40.16
186834	KINARD	WILSON	J.	20010618	0.50	55.93	27.96
186834	KINARD	WILSON	J.	20010702	0.50	72.60	36.30
186834	KINARD	WILSON	J.	20010716	0.50	86.40	43.20
186834	KINARD	WILSON	J.	20010730	0.50	102.92	51.46
186834	KINARD	WILSON	J.	20010813	0.50	143.26	71.63
186834	KINARD	WILSON	J.	20010827	0.50	78.97	39.48
186834	KINARD	WILSON	J.	20010910	0.50	117.39	58.69
186834	KINARD	WILSON	J.	20010924	0.50	108.26	54.13
186834	KINARD	WILSON	J.	20011008	0.50	132.93	66.46
186834	KINARD	WILSON	J.	20011022	0.50	108.75	54.37
186834	KINARD	WILSON	J.	20011105	0.50	120.00	60.00

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

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

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

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

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

PLAINTIFF'S EXHIBIT H

2797

RESUME-3/03
Dr. Joseph J. Benich

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

EDUCATION

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

ACADEMIC EXPERIENCE

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

2798

NON-ACADEMIC EXPERIENCE

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

PUBLICATIONS

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

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

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

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

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

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

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

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

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Michael Key
SCDC NUMBER: # 266390
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper B-B
WORK ASSIGNMENT: PI-2

NOV 04 2004
pp

Office Use Only
Grievance No. LCI 0767-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins & Wicker do require payment of prevailing wages. Greavants were employed by WTI, and SCDC is WTI's "Agent" in the paying of our wages. Adkins & Wicker further allow this issue of payment of wages under S.C. Code 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed b Darrell Williams and Attorney Douglas Westbrook on 9-22-04.

Michael E. Key 11/3/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

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

Michael E. Key 5/28/07
Grievant Signature Date

5/22/07
IGC Signature Date

2800 (SEE REVERSE SIDE FOR INSTRUCTIONS)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

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

2801

KEY LCI-0767-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on July 21, 2000 and that, as of the date of this response, you are still participating in this project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2804

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Key, #266890,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 07-ALJ-04-____-____
GRIEVANCE NO.: _____

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

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

Michael Key
Appellant's Name

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

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

6-6-07
Dated

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

2805

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
MICHAEL KEY, #266890	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 7th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

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

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

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

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

Douglas H. Westbrook

2806

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Dennis Knight INMATE GRIEVANCE FORM
individually, and on STEP 1
behalf of all inmate employees (IE's)

Office Use Only
Grievance No. Lieber 070204
Code: General GW
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials LC

INMATE NAME: listed on attached Exh. A *
SCDC NUMBER: 286981
INSTITUTION: Lieber
HOUSING UNIT: Cooper-A-02
WORK ASSIGNMENT: None 911

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

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

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

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

Dennis Knight 9/27/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2807

Grievant Signature Date

Ackerman 5-6-11 2444

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

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

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2808

John D. Knight, #286981 CA 0707-04

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

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

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

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

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

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

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

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

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

2809

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

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

Therefore, I, again, deny your grievance.

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

2810

KNIGHT LCI-0707-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on February 20, 2003 and ended July 3, 2003. Additionally, these records reflect that you returned to this project for a second work assignment that began October 18, 2004 and ended January 24, 2006.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

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

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

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

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

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

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of your Step 1 grievance clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004 throughout your Step 1 grievance.

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

Also, contrary to the claims you made in your Step 1 grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "inmate/employee" within your Step 1 grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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

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

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

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

Therefore, I, again, deny your grievance in its entirety.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 6/3/07
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Dennis Knight
SCDC NUMBER: 28698
INSTITUTION: Lieber
HOUSING UNIT: Wanda-D-189
WORK ASSIGNMENT: Lt. Clerk

RECEIVED
JUN 12 2007
INMATE GRIEVANCE

Office Use Only
Grievance No. LCI 0707-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received 6/6/07
IGC Initials VB
✔ IGA - ABH 7-13-07

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

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

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4.00 per hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct, and back wages are owed.

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

Dennis Knight 5-29-07
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

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

Dennis Knight 8/8/07
Grievant Signature Date

IGC Signature 8/28/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2814

KNIGHT LCI-0707-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 29, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on February 20, 2003 and that your participation in this project ended on July 3, 2003.

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

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

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

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

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.
Moreover, you filed your Step 1 grievance over 19 months after SCDC first paid you for your participation in the project located at Lieber, over 14 months after your participation in this project ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

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

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

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

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

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

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dennis Knight, #286981, Appellant, vs. South Carolina Department of Corrections, Respondent.	NOTICE OF APPEAL DOCKET NO. 07-ALJ-04-_____ GRIEVANCE NO.: _____

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

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

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

Signed
5-30-07
Dated

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

2816

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
DENNIS KNIGHT, #286981	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 31st day of August, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

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

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

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

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

Douglas H. Westbrook

2817

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Nick Lambros
SCDC NUMBER: 215080
INSTITUTION: Lieber
HOUSING UNIT: E-B-21
WORK ASSIGNMENT: DoRm

NOV 03 2004
P.P.

Office Use Only
Grievance No. C0957-04
Code: General RW
Policy
Disc. Hear.
Class.
Date Received NOV 04 2004
IGC Initials LC

12/14/04

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

State Grievance.

The department is Asked to Review And determine wheather I Am entitled to Receive Back wages which ARE dewe to me from working At Lieber Peison Indostries Program when they paid me 35 An hour And not Prevailing whole As under south CAROLINA cod Ann Sec 24-3-430zA - As well As fact they were Getting $4.00 An hour still did not Give me my money from 1998-03 they denied me Prevailing wage

ACTION REQUESTED:

That All money due to me Paid At Pecvaling wages As well As overtime Rate moreover The Prevailing wage be Paid Now

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

LAW suite was filed ordered to Filed Grevance by Court wicker v scDc Adkins v scDc

Nicholas Lambros 10/29/04
Grievant Signature Date

ACTION TAKEN BY IGC:

2818

IGC Signature Date

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

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

Lieber PI Back Wage Claim Step 1 Reply

Inmate Name	SCDC #	Grievance #
Lambros, Nick	215080	LCI-0957-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 1 grievance form dated October 29, 2004 as well as any and all documents you submitted in support of your Step 1 grievance form.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 6, 1999 and that you concluded your participation in this project on March 8, 2002.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

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

Inmate Name	SCDC #	Grievance #
Lambros, Nick	215080	LCI-0957-04

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

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

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Inmate Name	SCDC #	Grievance #
Lambros, Nick	215080	LCI-0957-04

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of the documents submitted in support of your Step 1 grievance form clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004.

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

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

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

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

Inmate Name	SCDC #	Grievance #
Lambros, Nick	215080	LCI-0957-04

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

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

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

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

Therefore, I, again, deny your grievance in its entirety.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCC-0951-04
Code: General
Policy
Disc. Hear
Class.
Date Received 5/24/07
IGC Initials
4.13-07 - 9-22-07

INMATE NAME: Nicholas Zamboos
SCDC NUMBER: 215080
INSTITUTION: Lieber
HOUSING UNIT: ~~63-B-149~~ WB143
WORK ASSIGNMENT: Prison Industries

RECEIVED
JUN 04 2007 5-23-07
INMATE GRIEVANCE

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

Adkins Wicker do require payment of prevailing wages. Grievants were employed by W.T.I. and S.C.D.C. was W.T.I.'s "Agent" in paying our wages. Adkins Wicker further allow this issue of payment of wages under S.C code 24-3-930 to be grieved pursuant to S.C.D.C grivance procedures. Grievants incorporates by Reference all exhibits attached to grievances filed By Daeech Williams AN Attorney, Douglas Westbrook on 9-22-04

Grievant Signature 5/24/07 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

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

Grievant Signature 8/4/07 Date

IGC Signature Randall 8/8/07 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2823

SCDC 10-5A (November 1997)

Ackerman 5-6-11 2460

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Lambros, Nick	215080	LCI-0957-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 21, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated October 29, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 6, 1999 and that your participation in this project ended on March 8, 2002.

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

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

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

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

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

Inmate Name	SCDC #	Grievance #
Lambros, Nick	215080	LCI-0957-04

Moreover, you filed your Step 1 grievance over five (5) years after SCDC first paid you for your participation in the project located at Lieber, over 2 ½ years after your participation in this project ended, and over 60 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Nicholas Lambrose, #215080

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

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

Nicholas Lambrose
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

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

(See reverse side for instructions)

2826

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
NICHOLAS LAMBROSE, #215080	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	

I certify that on the 13 day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

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

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

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

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

Douglas H. Westbrook

2827

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Alain Laresu
SCDC NUMBER: 128014
INSTITUTION: LIEBER
HOUSING UNIT: WANDO C-250 ✓
WORK ASSIGNMENT:

Office Use Only
Grievance No. Lieber 0643-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

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

The Department is asked to review and determine whether I am entitled to recieve BACK Wages, which are due to me, from working at Lieber Prison Industries Program when they only paid me .35¢ an hour and not Prevailing Wage as under South Carolina Code Ann. Sec. 24-3-430 {A-7} as well as the fact they were getting $4.00 an hour and STILL DID not give me my money from 1998 - 2003. They Denied Me Prevailing Wage.

ACTION REQUESTED: That All money due to me be paid at Prevailing Wage, as well as Overtime RATE, Moreover, the prevailing WAGE be PAID now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit WAS Filed, ordered to file Grievance by Court under Wicker V. SCDC and ADKins V. SCDC.

Alain Laresu 9/22/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2828

L Carlton 10/28/04
IGC Signature Date
N/A

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date

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

Grievant Signature Date 11/3/04

IGC Signature Date 11-3-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2825

Inmate A. Lareau, #128014 2C10643-04

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

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

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

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

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

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

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

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

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

2830

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

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

Therefore, I, again, deny your grievance.

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

AMENDMENT TO GRIEVANCE OF ALAIN LAREAU, #128014

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

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; 69.52 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 2588.77 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

_____ _____
(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1203; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. 2210643-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: ALAIN H. LABEAU NOV 04 2004
SCDC NUMBER: 128014 PP
INSTITUTION: ~~LIEBER~~ KRCI
HOUSING UNIT: WANDO C-250
WORK ASSIGNMENT:

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
ADKINS + WICKER DO REQUIRE PAYMENT OF PREVAILING WAGES. GRIEVANTS WERE EMPLOYED BY WILLIAMS TECHNOLOGY (W.T.I.) AND IT'S "AGENT", S.C.D.C., IN PAYING OUR WAGES. ADKINS + WICKER' FURTHER DO ALLOW THIS ISSUE OF PAYMENT OF WAGES UNDER S.C. CODE 24-3-430 (A-F) to BE GRIEVED PURSUANT TO S.C.D.C.'S GRIEVANCE PROCEDURE. GRIEVANT INCORPORATES BY REFERENCE ALL EXHIBITS ATTACHED TO GRIEVANCES FILED BY DARRELL WILLIAMS AND BY ATTORNEY DOUGLAS WESTBROOK ON 9-22-04. Alain H Labeau 11-03-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

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

Alain Labeau 5-22-07
Grievant Signature Date

A Hardin 5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2833

Ackerman 5-6-11 2470

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Lareau, Alain	128014	LCI-0643-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on June 1, 2001 and that your participation in this project ended on October 31, 2002.

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

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

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

Inmate Name	SCDC #	Grievance #
Lareau, Alain	128014	LCI-0643-04

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

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

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

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

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

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

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

Ackerman 5-6-11 2472

Inmate Name	SCDC #	Grievance #
Lareau, Alain	128014	LCI-0643-04

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

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

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

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

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

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

Inmate Name	SCDC #	Grievance #
Lareau, Alain	128014	LCI-0643-04

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

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

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

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

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

Ackerman 5-6-11 2474

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alain H. Lareau, #128014

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

SUPPLEMENTAL
NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.: _____

Notice is hereby given that Alain H. Lareau does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-31-07 ? was mailed 6-6-07. and received on 5-22-07 ?, a copy of which ~~is attached~~. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9..

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

Alain H. Lareau
Appellant's Name

Kershaw C.I.
4848 Goldmine Hy.
Mailing Address

Kershaw, SC 29067
City, State, Zip Code

none
Telephone Number

Signed

6-8-07
Dated

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

2838

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ALAIN H. LAREAU, #128014	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 8th day of June, 2007, I mailed by first class postage Supplemental Appellant's Notice of Appeal, ~~and final decision~~, to the following:

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

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

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

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

D. H. Westbrook
Douglas H. Westbrook

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURTS DIVISION

Alain H. Lareau #128014,
Appellant,

vs.

South Carolina
Department of Corrections
Respondent,

NOTICE OF APPEAL

DOCKET No. _____

GRIEVANCE No. KCI

Notice is hereby given that ALAIN H. LAREAU does hereby Appeal the final decision of the South Carolina Department of Corrections DATED June 18th, 2007 (originally dated May 31st but resubmitted on 6-18-07) and recieved on May 22nd 2007, a copy of which is attached. A general Statement of the grounds for Appeal is (See SC. Code Ann. §1-23-380(A)(6)): SCDC is in violation of my due Process Rights and my state created Rights pursuant to SC Code Ann §24-3-430. I Filed a Step 1 and Step 2 grievance in accordance with Adkins V. State and Wicker V. State as a means to Resolve these issues. This I hereby Appeal the Final Decision of South Carolina Department of Corrections in accordance of the ruling of Al-Shabazz V. State, 338 SC. 354, 527 SE. 2d, 742 (2000). I also request all back wages, overtime wages and training wages at the prevailing wage, that are due to me. (See also: the Supplemental Notice of Appeal sent by Attorney Douglas Westbrook on 6-8-07.)

ALAIN H. LAREAU #128014
KERSHAW C.I. SB-1
4848 GOLDMINE HWY.
KERSHAW, SC. 29067
Tele: N/A

S/ Alain H. Lareau

Dated / June 18th, 2007
(originally sent on May 31st 2007)
But, Resubmitted on 6-18-07

Ackerman 5-6-11 2477

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Nikia Law INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 260855

INSTITUTION: Lieber

HOUSING UNIT: Corpus A-42

WORK ASSIGNMENT: PIA2

Office Use Only

Grievance No. Lieber 0761-04

Code: General CM

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits document a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

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

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

Grievant Signature 9-27-04 Date

ACTION TAKEN BY IGC:

See Warden's Response.

IGC Signature 10/28/04 Date

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

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

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

2841

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature — Date: OCT. 28, 07

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

Grievant Signature — Date: 11-2-04

IGC Signature — Date: 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2842

Jack N Law, #260855 LCI 0761-04

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

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

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

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

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

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

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

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

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

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

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

Therefore, I, again, deny your grievance.

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

2844

AMENDMENT TO GRIEVANCE OF NIKIA LAW, #260855

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

Grievant requests back wages owed for 139.00 hours in 1999 at $9.68 per hour; 1664.94 hours in 2000 at $10.66 per hour; 1405.60 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 3007.97 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Nikia Law 2-5-06
(Grievant Signature) (Date)

* Attached are Exn. A, 0787; C, 0081,0086; F, 1205-1206; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2845

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	LADSON, TRAVIS	262120	C A 43	1	12/1/99	12/28/00
	LALLIER, JESSIE	280559	A A 24	1	1/9/02	1/11/02
	LAMBROS, NICHOLAS	215080	C A 52	1	8/6/99	3/8/02
MI 3	LANCE, STEVEN	130041	WD286	1	6/26/03	7/7/03
MI 3	LANG, WILBUR	268347	A B 64	1	3/1/04	3/3/04
	LANGLEY, DANIEL	263930	C 0	1	4/6/00	4/12/00
MI 3	LAREAU, ALAIN	128014	C B 2	1	6/1/01	10/31/02
MI 3	LAREAU, ALAIN	128014	C A 30	1	6/1/01	7/18/03
	LASTER, WILLIE	194241	C A 44	1	10/20/00	6/19/02
	LaSURE, ALFRED	264677	C B 29	2	7/31/02	8/2/02
	LAUX, BERNARD	258357	C 0	1	11/4/99	1/14/00
	LAW, NIKIA	260855	C B 46	1	4/12/00	2/8/02
MI 3	LAW, NIKIA	260855	C A 42	1	12/18/03	6/24/04
	LAWRENCE, JERMAINE	226657	C 0	1	12/10/99	1/14/00
	LEAPHART, TRAVIS	277177	E B 30	2	8/30/01	10/2/01
MI 2	LEASE, STEVE	137016	C A 46	1	8/6/99	6/24/04
	LEE, ARCHIE	226354	A A 36	1	10/13/00	3/13/01
	LEE, DERRICK	251269	MX 0	2	1/4/00	10/5/00
	LEE, WAYNE	266212	S B 23	1	2/15/01	4/4/01
MI 2	LEGRAND, NATHAN	259490	C A 59	1	11/4/99	4/19/02
MI 3	LEONARD, HARRY	249996	C B 58	1	8/6/99	6/24/04
	LESANE, MICHAEL	258515	C 0	1	4/10/00	4/20/00
	LEWIS, DESMOND	268968	E A 29	1	10/13/00	10/18/00
	LEWIS, OMAR	264047	E B 47	1	9/22/00	9/27/00
MI 2	LIBBY, RICKY	274681	C B 31	1	3/11/02	8/5/02
MI 2	LIBBY, RICKY	274681	WB149	1	3/11/02	11/12/03
MI 3	LINEN, QUINTIN	238553	C A 51	1	8/5/02	6/2/04
	LINNEN, BOOKER	165854	C B 41	1	6/6/00	12/21/00
	LIPSCOMB, JAMES	254950	C 0	1	8/11/99	3/7/00
MI 2	LIPSCOMB, MARK	272387	C A 16	1	4/4/01	5/2/03
MI 2	LIPSCOMB, MARK	272387	C A 59	3	9/24/03	12/8/03
	LITES, JAMES	270041	C B 19	1	12/5/00	6/12/01
MI 3	LIVINGSTON, RAYMOND	277133	C A 14	2	9/4/01	1/13/03
	LOCKLAIR, JIMMY	276548	C A 31	2	7/30/01	10/31/01
	LOGAN, JERRY	211561	C B 1	0	1/4/00	2/2/00
MI 2	LOVE, STEVEN	197674	C B 34	1	6/27/00	5/2/03
	LOWER, JAMES	264743	E A 55	1	4/18/01	6/7/01
	LUCAS, KELVIN	280760	E A 41	1	2/23/02	4/5/02
MI 3	LYLES, DONALD	296135	C B 9	3		3/17/04
MI 3	LYLES, DONALD	296135	C B 9	1	5/18/04	6/24/04
MI 3	MACK, EARL	216237	C A 47	1	3/14/00	6/26/03
	MACK, JOHN	106272	MX 0	1	7/11/00	12/11/01
MI 3	MACK, LAVANZA	189340	C B 29	1	3/29/04	6/24/04
MI 3	MACK, NATHAN	255391	C B 33	1	6/15/00	6/26/03
	MACKEY, BROADUS	171502	C A 29	1	3/15/00	6/27/00
	MAKINS, MAXIE	269147	C A 61	2	10/16/00	8/13/01

PLAINTIFF'S EXHIBIT A

A - 0787
June 2004

2846

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

PLAINTIFF'S EXHIBIT C

2847

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

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

3.3 Mutual Duties of the Parties:

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

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

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

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

ARTICLE 4 General Terms and Conditions:

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

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

PLAINTIFF'S EXHIBIT C

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
258357	LAUX	BERNARD	FRANK	20000214	0.55	2.00	1.10
258357	LAUX	BERNARD	FRANK	20000228	0.50	67.50	33.75
258357	LAUX	BERNARD	FRANK	20000228	1.05	15.00	15.75
258357	LAUX	BERNARD	FRANK	20000313	0.35	67.95	23.78
258357	LAUX	BERNARD	FRANK	20000327	0.35	29.63	10.37
260855	LAW	NIKIA	C.	19991025	0.35	48.50	16.97
260855	LAW	NIKIA	C.	19991108	0.35	71.50	25.02
260855	LAW	NIKIA	C.	19991108	0.55	19.00	10.45
260855	LAW	NIKIA	C.	20000424	0.35	75.00	26.25
260855	LAW	NIKIA	C.	20000424	0.55	3.44	1.89
260855	LAW	NIKIA	C.	20000508	0.35	75.00	26.25
260855	LAW	NIKIA	C.	20000508	0.55	32.12	17.66
260855	LAW	NIKIA	C.	20000508	0.25	14.35	3.58
260855	LAW	NIKIA	C.	20000522	0.35	67.50	23.62
260855	LAW	NIKIA	C.	20000522	0.55	45.25	24.88
260855	LAW	NIKIA	C.	20000522	0.25	21.77	5.44
260855	LAW	NIKIA	C.	20000522	0.55	7.50	4.12
260855	LAW	NIKIA	C.	20000605	0.35	67.50	23.62
260855	LAW	NIKIA	C.	20000605	0.55	55.23	30.37
260855	LAW	NIKIA	C.	20000605	0.25	14.12	3.53
260855	LAW	NIKIA	C.	20000703	0.50	60.00	30.00
260855	LAW	NIKIA	C.	20000703	0.55	63.58	34.96
260855	LAW	NIKIA	C.	20000703	0.35	4.50	1.57
260855	LAW	NIKIA	C.	20000703	0.25	18.53	4.63
260855	LAW	NIKIA	C.	20000717	0.50	101.84	50.92
260855	LAW	NIKIA	C.	20000731	0.50	112.77	56.38
260855	LAW	NIKIA	C.	20000814	0.50	67.80	33.90
260855	LAW	NIKIA	C.	20000828	0.50	81.03	40.51
260855	LAW	NIKIA	C.	20000911	0.50	67.24	33.62
260855	LAW	NIKIA	C.	20000925	0.50	64.07	32.03
260855	LAW	NIKIA	C.	20001009	0.50	72.72	36.36
260855	LAW	NIKIA	C.	20001023	0.50	77.28	38.64
260855	LAW	NIKIA	C.	20001106	0.50	72.33	36.16
260855	LAW	NIKIA	C.	20001120	0.50	111.36	55.68
260855	LAW	NIKIA	C.	20001204	0.50	69.06	34.53
260855	LAW	NIKIA	C.	20001218	0.50	98.98	49.49
260855	LAW	NIKIA	C.	20010101	0.50	43.07	21.53
260855	LAW	NIKIA	C.	20010115	0.50	50.95	25.47
260855	LAW	NIKIA	C.	20010129	0.50	81.99	40.99
260855	LAW	NIKIA	C.	20010212	0.50	91.69	45.84
260855	LAW	NIKIA	C.	20010226	0.50	98.17	49.08
260855	LAW	NIKIA	C.	20010312	0.50	110.41	55.20
260855	LAW	NIKIA	C.	20010326	0.50	129.19	64.59
260855	LAW	NIKIA	C.	20010409	0.50	97.65	48.82
260855	LAW	NIKIA	C.	20010423	0.50	134.29	67.14
260855	LAW	NIKIA	C.	20010507	0.50	168.30	84.15
260855	LAW	NIKIA	C.	20010521	0.50	126.57	63.28
260855	LAW	NIKIA	C.	20010604	0.50	92.22	46.11
260855	LAW	NIKIA	C.	20010618	0.50	112.20	56.10
260855	LAW	NIKIA	C.	20010702	0.50	111.97	55.98
260855	LAW	NIKIA	C.	20010716	0.50	97.91	48.95
260855	LAW	NIKIA	C.	20010730	0.50	148.68	74.34
260855	LAW	NIKIA	C.	20010813	0.50	157.50	78.75
260855	LAW	NIKIA	C.	20010827	0.50	112.63	56.31

PLAINTIFF'S EXHIBIT

2849

A - 1205
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
260855	LAW	NIKIA	C.	20010910	0.50	112.40	56.20
260855	LAW	NIKIA	C.	20010924	0.50	120.53	60.26
260855	LAW	NIKIA	C.	20011008	0.50	134.94	67.47
260855	LAW	NIKIA	C.	20011022	0.50	123.37	61.68
260855	LAW	NIKIA	C.	20011105	0.50	115.94	57.97
260855	LAW	NIKIA	C.	20011119	0.50	111.15	55.57
260855	LAW	NIKIA	C.	20011203	0.50	95.80	47.90
260855	LAW	NIKIA	C.	20011217	0.50	123.02	61.51
260855	LAW	NIKIA	C.	20011231	0.50	58.28	29.14
260855	LAW	NIKIA	C.	20020114	0.50	86.51	43.25
260855	LAW	NIKIA	C.	20020128	0.50	71.92	35.96
260855	LAW	NIKIA	C.	20020211	0.50	117.81	58.90
260855	LAW	NIKIA	C.	20031229	0.50	24.25	12.12
260855	LAW	NIKIA	C.	20040112	0.50	63.71	31.85
260855	LAW	NIKIA	C.	20040126	0.50	108.55	54.27
260855	LAW	NIKIA	C.	20040209	0.50	108.02	54.01
260855	LAW	NIKIA	C.	20040223	0.50	127.38	63.69
260855	LAW	NIKIA	C.	20040308	0.50	118.43	59.21
260855	LAW	NIKIA	C.	20040322	0.50	107.76	53.88
260855	LAW	NIKIA	C.	20040405	0.50	108.53	54.26
260855	LAW	NIKIA	C.	20040419	0.50	107.73	53.86
260855	LAW	NIKIA	C.	20040503	0.50	132.10	66.05
260855	LAW	NIKIA	C.	20040517	0.50	130.88	65.44
260855	LAW	NIKIA	C.	20040531	0.50	82.24	41.12
226657	LAWERENCE	JERMIANE	E.	19991108	0.35	15.00	5.25
226657	LAWERENCE	JERMIANE	E.	19991122	0.35	66.33	23.21
226657	LAWERENCE	JERMIANE	E.	19991122	0.55	7.10	3.90
226657	LAWERENCE	JERMIANE	E.	19991206	0.35	46.44	16.25
226657	LAWERENCE	JERMIANE	E.	19991220	2.50	2.00	5.00
226657	LAWERENCE	JERMIANE	E.	19991220	0.35	71.70	25.09
226657	LAWERENCE	JERMIANE	E.	19991220	0.55	11.42	6.28
226657	LAWERENCE	JERMIANE	E.	20000103	0.50	31.42	15.71
226657	LAWERENCE	JERMIANE	E.	20000103	0.55	0.57	0.31
226657	LAWERENCE	JERMIANE	E.	20000117	0.35	54.10	18.93
226657	LAWERENCE	JERMIANE	E.	20000117	0.55	5.63	3.09
226657	LAWERENCE	JERMIANE	E.	20000117	0.50	7.50	3.75
226657	LAWERENCE	JERMIANE	E.	20000117	0.55	2.00	1.10
277177	LEAPHART	TRAVIS		20010910	0.50	26.25	13.12
277177	LEAPHART	TRAVIS		20010924	0.50	52.50	26.25
277177	LEAPHART	TRAVIS		20011008	0.50	26.25	13.12
137016	LEASE	STEPHEN		19990816	0.50	32.00	16.00
137016	LEASE	STEPHEN		19990816	0.70	8.00	5.60
137016	LEASE	STEPHEN		19990830	0.50	79.25	39.62
137016	LEASE	STEPHEN		19990830	0.70	2.50	1.75
137016	LEASE	STEPHEN		19990913	0.50	72.00	36.00
137016	LEASE	STEPHEN		19990913	0.70	23.25	16.27
137016	LEASE	STEPHEN		19990927	0.50	54.25	27.12
137016	LEASE	STEPHEN		19990927	0.70	22.00	15.40
137016	LEASE	STEPHEN		19991011	0.50	67.50	33.75
137016	LEASE	STEPHEN		19991011	0.55	54.75	30.11
137016	LEASE	STEPHEN		19991025	0.50	75.00	37.50
137016	LEASE	STEPHEN		19991025	0.55	15.50	8.52
137016	LEASE	STEPHEN		19991108	0.50	75.00	37.50
137016	LEASE	STEPHEN		19991108	0.55	15.50	8.52

2850

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

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

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

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

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



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RESUME-3/03
Dr. Joseph J. Benich

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

EDUCATION

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

ACADEMIC EXPERIENCE

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

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NON-ACADEMIC EXPERIENCE

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

PUBLICATIONS

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

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

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

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

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

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

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

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

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-7-04

INMATE NAME: Mika Lain
SCDC NUMBER: 260855
INSTITUTION: Leber
HOUSING UNIT: Cooper A-42
WORK ASSIGNMENT: P.I 2

NOV 04 2004
PP

Office Use Only
Grievance No. LL0761-04
Code: General NM
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

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

Adkins and Wilkes do require payment of prevailing wages. Grievants were employed by W.T.I., and S.C.D.C was W.T.I.'s "Agent" in paying our wages under S.C. code 24-3-430 to be grieved pursuant to S.C.D.C.'s grievance procedures. Grievants incorporate by reference all exhibits attached to grievance filed by Darrel Williams and Attorney Douglas Westbrook on 9-22-04

Mika Lain 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

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

Mika Lain 5-22-07
Grievant Signature Date

Ann Hallman 5-22-07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

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Ackerman 5-6-11 2491

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

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

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LAW LCI-0761-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on December 18, 2003 and that, as of the date of this response, you are still participating in this project.

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

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

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

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

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

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

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

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

Moreover, you filed your Step 1 grievance over 21 months after SCDC first paid you for your participation in the project located at Lieber and more than 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

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

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

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

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

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

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

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

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

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

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

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

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

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Nikia Law, #260855,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07__-ALJ-04-_____-___
GRIEVANCE NO.: _____

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

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy.

8. Appellant claims pre/post judgment interest, costs and attorney fees.

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

/S/ Douglas H. Westbrook
Signed
5-30-07
Dated

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

2959

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
NIKIA LAW, #260855	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

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

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

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

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

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

Douglas H. Westbrook

2860

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Stephen M. Lease INMATE GRIEVANCE FORM
individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 137016

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Cooper A-46 ✓

WORK ASSIGNMENT: Prision Industries II

Office Use Only
Grievance No. Lieber 0778-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

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

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

Stephen M. Lease 9-27-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

C Carlton 10/28/04
IGC Signature Date

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

N/A
Grievant Signature Date

2861

Ackerman 5-6-11 2498

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date

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

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2862

J/R S. Lease #137016 COI 0778-04

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

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

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

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

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

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

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

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

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

2863

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

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

Therefore, I, again, deny your grievance.

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

2864

AMENDMENT TO GRIEVANCE OF STEPHEN LEASE, #137016

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

Grievant requests back wages owed for 908.86 hours in 1999 at $9.68 per hour; 3657.55 hours in 2000 at $10.66 per hour; 2360.51 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 13,426.56 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1206-1209, H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2865

AMENDMENT TO GRIEVANCE OF STEPHEN LEASE, #137016

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

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_____ _____
(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1206-1209, H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	LADSON, TRAVIS	262120	C A 43	1	12/1/99	12/28/00
	LALLIER, JESSIE	280559	A A 24	1	1/9/02	1/11/02
	LAMBROS, NICHOLAS	215080	C A 52	1	8/6/99	3/8/02
MI 3	LANCE, STEVEN	130041	WD286	1	6/26/03	7/7/03
MI 3	LANG, WILBUR	268347	A B 64	1	3/1/04	3/3/04
	LANGLEY, DANIEL	263930	C 0	1	4/6/00	4/12/00
MI 3	LAREAU, ALAIN	128014	C B 2	1	6/1/01	10/31/02
MI 3	LAREAU, ALAIN	128014	C A 30	1	6/1/01	7/18/03
	LASTER, WILLIE	194241	C A 44	1	10/20/00	6/19/02
	LaSURE, ALFRED	264677	C B 29	2	7/31/02	8/2/02
	LAUX, BERNARD	258357	C 0	1	11/4/99	1/14/00
	LAW, NIKIA	260855	C B 46	1	4/12/00	2/8/02
MI 3	LAW, NIKIA	260855	C A 42	1	12/18/03	6/24/04
	LAWRENCE, JERMAINE	226657	C 0	1	12/10/99	1/14/00
	LEAPHART, TRAVIS	277177	E B 30	2	8/30/01	10/2/01
MI 2	LEASE, STEVE	137016	C A 46	1	8/6/99	6/24/04
	LEE, ARCHIE	226354	A A 36	1	10/13/00	3/13/01
	LEE, DERRICK	251269	M X 0	2	1/4/00	10/5/00
	LEE, WAYNE	266212	S B 23	1	2/15/01	4/4/01
MI 2	LEGRAND, NATHAN	259490	C A 59	1	11/4/99	4/19/02
MI 3	LEONARD, HARRY	249996	C B 58	1	8/6/99	6/24/04
	LESANE, MICHAEL	258515	C 0	1	4/10/00	4/20/00
	LEWIS, DESMOND	268968	E A 29	1	10/13/00	10/18/00
	LEWIS, OMAR	264047	E B 47	1	9/22/00	9/27/00
MI 2	LIBBY, RICKY	274681	C B 31	1	3/11/02	8/5/02
MI 2	LIBBY, RICKY	274681	WB149	1	3/11/02	11/12/03
MI 3	LINEN, QUINTIN	238553	C A 51	1	8/5/02	6/2/04
	LINNEN, BOOKER	165854	C B 41	1	6/6/00	12/21/00
	LIPSCOMB, JAMES	254950	C 0	1	8/11/99	3/7/00
MI 2	LIPSCOMB, MARK	272387	C A 16	1	4/4/01	5/2/03
MI 2	LIPSCOMB, MARK	272387	C A 59	3	9/24/03	12/8/03
	LITES, JAMES	270041	C B 19	1	12/5/00	6/12/01
MI 3	LIVINGSTON, RAYMOND	277133	C A 14	2	9/4/01	1/13/03
	LOCKLAIR, JIMMY	276548	C A 31	2	7/30/01	10/31/01
	LOGAN, JERRY	211561	C B 1	0	1/4/00	2/2/00
MI 2	LOVE, STEVEN	197674	C B 34	1	6/27/00	5/2/03
	LOWER, JAMES	264743	E A 55	1	4/18/01	6/7/01
	LUCAS, KELVIN	280760	E A 41	1	2/23/02	4/5/02
MI 3	LYLES, DONALD	296135	C B 9	3		3/17/04
MI 3	LYLES, DONALD	296135	C B 9	1	5/18/04	6/24/04
MI 3	MACK, EARL	216237	C A 47	1	3/14/00	6/26/03
	MACK, JOHN	106272	M X 0	1	7/11/00	12/11/01
MI 3	MACK, LAVANZA	189340	C B 29	1	3/29/04	6/24/04
MI 3	MACK, NATHAN	255391	C B 33	1	6/15/00	6/26/03
	MACKEY, BROADUS	171502	C A 29	1	3/15/00	6/27/00
	MAKINS, MAXIE	269147	C A 61	2	10/16/00	8/13/01

PLAINTIFF'S EXHIBIT 4

A - 0787
June 2004

2867

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

PLAINTIFF'S EXHIBIT C
2868

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

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

3.3 Mutual Duties of the Parties:

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

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

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

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

ARTICLE 4 General Terms and Conditions:

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

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



2869

00026

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
260855	LAW	NIKIA	C.	20010910	0.50	112.40	56.20
260855	LAW	NIKIA	C.	20010924	0.50	120.53	60.26
260855	LAW	NIKIA	C.	20011008	0.50	134.94	67.47
260855	LAW	NIKIA	C.	20011022	0.50	123.37	61.68
260855	LAW	NIKIA	C.	20011105	0.50	115.94	57.97
260855	LAW	NIKIA	C.	20011119	0.50	111.15	55.57
260855	LAW	NIKIA	C.	20011203	0.50	95.80	47.90
260855	LAW	NIKIA	C.	20011217	0.50	123.02	61.51
260855	LAW	NIKIA	C.	20011231	0.50	58.28	29.14
260855	LAW	NIKIA	C.	20020114	0.50	86.51	43.25
260855	LAW	NIKIA	C.	20020128	0.50	71.92	35.96
260855	LAW	NIKIA	C.	20020211	0.50	117.81	58.90
260855	LAW	NIKIA	C.	20031229	0.50	24.25	12.12
260855	LAW	NIKIA	C.	20040112	0.50	63.71	31.85
260855	LAW	NIKIA	C.	20040126	0.50	108.55	54.27
260855	LAW	NIKIA	C.	20040209	0.50	108.02	54.01
260855	LAW	NIKIA	C.	20040223	0.50	127.38	63.69
260855	LAW	NIKIA	C.	20040308	0.50	118.43	59.21
260855	LAW	NIKIA	C.	20040322	0.50	107.76	53.88
260855	LAW	NIKIA	C.	20040405	0.50	108.53	54.26
260855	LAW	NIKIA	C.	20040419	0.50	107.73	53.86
260855	LAW	NIKIA	C.	20040503	0.50	132.10	66.05
260855	LAW	NIKIA	C.	20040517	0.50	130.88	65.44
260855	LAW	NIKIA	C.	20040531	0.50	82.24	41.12
226657	LAWERENCE	JERMIANE	E.	19991108	0.35	15.00	5.25
226657	LAWERENCE	JERMIANE	E.	19991122	0.35	66.33	23.21
226657	LAWERENCE	JERMIANE	E.	19991122	0.55	7.10	3.90
226657	LAWERENCE	JERMIANE	E.	19991206	0.35	46.44	16.25
226657	LAWERENCE	JERMIANE	E.	19991220	2.50	2.00	5.00
226657	LAWERENCE	JERMIANE	E.	19991220	0.35	71.70	25.09
226657	LAWERENCE	JERMIANE	E.	19991220	0.55	11.42	6.28
226657	LAWERENCE	JERMIANE	E.	20000103	0.50	31.42	15.71
226657	LAWERENCE	JERMIANE	E.	20000103	0.55	0.57	0.31
226657	LAWERENCE	JERMIANE	E.	20000117	0.35	54.10	18.93
226657	LAWERENCE	JERMIANE	E.	20000117	0.55	5.63	3.09
226657	LAWERENCE	JERMIANE	E.	20000117	0.50	7.50	3.75
226657	LAWERENCE	JERMIANE	E.	20000117	0.55	2.00	1.10
277177	LEAPHART	TRAVIS		20010910	0.50	26.25	13.12
277177	LEAPHART	TRAVIS		20010924	0.50	52.50	26.25
277177	LEAPHART	TRAVIS		20011008	0.50	26.25	13.12
137016	LEASE	STEPHEN		19990816	0.50	32.00	16.00
137016	LEASE	STEPHEN		19990816	0.70	8.00	5.60
137016	LEASE	STEPHEN		19990830	0.50	79.25	39.62
137016	LEASE	STEPHEN		19990830	0.70	2.50	1.75
137016	LEASE	STEPHEN		19990913	0.50	72.00	36.00
137016	LEASE	STEPHEN		19990913	0.70	23.25	16.27
137016	LEASE	STEPHEN		19990927	0.50	54.25	27.12
137016	LEASE	STEPHEN		19990927	0.70	22.00	15.40
137016	LEASE	STEPHEN		19991011	0.50	67.50	33.75
137016	LEASE	STEPHEN		19991011	0.55	54.75	30.11
137016	LEASE	STEPHEN		19991025	0.50	75.00	37.50
137016	LEASE	STEPHEN		19991025	0.55	15.50	8.52
137016	LEASE	STEPHEN		19991108	0.50	75.00	37.50
137016	LEASE	STEPHEN		19991108	0.55	15.50	8.52

PLAINTIFF'S EXHIBIT

2870

A - 1206
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
137016	LEASE	STEPHEN		19991122	0.50	64.95	32.47
137016	LEASE	STEPHEN		19991122	0.55	14.50	7.97
137016	LEASE	STEPHEN		19991206	0.50	55.36	27.68
137016	LEASE	STEPHEN		19991206	0.55	19.76	10.86
137016	LEASE	STEPHEN		19991220	2.50	2.00	5.00
137016	LEASE	STEPHEN		19991220	0.50	74.30	37.15
137016	LEASE	STEPHEN		19991220	0.55	33.47	18.40
137016	LEASE	STEPHEN		20000103	0.50	37.50	18.75
137016	LEASE	STEPHEN		20000103	0.55	10.52	5.78
137016	LEASE	STEPHEN		20000117	0.50	75.00	37.50
137016	LEASE	STEPHEN		20000117	0.55	10.67	5.86
137016	LEASE	STEPHEN		20000117	0.50	15.00	7.50
137016	LEASE	STEPHEN		20000117	0.55	4.00	2.20
137016	LEASE	STEPHEN		20000131	0.50	67.50	33.75
137016	LEASE	STEPHEN		20000131	0.55	7.50	4.12
137016	LEASE	STEPHEN		20000214	0.60	75.00	45.00
137016	LEASE	STEPHEN		20000214	0.55	15.00	8.25
137016	LEASE	STEPHEN		20000214	0.80	6.50	5.20
137016	LEASE	STEPHEN		20000214	0.10	67.50	6.75
137016	LEASE	STEPHEN		20000228	0.60	67.50	40.50
137016	LEASE	STEPHEN		20000228	0.55	22.92	12.60
137016	LEASE	STEPHEN		20000228	1.05	15.00	15.75
137016	LEASE	STEPHEN		20000313	0.75	75.00	56.25
137016	LEASE	STEPHEN		20000313	0.55	27.90	15.34
137016	LEASE	STEPHEN		20000313	0.75	6.50	4.87
137016	LEASE	STEPHEN		20000327	0.75	75.00	56.25
137016	LEASE	STEPHEN		20000327	0.75	24.28	18.21
137016	LEASE	STEPHEN		20000327	1.00	10.00	10.00
137016	LEASE	STEPHEN		20000327	1.00	7.50	7.50
137016	LEASE	STEPHEN		20000410	0.75	75.00	56.25
137016	LEASE	STEPHEN		20000410	0.75	46.12	34.59
137016	LEASE	STEPHEN		20000410	1.00	15.00	15.00
137016	LEASE	STEPHEN		20000424	0.75	75.00	56.25
137016	LEASE	STEPHEN		20000424	0.75	66.04	49.53
137016	LEASE	STEPHEN		20000424	0.25	12.95	3.23
137016	LEASE	STEPHEN		20000508	0.75	75.00	56.25
137016	LEASE	STEPHEN		20000508	0.75	42.73	32.04
137016	LEASE	STEPHEN		20000508	0.25	7.32	1.83
137016	LEASE	STEPHEN		20000522	0.75	67.50	50.62
137016	LEASE	STEPHEN		20000522	0.75	58.14	43.60
137016	LEASE	STEPHEN		20000522	0.25	21.85	5.46
137016	LEASE	STEPHEN		20000605	0.75	67.50	50.62
137016	LEASE	STEPHEN		20000605	0.75	38.10	28.57
137016	LEASE	STEPHEN		20000605	0.25	14.47	3.61
137016	LEASE	STEPHEN		20000703	0.65	60.00	39.00
137016	LEASE	STEPHEN		20000703	0.75	67.52	50.64
137016	LEASE	STEPHEN		20000703	0.25	22.83	5.70
137016	LEASE	STEPHEN		20000717	0.50	210.17	105.08
137016	LEASE	STEPHEN		20000731	0.50	189.99	94.99
137016	LEASE	STEPHEN		20000814	0.50	135.52	67.76
137016	LEASE	STEPHEN		20000828	0.50	164.88	82.44
137016	LEASE	STEPHEN		20000911	0.50	159.32	79.66
137016	LEASE	STEPHEN		20000925	0.50	174.74	87.37
137016	LEASE	STEPHEN		20001009	0.50	178.01	89.00

A - 1207
June 2004

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Ackerman 5-6-11 2508

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
137016	LEASE	STEPHEN		20001023	0.50	196.29	98.14
137016	LEASE	STEPHEN		20001106	0.50	208.80	104.40
137016	LEASE	STEPHEN		20001120	0.50	134.56	67.28
137016	LEASE	STEPHEN		20001204	0.50	91.11	45.55
137016	LEASE	STEPHEN		20001218	0.50	213.99	106.99
137016	LEASE	STEPHEN		20010101	0.50	91.83	45.91
137016	LEASE	STEPHEN		20010115	0.50	159.39	79.69
137016	LEASE	STEPHEN		20010129	0.50	192.36	96.18
137016	LEASE	STEPHEN		20010212	0.50	184.75	92.37
137016	LEASE	STEPHEN		20010226	0.50	160.04	80.02
137016	LEASE	STEPHEN		20010312	0.50	223.59	111.79
137016	LEASE	STEPHEN		20010326	0.50	192.30	96.15
137016	LEASE	STEPHEN		20010409	0.50	193.26	96.63
137016	LEASE	STEPHEN		20010423	0.50	176.15	88.07
137016	LEASE	STEPHEN		20010507	0.50	194.19	97.09
137016	LEASE	STEPHEN		20010521	0.50	171.72	85.86
137016	LEASE	STEPHEN		20010604	0.50	153.09	76.54
137016	LEASE	STEPHEN		20010618	0.50	184.60	92.30
137016	LEASE	STEPHEN		20010702	0.50	175.07	87.53
137016	LEASE	STEPHEN		20010716	0.50	163.05	81.52
137016	LEASE	STEPHEN		20010730	0.50	204.51	102.25
137016	LEASE	STEPHEN		20010813	0.50	211.10	105.55
137016	LEASE	STEPHEN		20010827	0.50	155.06	77.53
137016	LEASE	STEPHEN		20010910	0.50	160.54	80.27
137016	LEASE	STEPHEN		20010924	0.50	212.56	106.28
137016	LEASE	STEPHEN		20011008	0.50	257.10	128.55
137016	LEASE	STEPHEN		20011022	0.50	259.40	129.70
137016	LEASE	STEPHEN		20011105	0.50	230.74	115.37
137016	LEASE	STEPHEN		20011119	0.50	229.05	114.52
137016	LEASE	STEPHEN		20011203	0.50	138.64	69.32
137016	LEASE	STEPHEN		20011217	0.50	246.70	123.35
137016	LEASE	STEPHEN		20011231	0.50	105.54	52.77
137016	LEASE	STEPHEN		20020114	0.50	131.12	65.56
137016	LEASE	STEPHEN		20020128	0.50	183.86	91.93
137016	LEASE	STEPHEN		20020211	0.50	216.94	108.47
137016	LEASE	STEPHEN		20020225	0.50	240.14	120.07
137016	LEASE	STEPHEN		20020311	0.50	224.00	112.00
137016	LEASE	STEPHEN		20020325	0.50	199.00	99.50
137016	LEASE	STEPHEN		20020408	0.50	200.56	100.28
137016	LEASE	STEPHEN		20020422	0.50	202.90	101.45
137016	LEASE	STEPHEN		20020506	0.50	159.00	79.50
137016	LEASE	STEPHEN		20020520	0.50	196.79	98.39
137016	LEASE	STEPHEN		20020603	0.50	167.60	83.80
137016	LEASE	STEPHEN		20020617	0.50	198.00	99.00
137016	LEASE	STEPHEN		20020701	0.50	182.34	91.17
137016	LEASE	STEPHEN		20020715	0.10	176.10	17.61
137016	LEASE	STEPHEN		20020729	0.50	184.94	92.47
137016	LEASE	STEPHEN		20020812	0.50	181.76	90.88
137016	LEASE	STEPHEN		20020826	0.50	210.27	105.13
137016	LEASE	STEPHEN		20020909	0.50	212.98	106.49
137016	LEASE	STEPHEN		20020923	0.50	197.40	98.70
137016	LEASE	STEPHEN		20021007	0.50	217.55	108.77
137016	LEASE	STEPHEN		20021021	0.50	180.75	90.37
137016	LEASE	STEPHEN		20021104	0.50	191.52	95.76

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
137016	LEASE	STEPHEN		20021118	0.50	182.52	91.26
137016	LEASE	STEPHEN		20021202	0.50	165.54	82.77
137016	LEASE	STEPHEN		20021216	0.50	187.24	93.62
137016	LEASE	STEPHEN		20021230	0.50	148.68	74.34
137016	LEASE	STEPHEN		20030113	0.50	149.25	74.62
137016	LEASE	STEPHEN		20030127	0.50	166.85	83.42
137016	LEASE	STEPHEN		20030210	0.50	194.63	97.31
137016	LEASE	STEPHEN		20030224	0.50	206.39	103.19
137016	LEASE	STEPHEN		20030310	0.50	192.68	96.34
137016	LEASE	STEPHEN		20030324	0.50	227.12	113.56
137016	LEASE	STEPHEN		20030407	0.50	188.10	94.05
137016	LEASE	STEPHEN		20030421	0.50	159.35	79.67
137016	LEASE	STEPHEN		20030505	0.50	124.05	62.02
137016	LEASE	STEPHEN		20030519	0.50	155.02	77.51
137016	LEASE	STEPHEN		20030602	0.50	135.62	67.81
137016	LEASE	STEPHEN		20030616	0.50	170.48	85.24
137016	LEASE	STEPHEN		20030630	0.50	156.60	78.30
137016	LEASE	STEPHEN		20030714	0.50	160.33	80.16
137016	LEASE	STEPHEN		20030728	0.50	152.10	76.05
137016	LEASE	STEPHEN		20030811	0.50	151.89	75.94
137016	LEASE	STEPHEN		20030825	0.50	160.82	80.41
137016	LEASE	STEPHEN		20030908	0.50	145.13	72.56
137016	LEASE	STEPHEN		20030922	0.50	162.18	81.09
137016	LEASE	STEPHEN		20031006	0.50	157.08	78.54
137016	LEASE	STEPHEN		20031020	0.50	156.35	78.17
137016	LEASE	STEPHEN		20031103	0.50	160.34	80.17
137016	LEASE	STEPHEN		20031117	0.50	163.70	81.85
137016	LEASE	STEPHEN		20031201	0.50	141.42	70.71
137016	LEASE	STEPHEN		20031215	0.50	145.24	72.62
137016	LEASE	STEPHEN		20031229	0.50	137.05	68.52
137016	LEASE	STEPHEN		20040112	0.50	107.43	53.71
137016	LEASE	STEPHEN		20040126	0.50	142.52	71.26
137016	LEASE	STEPHEN		20040209	0.50	163.53	81.76
137016	LEASE	STEPHEN		20040223	0.50	169.50	84.75
137016	LEASE	STEPHEN		20040308	0.50	114.62	57.31
137016	LEASE	STEPHEN		20040322	0.50	181.52	90.76
137016	LEASE	STEPHEN		20040405	0.50	165.53	82.76
137016	LEASE	STEPHEN		20040419	0.50	150.41	75.20
137016	LEASE	STEPHEN		20040503	0.50	164.34	82.17
137016	LEASE	STEPHEN		20040517	0.50	170.77	85.38
137016	LEASE	STEPHEN		20040531	0.50	163.13	81.56
226354	LEE	ARCHIE		20001106	0.50	49.89	24.94
226354	LEE	ARCHIE		20001106	0.50	28.53	14.26
226354	LEE	ARCHIE		20001120	0.50	53.69	26.84
226354	LEE	ARCHIE		20001204	0.50	38.65	19.32
226354	LEE	ARCHIE		20001218	0.50	48.76	24.38
226354	LEE	ARCHIE		20010101	0.50	32.60	16.30
226354	LEE	ARCHIE		20010226	0.50	16.60	8.30
226354	LEE	ARCHIE		20010312	0.50	41.58	20.79
251269	LEE	DERRICK	TYRONE	20000131	0.50	67.50	33.75
251269	LEE	DERRICK	TYRONE	20000214	0.50	74.52	37.26
251269	LEE	DERRICK	TYRONE	20000228	0.50	59.83	29.91
251269	LEE	DERRICK	TYRONE	20000228	0.35	16.00	5.60
251269	LEE	DERRICK	TYRONE	20000313	0.50	75.00	37.50

PLAINTIFF'S EXHIBIT

2873

A - 1209
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

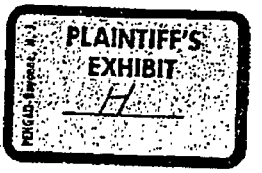
Date: 9/20/04

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

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

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

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



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RESUME-3/03
Dr. Joseph J. Benich

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

EDUCATION

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

ACADEMIC EXPERIENCE

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

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NON-ACADEMIC EXPERIENCE

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

PUBLICATIONS

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

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

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

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

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

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

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

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

2876

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-2-04

INMATE NAME: Stephen M. Lease
SCDC NUMBER: 137016
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper A-46
WORK ASSIGNMENT: PI-2

NOV 04 2004

Office Use Only
Grievance No. LCI 0778-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins & Wicker do require payments of prevailing wages. Grievants were employed by WTI, and SCDC was WTI's "Agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under SC. Code 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04.

Stephen M. Lease 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

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

5-16-07 Ms R. Dean-Miller 5-16-07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2877

Ackerman 5-6-11 2514

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

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

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LEASE LCI-0778-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 6, 1999 and that your participation in this project ended on May 4, 2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Stephen Lease, #137016,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07__-ALJ-04-_____-____
GRIEVANCE NO.: _____

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

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy.

8. Appellant claims pre/post judgment interest, costs and attorney fees.

Stephen Lease
Appellant's Name

Evans C.I.
~~610 Hy 9 West~~
Mailing Address

Bennettsville, SC 29512
City, State, Zip Code

none
Telephone Number

Signed

5-30-07
Dated

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

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STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
STEPHEN LEASE, #137016	)	
	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
	)	
Respondent/Appellee.	)	

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

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

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

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

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

D. H. Westbrook
Douglas H. Westbrook

Ackerman 5-6-11 2520

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Archie Lee
SCDC NUMBER: 226354
INSTITUTION: Lieber
HOUSING UNIT: Ashley B-62
WORK ASSIGNMENT: Ground Maintaince

Office Use Only
Grievance No. Lieber 0694-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (Include documentation, and date of incident; if SCDC Policy, indicate which policy)
The department is asked to look into this institution, Prison Industries Program which has to this date Failed to Pay the Prevailing wage as Required by Law at Lieber From 1998- 2003 the institution has Neglected to pay wages as Required by Law. Under South Carolina Code ANN. Sec. 24-3-430-5a-9) which applies to my Grievance make the contract illegal, when $4.00 an hour is not Prevailing wages

ACTION REQUESTED: That the inMate be Paid Prevailing wage and overtime Rate under the law as well as Prevailing wage

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Law Suit was Filed, and ordered to File Grievance by Court in Adkins v. SCDC OP NO. 25860; Wicker v. SCDC OP. NO. 25894

Archie Lee 9-4-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Carlton 10/28/04
IGC Signature Date

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

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 2884

Ackerman 5-6-11 2521

WARDEN'S DECISION AND REASON:

See Attachment

Oct. 28, 04
Warden Signature Date

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

Grievant Signature 11-2-04 Date

IGC Signature 11.2.04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

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D/R A Lee, #226354 CI 068404

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

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

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

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

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

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

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

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

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

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

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

Therefore, I, again, deny your grievance.

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

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AMENDMENT TO GRIEVANCE OF ARCHIE LEE, #226354 ,LCI-0694-04

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

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 252.12 hours in 2000 at $10.66 per hour; 58.18 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and nours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Archie Lee 3-14-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1209; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

RECEIVED MAR INMATE

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	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	LADSON, TRAVIS	262120	C A 43	1	12/1/99	12/28/00
	LALLIER, JESSIE	280559	A A 24	1	1/9/02	1/11/02
	LAMBROS, NICHOLAS	215080	C A 52	1	8/6/99	3/8/02
MI 3	LANCE, STEVEN	130041	WD286	1	6/26/03	7/7/03
MI 3	LANG, WILBUR	268347	A B 64	1	3/1/04	3/3/04
	LANGLEY, DANIEL	263930	C 0	1	4/6/00	4/12/00
MI 3	LAREAU, ALAIN	128014	C B 2	1	6/1/01	10/31/02
MI 3	LAREAU, ALAIN	128014	C A 30	1	6/1/01	7/18/03
	LASTER, WILLIE	194241	C A 44	1	10/20/00	6/19/02
	LaSURE, ALFRED	264677	C B 29	2	7/31/02	8/2/02
	LAUX, BERNARD	258357	C 0	1	11/4/99	1/14/00
	LAW, NIKIA	260855	C B 46	1	4/12/00	2/8/02
MI 3	LAW, NIKIA	260855	C A 42	1	12/18/03	6/24/04
	LAWRENCE, JERMAINE	226657	C 0	1	12/10/99	1/14/00
	LEAPHART, TRAVIS	277177	E B 30	2	8/30/01	10/2/01
MI 2	LEASE, STEVE	137016	C A 46	1	8/6/99	6/24/04
	LEE, ARCHIE	226354	A A 36	1	10/13/00	3/13/01
	LEE, DERRICK	251269	MX 0	2	1/4/00	10/5/00
	LEE, WAYNE	266212	S B 23	1	2/15/01	4/4/01
MI 2	LEGRAND, NATHAN	259490	C A 59	1	11/4/99	4/19/02
MI 3	LEONARD, HARRY	249996	C B 58	1	8/6/99	6/24/04
	LESANE, MICHAEL	258515	C 0	1	4/10/00	4/20/00
	LEWIS, DESMOND	268968	E A 29	1	10/13/00	10/18/00
	LEWIS, OMAR	264047	E B 47	1	9/22/00	9/27/00
MI 2	LIBBY, RICKY	274681	C B 31	1	3/11/02	8/5/02
MI 2	LIBBY, RICKY	274681	WB149	1	3/11/02	11/12/03
MI 3	LINEN, QUINTIN	238553	C A 51	1	8/5/02	6/2/04
	LINNEN, BOOKER	165854	C B 41	1	6/6/00	12/21/00
	LIPSCOMB, JAMES	254950	C 0	1	8/11/99	3/7/00
MI 2	LIPSCOMB, MARK	272387	C A 16	1	4/4/01	5/2/03
MI 2	LIPSCOMB, MARK	272387	C A 59	3	9/24/03	12/8/03
	LITES, JAMES	270041	C B 19	1	12/5/00	6/12/01
MI 3	LIVINGSTON, RAYMOND	277133	C A 14	2	9/4/01	1/13/03
	LOCKLAIR, JIMMY	276548	C A 31	2	7/30/01	10/31/01
	LOGAN, JERRY	211561	C B 1	0	1/4/00	2/2/00
MI 2	LOVE, STEVEN	197674	C B 34	1	6/27/00	5/2/03
	LOWER, JAMES	264743	E A 55	1	4/18/01	6/7/01
	LUCAS, KELVIN	280760	E A 41	1	2/23/02	4/5/02
MI 3	LYLES, DONALD	296135	C B 9	3		3/17/04
MI 3	LYLES, DONALD	296135	C B 9	1	5/18/04	6/24/04
MI 3	MACK, EARL	216237	C A 47	1	3/14/00	6/26/03
	MACK, JOHN	106272	MX 0	1	7/11/00	12/11/01
MI 3	MACK, LAVANZA	189340	C B 29	1	3/29/04	6/24/04
MI 3	MACK, NATHAN	255391	C B 33	1	6/15/00	6/26/03
	MACKEY, BROADUS	171502	C A 29	1	3/15/00	6/27/00
	MAKINS, MAXIE	269147	C A 61	2	10/16/00	8/13/01



A - 0787
June 2004

2889

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

PLAINTIFF'S EXHIBIT
2890

Ackerman 5-6-11 2527

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

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

3.3 Mutual Duties of the Parties:

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

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

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

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

ARTICLE 4 General Terms and Conditions:

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

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

PLAINTIFF'S EXHIBIT C

Ackerman 5-6-11 2528

Number	LastName	FirstName	MiddleName	PayDate	PayRate	Hours	PayAmount
137016	LEASE	STEPHEN		20021118	0.50	182.52	91.26
137016	LEASE	STEPHEN		20021202	0.50	165.54	82.77
137016	LEASE	STEPHEN		20021216	0.50	187.24	93.62
137016	LEASE	STEPHEN		20021230	0.50	148.68	74.34
137016	LEASE	STEPHEN		20030113	0.50	149.25	74.62
137016	LEASE	STEPHEN		20030127	0.50	166.85	83.42
137016	LEASE	STEPHEN		20030210	0.50	194.63	97.31
137016	LEASE	STEPHEN		20030224	0.50	206.39	103.19
137016	LEASE	STEPHEN		20030310	0.50	192.68	96.34
137016	LEASE	STEPHEN		20030324	0.50	227.12	113.56
137016	LEASE	STEPHEN		20030407	0.50	188.10	94.05
137016	LEASE	STEPHEN		20030421	0.50	159.35	79.67
137016	LEASE	STEPHEN		20030505	0.50	124.05	62.02
137016	LEASE	STEPHEN		20030519	0.50	155.02	77.51
137016	LEASE	STEPHEN		20030602	0.50	135.62	67.81
137016	LEASE	STEPHEN		20030616	0.50	170.48	85.24
137016	LEASE	STEPHEN		20030630	0.50	156.60	78.30
137016	LEASE	STEPHEN		20030714	0.50	160.33	80.16
137016	LEASE	STEPHEN		20030728	0.50	152.10	76.05
137016	LEASE	STEPHEN		20030811	0.50	151.89	75.94
137016	LEASE	STEPHEN		20030825	0.50	160.82	80.41
137016	LEASE	STEPHEN		20030908	0.50	145.13	72.56
137016	LEASE	STEPHEN		20030922	0.50	162.18	81.09
137016	LEASE	STEPHEN		20031006	0.50	157.08	78.54
137016	LEASE	STEPHEN		20031020	0.50	156.35	78.17
137016	LEASE	STEPHEN		20031103	0.50	160.34	80.17
137016	LEASE	STEPHEN		20031117	0.50	163.70	81.85
137016	LEASE	STEPHEN		20031201	0.50	141.42	70.71
137016	LEASE	STEPHEN		20031215	0.50	145.24	72.62
137016	LEASE	STEPHEN		20031229	0.50	137.05	68.52
137016	LEASE	STEPHEN		20040112	0.50	107.43	53.71
137016	LEASE	STEPHEN		20040126	0.50	142.52	71.26
137016	LEASE	STEPHEN		20040209	0.50	163.53	81.76
137016	LEASE	STEPHEN		20040223	0.50	169.50	84.75
137016	LEASE	STEPHEN		20040308	0.50	114.62	57.31
137016	LEASE	STEPHEN		20040322	0.50	181.52	90.76
137016	LEASE	STEPHEN		20040405	0.50	165.53	82.76
137016	LEASE	STEPHEN		20040419	0.50	150.41	75.20
137016	LEASE	STEPHEN		20040503	0.50	164.34	82.17
137016	LEASE	STEPHEN		20040517	0.50	170.77	85.38
137016	LEASE	STEPHEN		20040531	0.50	163.13	81.56
226354	LEE	ARCHIE		20001106	0.50	49.89	24.94
226354	LEE	ARCHIE		20001106	0.50	28.53	14.26
226354	LEE	ARCHIE		20001120	0.50	53.69	26.84
226354	LEE	ARCHIE		20001204	0.50	38.65	19.32
226354	LEE	ARCHIE		20001218	0.50	48.76	24.38
226354	LEE	ARCHIE		20010101	0.50	32.60	16.30
226354	LEE	ARCHIE		20010226	0.50	16.60	8.30
226354	LEE	ARCHIE		20010312	0.50	41.58	20.79
251269	LEE	DERRICK	TYRONE	20000131	0.50	67.50	33.75
251269	LEE	DERRICK	TYRONE	20000214	0.50	74.52	37.26
251269	LEE	DERRICK	TYRONE	20000228	0.50	59.83	29.91
251269	LEE	DERRICK	TYRONE	20000228	0.35	16.00	5.60
251269	LEE	DERRICK	TYRONE	20000313	0.50	75.00	37.50

PLAINTIFF'S EXHIBIT F

A - 1209
June 2004

2892

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

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

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

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

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



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RESUME-3/03
Dr. Joseph J. Benich

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

EDUCATION

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

ACADEMIC EXPERIENCE

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

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NON-ACADEMIC EXPERIENCE

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

PUBLICATIONS

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

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

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

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

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

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

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

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

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

INMATE NAME: Archie Lee
SCDC NUMBER: 226354
INSTITUTION: ~~Lieber~~ ACI NOV 04 2004 P.P
HOUSING UNIT: Ashley
WORK ASSIGNMENT: Ground Maintaince

Office Use Only
Grievance No. ACI 069404
Code: General V
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Adkin Wicker do Require payment of prevailing wages. Grievants, were employed by WTI, and SCDC was WTI's Agent in paying our wages, Adkin Wicker Further allow this Issue of payment of wages under SC Code 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9-22-04

Archie Lee 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

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

Archie Lee 5-22-07
Grievant Signature Date

IGC Signature 5/22/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2896

LEE LCI-0694-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 4, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 13, 2000 and that your participation in this project ended on March 31, 2001.

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

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

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

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

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

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

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

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

Moreover, you filed your Step 1 grievance nearly four (4) years after SCDC first paid you for your participation in the project located at Lieber and nearly 3 ½ years after your participation in the project at Lieber ended. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

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

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

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

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

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

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

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

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

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

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

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Archie Lee, #226354,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.: _____

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

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

Archie Lee
Appellant's Name
Allendale C.I.
P.O. Box 1151
Mailing Address
Fairfax, SC 29827
City, State, Zip Code
none
Telephone Number

Signed

6-1-07
Dated

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

2900

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ARCHIE LEE, #226354	)	
	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 7th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

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

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

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

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

DH Westbrook
Douglas H. Westbrook

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Harry L. Leonard
SCDC NUMBER: #249996
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper B-58 ✓
WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. Lieber 0677-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

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

The Department is asked to review and determine whether I am entitled to receive back wages due to me from working at Lieber Prison Industry Program when they paid me only $.35/hr. and not prevailing wage as required under South Carolina Code Ann. §24-3-430(A),(H) as well as fact that from 1998-2003 they denied me prevailing wage.

ACTION REQUESTED:

All money due to me be paid at prevailing wage and overtime rate and prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit has been filed, court order to file a grievance by the court; Wicker v. SCDC and Adkins v. SCDC.

Harry L. Leonard 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Carlton 10/28/04
IGC Signature Date

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

N/A
Grievant Signature Date

SCDC 10-5 (Rev November 1997)

2902

Ackerman 5-6-11 2539

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date Oct. 28, 04

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

Grievant Signature Date 11-2-04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2903

J/M H. Leonard #249996 LCI 0677-04

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

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

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

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

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

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

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

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

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

2904

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

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

Therefore, I, again, deny your grievance.

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

2905

AMENDMENT TO GRIEVANCE OF HARRY LEONARD, #249996

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

Grievant requests back wages owed for 749.66 hours in 1999 at $9.68 per hour; 2279.12 hours in 2000 at $10.66 per hour; 1250.25 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 9941.75 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Harry T. Leonard 249996 (Grievant Signature) "Feb" 2-3-06 (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1212-1214; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	LADSON, TRAVIS	262120	C A 43	1	12/1/99	12/28/00
	LALLIER, JESSIE	280559	A A 24	1	1/9/02	1/11/02
	LAMBROS, NICHOLAS	215080	C A 52	1	8/6/99	3/8/02
MI 3	LANCE, STEVEN	130041	WD286	1	6/26/03	7/7/03
MI 3	LANG, WILBUR	268347	A B 64	1	3/1/04	3/3/04
	LANGLEY, DANIEL	263930	C 0	1	4/6/00	4/12/00
MI 3	LAREAU, ALAIN	128014	C B 2	1	6/1/01	10/31/02
MI 3	LAREAU, ALAIN	128014	C A 30	1	6/1/01	7/18/03
	LASTER, WILLIE	194241	C A 44	1	10/20/00	6/19/02
	LaSURE, ALFRED	264677	C B 29	2	7/31/02	8/2/02
	LAUX, BERNARD	258357	C 0	1	11/4/99	1/14/00
	LAW, NIKIA	260855	C B 46	1	4/12/00	2/8/02
MI 3	LAW, NIKIA	260855	C A 42	1	12/18/03	6/24/04
	LAWRENCE, JERMAINE	226657	C 0	1	12/10/99	1/14/00
	LEAPHART, TRAVIS	277177	E B 30	2	8/30/01	10/2/01
MI 2	LEASE, STEVE	137016	C A 46	1	8/6/99	6/24/04
	LEE, ARCHIE	226354	A A 36	1	10/13/00	3/13/01
	LEE, DERRICK	251269	M X 0	2	1/4/00	10/5/00
	LEE, WAYNE	266212	S B 23	1	2/15/01	4/4/01
MI 2	LEGRAND, NATHAN	259490	C A 59	1	11/4/99	4/19/02
MI 3	LEONARD, HARRY	249996	C B 58	1	8/6/99	6/24/04
	LESANE, MICHAEL	258515	C 0	1	4/10/00	4/20/00
	LEWIS, DESMOND	268968	E A 29	1	10/13/00	10/18/00
	LEWIS, OMAR	264047	E B 47	1	9/22/00	9/27/00
MI 2	LIBBY, RICKY	274681	C B 31	1	3/11/02	8/5/02
MI 2	LIBBY, RICKY	274681	WB149	1	3/11/02	11/12/03
MI 3	LINEN, QUINTIN	238553	C A 51	1	8/5/02	6/2/04
	LINNEN, BOOKER	165854	C B 41	1	6/6/00	12/21/00
	LIPSCOMB, JAMES	254950	C 0	1	8/11/99	3/7/00
MI 2	LIPSCOMB, MARK	272387	C A 16	1	4/4/01	5/2/03
MI 2	LIPSCOMB, MARK	272387	C A 59	3	9/24/03	12/8/03
	LITES, JAMES	270041	C B 19	1	12/5/00	6/12/01
MI 3	LIVINGSTON, RAYMOND	277133	C A 14	2	9/4/01	1/13/03
	LOCKLAIR, JIMMY	276548	C A 31	2	7/30/01	10/31/01
	LOGAN, JERRY	211561	C B 1	0	1/4/00	2/2/00
MI 2	LOVE, STEVEN	197674	C B 34	1	6/27/00	5/2/03
	LOWER, JAMES	264743	E A 55	1	4/18/01	6/7/01
	LUCAS, KELVIN	280760	E A 41	1	2/23/02	4/5/02
MI 3	LYLES, DONALD	296135	C B 9	3		3/17/04
MI 3	LYLES, DONALD	296135	C B 9	1	5/18/04	6/24/04
MI 3	MACK, EARL	216237	C A 47	1	3/14/00	6/26/03
	MACK, JOHN	106272	M X 0	1	7/11/00	12/11/01
MI 3	MACK, LAVANZA	189340	C B 29	1	3/29/04	6/24/04
MI 3	MACK, NATHAN	255391	C B 33	1	6/15/00	6/26/03
	MACKEY, BROADUS	171502	C A 29	1	3/15/00	6/27/00
	MAKINS, MAXIE	269147	C A 61	2	10/16/00	8/13/01

PLAINTIFF'S EXHIBIT A

A - 0787
June 2004

2907

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

A:\SCDC FINAL CONTRACT.doc
August 17, 1998

PLAINTIFF'S EXHIBIT C 2468

A.-0081
June 2004

000121

Ackerman 5-6-11 2545

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

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

3.3 Mutual Duties of the Parties:

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

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

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

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

ARTICLE 4 General Terms and Conditions:

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

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

PLAINTIFF'S EXHIBIT C

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
259490	LEGRAND	NATHAN		20020408	0.50	124.20	62.10
259490	LEGRAND	NATHAN		20020422	0.50	73.68	36.84
249996	LEONARD	HARRY	L.	19990816	0.50	54.00	27.00
249996	LEONARD	HARRY	L.	19990816	0.70	8.00	5.60
249996	LEONARD	HARRY	L.	19990830	0.50	78.00	39.00
249996	LEONARD	HARRY	L.	19990830	0.70	4.50	3.15
249996	LEONARD	HARRY	L.	19990913	0.50	56.00	28.00
249996	LEONARD	HARRY	L.	19990913	0.70	16.25	11.37
249996	LEONARD	HARRY	L.	19990927	0.50	54.25	27.12
249996	LEONARD	HARRY	L.	19990927	0.70	22.00	15.40
249996	LEONARD	HARRY	L.	19991011	0.50	65.50	32.75
249996	LEONARD	HARRY	L.	19991011	0.55	6.25	3.43
249996	LEONARD	HARRY	L.	19991025	0.50	71.50	35.75
249996	LEONARD	HARRY	L.	19991108	0.50	74.50	37.25
249996	LEONARD	HARRY	L.	19991108	0.55	7.50	4.12
249996	LEONARD	HARRY	L.	19991122	0.50	57.98	28.99
249996	LEONARD	HARRY	L.	19991206	0.50	56.33	28.16
249996	LEONARD	HARRY	L.	19991220	2.50	2.00	5.00
249996	LEONARD	HARRY	L.	19991220	0.50	74.13	37.06
249996	LEONARD	HARRY	L.	20000103	0.50	35.42	17.71
249996	LEONARD	HARRY	L.	20000103	0.55	5.55	3.05
249996	LEONARD	HARRY	L.	20000117	0.50	74.78	37.39
249996	LEONARD	HARRY	L.	20000117	0.50	15.00	7.50
249996	LEONARD	HARRY	L.	20000131	0.50	65.02	32.51
249996	LEONARD	HARRY	L.	20000214	0.50	75.00	37.50
249996	LEONARD	HARRY	L.	20000214	0.55	5.50	3.02
249996	LEONARD	HARRY	L.	20000228	0.50	65.23	32.61
249996	LEONARD	HARRY	L.	20000313	0.65	68.47	44.50
249996	LEONARD	HARRY	L.	20000327	0.65	75.00	48.75
249996	LEONARD	HARRY	L.	20000327	0.75	2.98	2.23
249996	LEONARD	HARRY	L.	20000410	0.65	75.00	48.75
249996	LEONARD	HARRY	L.	20000410	0.75	2.18	1.63
249996	LEONARD	HARRY	L.	20000424	0.65	76.00	49.40
249996	LEONARD	HARRY	L.	20000508	0.65	74.88	48.67
249996	LEONARD	HARRY	L.	20000522	0.65	67.50	43.87
249996	LEONARD	HARRY	L.	20000522	0.75	7.23	5.42
249996	LEONARD	HARRY	L.	20000522	0.25	7.50	1.87
249996	LEONARD	HARRY	L.	20000605	0.65	67.50	43.87
249996	LEONARD	HARRY	L.	20000605	0.75	37.10	27.82
249996	LEONARD	HARRY	L.	20000605	0.25	7.05	1.76
249996	LEONARD	HARRY	L.	20000703	0.65	60.00	39.00
249996	LEONARD	HARRY	L.	20000703	0.75	18.73	14.04
249996	LEONARD	HARRY	L.	20000703	0.25	7.50	1.87
249996	LEONARD	HARRY	L.	20000717	0.50	87.75	43.87
249996	LEONARD	HARRY	L.	20000731	0.50	104.25	52.12
249996	LEONARD	HARRY	L.	20000814	0.50	93.33	46.66
249996	LEONARD	HARRY	L.	20000828	0.50	96.85	48.42
249996	LEONARD	HARRY	L.	20000911	0.50	78.65	39.32
249996	LEONARD	HARRY	L.	20000925	0.50	127.94	63.97
249996	LEONARD	HARRY	L.	20001009	0.50	111.53	55.76
249996	LEONARD	HARRY	L.	20001023	0.50	142.39	71.19
249996	LEONARD	HARRY	L.	20001106	0.50	112.50	56.25
249996	LEONARD	HARRY	L.	20001120	0.50	107.13	53.56
249996	LEONARD	HARRY	L.	20001204	0.50	81.55	40.77

PLAINTIFF'S EXHIBIT

2910

A - 1212
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
249996	LEONARD	HARRY	L.	20001218	0.50	113.50	56.75
249996	LEONARD	HARRY	L.	20010101	0.50	66.60	33.30
249996	LEONARD	HARRY	L.	20010115	0.50	90.00	45.00
249996	LEONARD	HARRY	L.	20010129	0.50	125.64	62.82
249996	LEONARD	HARRY	L.	20010212	0.50	133.67	66.83
249996	LEONARD	HARRY	L.	20010226	0.50	127.81	63.90
249996	LEONARD	HARRY	L.	20010312	0.50	128.40	64.20
249996	LEONARD	HARRY	L.	20010326	0.50	112.50	56.25
249996	LEONARD	HARRY	L.	20010409	0.50	108.47	54.23
249996	LEONARD	HARRY	L.	20010423	0.50	112.50	56.25
249996	LEONARD	HARRY	L.	20010507	0.50	109.77	54.88
249996	LEONARD	HARRY	L.	20010521	0.50	49.24	24.62
249996	LEONARD	HARRY	L.	20010604	0.50	47.25	23.62
249996	LEONARD	HARRY	L.	20010618	0.50	52.50	26.25
249996	LEONARD	HARRY	L.	20010702	0.50	52.50	26.25
249996	LEONARD	HARRY	L.	20010716	0.50	99.65	49.82
249996	LEONARD	HARRY	L.	20010730	0.50	111.68	55.84
249996	LEONARD	HARRY	L.	20010813	0.50	89.37	44.68
249996	LEONARD	HARRY	L.	20010827	0.50	119.17	59.58
249996	LEONARD	HARRY	L.	20010910	0.50	118.30	59.15
249996	LEONARD	HARRY	L.	20010924	0.50	151.20	75.60
249996	LEONARD	HARRY	L.	20011008	0.50	152.45	76.22
249996	LEONARD	HARRY	L.	20011022	0.50	145.00	72.50
249996	LEONARD	HARRY	L.	20011105	0.50	147.94	73.97
249996	LEONARD	HARRY	L.	20011119	0.50	177.86	88.93
249996	LEONARD	HARRY	L.	20011203	0.50	106.34	53.17
249996	LEONARD	HARRY	L.	20011217	0.50	143.79	71.89
249996	LEONARD	HARRY	L.	20011231	0.50	63.85	31.92
249996	LEONARD	HARRY	L.	20020114	0.50	93.02	46.51
249996	LEONARD	HARRY	L.	20020128	0.50	142.82	71.41
249996	LEONARD	HARRY	L.	20020211	0.50	134.51	67.25
249996	LEONARD	HARRY	L.	20020225	0.50	140.25	70.12
249996	LEONARD	HARRY	L.	20020311	0.50	131.54	65.77
249996	LEONARD	HARRY	L.	20020325	0.50	130.63	65.31
249996	LEONARD	HARRY	L.	20020408	0.50	121.50	60.75
249996	LEONARD	HARRY	L.	20020422	0.50	127.85	63.92
249996	LEONARD	HARRY	L.	20020506	0.50	128.54	64.27
249996	LEONARD	HARRY	L.	20020520	0.50	136.70	68.35
249996	LEONARD	HARRY	L.	20020603	0.50	121.27	60.63
249996	LEONARD	HARRY	L.	20020617	0.50	129.24	64.62
249996	LEONARD	HARRY	L.	20020701	0.50	128.30	64.15
249996	LEONARD	HARRY	L.	20020715	0.50	112.50	56.25
249996	LEONARD	HARRY	L.	20020729	0.50	127.75	63.87
249996	LEONARD	HARRY	L.	20020812	0.50	123.48	61.74
249996	LEONARD	HARRY	L.	20020826	0.50	140.41	70.20
249996	LEONARD	HARRY	L.	20020909	0.50	137.85	68.92
249996	LEONARD	HARRY	L.	20020923	0.50	171.62	85.81
249996	LEONARD	HARRY	L.	20021007	0.50	152.97	76.48
249996	LEONARD	HARRY	L.	20021021	0.50	145.90	72.95
249996	LEONARD	HARRY	L.	20021104	0.50	139.50	69.75
249996	LEONARD	HARRY	L.	20021118	0.50	138.50	69.25
249996	LEONARD	HARRY	L.	20021202	0.50	124.74	62.37
249996	LEONARD	HARRY	L.	20021216	0.50	135.54	67.77
249996	LEONARD	HARRY	L.	20021230	0.50	80.75	40.37

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
249996	LEONARD	HARRY	L.	20030113	0.50	104.37	52.18
249996	LEONARD	HARRY	L.	20030127	0.50	127.34	63.67
249996	LEONARD	HARRY	L.	20030210	0.50	140.83	70.41
249996	LEONARD	HARRY	L.	20030224	0.50	143.61	71.80
249996	LEONARD	HARRY	L.	20030310	0.50	137.31	68.65
249996	LEONARD	HARRY	L.	20030324	0.50	136.90	68.45
249996	LEONARD	HARRY	L.	20030407	0.50	184.90	92.45
249996	LEONARD	HARRY	L.	20030421	0.50	129.45	64.72
249996	LEONARD	HARRY	L.	20030505	0.50	101.71	50.85
249996	LEONARD	HARRY	L.	20030519	0.50	139.06	69.53
249996	LEONARD	HARRY	L.	20030602	0.50	113.15	56.57
249996	LEONARD	HARRY	L.	20030616	0.50	139.84	69.92
249996	LEONARD	HARRY	L.	20030630	0.50	134.05	67.02
249996	LEONARD	HARRY	L.	20030714	0.50	136.82	68.41
249996	LEONARD	HARRY	L.	20030728	0.50	132.39	66.19
249996	LEONARD	HARRY	L.	20030811	0.50	109.95	54.97
249996	LEONARD	HARRY	L.	20030825	0.50	136.80	68.40
249996	LEONARD	HARRY	L.	20030908	0.50	127.84	63.92
249996	LEONARD	HARRY	L.	20030922	0.50	141.66	70.83
249996	LEONARD	HARRY	L.	20031006	0.50	128.10	64.05
249996	LEONARD	HARRY	L.	20031020	0.50	135.86	67.93
249996	LEONARD	HARRY	L.	20031103	0.50	125.46	62.73
249996	LEONARD	HARRY	L.	20031117	0.50	130.74	65.37
249996	LEONARD	HARRY	L.	20031201	0.50	121.44	60.72
249996	LEONARD	HARRY	L.	20031215	0.50	125.24	62.62
249996	LEONARD	HARRY	L.	20031229	0.50	122.26	61.13
249996	LEONARD	HARRY	L.	20040112	0.50	81.00	40.50
249996	LEONARD	HARRY	L.	20040126	0.50	125.30	62.65
249996	LEONARD	HARRY	L.	20040209	0.50	148.96	74.48
249996	LEONARD	HARRY	L.	20040223	0.50	160.99	80.49
249996	LEONARD	HARRY	L.	20040308	0.50	148.04	74.02
249996	LEONARD	HARRY	L.	20040322	0.50	150.00	75.00
249996	LEONARD	HARRY	L.	20040405	0.50	147.06	73.53
249996	LEONARD	HARRY	L.	20040419	0.50	128.16	64.08
249996	LEONARD	HARRY	L.	20040503	0.50	140.70	70.35
249996	LEONARD	HARRY	L.	20040517	0.50	135.91	67.95
249996	LEONARD	HARRY	L.	20040531	0.50	144.27	72.13
268968	LEWIS	DESMOND		20001023	0.50	2.72	1.36
274681	LIBBY	RICKY	ALLEN	20020325	0.50	30.88	15.44
274681	LIBBY	RICKY	ALLEN	20020408	0.50	35.91	17.95
274681	LIBBY	RICKY	ALLEN	20020422	0.50	48.03	24.01
274681	LIBBY	RICKY	ALLEN	20020506	0.50	51.84	25.92
274681	LIBBY	RICKY	ALLEN	20020520	0.50	76.64	38.32
274681	LIBBY	RICKY	ALLEN	20020603	0.50	64.38	32.19
274681	LIBBY	RICKY	ALLEN	20020617	0.50	99.31	49.65
274681	LIBBY	RICKY	ALLEN	20020701	0.50	79.10	39.55
274681	LIBBY	RICKY	ALLEN	20020715	0.50	67.24	33.62
274681	LIBBY	RICKY	ALLEN	20020729	0.50	82.56	41.28
274681	LIBBY	RICKY	ALLEN	20020812	0.50	48.16	24.08
274681	LIBBY	RICKY	ALLEN	20031103	0.50	17.50	8.75
274681	LIBBY	RICKY	ALLEN	20031117	0.50	44.02	22.01
165854	LINEN	BOOKER		20000731	0.50	76.61	38.30
165854	LINEN	BOOKER		20000731	0.50	39.81	19.90
165854	LINEN	BOOKER		20000814	0.50	36.39	18.19

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

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

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

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

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

2913

PLAINTIFF'S EXHIBIT H

RESUME-3/03
Dr. Joseph J. Benich

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

EDUCATION

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

ACADEMIC EXPERIENCE

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

2914

NON-ACADEMIC EXPERIENCE

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

PUBLICATIONS

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

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

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

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

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

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

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

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

2915

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 11-04-04

INMATE GRIEVANCE FORM

STEP 2

INMATE NAME: Leonard, Harry

SCDC NUMBER: #249996 NOV 04 2004

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Cooper B-58

WORK ASSIGNMENT:

Office Use Only

Grievance No. LCI 0677-04

Code: General NM

Policy:

Disc. Hear.

Class:

Date Received NOV 08 2004

IGC Initials

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

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

Harry F. Leonard 11-9-04

Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07

Signature Date

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

Harry F. Leonard 5/22/07

Grievant Signature Date

IGC Signature 5/22/07

Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2916

Ackerman 5-6-11 2553

LEONARD LCI-0677-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 6, 1999 and that, as of the date of this response, you are still participating in this project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2919

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Harry Leonard, #249996,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 07 -ALJ-04- -

GRIEVANCE NO.:

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

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy.

8. Appellant claims pre/post judgment interest, costs and attorney fees.

Harry Leonard
Appellant's Name

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

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

5-31-07
Dated

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

2920

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
HARRY LEONARD, #249996	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

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

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

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

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

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

D H Westbrook

Douglas H. Westbrook

Ackerman 5-6-11 2558

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Rick Libby
SCDC NUMBER: 274681
INSTITUTION: LIEBER
HOUSING UNIT: WANDO C-259
WORK ASSIGNMENT: EDUCATION

Office Use Only
Grievance No. Lieber 061204
Code: General rmj
Policy
Disc. Hear.
Class
Date Received SEP 22 2004
IGC Initials LC

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

The Department is asked to review and determine whether I am entitled to recieve Back Wages, which are due to me, from working at Lieber Prison Industries Program when they only paid me .35¢ an hour and not Prevailing Wage as under South Carolina Code Ann. Sec. 24-3-430 {A-7} as well as the fact they were getting $4.00 an hour and still did not give me my money from 1998-20 They Denied me Prevailing Wage.

ACTION REQUESTED: That All money due to me be paid at Prevailing Wage as well as overtime Rate, moreover, the Prevailing Wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

LAWSUIT WAS FILED, ordered to file Grievance by Court under Wicker V. ScDc and Adkins V. ScDc.

Ricky Libby 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Libby: See Warden's response.

G Carylone 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2922

N/A

Ackerman 5-6-11 2559

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Oct 28, 04 Date

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

Grievant Signature 11/3/04 Date

IGC Signature 11-3-04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

2923

Inmate Rick Gilstrap, #274681 LC10612-04

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

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

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

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

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

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

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

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

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

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

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

Therefore, I, again, deny your grievance.

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

2925

AMENDMENT TO GRIEVANCE OF RICK LIBBY, #274681

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

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 745.57 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1214; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 11-8-04
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: RICKY L. LIBBY
SCDC NUMBER: 274681 NOV 08 2004
INSTITUTION: ~~LIEBER~~ KACI PP
HOUSING UNIT: WANDO C-259
WORK ASSIGNMENT: EDUCATION

Office Use Only
Grievance No. LCI-0112-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

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

ADKINS + WICKER DO REQUIRE PAYMENT OF PREVAILING WAGES. GRIEVANTS WERE EMPLOYED BY WILLIAMS TECHNOLOGY (W.T.I.) AND IT'S "AGENT", S.C.D.C., IN PAYING OUR WAGES.

ADKINS + WICKER FURTHER DO ALLOW THIS ISSUE OF PAYMENT OF WAGES UNDER S. C. CODE 24-3-430(A-F) TO BE GRIEVED PURSUANT TO S.C.D.C.'S GRIEVANCE PROCEDURE. GRIEVANT INCORPORATES BY REFERENCE ALL EXHIBITS ATTACHED TO THE GRIEVANCES FILED BY DARRELL WILLIAMS AND BY ATTORNEY DOUGLAS WESTBROOK ON 9-22-04. Ricky A. Libby 11-03-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 5-14-07
Date

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

Ricky A. Libby 5-22-07
Grievant Signature Date

A Hardin 5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

LIBBY LCI-0612-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 11, 2002 and that your participation in this project ended on November 12, 2005.

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

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

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

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

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

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

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

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

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

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

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ricky Libby, #274681,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

SUPPLEMENTAL
NOTICE OF APPEAL

DOCKET NO. 07-ALJ-04-_____

GRIEVANCE NO.: _____

Notice is hereby given that Ricky Libby does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-31-07 ? was mailed 6-6-07. and received on 5-22-07 ?, a copy of which ~~is attached~~. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

Ricky Libby
Appellant's Name
Kershaw C.I.
4848 Goldmine Hy
Mailing Address
Kershaw, SC 29067
City, State, Zip Code
none
Telephone Number

Signed

6-8-07
Dated

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

2930

STATE OF SOUTH CAROLINA RICKY LIBBY, #274681 Grievant/Appellant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent/Appellee.	)	IN THE ADMINISTRATIVE LAW COURT CERTIFICATE OF SERVICE

I certify that on the 8th day of June, 2007, I mailed by first class postage Supplemental Appellant's Notice of Appeal, ~~and final decision~~, to the following:

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

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

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

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

Douglas H. Westbrook

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STATE OF South Carolina
Administrative Law Court

Ricky Libby, #274681
Appellant,

VS.

South Carolina Dept. of Corrections,
—Respondent,—

NOTICE OF APPEAL

DOCKET NO. _____

GRIEVANCE NO. LCI-0612-04

NOTICE is hereby given that Ricky Libby does hereby appeal the final decision of the South Carolina Department of Corrections dated: May 31st 07 (and resubmitted on June 19th 2007) and recieved on May 22nd, 2007, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. §1-23-380(A)(6)):

SCDC is in violation of MY Due process RIGHTS and my State created rights pursuant to SC Code of Laws Ann. § 24-3-430 for not paying me prevailing wage for my back wages; overtime wages; and training wages. I fried Step 1 and Step 2 grievances as per Adkins V. STATE AND Wicker V. State as a means to Resolve these issues. I hereby Appeal the Final Decision of South Carolina Department of Corrections BASED on the RuLing of Al-Shaba33 V. STATE, 338 S.C. 354 527 SE 2d 742 (2000) (See also: SC CODE Ann. §24-3-40; 24-3-310; 24-2-315.) Also see: Supplemental Notice of Appeal, sent by Attorney Douglas WESTBROOK on 6-8-2007.

Ricky A. Libby #274681
PB-51
4848 GOLDMINE HWY
KERSHAW, SC. 29067

Tele: N/A

S/ Ricky Libby

Dated: June 19th 2007
(previously dated: May 31st, 07)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

Office Use Only
Grievance No. Lieber 0597-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

INMATE NAME: Quinton Linen
SCDC NUMBER: 238553
INSTITUTION: Lieber C.I.
HOUSING UNIT: STOND B-13
WORK ASSIGNMENT: N/A Q1?

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
THE Department is Asked to review and Determine whether I am entitled to recieve back wages, which are due to me from working at Lieber Prison Industries Program, when they only paid me .35¢ an hour and not Prevailing Wages as under South Carolina Code Ann. Sec. 24-3-430 [A-7] as well as the fact they were getting $4.00 an hour and still did not give me my money from 1998-2003. They Denied me Prevailing wage.

ACTION REQUESTED:
~~THAT~~ All money due to me be paid at Prevailing wage as well as overtime rate, moreover the prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed, ordered to file a grievance by Court under Wicker V. SCDC and Adkins VS. SCDC

Quinton Linen 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:
Inmate Linen: See Warden's response.

L Carlone 10/27/04
IGC Signature Date

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

N/A
Grievant Signature Date

2933

Ackerman 5-6-11 2570

WARDEN'S DECISION AND REASON:

See Attachment.

Oct 28, 04
Warden Signature Date

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

11/2/04
Grievant Signature Date

11-3-04
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

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Inmate Quinton Grimes, #238553 LC10597-04

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

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

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

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

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

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

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

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

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

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

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

Therefore, I, again, deny your grievance.

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

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11-2-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. CE 0592-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: Quintin Linen
SCDC NUMBER: #238553 NOV 04 2004
INSTITUTION: ~~Lieber C.I.~~ BRCI
HOUSING UNIT: STONO (B-13)
WORK ASSIGNMENT: P.I. II MY191

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Adkins + Wicker do require payment of prevailing wages. Grievant's were employed by WTI, and SCDC is WTI's "Agent" in paying our wages. Adkins + Wicker further allow this issue of payment of wages under S.C. Code 24-3-340 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darnell Williams + Attorney Douglas Westbrook on 9-22-04

Quintin Linen 11/3/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

RECEIVED
MAY 16 2007
BRCI GREIVANCE OFFICE

SEE ATTACHED

5-14-07
Signature Date

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

Quintin Linen 5-17-07
Grievant Signature Date

Willie Montgomery 5/17/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2937

Ackerman 5-6-11 2574

RECEIVED

MAY 1 6 2007

BRCI GREIVANCE OFFICE

LINEN LCI-0597-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 5, 2002 and that your participation in this project ended on January 4, 2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2939

RECEIVED

MAY 16 2007

BRCI GREIVANCE OFFICE

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

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

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

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

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

2940

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Quintin Linen, #238553,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.:_____

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

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy.

8. Appellant claims pre/post judgment interest, costs and attorney fees.

Quintin Linen
Appellant's Name

Broad River C.I.
~~4460 Broad River Rd.~~
Mailing Address

Columbia, SC 29210
City, State, Zip Code

none
Telephone Number

2941

Signed

5-30-07
Dated

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

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
QUINTIN LINEN, #238553	)	
	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
	)	
Respondent/Appellee.	)	

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

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

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

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

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

Douglas H. Westbrook

2942

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Raymond Livingston INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 277133

INSTITUTION: Lieber

HOUSING UNIT: CA-14 ✓

WORK ASSIGNMENT: PI-1

Office Use Only

Grievance No. Lieber 0717-04

Code: General NH

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documenta $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate for 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs ~~and attorney fees.~~

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 2004 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Raymond Livingston 9/27/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Carlton 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal. 2943

N/A
Grievant Signature Date

Ackerman 5-6-11 2580

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Oct. 28 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator

2544

Jack B. Livingston # 277133 LC10717-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams' Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2945

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2946

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI-0111-07
Code: General ✓
Policy
Disc. Hear.
Class.
Date Received 5/24
IGC Initials
7-13-07
✓ IGA - ABH 7232

INMATE NAME: Raymond Livingston 33
SCDC NUMBER: 277133 5-23-07
INSTITUTION: Lieber Correctional Inst.
HOUSING UNIT: ~~Wando C-265~~ DC214
WORK ASSIGNMENT: P.I. #2

RECEIVED
JUN 04 2007
INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker held that §24-3-430's wage provisions were "mandatory," and created a "statutory right to the payment of a prevailing wage." These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under §24-3-430, with review by the ALJ.

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4.00 per hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was no correct, and back wages are owed.

Grievant incorporates by reference Exhibits A-K attached to grievances filed by Darrell Williams and counsel on September 22, 2004.

Raymond Livingston 5-22-07
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Raymond Livingston Aug 7 07
Grievant Signature Date

IGC Signature 8/7/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2947

SCDC 10-8A (November 1997)

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Livingston, Raymond	277133	LCI-0717-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 21, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your voluntary participation in the prison industries project at Lieber began on January 13, 2002 and, as of the date of this response, your participation continues.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Inmate Name	SCDC #	Grievance #
Livingston, Raymond	277133	LCI-0717-04

Moreover, you filed your Step 1 grievance over 2 ½ years after SCDC first paid you for your participation in the project located at Lieber and over 30 days after days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step 1 grievance.

Therefore, I deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Raymond Livingston, #277133

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Raymond Livingston does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Raymond Livingston
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-04
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2950

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
RAYMOND LIVINGSTON, #277133	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	

I certify that on the 25 day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

2951

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Donald Lykes INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 296135

INSTITUTION: Lieber Correctional Inst.

HOUSING UNIT: Cooper-B-9 ✓

WORK ASSIGNMENT: P-I-2

Office Use Only

Grievance No. Lieber 0735-04

Code: General ALL

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials TC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Donald Lykes 9-27-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlton 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal. 2952

Grievant Signature Date

Ackerman 5-6-11 2589

WARDEN'S DECISION AND REASON:

See Attachment

Warden Signature Oct. 28, 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 11-2-04
Date

IGO Signature 11-2-04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator

2953

I/M D. Hafler, #296135 CC10735-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

2954

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2955

AMENDMENT TO GRIEVANCE OF DONALD LYLES, #296135

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 17.50 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Donald Lyles 3-16-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1220; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-2-04

Office Use Only
Grievance No. CCI 0735-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: Lyles, Donald #
SCDC NUMBER: 296135
INSTITUTION: Lieber Corr. Inst. NOV 08 2004 PP
HOUSING UNIT: Cooper E-09 PCI RECEIVED
WORK ASSIGNMENT: PI-2 Q3A 111 MAY 24 2007

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): INMATE GRIEVANCE

Atkins and Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in paying our wages. Atkins and Wicker further allow this issue of payment of wages under S.C. Code Ann. §24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9/22/04.

Donald Lyles 11-02-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Donald Lyles 5 21 07
Grievant Signature Date

5-21-07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

2957

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Lyles, Donald	296135	LCI-0735-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on May 18, 2004 and that your participation in this project ended on January 5, 2006.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court

Inmate Name	SCDC #	Grievance #
Lyles, Donald	296135	LCI-0735-04

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over four (4) months after SCDC first paid you for your participation in the project located at Lieber and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Inmate Name	SCDC #	Grievance #
Lyles, Donald	296135	LCI-0735-04

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or

Inmate Name	SCDC #	Grievance #
Lyles, Donald	296135	LCI-0735-04

other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

Ackerman 5-6-11 2598

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Donald Lyles, #296135 released,

Appellant;

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Donald Lyles does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Donald Lyles
Appellant's Name

P.O. Box 434
Mailing Address

Spartanburg, SC 29304

(864) 542-2611
City, State, Zip Code

Telephone Number

Signed

11-6-09
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2962

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
DONALD LYLES, #296135	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	

I certify that on the 15 day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

(3) One copy was mailed pursuant to Directive to SCDC Policy GA-01.12 to:

South Carolina Department of Corrections
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221-1787

D H Westbrook
Douglas H. Westbrook

2963

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Francis Ackerman, #266928, et al.,	)	Docket Nos. 07-ALJ-04-00444 through 00449-AP
	)	Docket Nos. 07-ALJ-04-00500 through 00548-AP
	)	0549-IJ, 0550 through 07-00559-AP
	)	Docket Nos. 07-ALJ-04-00623 through 00632-AP
Appellants,	)	Docket Nos. 07-ALJ-04-00671 through 00677-AP
	)	Docket Nos. 07-ALJ-04-00691, 0752, 0826, 0856
vs.	)	through 0867-AP
	)	Docket Nos. 07-ALJ-04-00869 through 00872-AP
	)	Docket Nos. 07-ALJ-04-00444, 0876, 0885
	)	Docket Nos. 07-ALJ-04-00141 through 00149-AP
South Carolina Department of	)	Docket Nos. 07-ALJ-04-00169 through 00171-AP
Corrections,	)	Docket Nos. 07-ALJ-04-00966 through 01021-IJ
	)	Docket Nos. 07-ALJ-04-01023 through 01045-IJ
Respondent.	)	Docket No. 09-ALJ-04-00304-IJ
	)	

1st SUPPLEMENTAL RECORD ON APPEAL

VOLUME 4

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401
(843) 853-9600 – Office
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FOR THE APPELLANTS

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Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201
(803) 254-3300 – Office
(803) 254-0309 – Fax

FOR THE DEPARTMENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: EARL MACK
SCDC NUMBER: 216237
INSTITUTION: LIEBER
HOUSING UNIT: COOPER A47
WORK ASSIGNMENT: COMMISSARY

Office Use Only
Grievance No. Lieber 0667-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials TC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

THE DEPARTMENT is ASKED to REVIEW AND determine whether I AM ENTITLED to RECEIVE BACK WAGES DUE to ME FROM WORKING AT LIEBER PRISON INDUSTRY PROGRAM WHEN they ONLY PAID ME .35 CENTS AN HOUR AND NOT PREVAILING WAGE AS REQUIRED UNDER SOUTH CAROLINA CODE ANN. SEC. 24-3-430 (A-7) AS WELL AS FACT THAT FROM 1998-03 they DENIED ME PREVAILING WAGE.

ACTION REQUESTED: ALL MONEY DUE to ME be PAID AT PREVAILING WAGE AND OVERTIME RATE AND PREVAILING WAGE be PAID NOW.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
LAWSUIT WAS FILED ORDERED to FILE GRIEVANCE BY COURT WICKER V. SCDC ADKINS V. SCDC

9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

2965

SCDC 10-5 (Rev. November 1997)

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☒ I do ~~not accept~~ the Warden's decision and wish to appeal.

Grievant Signature 11/02/04 Date

IGC Signature 11-2-04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

2966

Inmate Eric Mack #216237 LC10667-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

2968

AMENDMENT TO GRIEVANCE OF EARL MACK, #216237

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 1538.33 hours in 2000 at $10.66 per hour; 1088.19 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 4900.55 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) 2/3/06 (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1220-1221; H, 1-3.

* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

2969

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	LADSON, TRAVIS	262120	C A 43	1	12/1/99	12/28/00
	LALLIER, JESSIE	280559	A A 24	1	1/9/02	1/11/02
	LAMBROS, NICHOLAS	215080	C A 52	1	8/6/99	3/8/02
MI 3	LANCE, STEVEN	130041	WD286	1	6/26/03	7/7/03
MI 3	LANG, WILBUR	268347	A B 64	1	3/1/04	3/3/04
	LANGLEY, DANIEL	263930	C 0	1	4/6/00	4/12/00
MI 3	LAREAU, ALAIN	128014	C B 2	1	6/1/01	10/31/02
MI 3	LAREAU, ALAIN	128014	C A 30	1	6/1/01	7/18/03
	LASTER, WILLIE	194241	C A 44	1	10/20/00	6/19/02
	LaSURE, ALFRED	264677	C B 29	2	7/31/02	8/2/02
	LAUX, BERNARD	258357	C 0	1	11/4/99	1/14/00
	LAW, NIKIA	260855	C B 46	1	4/12/00	2/8/02
MI 3	LAW, NIKIA	260855	C A 42	1	12/18/03	6/24/04
	LAWRENCE, JERMAINE	226657	C 0	1	12/10/99	1/14/00
	LEAPHART, TRAVIS	277177	E B 30	2	8/30/01	10/2/01
MI 2	LEASE, STEVE	137016	C A 46	1	8/6/99	6/24/04
	LEE, ARCHIE	226354	A A 36	1	10/13/00	3/13/01
	LEE, DERRICK	251269	M X 0	2	1/4/00	10/5/00
	LEE, WAYNE	266212	S B 23	1	2/15/01	4/4/01
MI 2	LEGRAND, NATHAN	259490	C A 59	1	11/4/99	4/19/02
MI 3	LEONARD, HARRY	249996	C B 58	1	8/6/99	6/24/04
	LESANE, MICHAEL	258515	C 0	1	4/10/00	4/20/00
	LEWIS, DESMOND	268968	E A 29	1	10/13/00	10/18/00
	LEWIS, OMAR	264047	E B 47	1	9/22/00	9/27/00
MI 2	LIBBY, RICKY	274681	C B 31	1	3/11/02	8/5/02
MI 2	LIBBY, RICKY	274681	WB149	1	3/11/02	11/12/03
MI 3	LINEN, QUINTIN	238553	C A 51	1	8/5/02	6/2/04
	LINNEN, BOOKER	165854	C B 41	1	6/6/00	12/21/00
	LIPSCOMB, JAMES	254950	C 0	1	8/11/99	3/7/00
MI 2	LIPSCOMB, MARK	272387	C A 16	1	4/4/01	5/2/03
MI 2	LIPSCOMB, MARK	272387	C A 59	3	9/24/03	12/8/03
	LITES, JAMES	270041	C B 19	1	12/5/00	6/12/01
MI 3	LIVINGSTON, RAYMOND	277133	C A 14	2	9/4/01	1/13/03
	LOCKLAIR, JIMMY	276548	C A 31	2	7/30/01	10/31/01
	LOGAN, JERRY	211561	C B 1	0	1/4/00	2/2/00
MI 2	LOVE, STEVEN	197674	C B 34	1	6/27/00	5/2/03
	LOWER, JAMES	264743	E A 55	1	4/18/01	6/7/01
	LUCAS, KELVIN	280760	E A 41	1	2/23/02	4/5/02
MI 3	LYLES, DONALD	296135	C B 9	3		3/17/04
MI 3	LYLES, DONALD	296135	C B 9	1	5/18/04	6/24/04
MI 3	MACK, EARL	216237	C A 47	1	3/14/00	6/26/03
	MACK, JOHN	106272	M X 0	1	7/11/00	12/11/01
MI 3	MACK, LAVANZA	189340	C B 29	1	3/29/04	6/24/04
MI 3	MACK, NATHAN	255391	C B 33	1	6/15/00	6/26/03
	MACKEY, BROADUS	171502	C A 29	1	3/15/00	6/27/00
	MAKINS, MAXIE	269147	C A 61	2	10/16/00	8/13/01

PLAINTIFF'S EXHIBIT A

A - 0787
June 2004

2971

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

PLAINTIFF'S EXHIBIT C

2971

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

PLAINTIFF'S EXHIBIT C

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
197674	LOVE	STEVEN	DOUGLAS	20030407	0.50	132.30	66.15
197674	LOVE	STEVEN	DOUGLAS	20030421	0.50	131.22	65.61
197674	LOVE	STEVEN	DOUGLAS	20030505	0.50	92.66	46.33
264743	LOWER, SR.	JAMES	RONALD	20010507	0.50	52.49	26.24
264743	LOWER, SR.	JAMES	RONALD	20010521	0.50	53.75	26.87
264743	LOWER, SR.	JAMES	RONALD	20010604	0.50	42.15	21.07
264743	LOWER, SR.	JAMES	RONALD	20010618	0.50	37.50	18.75
280760	LUCAS	KELVIN		20020311	0.50	22.93	11.46
280760	LUCAS	KELVIN		20020325	0.50	31.91	15.95
280760	LUCAS	KELVIN		20020408	0.50	30.66	15.33
280760	LUCAS	KELVIN		20020422	0.50	4.99	2.49
296135	LYLES	DONALD		20040531	0.50	17.50	8.75
216237	MACK	EARL		20000327	0.35	64.50	22.57
216237	MACK	EARL		20000410	0.50	75.00	37.50
216237	MACK	EARL		20000424	0.35	74.00	25.90
216237	MACK	EARL		20000508	0.35	75.00	26.25
216237	MACK	EARL		20000522	0.50	67.50	33.75
216237	MACK	EARL		20000522	0.80	7.50	6.00
216237	MACK	EARL		20000605	0.50	67.50	33.75
216237	MACK	EARL		20000703	0.50	60.00	30.00
216237	MACK	EARL		20000703	0.55	10.02	5.51
216237	MACK	EARL		20000703	0.35	4.67	1.63
216237	MACK	EARL		20000717	0.50	79.50	39.75
216237	MACK	EARL		20000731	0.50	119.52	59.76
216237	MACK	EARL		20000814	0.50	72.65	36.32
216237	MACK	EARL		20000828	0.50	64.48	32.24
216237	MACK	EARL		20000911	0.50	59.73	29.86
216237	MACK	EARL		20000925	0.50	65.33	32.66
216237	MACK	EARL		20001009	0.50	74.37	37.18
216237	MACK	EARL		20001023	0.50	89.48	44.74
216237	MACK	EARL		20001106	0.50	88.04	44.02
216237	MACK	EARL		20001120	0.50	114.28	57.14
216237	MACK	EARL		20001204	0.50	68.94	34.47
216237	MACK	EARL		20001218	0.50	91.60	45.80
216237	MACK	EARL		20010101	0.50	44.72	22.36
216237	MACK	EARL		20010115	0.50	69.97	34.98
216237	MACK	EARL		20010129	0.50	81.31	40.65
216237	MACK	EARL		20010212	0.50	95.72	47.86
216237	MACK	EARL		20010226	0.50	102.75	51.37
216237	MACK	EARL		20010312	0.50	73.71	36.85
216237	MACK	EARL		20010326	0.50	59.71	29.85
216237	MACK	EARL		20010409	0.50	73.01	36.50
216237	MACK	EARL		20010423	0.50	67.05	33.52
216237	MACK	EARL		20010507	0.50	75.81	37.90
216237	MACK	EARL		20010521	0.50	136.61	68.30
216237	MACK	EARL		20010604	0.50	62.83	31.41
216237	MACK	EARL		20010618	0.50	66.40	33.20
216237	MACK	EARL		20010702	0.50	123.31	61.65
216237	MACK	EARL		20010716	0.50	113.16	56.58
216237	MACK	EARL		20010730	0.50	143.69	71.84
216237	MACK	EARL		20010813	0.50	148.96	74.48
216237	MACK	EARL		20010827	0.50	101.20	50.60
216237	MACK	EARL		20010910	0.50	85.18	42.59
216237	MACK	EARL		20010924	0.50	128.53	64.26



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A - 1220
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
216237	MACK	EARL		20011008	0.50	153.51	76.75
216237	MACK	EARL		20011022	0.50	102.76	51.38
216237	MACK	EARL		20011105	0.50	89.94	44.97
216237	MACK	EARL		20011119	0.50	70.07	35.03
216237	MACK	EARL		20011203	0.50	64.85	32.42
216237	MACK	EARL		20011217	0.50	98.65	49.32
216237	MACK	EARL		20011231	0.50	72.08	36.04
216237	MACK	EARL		20020114	0.50	44.00	22.00
216237	MACK	EARL		20020128	0.50	104.75	52.37
216237	MACK	EARL		20020211	0.50	115.72	57.86
216237	MACK	EARL		20020225	0.50	111.15	55.57
216237	MACK	EARL		20020311	0.50	111.66	55.83
216237	MACK	EARL		20020325	0.50	103.90	51.95
216237	MACK	EARL		20020408	0.50	56.16	28.08
216237	MACK	EARL		20020422	0.50	63.38	31.69
216237	MACK	EARL		20020506	0.50	65.22	32.61
216237	MACK	EARL		20020520	0.50	110.73	55.36
216237	MACK	EARL		20020603	0.50	63.73	31.86
216237	MACK	EARL		20020617	0.50	121.95	60.97
216237	MACK	EARL		20020701	0.50	108.14	54.07
216237	MACK	EARL		20020715	0.50	84.55	42.27
216237	MACK	EARL		20020729	0.50	86.35	43.17
216237	MACK	EARL		20020812	0.50	98.87	49.43
216237	MACK	EARL		20020826	0.50	106.20	53.10
216237	MACK	EARL		20020909	0.50	103.10	51.55
216237	MACK	EARL		20020923	0.50	118.84	59.42
216237	MACK	EARL		20021007	0.50	114.57	57.28
216237	MACK	EARL		20021021	0.50	106.70	53.35
216237	MACK	EARL		20021104	0.50	113.62	56.81
216237	MACK	EARL		20021118	0.50	108.12	54.06
216237	MACK	EARL		20021202	0.50	81.67	40.83
216237	MACK	EARL		20021216	0.50	91.15	45.57
216237	MACK	EARL		20021230	0.50	31.10	15.55
216237	MACK	EARL		20030113	0.50	68.00	34.00
216237	MACK	EARL		20030127	0.50	87.79	43.89
216237	MACK	EARL		20030210	0.50	94.90	47.45
216237	MACK	EARL		20030224	0.50	80.33	40.16
216237	MACK	EARL		20030310	0.50	70.29	35.14
216237	MACK	EARL		20030324	0.50	76.00	38.00
216237	MACK	EARL		20030407	0.50	92.53	46.26
216237	MACK	EARL		20030421	0.50	89.78	44.89
216237	MACK	EARL		20030505	0.50	71.29	35.64
216237	MACK	EARL		20030519	0.50	127.69	63.84
216237	MACK	EARL		20030602	0.50	63.70	31.85
216237	MACK	EARL		20030616	0.50	99.46	49.73
216237	MACK	EARL		20030630	0.50	80.88	40.44
106272	MACK	JOHN	HENRY	20000717	0.50	21.70	10.85
106272	MACK	JOHN	HENRY	20000731	0.50	79.90	39.95
106272	MACK	JOHN	HENRY	20000814	0.50	59.85	29.92
106272	MACK	JOHN	HENRY	20000828	0.50	66.50	33.25
106272	MACK	JOHN	HENRY	20000911	0.50	70.15	35.07
106272	MACK	JOHN	HENRY	20000925	0.50	89.00	44.50
106272	MACK	JOHN	HENRY	20001009	0.50	72.60	36.30
106272	MACK	JOHN	HENRY	20001023	0.50	102.40	51.20

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

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PLAINTIFF'S EXHIBIT H

RESUME-3/03
Dr. Joseph J. Benich

FAMILY STATUS
Wife - Roberta; two children - Kiersten and J.J.

EDUCATION

9/68 - 6/72	Doctor of Business Administration Majors: Production Management and Marketing Kent State University, Kent, Ohio
1/66 - 5/68	Masters of Business Administration Majors: Economics and Marketing Case Western Reserve University, Cleveland, Ohio
9/65 - 1/66	Western Reserve University, Cleveland, Ohio Major: Law
9/61 - 6/65	Bachelor of Science in Chemical Engineering Case Institute of Technology, Cleveland, Ohio

ACADEMIC EXPERIENCE

9/93 –2003	Professor of Business Administration College of Charleston, Charleston, South Carolina
9/78 - 8/93	Associate Professor of Business Administration College of Charleston, Charleston, South Carolina
9/76 - 9/78	Associate Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/72 - 9/76	Assistant Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/69 - 6/72	Full-time Instructor, Economics Department Kent State University, Kent, Ohio
1/69 - 6/69	Teaching Fellow, Statistics Kent State University
9/68 - 12/68	Graduate Assistant Kent State University

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NON-ACADEMIC EXPERIENCE

6/74 -	Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts
7/78 -	Manager of Summertime Properties, Charleston, South Carolina
6/73 -	Business Consulting, J. Benich and Associates, Charleston, South Carolina
1/68 - 11/72	Business Advisor to Director of American Screw Products, Warrensville, Ohio
1/68 - 10/68	Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio
1/66 - 9/67	Industrial Market Research, Harshaw Chemical, Cleveland, Ohio
19/65 - 1/66	Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)
6/65 - 9/65	Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

2977

AMENDMENT TO GRIEVANCE OF LAVANZA MACK, #189340

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference). * Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 269.17 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1222; H, 1-3.

* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI-0607-04
Code: General RW
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: EARL MACK
SCDC NUMBER: 216234
INSTITUTION: Lieber NOV 08 2004
HOUSING UNIT: Cooper A-47 PP
WORK ASSIGNMENT: Commissary

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkin and Wicker Do Require payment of prevailing wages, INMATES were employed by WTI, AND SCDC was Agents in paying our Wages, Adkins and Wicker Further allows this issue of payments of wages under 24-3-430 to be grieved pursuant to SCDC procedure. Grievant incorporates by Reference all exhibits Attached to grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04

11-4-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

5/22/07 Jean Randall 5/22/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2979

SCDC 10-5A (November 1997)

Ackerman 5-6-11 2615

MACK LCI-0667-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 4, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 14, 2000 and that your participation in this project ended on June 23, 2003.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

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Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly 4 ½ years after SCDC first paid you for your participation in the project located at Lieber, nearly 15 months after your participation in the project at Lieber ended, and 30 days after our Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Earl Mack, #216237,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.: _____

Notice is hereby given that Earl Mack does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy.

8. Appellant claims pre/post judgment interest, costs and attorney fees.

Earl Mack
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

Signed

5-21-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

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STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
EARL MACK, #216237	)	
	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
	)	
Respondent/Appellee.	)	

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D H Westbrook

Douglas H. Westbrook

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: LAVANZA C. MACK
SCDC NUMBER: 189340
INSTITUTION: Lieber
HOUSING UNIT: CB-20
WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. Lieber 0590-04
Code: General CM
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials CC
11/1/04

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The Department asks to review or determine whether I am entitled to recieve back wages due to me from working at Lieber Prison Industry Progra when they only paid me 35¢ an hour, and not previl wages, as required under S.C. Code ANN. Sec. 24-3-43(A-7). As well asthat from 1998-2003, They denied prevailing wage.

ACTION REQUESTED: All money due to me, be paid the prevailing wage and overtime rate, at prevailing wage now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed, ordered to file grievance by court wicker-US-SCDC Adkins-US-SCDC

Lavanza Mack 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Mack: See Warden's response.

L Carrington 10/27/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2985

WA

Ackerman 5-6-11 2621

WARDEN'S DECISION AND REASON:

See attachment

Warden Signature Date Oct. 25, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date Lavanga Mack 10/2/04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

LAVANZA MACK INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 189340

INSTITUTION: Lee Correctional Inst.

HOUSING UNIT: CB-20

WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. _
Code: General _____
Policy _____
Disc. Hear. _____
Class. _____
Date Received SEP 30 2004
IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits document a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate for 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Lavanza E. Mack 9/27/04
Grievant Signature Date

ACTION TAKEN BY IGC:

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2987

Grievant Signature Date

Ackerman 5-6-11 2623

WARDEN'S DECISION AND REASON:

See attached.

Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1. See Warden's response.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

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Inmate Lavaniga Mack, #189340 LCI0590-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

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AMENDMENT TO GRIEVANCE OF LAVANZA MACK, #189340

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B;C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 269.17 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0787; C, 0081,0086; F, 1222; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI-0590-04
Code: General RAY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: LAVANZA MACK
SCDC NUMBER: 189340 NOV 04 2004
INSTITUTION: LIEBER ACI PP
HOUSING UNIT: CB-20
WORK ASSIGNMENT: P-I-2 F-1 A-31

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins & Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker further allows this issue of payment of wages under SC Code 24-3-430 to be grieved pursuant to SCDC's grievance procedures. Grievants incorporates by reference all exibits attached to Grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04

Lavanza Mack 11/2/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Lavanza Mack 5-23-07 5/22/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

2992

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Mack, Lavanza	189340	LCI-0590-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on March 29, 2004 and that your participation in this project ended on October 11, 2005.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court

Inmate Name	SCDC #	Grievance #
Mack, Lavanza	189340	LCI-0590-04

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly six (6) months after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Inmate Name	SCDC #	Grievance #
Mack, Lavanza	189340	LCI-0590-04

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Inmate Name	SCDC #	Grievance #
Mack, Lavanza	189340	LCI-0590-04

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Lavanza Mack, #189340

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Lavanza Mack does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Lavanza Mack
Appellant's Name

Manning C.I.
Mailing Address

502 Beckman Dr.

Columbia, SC 29203-3205
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

2997

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
LAVANZA MACK, #189340	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	
	)	

I certify that on the 25 day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

2998

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Percy M. Martin
SCDC NUMBER: 270035
INSTITUTION: Lieber C I
HOUSING UNIT: Cooper B-39 ✓
WORK ASSIGNMENT: Prison Industry #2

Office Use Only
Grievance No. Lieber 0611-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy indicate which policy)

The department is asked to review and determine whether I am entiteld to recieve back wage due to me from working at Lieber Prison Industry Program, when they only paid me 35¢ an hour and Not Prevailing WAGE as required under South Carolina Code Ann Sec 24-3-430 A-7 as well fact that from 1998-03 they denied me Prevailing Wage.

ACTION REQUESTED: All Money due to me be Paid at Prevailing WAGE and Overtime Rate and Prevaling Wage be Paid Now

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit filled ordered filed Grievance by Court Wicker V. SCDC, Atkins V. SCDC

Percy Martin 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Martin: See Warden's response.

L Carlton 10/28/04
IGC Signature Date

N/A
Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 2999

Ackerman 5-6-11 2635

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Date Oct 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date 11-2-04

IGC Signature Date 11-2-04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3000

Inmate Percy Martin, #270035 LC10611-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status, I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3001

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3002

AMENDMENT TO GRIEVANCE OF PERCY MARTIN, #270035

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 121.43 hours in 2000 at $10.66 per hour; 996.62 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 7861.51 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Percy Martin 02/03/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0788; C, 0081,0086; F, 1230-1231; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

237771	MARTIN	DON		19990830	0.35	75.25	26.33
237771	MARTIN	DON		19990830	0.55	2.50	1.37
237771	MARTIN	DON		19990913	0.35	9.75	3.41
237771	MARTIN	DON		19990913	0.55	2.50	1.37
270035	MARTIN	PERCY	MORRIS	20001218	0.50	79.33	39.66
270035	MARTIN	PERCY	MORRIS	20010101	0.50	42.10	21.05
270035	MARTIN	PERCY	MORRIS	20010115	0.50	41.34	20.67
270035	MARTIN	PERCY	MORRIS	20010129	0.50	74.00	37.00
270035	MARTIN	PERCY	MORRIS	20010212	0.50	94.41	47.20
270035	MARTIN	PERCY	MORRIS	20010226	0.50	74.79	37.39
270035	MARTIN	PERCY	MORRIS	20010312	0.50	91.73	45.86
270035	MARTIN	PERCY	MORRIS	20010326	0.50	44.47	22.23
270035	MARTIN	PERCY	MORRIS	20010409	0.50	74.03	37.01
270035	MARTIN	PERCY	MORRIS	20010423	0.50	78.69	39.34
270035	MARTIN	PERCY	MORRIS	20010507	0.50	85.75	42.87
270035	MARTIN	PERCY	MORRIS	20010521	0.50	95.03	47.51
270035	MARTIN	PERCY	MORRIS	20010604	0.50	35.16	17.58
270035	MARTIN	PERCY	MORRIS	20010618	0.50	110.63	55.31
270035	MARTIN	PERCY	MORRIS	20010702	0.50	96.59	48.29
270035	MARTIN	PERCY	MORRIS	20010716	0.50	68.75	34.37
270035	MARTIN	PERCY	MORRIS	20010730	0.50	108.41	54.20
270035	MARTIN	PERCY	MORRIS	20010813	0.50	121.98	60.99
270035	MARTIN	PERCY	MORRIS	20010827	0.50	82.78	41.39
270035	MARTIN	PERCY	MORRIS	20010910	0.50	95.58	47.79
270035	MARTIN	PERCY	MORRIS	20010924	0.50	122.33	61.16
270035	MARTIN	PERCY	MORRIS	20011008	0.50	153.97	76.98
270035	MARTIN	PERCY	MORRIS	20011022	0.50	142.16	71.08
270035	MARTIN	PERCY	MORRIS	20011105	0.50	111.98	55.99
270035	MARTIN	PERCY	MORRIS	20011119	0.50	124.35	62.17
270035	MARTIN	PERCY	MORRIS	20011203	0.50	116.81	58.40
270035	MARTIN	PERCY	MORRIS	20011217	0.50	143.76	71.88
270035	MARTIN	PERCY	MORRIS	20011231	0.50	86.92	43.46
270035	MARTIN	PERCY	MORRIS	20020114	0.50	98.52	49.76
270035	MARTIN	PERCY	MORRIS	20020128	0.50	75.11	37.55
270035	MARTIN	PERCY	MORRIS	20020211	0.50	128.21	64.10
270035	MARTIN	PERCY	MORRIS	20020225	0.50	141.63	70.81
270035	MARTIN	PERCY	MORRIS	20020311	0.50	127.97	63.98
270035	MARTIN	PERCY	MORRIS	20020325	0.50	141.49	70.74
270035	MARTIN	PERCY	MORRIS	20020408	0.50	129.20	64.60
270035	MARTIN	PERCY	MORRIS	20020422	0.50	142.27	71.13
270035	MARTIN	PERCY	MORRIS	20020506	0.50	143.09	71.54
270035	MARTIN	PERCY	MORRIS	20020520	0.50	153.82	76.91
270035	MARTIN	PERCY	MORRIS	20020603	0.50	132.75	66.37
270035	MARTIN	PERCY	MORRIS	20020617	0.50	142.50	71.25
270035	MARTIN	PERCY	MORRIS	20020701	0.50	142.50	71.25
270035	MARTIN	PERCY	MORRIS	20020715	0.50	116.75	58.37
270035	MARTIN	PERCY	MORRIS	20020729	0.50	99.94	49.97
270035	MARTIN	PERCY	MORRIS	20020812	0.50	119.57	59.78
270035	MARTIN	PERCY	MORRIS	20020826	0.50	141.55	70.77
270035	MARTIN	PERCY	MORRIS	20020909	0.50	110.52	55.26
270035	MARTIN	PERCY	MORRIS	20020923	0.50	152.89	76.44
270035	MARTIN	PERCY	MORRIS	20021007	0.50	146.51	73.25
270035	MARTIN	PERCY	MORRIS	20021021	0.50	130.68	65.34
270035	MARTIN	PERCY	MORRIS	20021104	0.50	140.64	70.32

3004

PLAINTIFF'S EXHIBIT

A - 1230
June 2004

Inmate No.	Last Name	First Name	Middle Name	Pay Date	Pay Hrs	Gross Pay Amt	Net Pay Amt
270035	MARTIN	PERCY	MORRIS	20021202	0.50	121.92	60.96
270035	MARTIN	PERCY	MORRIS	20021216	0.50	119.53	59.76
270035	MARTIN	PERCY	MORRIS	20030113	0.50	100.17	50.08
270035	MARTIN	PERCY	MORRIS	20030127	0.50	116.28	58.14
270035	MARTIN	PERCY	MORRIS	20030210	0.50	129.42	64.71
270035	MARTIN	PERCY	MORRIS	20030224	0.50	129.96	64.98
270035	MARTIN	PERCY	MORRIS	20030310	0.50	11.12	5.56
270035	MARTIN	PERCY	MORRIS	20030602	0.50	91.94	45.97
270035	MARTIN	PERCY	MORRIS	20030616	0.50	142.18	71.09
270035	MARTIN	PERCY	MORRIS	20030630	0.50	133.20	66.60
270035	MARTIN	PERCY	MORRIS	20030714	0.50	137.35	68.67
270035	MARTIN	PERCY	MORRIS	20030728	0.50	129.74	64.87
270035	MARTIN	PERCY	MORRIS	20030811	0.50	109.03	54.51
270035	MARTIN	PERCY	MORRIS	20030825	0.50	123.84	61.92
270035	MARTIN	PERCY	MORRIS	20030908	0.50	85.68	42.84
270035	MARTIN	PERCY	MORRIS	20030922	0.50	111.20	55.60
270035	MARTIN	PERCY	MORRIS	20031006	0.50	106.02	53.01
270035	MARTIN	PERCY	MORRIS	20031020	0.50	115.60	57.80
270035	MARTIN	PERCY	MORRIS	20031103	0.50	76.80	38.40
270035	MARTIN	PERCY	MORRIS	20031117	0.50	80.74	40.37
270035	MARTIN	PERCY	MORRIS	20031201	0.50	67.62	33.81
270035	MARTIN	PERCY	MORRIS	20031215	0.50	91.16	45.58
270035	MARTIN	PERCY	MORRIS	20031229	0.50	97.90	48.95
270035	MARTIN	PERCY	MORRIS	20040112	0.50	67.20	33.60
270035	MARTIN	PERCY	MORRIS	20040126	0.50	80.18	40.09
270035	MARTIN	PERCY	MORRIS	20040209	0.50	95.76	47.88
270035	MARTIN	PERCY	MORRIS	20040223	0.50	107.88	53.94
270035	MARTIN	PERCY	MORRIS	20040308	0.50	105.72	52.86
270035	MARTIN	PERCY	MORRIS	20040322	0.50	107.48	53.74
270035	MARTIN	PERCY	MORRIS	20040405	0.50	105.30	52.65
270035	MARTIN	PERCY	MORRIS	20040419	0.50	91.50	45.75
270035	MARTIN	PERCY	MORRIS	20040503	0.50	105.03	52.51
270035	MARTIN	PERCY	MORRIS	20040517	0.50	119.14	59.57
270035	MARTIN	PERCY	MORRIS	20040531	0.50	109.03	54.51
211631	MARTIN	RICHARD		20000717	0.50	52.02	26.01
211631	MARTIN	RICHARD		20000717	1.05	15.00	15.75
269333	MARTIN, JR.	SAMUEL	LEON	20010409	0.50	40.97	20.48
269333	MARTIN, JR.	SAMUEL	LEON	20010423	0.50	64.36	32.18
269333	MARTIN, JR.	SAMUEL	LEON	20010507	0.50	70.08	35.04
269333	MARTIN, JR.	SAMUEL	LEON	20010521	0.50	73.09	36.54
269333	MARTIN, JR.	SAMUEL	LEON	20010604	0.50	74.95	37.47
269333	MARTIN, JR.	SAMUEL	LEON	20010618	0.50	72.80	36.40
269333	MARTIN, JR.	SAMUEL	LEON	20010702	0.50	81.91	40.95
269333	MARTIN, JR.	SAMUEL	LEON	20010716	0.50	86.11	43.05
269333	MARTIN, JR.	SAMUEL	LEON	20010730	0.50	96.32	48.16
269333	MARTIN, JR.	SAMUEL	LEON	20010813	0.50	87.95	43.97
269333	MARTIN, JR.	SAMUEL	LEON	20010827	0.50	111.25	55.62
269333	MARTIN, JR.	SAMUEL	LEON	20010910	0.50	93.78	46.89
269333	MARTIN, JR.	SAMUEL	LEON	20010924	0.50	124.61	62.30
269333	MARTIN, JR.	SAMUEL	LEON	20011008	0.50	159.12	79.56
269333	MARTIN, JR.	SAMUEL	LEON	20011022	0.50	157.02	78.51
269333	MARTIN, JR.	SAMUEL	LEON	20011105	0.50	153.78	76.89
269333	MARTIN, JR.	SAMUEL	LEON	20011119	0.50	180.48	90.24
269333	MARTIN, JR.	SAMUEL	LEON	20011203	0.50	145.13	72.56

3005

11-1-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Martin, Percy M.
SCDC NUMBER: 270035 NOV 08 2004
INSTITUTION: Lieber Corr.Inst. PP
HOUSING UNIT: Cooper B-38
WORK ASSIGNMENT: P1-2

Office Use Only
Grievance No. LCI 0041-04
Code: General 104
Policy
Disc, Heat
Class.
Date Received Nov 09 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Nicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in paying our wages. Adkins and Nicker further allow this issue of payment of wages under S.C.Code Ann.§24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9/22/04.

Percy M. Martin 11-3-0
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Released 6-1-07

SEE ATTACHED

[signature] 6-19-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3006

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Martin, Percy M.
SCDC NUMBER: #270035 NOV 08 2004
INSTITUTION: Lieber Corr.Inst.
HOUSING UNIT: Cooper E-39
WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. LCI-0611-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C.Code Ann.§24-3-430 to be grieved purusant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9/22/04.

Percy M. Martin 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3007

SCDC 10-5A (November 1997)

Ackerman 5-6-11 2643

MARTIN LCI-0611-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on December 1, 2000 and ended February 24, 2003. Additionally, these records reflect that you returned to this project for a second work assignment that began May 19, 2003, and, as of the date of this response, your participation continues.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005. Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

3008

MARTIN LCI-0611-04

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly four (4) years after SCDC first paid you for the labor you provided to the project located at Lieber during your first work assignment there and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

3009

MARTIN LCI-0611-04

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

3010

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Percy Morris Martin, #270035,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 00-ALJ-04-_____-AP

Notice is hereby given that Percy Morris Martin does hereby appeal the final decision of the South Carolina Department of Corrections dated 6-19-07 and received on 2-1-08, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): Grievant seeks back wages contesting SCDC policy/procedure of paying below prevailing/negotiated wages and under §13.9 there was no time limit to file. Grievant had reasonable cause under §13.9 as right to grieve did not accrue until Adkins/Wicker and he filed within reasonable time. Applying §13.1 denied grievant reasonable time to file and thus due process. SCDC failed to plead §13.1 in step 1 and filed/considered Amendments/Exhibits on the merits and thus waived §13.1. Grievant proved all elements of claim and disputes work period(s) alleged by SCDC. Dr. Benich's report is the only evidence of prevailing wages in record and grievant is entitled to prevailing/negotiated wages. To extent grievant worked OT he is entitled to it under SCDC policy. Grievant claims pre/post judgment interest, costs and attorney fees. Darrell Williams' 9-22-04 grievance, and many others, was filed individually and on behalf of all inmates and SCDC should process grievance for all who worked in program regardless of filin

Percy Morris Martin
Appellant's Name
c/o Ms. Matie Holmes
2415 North West 15th
Mailing Address

Ft. Lauderdale, FL 33311
City, State, Zip Code
none available
Telephone Number

Signed

2-6-08
Dated:

Douglas R. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

3011

(See reverse side for instructions)

STATE OF SOUTH CAROLINA	IN THE ADMINISTRATIVE LAW COURT
PERCY MORRIS MARTIN, #270035	
GRIEVANT/APPELLANT,	
VS.	CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	
RESPONDENT/APPELLEE.	

I certify that on the 22nd day of Feb., 2008, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jane Shealy
Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to Directive to SCDC Policy GA-01.12, §4.3, effective Jan. 30, 2008, to:

South Carolina Department of Corrections
Office of General Counsel
P.O. Box 21787
Columbia, SC 29221-1787

Douglas H. Westbrook

30/2

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Cedric D Martino INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 291396

INSTITUTION: Lieber

HOUSING UNIT: Cooper A-52 ✓

WORK ASSIGNMENT: PI, 1

Office Use Only

Grievance No. Lieber0775-04

Code: General NH

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fc 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 837.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documer a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 3(1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplc ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fc 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Cedric D. Martino 9-27-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal. 3013

N/A

Grievant Signature Date

Ackerman 5-6-11 2649

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Oct. 28, 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance

3014

J/R C. Martino, #291396 CA 0775-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3015

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3016

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI-0775-07
Code: General 4Y
Policy
Disc. Heal.
Class. 3/3I
Date Received
IGC Initials

INMATE NAME: Cedric D. Martin
SCDC NUMBER: 291396
INSTITUTION: Lieber
HOUSING UNIT: Ashley A-24 95I
WORK ASSIGNMENT: Unassigned

RECEIVED
JUN 12 2007
INMATE GRIEVANCE

✓ IGA - ABH 7-13-07

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker held that Sec. 24-3-430's wage provisions were "mandatory" and created a "statutory right to the payment of a prevailing wage. These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under sec. 24-3-430. With review by the NLS. SCDC owes grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4/hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct and back wages are owed.

Grievant incorporates by reference EXHIBITS A-H attached to grievance filed by Darrell Williams and Counsel on September 22, 2004.

Cedric Martin 5-23-07
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Cedric Martin 8-01-07
Grievant Signature Date

IGC Signature 8/01
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3017

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Martino, Cedric	291396	LCI-0775-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 23, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on June 30, 2003 and that your participation in this project ended on July 22, 2003.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Inmate Name	SCDC #	Grievance #
Martino, Cedric	291396	LCI-0775-04

Moreover, you filed your Step 1 grievance nearly 15 months after SCDC first paid you for your participation in the project located at Lieber, over 14 months after your participation in this project ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step 1 grievance.

Moreover, I specifically conclude that the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Therefore, I deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Cedric Martino, #291396, Appellant, vs. South Carolina Department of Corrections, Respondent.	NOTICE OF APPEAL Docket No. 0 -ALJ-04-_____-AP Grievance No. _____

Notice is hereby given that Cedric Martino does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automaric appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Cedric Martino
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

3020

Ackerman 5-6-11 2656

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
CEDRIC MARTINO, #291396	)	
Grievant/Appellant,	)	
vs.	)	CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
Respondent/Appellee.	)	

I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

3021

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Donald C. McAteer
SCDC NUMBER: #292961
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper B-18
WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. Lieber 0673-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The Department is asked to review and determine whether I am entitled to receive back wages due to me from working at Lieber Prison Industry Program when they paid me only $.35/hr. and not prevailing wage as required under South Carolina Code Ann. §24-3-430(A),(B) as well as fact that from 1998-2003 they denied me prevailing wage.

ACTION REQUESTED:

All money due to me be paid at prevailing wage and overtime rate and prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit has been filed, court order to file a grievance by the court; Wicker v. SCDC and Adkins v. SCDC.

Donald C. McAteer 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlone 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

3022

N/A
Grievant Signature Date

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Oct. 28, 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☒ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 11/2/04
Date

IGC Signature 11-2-04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3023

D/R D. McAteer, # 292961 LC10673-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3025

AMENDMENT TO GRIEVANCE OF DONALD MCATEER, #292961

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 1073.14 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0788; C, 0081,0086; F, 1242; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

Office Use Only
Grievance No. 04-0673-04
Code: General NN4
Policy
Disc. Hear.
Class
Date Received NOV 08 2004
IGC Initials

INMATE NAME: McAteer, Donald C.
NOV 04 2004
SCDC NUMBER: #292961 PP
INSTITUTION: ~~Lieber~~ Corr. Inst. ACI
HOUSING UNIT: Cooper B-18 F-2 B-17
WORK ASSIGNMENT: PI-2

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C.Code Ann.§24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and attorney Douglas Westbrook on 9/22/04.

Donald McAteer 11/2/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Donald McAteer 5/22/07
Grievant Signature Date

IGC Signature 5/22/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3027

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
McAteer, Donald	292961	LCI-0673-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on December 8, 2003 and that your participation in this project ended on December 21, 2005.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court

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Inmate Name	SCDC #	Grievance #
McAteer, Donald	292961	LCI-0673-04

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over nine (9) months after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Inmate Name	SCDC #	Grievance #
McAteer, Donald	292961	LCI-0673-04

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Inmate Name	SCDC #	Grievance #
McAteer, Donald	292961	LCI-0673-04

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Donald McAteer; #292961,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Donald McAteer does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Donald McAteer
Appellant's Name

Allendale C.I.
Mailing Address

Hwy 47, P.O. Box 1151

Fairfax, SC 29827
City, State, Zip Code

none
Telephone Number

Signed

11-6-06
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

3032

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
DONALD MGATEER, #292961	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	

I certify that on the 7th day of Nov., 2008; I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

3033

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Larry McClam INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 282972

INSTITUTION: ~~Ellet~~ Lieber

HOUSING UNIT: Cooper -B-1

WORK ASSIGNMENT: Dorm

Office Use Only

Grievance No. Lieber 0734-04

Code: General MM

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 837.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are ~~incorporated by reference herein.~~

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs ~~and attorney fees.~~

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willia et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifie a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Larry McClam 9-27-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

G Carlone 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

N/A

Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 3034 ... original grievance signed

Ackerman 5-6-11 2670

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Oct. 28 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 11-2-04
Date

IGC Signature 11-2-04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3035

J/M L. McClam, #282972 LCI 0734-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3036

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

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AMENDMENT TO GRIEVANCE OF LARRY MCCLAM, #282972

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 59.29 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Larry McClam 02-04-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0788; C, 0081,0086; F, 1242; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	MANGHAM, MARVIN	199465	C A 26	1	8/11/99	8/16/01
ME 3	MANICK, JAMAL	259313	A A 56	2	9/18/02	10/1/02
MI 2	MANICK, RICHARD	198535	C A 38	1	3/15/04	6/24/04
	MANIGAULT, CALVIN	215941	C 0	1	8/5/99	2/23/00
	MANIGO, NAMON	211629	C A 6	1	2/20/00	8/16/01
	MANYFIELD, JOHN	262770	C X 0	1	2/14/00	9/6/00
	MAPLE, ROGER	255831	C B 50	1	11/4/99	8/1/01
MI 3	MARSHALL, CHRISTOPHER	254127	S A 53	1	9/10/01	11/4/02
	MARSHALL, GREGORY	258406	C B 1	0	6/19/00	2/2/00
MI 3	MARTIN, D	137771	C A 0	0		9/13/99
MI 3	MARTIN, PERCY	270035	C B 39	1	12/1/00	2/24/03
MI 2	MARTIN, PERCY	270035	C B 39	1	5/19/03	6/24/04
	MARTIN, RICHARD	211631	C B 1	0	2/14/00	2/2/00
MI 1B	MARTIN, SAMUEL	269333	C B 1	1	3/26/01	2/17/03
	MARTINEZ, SACREMENTO	259670	C A 11	1	6/27/00	9/17/01
MI 3	MARTINO, CEDRIC	291396	C A 16	1	6/30/03	7/22/03
MI 3	MASIA, GILBERT	253081	C A 4	1	11/27/00	3/11/04
MI 2	MASON, SAMUEL	260005	C A 48	1	9/9/99	5/2/03
MI 3	MATA, ALBERTO	272646	C B 64	1	11/8/02	3/29/04
MI 2	MATTHEWS, DAVID	259638	C A 49	1	12/5/99	5/19/03
MI 1B	MATTHEWS, DAVID	259638	C A 49	1	12/5/99	6/24/04
	MATTHEWS, HENRY	258787	C A 21	1	12/5/99	8/25/00
MI 3	MATTHEWS, JOHNATON	265014	C B 62	1	10/31/01	5/1/03
	MAYES, JOHNNY	169207	C A 24	1	7/12/02	8/20/02
	MAYNARD, TOMMY	257255	A A 42	1	12/7/00	2/21/01
MI 3	McATEER, DONALD	292961	C B 18	1	12/8/03	6/24/04
	McCLAM, LARRY	282972	C B 26	2	5/13/02	5/31/02
	MCCLARY, JOHN	256274	C B 25	1	10/18/00	11/9/00
	MCCLELLAN, AVERY	265357	M X 0	2	8/16/00	6/19/01
MI 3	McCLENDON, STONEY	263680	S B 43	1	6/26/03	7/8/03
	McCLENDON, STONEY	263680	C A 23	2	8/10/01	6/12/02
	MCCLINTON, MICHAEL	270097	C A 48	1	11/17/00	8/15/02
	MCCLURKIN, DONALD	257463	C A 18	1	3/14/00	7/25/00
	MCCULLOUGH, TITUS	259881	C 0	1	10/4/99	5/11/00
	McDOWELL, JAMES	174261	C B 15	1	10/19/01	10/19/01
MI 3	MCFADDEN, HERBERT	184297	C B 30	1	5/18/04	6/24/04
MI 3	MCFADDEN, HERBERT L.	184297	A A 21	3	4/5/04	4/8/04
MI 3	McFADDEN, JAMES	235419	C A 37	1	4/5/02	6/1/04
	McFADDEN, LONELL	237115	S A 58	2	10/29/01	1/9/01
MI 3	McFARLAND, MICHAEL	266870	C A 55	1	9/23/02	6/24/04
	MCGILL, FATORMA	256787	C B 28	2	8/10/01	3/25/02
	McGREW, DAVID	266950	S B 40	1	3/22/01	2/10/02
	McKEE, ANTHONY	278025	C A 28	2	1/9/02	7/1/02
	MCKEE, EMORY	274280	C B 18	1	6/12/01	8/6/01
	MCKINNEY, MICHAEL	168361	C 0	1	3/29/00	3/29/00
MI 2	McLAMORE, TERRENCE	241127	C A 31	1	3/12/04	6/9/04

PLAINTIFF'S EXHIBIT

A - 0788
June 2004

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE I General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

PLAINTIFF'S EXHIBIT

3040

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

PLAINTIFF'S EXHIBIT C

Ackerman 5-6-11 2677

Inmate ID	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Y Hours	Pay Amount
257255	MAYNARD	TOMMY	LANE	20010212	0.50	73.68	36.84
257255	MAYNARD	TOMMY	LANE	20010226	0.50	13.78	6.89
292961	MCATEER	DONALD	C	20031229	0.50	51.28	25.64
292961	MCATEER	DONALD	C	20031229	0.50	4.63	2.31
292961	MCATEER	DONALD	C	20031229	0.50	51.79	25.89
292961	MCATEER	DONALD	C	20031229	0.50	36.54	18.27
292961	MCATEER	DONALD	C	20040112	0.50	44.52	22.26
292961	MCATEER	DONALD	C	20040126	0.50	69.85	34.92
292961	MCATEER	DONALD	C	20040209	0.50	76.07	38.03
292961	MCATEER	DONALD	C	20040223	0.50	95.91	47.95
292961	MCATEER	DONALD	C	20040308	0.50	92.40	46.20
292961	MCATEER	DONALD	C	20040322	0.50	80.88	40.44
292961	MCATEER	DONALD	C	20040405	0.50	90.13	45.06
292961	MCATEER	DONALD	C	20040419	0.50	84.14	42.07
292961	MCATEER	DONALD	C	20040503	0.50	93.00	46.50
292961	MCATEER	DONALD	C	20040517	0.50	101.02	50.51
292961	MCATEER	DONALD	C	20040531	0.50	100.98	50.49
282972	MCCLAM	LARRY		20020520	0.50	22.40	11.20
282972	MCCLAM	LARRY		20020603	0.50	36.89	18.44
256274	MCCLARY	JOHN		20001023	0.50	18.75	9.37
256274	MCCLARY	JOHN		20001106	0.50	98.42	49.21
256274	MCCLARY	JOHN		20001120	0.50	20.36	10.18
263680	MCCLENDON	STONEY	MACK	20010827	0.50	60.20	30.10
263680	MCCLENDON	STONEY	MACK	20010910	0.50	42.00	21.00
263680	MCCLENDON	STONEY	MACK	20010924	0.50	45.21	22.60
263680	MCCLENDON	STONEY	MACK	20011008	0.50	73.42	36.71
263680	MCCLENDON	STONEY	MACK	20011022	0.50	78.30	39.15
263680	MCCLENDON	STONEY	MACK	20011105	0.50	67.50	33.75
263680	MCCLENDON	STONEY	MACK	20011119	0.50	82.36	41.18
263680	MCCLENDON	STONEY	MACK	20011203	0.50	28.30	14.15
263680	MCCLENDON	STONEY	MACK	20011217	0.50	96.40	48.20
263680	MCCLENDON	STONEY	MACK	20011231	0.50	43.06	21.53
263680	MCCLENDON	STONEY	MACK	20020114	0.50	63.00	31.50
263680	MCCLENDON	STONEY	MACK	20020128	0.50	79.34	39.67
263680	MCCLENDON	STONEY	MACK	20020211	0.50	90.00	45.00
263680	MCCLENDON	STONEY	MACK	20020225	0.50	113.25	56.62
263680	MCCLENDON	STONEY	MACK	20020311	0.50	108.00	54.00
263680	MCCLENDON	STONEY	MACK	20020325	0.50	112.50	56.25
263680	MCCLENDON	STONEY	MACK	20020408	0.50	98.36	49.18
263680	MCCLENDON	STONEY	MACK	20020422	0.50	107.18	53.59
263680	MCCLENDON	STONEY	MACK	20020506	0.50	104.25	52.12
263680	MCCLENDON	STONEY	MACK	20020520	0.50	104.76	52.38
263680	MCCLENDON	STONEY	MACK	20020603	0.50	101.25	50.62
263680	MCCLENDON	STONEY	MACK	20020617	0.50	37.50	18.75
263680	MCCLENDON	STONEY	MACK	20030714	0.50	38.50	19.25
270097	MCCLINTON	MICHAEL		20001204	0.50	33.16	16.58
270097	MCCLINTON	MICHAEL		20001218	0.50	44.38	22.19
270097	MCCLINTON	MICHAEL		20010101	0.50	28.22	14.11
270097	MCCLINTON	MICHAEL		20010115	0.50	25.25	12.62
270097	MCCLINTON	MICHAEL		20010129	0.50	65.68	32.84
270097	MCCLINTON	MICHAEL		20010212	0.50	46.28	23.14
270097	MCCLINTON	MICHAEL		20010226	0.50	67.50	33.75
270097	MCCLINTON	MICHAEL		20010312	0.50	27.85	13.92
270097	MCCLINTON	MICHAEL		20010326	0.50	31.40	15.70

PLAINTIFF'S EXHIBIT F

3042

A - 1242
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers--Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

PLAINTIFF'S EXHIBIT H

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RESUME-3/03
Dr. Joseph J. Benich

FAMILY STATUS
Wife - Roberta; two children - Kiersten and J.J.

EDUCATION

9/68 - 6/72	Doctor of Business Administration Majors: Production Management and Marketing Kent State University, Kent, Ohio
1/66 - 5/68	Masters of Business Administration Majors: Economics and Marketing Case Western Reserve University, Cleveland, Ohio
9/65 - 1/66	Western Reserve University, Cleveland, Ohio Major: Law
9/61 - 6/65	Bachelor of Science in Chemical Engineering Case Institute of Technology, Cleveland, Ohio

ACADEMIC EXPERIENCE

9/93 –2003	Professor of Business Administration College of Charleston, Charleston, South Carolina
9/78 - 8/93	Associate Professor of Business Administration College of Charleston, Charleston, South Carolina
9/76 - 9/78	Associate Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/72 - 9/76	Assistant Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/69 - 6/72	Full-time Instructor, Economics Department Kent State University, Kent, Ohio
1/69 - 6/69	Teaching Fellow, Statistics Kent State University
9/68 - 12/68	Graduate Assistant Kent State University

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NON-ACADEMIC EXPERIENCE

6/74 -	Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts
7/78 -	Manager of Summertime Properties, Charleston, South Carolina
6/73 -	Business Consulting, J. Benich and Associates, Charleston, South Carolina
1/68 - 11/72	Business Advisor to Director of American Screw Products, Warrensville, Ohio
1/68 - 10/68	Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio
1/66 - 9/67	Industrial Market Research, Harshaw Chemical, Cleveland, Ohio
19/65 - 1/66	Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)
6/65 - 9/65	Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

3045

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Larry McClam

SCDC NUMBER: 218972

INSTITUTION: Lieber Corr. Inst. Turbeville NOV 08 2004

HOUSING UNIT: Cooper B-1 5B174

WORK ASSIGNMENT: Dorm

Office Use Only
Grievance No. CA07321-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Atkins v. Wicker do require payment of prevailing wages. Grievants were employed by W.T.I. and S.C.D.C. was W.T.I.'s "agent" in paying our wages. Atkins v. Wicker further allow this issue of payment of wages under S.C. Code 24-3-150 to be grieved pursuant to S.C.D.C.'s grievance procedures. Grievant incorporates by reference all exhibits attached to grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04.

Larry McClam 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

1-28-08
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Larry McClam 2-26-08
Grievant Signature Date

[signature] 2/26/08
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3046

MCCLAM, LARRY #282972 LCI-0734-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your participation in the prison industries project at Lieber first started on May 20, 2002 and ended June 3, 2002. Additionally, your pay records show that you again participated in this project from February 21, 2005 through August 20, 2007.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and,

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specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 28 months after SCDC first paid you for your participation in the project located at Lieber and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.
Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Larry McClam, #282972

Appellant;

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Larry McClam does hereb appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of th grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thu due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amend- ments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(worked and any overtime due. 9. Grievant claims back wages, pre/post judgment int- erest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Larry McClam
Appellant's Name

Turbeville C.I.
Mailing Address

P.O. Box 252

Turbeville, SC 29162
City, State, Zip Code

none
Telephone Number

Signed

11 - 6 - 08
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

3050

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
LARRY MCCLAM, #282972	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	

I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D. H. Westbrook
Douglas H. Westbrook

3051

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Herbert McFadden INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: individually, and on behalf of all inmate employees (IE's) listed on attached Exh. A *

SCDC NUMBER: 184297

INSTITUTION: Lieber

HOUSING UNIT: Cooper A-39 ✓

WORK ASSIGNMENT: P.I.

Office Use Only

Grievance No. Lieber 0776-04

Code: General MJ

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits document a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate for 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Herbert McFadden 9-27-0

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Cayton 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal. 3052

N/A

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

Ackerman 5-6-11 2688

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Oct. 28, 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Herbert McFadden 11-2-04
Grievant Signature Date

IGC Signature 11-2-04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

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D/R. H. McFadden #184297 LC10776-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3055

AMENDMENT TO GRIEVANCE OF HERBERT MCFADDEN, #184247

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 29.63 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0788; C, 0081,0086; F, 1244; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

3056

AMENDMENT TO GRIEVANCE OF HERBERT MCFADDEN, #184297

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 29.63 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0788; C, 0081,0086; F, 1244; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	MANGHAM, MARVIN	199465	C A 26	1	8/11/99	8/16/01
ME 3	MANICK, JAMAL	259313	A A 56	2	9/18/02	10/1/02
MI 2	MANICK, RICHARD	198535	C A 38	1	3/15/04	6/24/04
	MANIGAULT, CALVIN	215941	C 0	1	8/5/99	2/23/00
	MANIGO, NAMON	211629	C A 6	1	2/20/00	8/16/01
	MANYFIELD, JOHN	262770	C X 0	1	2/14/00	9/6/00
	MAPLE, ROGER	255831	C B 50	1	11/4/99	8/1/01
MI 3	MARSHALL, CHRISTOPHER	254127	S A 53	1	9/10/01	11/4/02
	MARSHALL, GREGORY	258406	C B 1	0	6/19/00	2/2/00
MI 3	MARTIN, D	137771	C A 0	0		9/13/99
MI 3	MARTIN, PERCY	270035	C B 39	1	12/1/00	2/24/03
MI 2	MARTIN, PERCY	270035	C B 39	1	5/19/03	6/24/04
	MARTIN, RICHARD	211631	C B 1	0	2/14/00	2/2/00
MI 1B	MARTIN, SAMUEL	269333	C B 1	1	3/26/01	2/17/03
	MARTINEZ, SACREMENTO	259670	C A 11	1	6/27/00	9/17/01
MI 3	MARTINO, CEDRIC	291396	C A 16	1	6/30/03	7/22/03
MI 3	MASIA, GILBERT	253081	C A 4	1	11/27/00	3/11/04
MI 2	MASON, SAMUEL	260005	C A 48	1	9/9/99	5/2/03
MI 3	MATA, ALBERTO	272646	C B 64	1	11/8/02	3/29/04
MI 2	MATTHEWS, DAVID	259638	C A 49	1	12/5/99	5/19/03
MI 1B	MATTHEWS, DAVID	259638	C A 49	1	12/5/99	6/24/04
	MATTHEWS, HENRY	258787	C A 21	1	12/5/99	8/25/00
MI 3	MATTHEWS, JOHNATON	265014	C B 62	1	10/31/01	5/1/03
	MAYES, JOHNNY	169207	C A 24	1	7/12/02	8/20/02
	MAYNARD, TOMMY	257255	A A 42	1	12/7/00	2/21/01
MI 3	McATEER, DONALD	292961	C B 18	1	12/8/03	6/24/04
	McCLAM, LARRY	282972	C B 26	2	5/13/02	5/31/02
	MCCLARY, JOHN	256274	C B 25	1	10/18/00	11/9/00
	MCCLELLAN, AVERY	265357	M X 0	2	8/16/00	6/19/01
MI 3	McCLENDON, STONEY	263680	S B 43	1	6/26/03	7/8/03
	McCLENDON, STONEY	263680	C A 23	2	8/10/01	6/12/02
	MCCLINTON, MICHAEL	270097	C A 48	1	11/17/00	8/15/02
	MCCLURKIN, DONALD	257463	C A 18	1	3/14/00	7/25/00
	MCCULLOUGH, TITUS	259881	C 0	1	10/4/99	5/11/00
	McDOWELL, JAMES	174261	C B 15	1	10/19/01	10/19/01
MI 3	MCFADDEN, HERBERT	184297	C B 30	1	5/18/04	6/24/04
MI 3	MCFADDEN, HERBERT L.	184297	A A 21	3	4/5/04	4/8/04
MI 3	McFADDEN, JAMES	235419	C A 37	1	4/5/02	6/1/04
	McFADDEN, LONELL	237115	S A 58	2	10/29/01	1/9/01
MI 3	McFARLAND, MICHAEL	266870	C A 55	1	9/23/02	6/24/04
	MCGILL, FATORMA	256787	C B 28	2	8/10/01	3/25/02
	McGREW, DAVID	266950	S B 40	1	3/22/01	2/10/02
	McKEE, ANTHONY	278025	C A 28	2	1/9/02	7/1/02
	MCKEE, EMORY	274280	C B 18	1	6/12/01	8/6/01
	MCKINNEY, MICHAEL	168361	C 0	1	3/29/00	3/29/00
MI 2	McLAMORE, TERRENCE	241127	C A 31	1	3/12/04	6/9/04

PLAINTIFF'S EXHIBIT A

A - 0788
June 2004

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

PLAINTIFF'S EXHIBIT C

3059

A - 0081
June 2004

00021

Ackerman 5-6-11 2695

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

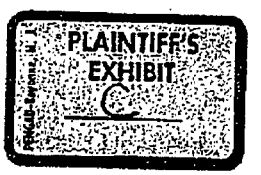
Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner



Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
259881	MCCULLOUGH	TITUS	TERRELL	19991025	0.35	53.00	18.55
259881	MCCULLOUGH	TITUS	TERRELL	19991108	0.35	72.50	25.37
259881	MCCULLOUGH	TITUS	TERRELL	19991108	0.55	40.00	22.00
259881	MCCULLOUGH	TITUS	TERRELL	19991122	0.35	55.85	19.54
259881	MCCULLOUGH	TITUS	TERRELL	19991206	0.35	53.83	18.84
259881	MCCULLOUGH	TITUS	TERRELL	19991220	2.50	2.00	5.00
259881	MCCULLOUGH	TITUS	TERRELL	19991220	0.50	68.95	34.47
259881	MCCULLOUGH	TITUS	TERRELL	20000103	0.50	27.28	13.64
259881	MCCULLOUGH	TITUS	TERRELL	20000103	0.55	0.18	0.09
259881	MCCULLOUGH	TITUS	TERRELL	20000117	0.50	72.93	36.46
259881	MCCULLOUGH	TITUS	TERRELL	20000131	0.50	61.23	30.61
259881	MCCULLOUGH	TITUS	TERRELL	20000214	0.50	70.12	35.06
259881	MCCULLOUGH	TITUS	TERRELL	20000214	0.80	6.50	5.20
259881	MCCULLOUGH	TITUS	TERRELL	20000214	0.55	7.50	4.12
259881	MCCULLOUGH	TITUS	TERRELL	20000228	0.50	65.55	32.77
259881	MCCULLOUGH	TITUS	TERRELL	20000228	1.05	15.00	15.75
259881	MCCULLOUGH	TITUS	TERRELL	20000313	0.50	72.40	36.20
259881	MCCULLOUGH	TITUS	TERRELL	20000327	0.50	72.41	36.20
259881	MCCULLOUGH	TITUS	TERRELL	20000410	0.50	75.00	37.50
259881	MCCULLOUGH	TITUS	TERRELL	20000410	0.55	1.43	0.78
259881	MCCULLOUGH	TITUS	TERRELL	20000424	0.50	75.00	37.50
259881	MCCULLOUGH	TITUS	TERRELL	20000424	0.55	5.28	2.90
259881	MCCULLOUGH	TITUS	TERRELL	20000508	0.35	30.47	10.66
259881	MCCULLOUGH	TITUS	TERRELL	20000522	0.50	19.75	9.87
259881	MCCULLOUGH	TITUS	TERRELL	20000522	0.25	7.50	1.87
184297	MCFADDEN	HERBERT	LEE	20040531	0.50	29.63	14.81
235419	MCFADDEN	JAMES		20020506	0.50	55.00	27.50
235419	MCFADDEN	JAMES		20020506	0.50	64.07	32.03
235419	MCFADDEN	JAMES		20020520	0.50	70.13	35.06
235419	MCFADDEN	JAMES		20020603	0.50	47.25	23.62
235419	MCFADDEN	JAMES		20020617	0.50	75.00	37.50
235419	MCFADDEN	JAMES		20020701	0.50	75.00	37.50
235419	MCFADDEN	JAMES		20020715	0.50	60.00	30.00
235419	MCFADDEN	JAMES		20020729	0.50	125.26	62.63
235419	MCFADDEN	JAMES		20020812	0.50	88.10	44.05
235419	MCFADDEN	JAMES		20020826	0.50	88.90	44.45
235419	MCFADDEN	JAMES		20020909	0.50	79.80	39.90
235419	MCFADDEN	JAMES		20020923	0.50	90.00	45.00
235419	MCFADDEN	JAMES		20021007	0.50	71.25	35.62
235419	MCFADDEN	JAMES		20021021	0.50	112.50	56.25
235419	MCFADDEN	JAMES		20021104	0.50	112.50	56.25
235419	MCFADDEN	JAMES		20021118	0.50	114.65	57.32
235419	MCFADDEN	JAMES		20021202	0.50	108.72	54.36
235419	MCFADDEN	JAMES		20021216	0.50	117.83	58.91
235419	MCFADDEN	JAMES		20021230	0.50	58.85	29.42
235419	MCFADDEN	JAMES		20030113	0.50	63.92	31.96
235419	MCFADDEN	JAMES		20030127	0.50	69.14	34.57
235419	MCFADDEN	JAMES		20030210	0.50	77.49	38.74
235419	MCFADDEN	JAMES		20030224	0.50	73.24	36.62
235419	MCFADDEN	JAMES		20030310	0.50	90.13	45.06
235419	MCFADDEN	JAMES		20030324	0.50	97.72	48.86
235419	MCFADDEN	JAMES		20030407	0.50	54.57	27.28
235419	MCFADDEN	JAMES		20030714	0.50	145.60	72.80
235419	MCFADDEN	JAMES		20030728	0.50	124.39	62.19

PLAINTIFF'S EXHIBIT F

3061

A - 1244
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000; and $12.06 - $10.10 for 2001.



3062

RESUME-3/03
Dr. Joseph J. Benich

FAMILY STATUS
Wife - Roberta; two children - Kiersten and J.J.

EDUCATION

9/68 - 6/72	Doctor of Business Administration Majors: Production Management and Marketing Kent State University, Kent, Ohio
1/66 - 5/68	Masters of Business Administration Majors: Economics and Marketing Case Western Reserve University, Cleveland, Ohio
9/65 - 1/66	Western Reserve University, Cleveland, Ohio Major: Law
9/61 - 6/65	Bachelor of Science in Chemical Engineering Case Institute of Technology, Cleveland, Ohio

ACADEMIC EXPERIENCE

9/93 –2003	Professor of Business Administration College of Charleston, Charleston, South Carolina
9/78 - 8/93	Associate Professor of Business Administration College of Charleston, Charleston, South Carolina
9/76 - 9/78	Associate Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/72 - 9/76	Assistant Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/69 - 6/72	Full-time Instructor, Economics Department Kent State University, Kent, Ohio
1/69 - 6/69	Teaching Fellow, Statistics Kent State University
9/68 - 12/68	Graduate Assistant Kent State University

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NON-ACADEMIC EXPERIENCE

6/74 -	Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts
7/78 -	Manager of Summertime Properties, Charleston, South Carolina
6/73 -	Business Consulting, J. Benich and Associates, Charleston, South Carolina
1/68 - 11/72	Business Advisor to Director of American Screw Products, Warrensville, Ohio
1/68 - 10/68	Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio
1/66 - 9/67	Industrial Market Research, Harshaw Chemical, Cleveland, Ohio
19/65 - 1/66	Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)
6/65 - 9/65	Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11.7.04

INMATE NAME: Herbert McFadden
SCDC NUMBER: 184297
INSTITUTION: Lieber
HOUSING UNIT: Cooper A-39
WORK ASSIGNMENT: PI

NOV 04 2004
PP

Office Use Only
Grievance No. CG 0716-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins and Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTI's "agent" in paying our wages. Adkins and Wicker further allow this issue of payment of wages under S.C. Code Ann. § 24-3-430 to be grieved pursuant to SCDC's grievance procedure. Grievant incorporates by reference all exhibits attached to grievance filed by Darrell Williams and attorney Douglas Westbrook on 9-22-04.

Herbert McFadden 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Herbert McFadden 5-17-07
Grievant Signature Date

TA/ 5/17/07
IGC Signature Date

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(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

Ackerman 5-6-11 2701

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

3066

MCFADDEN LCI-0776-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on April 5, 2004 and that your participation in this project ended on August 2, 2005.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over five (5) months after SCDC first paid you for your participation in the project located at Lieber and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Herbert McFadden, #184297

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07__-ALJ-04-_____-___
GRIEVANCE NO.: _____

Notice is hereby given that Herbert McFadden does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-17-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.
2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.
3. Applying §13.1 to these facts violated due process.
4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.
5. Grievance proved all elements of claim for prevailing/negot. wages.
6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.
7. To extent Appellant worked OT he is entitled to it under SCDC policy.
8. Appellant claims pre/post judgment interest, costs and attorney fees.

Herbert McFadden
Appellant's Name
Turbeville C.I.
P.O. Box 252
Mailing Address
Turbeville, SC 29162
City, State, Zip Code
none
Telephone Number

DG Westbrook
Signed
5-30-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

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STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
HERBERT MCFADDEN, #184297	)	
	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
	)	
Respondent/Appellee.	)	

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D. H. Westbrook
Douglas H. Westbrook

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 4/5/04
INMATE GRIEVANCE FORM

JAMES McFADDEN individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: Listed on attached Exh. A *
SCDC NUMBER: 235419
INSTITUTION: Lieber Corr Inst
HOUSING UNIT: Cooper A 37 WC259
WORK ASSIGNMENT: P-I-I

Office Use Only
Grievance No. Lieber 0708-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work pro gram. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-43 to pay IE's the "prevailing wage" for work of a similar nature in the privat sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Liebe were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits docum a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emp ment periods of all 1000 plus class members, and the pay dates, rates, hours and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the f ture; all as determined from Exhibits A-H; and the time cards, pay stubs, a other records for class members shown to IE's counsel July 20, 2004 at Liebe in Jack Staudt's custody. IE's also request pre/post judgment interest, cos and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's ha verbally requested WTI/Lieber to pay them prevailing wages. Darrell William in 2001 formally protested the improper wages, and filed a grievance which w dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Will et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certif a class action representing the class identified in Exh. A. On August 23, 2 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

James McFadden 9/27/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlton 10-28-04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

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Ackerman 5-6-11 2708

WARDEN'S DECISION AND REASON:

SEE ATTACHED

Warden Signature 5-24-07 Date

☑ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

James McFadden 5/30/07
Grievant Signature Date

IGC Signature 5/30/07 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

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JM J McDadden, # 235419 CC/0708-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

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MCFADDEN LCI-0708-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 1 grievance form dated September 27, 2004 as well as any and all documents you submitted in support of your Step 1 grievance form.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on April 5, 2002 and ended January 2, 2006. Additionally, these records reflect that you returned to this project for a second work assignment that began May 24, 2006 and, as of the date of this response, your participation continues.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

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Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of your Step 1 grievance clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004 throughout your Step 1 grievance.

Contrary to the claims you made in your Step 1 grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your Step 1 grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "inmate/employee" within your Step 1 grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your grievance in its entirety.

3078

65-01

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: James McFadden

SCDC NUMBER: 235419

INSTITUTION: Lieber Correctional Inst.

HOUSING UNIT: Wando C-259

WORK ASSIGNMENT:

RECEIVED JUN 12 2007 INMATE GRIEVANCE

Office Use Only
Grievance No. LCI-0758-07
Code: General ✓
Policy
Disc. Hear.
Class.
Date Received 6/6/07
IGC Initials VO
✓ IGA - ABH 7-13-07

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker held that §24-3-430's wage provisions were "mandatory," and created a "statutory right to the payment of a prevailing wage." These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under §24-3-430, with review by the ALJ.

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4.00 per hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct, and back wages are owed.

Grievant incorporates by reference Exhibits A-H attached to grievances filed by Darrell Williams and counsel on September 22, 2004.

X James McFadden 5-30-07
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

James McFadden
Grievant Signature Date

IGC Signature 8/17/07 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3079

MCFADDEN LCI-0708-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 30, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 27, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on April 5, 2002 and that your participation in this project ended on January 2, 2006.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.
Moreover, you filed your Step 1 grievance nearly 30 months after SCDC first paid you for your participation in the project located at Lieber and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step 1 grievance.

Moreover, I specifically conclude that the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Therefore, I deny your Step 2 appeal in its entirety.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

3080

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James McFadden, #235419,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.: _____

Notice is hereby given that James McFadden does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 8-7-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

James McFadden
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

Signed
8-16-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

3081

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
JAMES MCFADDEN, #235419	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 24th day of August, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

3082

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Michael K McFarland
SCDC NUMBER: 266870
INSTITUTION: Lieber C.I.
HOUSING UNIT: CA-55
WORK ASSIGNMENT: P.I. #2

Office Use Only
Grievance No. Lieber 09240 4
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The department is asking to review and determine wheather I am entiled to receive back wages due to me from working at Lieber prison Industay program when that only paid me 35 cents an hour and not prevailing wages as required under South Carolina Code ann, sec. 24-3-430 (A-7) as well as fact that from Sept 23 2002 to this date know. They denied me prevailing wages

ACTION REQUESTED: All money due to me be paid at prevaling and over time Rate and prevaling wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed ordered to file Grievance by court + wicker v. SCDC Adkins V. SC.DC.

Michael McFarland 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Wardens response.

L Carlton 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

3083

Ackerman 5-6-11 2719

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature Oct. 28, 04 Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Michael McFarland 11-2-04
Grievant Signature Date

IGC Signature 11-2-04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3084

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Michael K. McFarland INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 266870

INSTITUTION: Lieber C.I.

HOUSING UNIT: CA-65

WORK ASSIGNMENT: P.I. # 2

Office Use Only

Grievance No.

Code: General

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits document a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate for 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 2004 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Michael K. McFarland 9-27-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.
See CCI 0624-04.

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

308.5

Grievant Signature Date

Ackerman 5-6-11 2721

WARDEN'S DECISION AND REASON:

See Attachment

Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3086

Inmate M. McFarland, #266870 CI 0624-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3087

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3088

AMENDMENT TO GRIEVANCE OF MICHAEL MCFARLAND, #266870

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 3872.78 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Michael McFarland 2-4-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0788; C, 0081,0086; F, 1245-1246; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	MANGHAM, MARVIN	199465	C A 26	1	8/11/99	8/16/01
ME 3	MANICK, JAMAL	259313	A A 56	2	9/18/02	10/1/02
MI 2	MANICK, RICHARD	198535	C A 38	1	3/15/04	6/24/04
	MANIGAULT, CALVIN	215941	C 0	1	8/5/99	2/23/00
	MANIGO, NAMON	211629	C A 6	1	2/20/00	8/16/01
	MANYFIELD, JOHN	262770	C X 0	1	2/14/00	9/6/00
	MAPLE, ROGER	255831	C B 50	1	11/4/99	8/1/01
MI 3	MARSHALL, CHRISTOPHER	254127	S A 53	1	9/10/01	11/4/02
	MARSHALL, GREGORY	258406	C B 1	0	6/19/00	2/2/00
MI 3	MARTIN, D	137771	C A 0	0		9/13/99
MI 3	MARTIN, PERCY	270035	C B 39	1	12/1/00	2/24/03
MI 2	MARTIN, PERCY	270035	C B 39	1	5/19/03	6/24/04
	MARTIN, RICHARD	211631	C B 1	0	2/14/00	2/2/00
MI 1B	MARTIN, SAMUEL	269333	C B 1	1	3/26/01	2/17/03
	MARTINEZ, SACREMENTO	259670	C A 11	1	6/27/00	9/17/01
MI 3	MARTINO, CEDRIC	291396	C A 16	1	6/30/03	7/22/03
MI 3	MASIA, GILBERT	253081	C A 4	1	11/27/00	3/11/04
MI 2	MASON, SAMUEL	260005	C A 48	1	9/9/99	5/2/03
MI 3	MATA, ALBERTO	272646	C B 64	1	11/8/02	3/29/04
MI 2	MATTHEWS, DAVID	259638	C A 49	1	12/5/99	5/19/03
MI 1B	MATTHEWS, DAVID	259638	C A 49	1	12/5/99	6/24/04
	MATTHEWS, HENRY	258787	C A 21	1	12/5/99	8/25/00
MI 3	MATTHEWS, JOHNATON	265014	C B 62	1	10/31/01	5/1/03
	MAYES, JOHNNY	169207	C A 24	1	7/12/02	8/20/02
	MAYNARD, TOMMY	257255	A A 42	1	12/7/00	2/21/01
MI 3	McATEER, DONALD	292961	C B 18	1	12/8/03	6/24/04
	McCLAM, LARRY	282972	C B 26	2	5/13/02	5/31/02
	MCCLARY, JOHN	256274	C B 25	1	10/18/00	11/9/00
	MCCLELLAN, AVERY	265357	M X 0	2	8/16/00	6/19/01
MI 3	McCLENDON, STONEY	263680	S B 43	1	6/26/03	7/8/03
	McCLENDON, STONEY	263680	C A 23	2	8/10/01	6/12/02
	MCCLINTON, MICHAEL	270097	C A 48	1	11/17/00	8/15/02
	MCCLURKIN, DONALD	257463	C A 18	1	3/14/00	7/25/00
	MCCULLOUGH, TITUS	259881	C 0	1	10/4/99	5/11/00
	McDOWELL, JAMES	174261	C B 15	1	10/19/01	10/19/01
MI 3	MCFADDEN, HERBERT	184297	C B 30	1	5/18/04	6/24/04
MI 3	MCFADDEN, HERBERT L.	184297	A A 21	3	4/5/04	4/8/04
MI 3	McFADDEN, JAMES	235419	C A 37	1	4/5/02	6/1/04
	McFADDEN, LONELL	237115	S A 58	2	10/29/01	1/9/01
MI 3	McFARLAND, MICHAEL	266870	C A 55	1	9/23/02	6/24/04
	MCGILL, FATORMA	256787	C B 28	2	8/10/01	3/25/02
	McGREW, DAVID	266950	S B 40	1	3/22/01	2/10/02
	McKEE, ANTHONY	278025	C A 28	2	1/9/02	7/1/02
	MCKEE, EMORY	274280	C B 18	1	6/12/01	8/6/01
	MCKINNEY, MICHAEL	168361	C 0	1	3/29/00	3/29/00
MI 2	McLAMORE, TERRENCE	241127	C A 31	1	3/12/04	6/9/04

PLAINTIFF'S EXHIBIT A

A.- 0788
June 2004

3090

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

THIS AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

PLAINTIFF'S EXHIBIT C
3091

Ackerman 5-6-11 2727

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

PLAINTIFF'S EXHIBIT C

A - 0086
June 2004

3092

Inmate	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
235419	MCFADDEN	JAMES		20030811	0.50	110.84	55.42
235419	MCFADDEN	JAMES		20030825	0.50	118.88	59.44
235419	MCFADDEN	JAMES		20030908	0.50	86.31	43.15
235419	MCFADDEN	JAMES		20030922	0.50	103.16	51.58
235419	MCFADDEN	JAMES		20031006	0.50	97.36	48.68
235419	MCFADDEN	JAMES		20031020	0.50	101.12	50.56
235419	MCFADDEN	JAMES		20031103	0.50	106.45	53.22
235419	MCFADDEN	JAMES		20031117	0.50	114.49	57.24
235419	MCFADDEN	JAMES		20031201	0.50	104.52	52.26
235419	MCFADDEN	JAMES		20031215	0.50	114.02	57.01
235419	MCFADDEN	JAMES		20031229	0.50	118.06	59.03
235419	MCFADDEN	JAMES		20040112	0.50	83.76	41.88
235419	MCFADDEN	JAMES		20040126	0.50	115.56	57.78
235419	MCFADDEN	JAMES		20040209	0.50	129.50	64.75
235419	MCFADDEN	JAMES		20040223	0.50	140.38	70.19
235419	MCFADDEN	JAMES		20040308	0.50	132.58	66.29
235419	MCFADDEN	JAMES		20040322	0.50	130.02	65.01
235419	MCFADDEN	JAMES		20040405	0.50	123.76	61.88
235419	MCFADDEN	JAMES		20040419	0.50	122.40	61.20
235419	MCFADDEN	JAMES		20040503	0.50	142.94	71.47
235419	MCFADDEN	JAMES		20040517	0.50	156.54	78.27
235419	MCFADDEN	JAMES		20040531	0.50	128.02	64.01
237115	MCFADDEN, JR.	LONNELL		20011231	0.50	26.75	13.37
237115	MCFADDEN, JR.	LONNELL		20020114	0.50	22.59	11.29
266870	MCFARLAND	MICHAEL	KEVIN	20021007	0.50	36.85	18.42
266870	MCFARLAND	MICHAEL	KEVIN	20021021	0.50	40.93	20.46
266870	MCFARLAND	MICHAEL	KEVIN	20021104	0.50	51.10	25.55
266870	MCFARLAND	MICHAEL	KEVIN	20021118	0.50	57.66	28.83
266870	MCFARLAND	MICHAEL	KEVIN	20021202	0.50	66.63	33.31
266870	MCFARLAND	MICHAEL	KEVIN	20021216	0.50	76.50	38.25
266870	MCFARLAND	MICHAEL	KEVIN	20021230	0.50	41.45	20.72
266870	MCFARLAND	MICHAEL	KEVIN	20030113	0.50	68.30	34.15
266870	MCFARLAND	MICHAEL	KEVIN	20030127	0.50	77.68	38.84
266870	MCFARLAND	MICHAEL	KEVIN	20030210	0.50	39.63	19.81
266870	MCFARLAND	MICHAEL	KEVIN	20030224	0.50	74.57	37.28
266870	MCFARLAND	MICHAEL	KEVIN	20030224	0.50	74.57	37.28
266870	MCFARLAND	MICHAEL	KEVIN	20030310	0.50	82.88	41.44
266870	MCFARLAND	MICHAEL	KEVIN	20030324	0.50	86.40	43.20
266870	MCFARLAND	MICHAEL	KEVIN	20030407	0.50	86.58	43.29
266870	MCFARLAND	MICHAEL	KEVIN	20030421	0.50	63.45	31.72
266870	MCFARLAND	MICHAEL	KEVIN	20030505	0.50	69.68	34.84
266870	MCFARLAND	MICHAEL	KEVIN	20030602	0.50	73.50	36.75
266870	MCFARLAND	MICHAEL	KEVIN	20030616	0.50	117.97	58.98
266870	MCFARLAND	MICHAEL	KEVIN	20030630	0.50	109.16	54.58
266870	MCFARLAND	MICHAEL	KEVIN	20030714	0.50	112.16	56.08
266870	MCFARLAND	MICHAEL	KEVIN	20030728	0.50	107.45	53.72
266870	MCFARLAND	MICHAEL	KEVIN	20030811	0.50	86.51	43.25
266870	MCFARLAND	MICHAEL	KEVIN	20030825	0.50	97.01	48.50
266870	MCFARLAND	MICHAEL	KEVIN	20030908	0.50	64.61	32.30
266870	MCFARLAND	MICHAEL	KEVIN	20030922	0.50	101.43	50.71
266870	MCFARLAND	MICHAEL	KEVIN	20031006	0.50	71.73	35.86
266870	MCFARLAND	MICHAEL	KEVIN	20031020	0.50	118.46	59.23
266870	MCFARLAND	MICHAEL	KEVIN	20031103	0.50	118.69	59.34
266870	MCFARLAND	MICHAEL	KEVIN	20031117	0.50	122.98	61.49

PLAINTIFF'S EXHIBIT 5

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
266870	MCFARLAND	MICHAEL	KEVIN	20031201	0.50	102.90	51.45
266870	MCFARLAND	MICHAEL	KEVIN	20031215	0.50	92.62	46.31
266870	MCFARLAND	MICHAEL	KEVIN	20031229	0.50	91.74	45.87
266870	MCFARLAND	MICHAEL	KEVIN	20040112	0.50	54.09	27.04
266870	MCFARLAND	MICHAEL	KEVIN	20040126	0.50	73.10	36.55
266870	MCFARLAND	MICHAEL	KEVIN	20040209	0.50	125.83	62.91
266870	MCFARLAND	MICHAEL	KEVIN	20040223	0.50	136.54	68.27
266870	MCFARLAND	MICHAEL	KEVIN	20040308	0.50	125.83	62.91
266870	MCFARLAND	MICHAEL	KEVIN	20040322	0.50	117.78	58.89
266870	MCFARLAND	MICHAEL	KEVIN	20040405	0.50	110.25	55.12
266870	MCFARLAND	MICHAEL	KEVIN	20040419	0.50	110.76	55.38
266870	MCFARLAND	MICHAEL	KEVIN	20040503	0.50	113.95	56.97
266870	MCFARLAND	MICHAEL	KEVIN	20040517	0.50	124.60	62.30
266870	MCFARLAND	MICHAEL	KEVIN	20040531	0.50	96.27	48.13
256787	MCGILL	FATORMA		20010827	0.50	50.34	25.17
256787	MCGILL	FATORMA		20010910	0.50	47.25	23.62
256787	MCGILL	FATORMA		20010924	0.50	31.11	15.55
256787	MCGILL	FATORMA		20011008	0.50	67.50	33.75
256787	MCGILL	FATORMA		20011022	0.50	67.50	33.75
256787	MCGILL	FATORMA		20011105	0.50	79.95	39.97
256787	MCGILL	FATORMA		20011119	0.50	71.25	35.62
256787	MCGILL	FATORMA		20011203	0.50	66.06	33.03
256787	MCGILL	FATORMA		20011217	0.50	92.48	46.24
256787	MCGILL	FATORMA		20011231	0.50	45.00	22.50
256787	MCGILL	FATORMA		20020114	0.50	63.00	31.50
256787	MCGILL	FATORMA		20020128	0.50	76.20	38.10
256787	MCGILL	FATORMA		20020211	0.50	80.48	40.24
256787	MCGILL	FATORMA		20020225	0.50	126.00	63.00
256787	MCGILL	FATORMA		20020311	0.50	115.67	57.83
256787	MCGILL	FATORMA		20020325	0.50	112.40	56.20
256787	MCGILL	FATORMA		20020408	0.50	7.50	3.75
266950	MCGREW	DAVID	WAYNE	20010326	0.50	7.09	3.54
266950	MCGREW	DAVID	WAYNE	20010409	0.50	63.86	31.93
266950	MCGREW	DAVID	WAYNE	20010423	0.50	25.73	12.86
266950	MCGREW	DAVID	WAYNE	20010507	0.50	52.02	26.01
266950	MCGREW	DAVID	WAYNE	20010521	0.50	67.56	33.78
266950	MCGREW	DAVID	WAYNE	20010604	0.50	18.84	9.42
266950	MCGREW	DAVID	WAYNE	20010618	0.50	24.73	12.36
266950	MCGREW	DAVID	WAYNE	20010702	0.50	67.62	33.81
266950	MCGREW	DAVID	WAYNE	20010716	0.50	71.10	35.55
266950	MCGREW	DAVID	WAYNE	20010730	0.50	4.98	2.49
278025	MCKEE	ANTHONY	FRANK	20020128	0.50	43.28	21.64
278025	MCKEE	ANTHONY	FRANK	20020211	0.50	45.35	22.67
278025	MCKEE	ANTHONY	FRANK	20020225	0.50	46.89	23.44
278025	MCKEE	ANTHONY	FRANK	20020311	0.50	52.13	26.06
278025	MCKEE	ANTHONY	FRANK	20020325	0.50	73.22	36.61
278025	MCKEE	ANTHONY	FRANK	20020408	0.50	63.97	31.98
278025	MCKEE	ANTHONY	FRANK	20020422	0.50	69.60	34.80
278025	MCKEE	ANTHONY	FRANK	20020506	0.50	100.31	50.15
278025	MCKEE	ANTHONY	FRANK	20020520	0.50	77.40	38.70
278025	MCKEE	ANTHONY	FRANK	20020603	0.50	74.94	37.47
278025	MCKEE	ANTHONY	FRANK	20020617	0.50	86.06	43.03
278025	MCKEE	ANTHONY	FRANK	20020701	0.50	27.69	13.84
274280	MCKEE	EMORY		20010618	0.50	11.94	5.97

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.

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PLAINTIFF'S EXHIBIT H

RESUME-3/03
Dr. Joseph J. Benich

FAMILY STATUS
Wife - Roberta; two children - Kiersten and J.J.

EDUCATION

9/68 - 6/72	Doctor of Business Administration Majors: Production Management and Marketing Kent State University, Kent, Ohio
1/66 - 5/68	Masters of Business Administration Majors: Economics and Marketing Case Western Reserve University, Cleveland, Ohio
9/65 - 1/66	Western Reserve University, Cleveland, Ohio Major: Law
9/61 - 6/65	Bachelor of Science in Chemical Engineering Case Institute of Technology, Cleveland, Ohio

ACADEMIC EXPERIENCE

9/93 –2003	Professor of Business Administration College of Charleston, Charleston, South Carolina
9/78 - 8/93	Associate Professor of Business Administration College of Charleston, Charleston, South Carolina
9/76 - 9/78	Associate Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/72 - 9/76	Assistant Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/69 - 6/72	Full-time Instructor, Economics Department Kent State University, Kent, Ohio
1/69 - 6/69	Teaching Fellow, Statistics Kent State University
9/68 - 12/68	Graduate Assistant Kent State University

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NON-ACADEMIC EXPERIENCE

6/74 -	Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts
7/78 -	Manager of Summertime Properties, Charleston, South Carolina
6/73 -	Business Consulting, J. Benich and Associates, Charleston, South Carolina
1/68 - 11/72	Business Advisor to Director of American Screw Products, Warrensville, Ohio
1/68 - 10/68	Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio
1/66 - 9/67	Industrial Market Research, Harshaw Chemical, Cleveland, Ohio
19/65 - 1/66	Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)
6/65 - 9/65	Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-2-04

INMATE NAME: Michael K. McFarland
SCDC NUMBER: #266870 NOV 08 2004
INSTITUTION: Lieber C.I. PP
HOUSING UNIT: CA-55
WORK ASSIGNMENT: P.I. #2

Office Use Only
Grievance No. 2204624-04
Code: General CM
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins & Wicker do require payment of prevailing wages. Grievants were employed by WTI and SCDC was WTIs "Agent" in paying our wages. Adkins & Wicker further allows this issues of payment of wages under SC code 24-3-430 to be grieved pursant to SCDC grievance procedure Grievants incorporates by reference all exhibits attached to grievance filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04

Michael McFarland 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Michael McFarland 5-22-07
Grievant Signature Date

5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

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Ackerman 5-6-11 2734

MCFARLAND LCI-0624-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on September 23, 2002 and that, as of the date of this response, you are still participating in this project.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

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Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance two (2) years after SCDC first paid you for your participation in the project located at Lieber and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael McFarland, #266870,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.: _____

Notice is hereby given that Michael McFarland does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy.

8. Appellant claims pre/post judgment interest, costs and attorney fees.

Michael McFarland
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

Signed

5-30-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

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STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
MICHAEL MCFARLAND, #266870	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 5th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original and one copy were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

DH Westbrook
Douglas H. Westbrook

3103

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Tony L. McNeil INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 235846

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: AA-51

WORK ASSIGNMENT: Cafe

Office Use Only

Grievance No.: Lieber 0794-04

Code: General CM

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, S37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits document a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate for 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Tony McNeil 9/29/04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlton 10/28/04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.

☐ I do not accept the action taken and wish to appeal.

N/A

Grievant Signature Date

3104

Ackerman 5-6-11 2740

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Date Oct. 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator

3105

Jr. L. J. McNeil, #235846 LC10794-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3106

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3/07

AMENDMENT TO GRIEVANCE OF TONY MCNEIL, #235846

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; 664.51 hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 1.47 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0789; C, 0081,0086; F, 1248; H, 1-3.

* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

3108

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI-3194-07
Code: General
Policy
Disc. Hear.
Class.
Date Received 5-17-07
IGC Initials
✓ IGA - ABH 7-13-07

INMATE NAME: Tony L. McNeil
SCDC NUMBER: 235846
INSTITUTION: Lieber Corr
HOUSING UNIT: Max-123
WORK ASSIGNMENT: N/A

RECEIVED
JUN 20 2007
INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker held that §24-3-430's wage provisions were "mandatory", and created a "statutory right to the payment of a prevailing wage". These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under §24-3-430, with review by the ALJ.

SCDC owes Grievant back-wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4/hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct, and back wages are owed.

Grievant incorporates by reference Exhibits A-H attached to grievances filed by Darrell Williams and counsel on September 22, 2004.

Tony McNeil 5/7/14
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Tony McNeil 8/2/07
Grievant Signature Date

J. Ransom 8/2/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3109

Ackerman 5-6-11 2745

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
McNeil, Tony	235846	LCI-0794-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 14, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 29, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 1, 2002 and that your participation in this project ended on October 8, 2002.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Inmate Name	SCDC #	Grievance #
McNeil, Tony	235846	LCI-0794-04

Moreover, you filed your Step 1 grievance nearly two (2) years after both SCDC first paid you for your participation in the project located at Lieber and your participation in this project ended and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step I grievance.

Moreover, I specifically conclude that the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Therefore, I deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Tony McNeil, #235846,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Tony McNeil does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Tony McNeil
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-05
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

3/12

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
TONY MCNEIL, #235846	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	
	)	

I certify that on the 7th day of Nov., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

3/13

AMENDMENT TO GRIEVANCE OF EDSELL MCNEILL, #219506

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for 370.29 hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 528.63 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

(Grievant Signature) (Date)

* Attached are Exh. A, 0789; C, 0081,0086; F, 1248-1249; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Thomas Miles
SCDC NUMBER: 246763
INSTITUTION: Lieber CI
HOUSING UNIT: Ashley B 06
WORK ASSIGNMENT: None

Office Use Only
Grievance No. Lieber 0647-04
Code: General NW
Policy
Disc. Hear.
Class.
Date Received SEP 23 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The Department is asked to review and determine whether I am entitled to recieve back wages, which are due me, from working at "Lieber Prison Industries program" when they only paid me $0.35 an hour and not prevailing wages as stated under South Carolina Code Ann. Sec. 24-3-430 (A-7), As well as the fact they getting $4.00 an hour and still not pay me from 15 June 00 thru 25 January 04 — they denied me prevailing wages.

ACTION REQUESTED:

That all money due me be paid at prevailing wages as well as overtime, moreover, the prevailing wages be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed, ordered to file grievance by Court under Wicker v. SCDC and Adkins v SCDC.

Thomas Miles 21 Sept 04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlton 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 3115 (CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature — Date: Oct. 28. 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature — Date: 10/29/04

IGC Signature — Date: 10/29/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. CI-0697-04
Code: General RXY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: Thomas Miles
SCDC NUMBER: 246763 NOV 04 2004
INSTITUTION: Leibre PP
HOUSING UNIT: Ashley B-06
WORK ASSIGNMENT: N-A-

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

The Department is asked to review and determine whether I'm entitled to recieve Back wages, which are due, from working at "Lieber Prison Industries Program" when they only paid me $0.35 an hour and not Prevailing wages as stated under South Carolina Code Ann. Sec. 24-3-430 (A-7). AS well as the fact they getting $4.00 an hour and still not Payme from 15 June thru 25 January 01 - they denied me Prevailing wages

Thomas Miles 11/2/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

3/17 (SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

3118

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1 8/2/05

RECEIVED SEP 13 2005 INMATE GRIEVANCE

INMATE NAME: Thomas Miles
SCDC NUMBER: 246763
INSTITUTION: Lieber
HOUSING UNIT: Ashley B-b
WORK ASSIGNMENT:

Office Use Only
Grievance No. LCI-1157-05
Code: General V H/SD
Policy
Disc. Hear.
Class.
Date Received AUG 03, 05
IGC Initials
9/12/05

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
Grievant was employed in the Williams Tech at Lieber Corr which was established under S.C. code § 24-3-310. Grievant was denied prevailing wages and now request that they be paid to him under S.C. code § 24-3-430.

ACTION REQUESTED: To be paid prevailing wages for the hours worked at Williams Tech at Lieber.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
By request and grievance

Thomas Miles 8-1-05
Grievant Signature Date

ACTION TAKEN BY IGC:

Duplicate LCI-0697-04

IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 3119

Grievant Signature Date

Ackerman 5-6-11 2755

WARDEN'S DECISION AND REASON:

Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☐ I do not accept the Warden's decision and wish to appeal.

Grievant Signature Date

IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3/20

D/R D Miller, # 246763 LC10692-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

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AMENDMENT TO GRIEVANCE OF THOMAS MILES, #246763

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; 103.91 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 1454.33 hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Thomas Miles 2/23/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0789; C, 0081,0086; F, 1249-1250, H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

3/23

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
MI 3	McMICHAEL, BRIAN	291500	E B 15	1	4/13/04	4/14/04
	MCMILLAN, COREY	226661	M X 0	2	3/15/00	7/17/01
MI 3	McNAIR, WILLIE	285558	C B 14	2	9/20/02	9/25/02
MI 3	McNEIL, EDSEL	219506	C A 24	1	4/5/02	9/4/02
	McNEIL, KENNETH	281799	C B 30	1	6/20/02	7/16/02
ME 3	McNEIL, TONY	235846	A B 42	1	10/1/02	10/8/02
	MCRAY, MARK	269169	C B 30	1	10/16/00	1/29/00
MI 3	MENDOZA, ERIBERTO	283772	C A 28	1	8/12/02	5/2/03
	MESSINK, GREGORY	275960	S B 22	2	8/17/01	8/27/01
	MEYERS, ROBERT	229315	C B 1	0	9/27/99	2/2/00
MI 2	MICKELL, JOHN	155009	C B 25	1	6/20/02	8/28/02
MI 2	MICKELL, JOHN	155009	C B 22	1	9/23/02	10/1/02
	MILES, THOMAS	246763	S B 53	1	6/7/01	1/29/02
MI 2	MILFORD, FRANKLIN	278855	C A 19	2	5/13/02	12/16/02
	MILLER, ADRIAN	282638	A A 33	1	5/6/02	5/31/02
	MILLER, CALVIN	163907	S A 34	1	3/21/00	6/16/00
	MILLER, DANA	253789	M X 0	2	1/6/00	6/27/00
MI 3	MILLER, DARRIN	259593	C B 50	1	4/10/02	6/24/04
MI 3	MILLER, ERNEST	235474	C A 44	1	3/21/00	6/26/03
	MILLER, JOHN	268152	E B 16	1	10/12/01	10/24/01
	MILLER, MOSES	256762	C B 5	1	11/4/99	3/5/01
ME 3	MILLER, RAY	214870	C B 28	2	9/30/02	11/12/02
	MILLER, WILLIAM	277143	S B 46	1	9/5/01	6/6/02
	MILLS, BARRICK	270170	S A 42	1	8/17/01	3/5/02
	MILLS, JOSEPH	266231	C A 20	1	5/31/00	8/1/00
	MILLS, STEVEN	245363	C 0	1	11/10/99	4/3/00
MI 2	MILLS, WILBERT	244004	C B 53	1	12/20/01	5/2/03
MI 1B	MILLS, WILBERT	244004	C B 53	1	12/20/01	6/26/03
MI 3	MILLS, WILLIAM	278584	C B 4	2	11/26/01	1/8/03
	MINGO, JOHN	247878	C 0	1	11/15/99	2/9/00
	MITCHELL, ANTHONY	267907	S B 59	1	2/23/01	4/24/01
	MITCHELL, JAMES	276967	S A 30	1	8/17/01	1/22/02
	MITCHELL, MARVIN	215068	S A 23	1	7/30/01	8/27/01
	MITCHUM, HERBERT	277999	E A 26	2	10/24/01	11/30/01
	MITCHUM, OTIS	228669	C 0	1	12/21/99	4/28/00
	MITCHUM, ROBERT	266352	S A 28	1	6/6/00	9/15/00
MI 2	MIXSON, JAMES	250314	C B 12	1	8/10/99	10/10/02
	MOLEN, KEVIN	219388	S A 27	1	8/17/01	9/24/01
	MONROE, ISHMALE	242487	A A 46	1	3/28/01	1/8/01
	MONTGOMERY, MIKE	266760	M X 0	2	8/16/00	10/5/00
MI 3	MOORE, CLARENCE	293031	WA113	3		4/7/04
	MOORE, WENDELL	260478	C A 17	1	11/1/99	4/5/00
MI 3	MOOSO, J	241869	C A 0	0		10/11/99
	MORGAN, DAVID	270062	S A 16	1	4/10/02	5/20/02
MI 3	MORRIS, JR. ROY	288777	C B 54	1	6/26/03	6/10/04
MI 2	MORRISON, CHARLES	253880	C A 52	2	8/6/99	12/16/02

PLAINTIFF'S EXHIBIT A

A - 0789
June 2004

3129

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000. Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

PLAINTIFF'S EXHIBIT

3125

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

PLAINTIFF'S EXHIBIT C

3126

A - 0086
June 2004

00026

Ackerman 5-6-11 2762

Inmate#	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
219506	MCNEILL,III	EDSEL	L.	19990830	0.35	65.65	22.97
219506	MCNEILL,III	EDSEL	L.	19990830	0.55	2.00	1.10
219506	MCNEILL,III	EDSEL	L.	19990913	0.35	71.50	25.02
219506	MCNEILL,III	EDSEL	L.	19990913	0.55	4.75	2.61
219506	MCNEILL,III	EDSEL	L.	19990927	0.35	39.00	13.65
219506	MCNEILL,III	EDSEL	L.	19990927	0.55	4.25	2.33
219506	MCNEILL,III	EDSEL	L.	19991011	0.35	68.75	24.06
219506	MCNEILL,III	EDSEL	L.	19991025	0.50	57.50	28.75
219506	MCNEILL,III	EDSEL	L.	19991108	0.35	42.00	14.70
219506	MCNEILL,III	EDSEL	L.	20020506	0.50	49.70	24.85
219506	MCNEILL,III	EDSEL	L.	20020506	0.50	31.47	15.73
219506	MCNEILL,III	EDSEL	L.	20020520	0.50	48.57	24.28
219506	MCNEILL,III	EDSEL	L.	20020603	0.50	39.34	19.67
219506	MCNEILL,III	EDSEL	L.	20020617	0.50	60.83	30.41
219506	MCNEILL,III	EDSEL	L.	20020701	0.50	62.87	31.43
219506	MCNEILL,III	EDSEL	L.	20020715	0.50	38.60	19.30
219506	MCNEILL,III	EDSEL	L.	20020729	0.50	25.01	12.50
219506	MCNEILL,III	EDSEL	L.	20020812	0.50	74.94	37.47
219506	MCNEILL,III	EDSEL	L.	20020826	0.50	72.92	36.46
219506	MCNEILL,III	EDSEL	L.	20020909	0.50	24.38	12.19
283772	MENDOZA	ERIBERTO		20020826	0.50	42.96	21.48
283772	MENDOZA	ERIBERTO		20020909	0.50	46.57	23.28
283772	MENDOZA	ERIBERTO		20020923	0.50	51.80	25.90
283772	MENDOZA	ERIBERTO		20021007	0.50	52.50	26.25
283772	MENDOZA	ERIBERTO		20021021	0.50	75.00	37.50
283772	MENDOZA	ERIBERTO		20021104	0.50	75.00	37.50
283772	MENDOZA	ERIBERTO		20021118	0.50	79.50	39.75
283772	MENDOZA	ERIBERTO		20021202	0.50	78.18	39.09
283772	MENDOZA	ERIBERTO		20021216	0.50	87.58	43.79
283772	MENDOZA	ERIBERTO		20021230	0.50	29.56	14.78
283772	MENDOZA	ERIBERTO		20030113	0.50	57.64	28.82
283772	MENDOZA	ERIBERTO		20030127	0.50	78.02	39.01
283772	MENDOZA	ERIBERTO		20030210	0.50	84.76	42.38
283772	MENDOZA	ERIBERTO		20030224	0.50	91.37	45.68
283772	MENDOZA	ERIBERTO		20030310	0.50	82.17	41.08
283772	MENDOZA	ERIBERTO		20030324	0.50	101.51	50.75
283772	MENDOZA	ERIBERTO		20030407	0.50	101.90	50.95
283772	MENDOZA	ERIBERTO		20030421	0.50	96.45	48.22
283772	MENDOZA	ERIBERTO		20030505	0.50	71.60	35.80
283772	MENDOZA	ERIBERTO		20030519	0.50	5.73	2.86
275960	MESSINK	GREGORY		20010827	0.50	10.80	5.40
155009	MICKELL, JR.	JOHN	-	20020729	0.50	43.17	21.58
155009	MICKELL, JR.	JOHN	-	20020812	0.50	44.09	22.04
155009	MICKELL, JR.	JOHN	-	20020826	0.50	68.85	34.42
155009	MICKELL, JR.	JOHN	-	20020909	0.50	18.34	9.17
155009	MICKELL, JR.	JOHN	-	20021007	0.50	13.42	6.71
246763	MILES,III	THOMAS	REED	20010618	0.50	40.33	20.16
246763	MILES,III	THOMAS	REED	20010702	0.50	63.58	31.79
246763	MILES,III	THOMAS	REED	20010716	0.50	45.74	22.87
246763	MILES,III	THOMAS	REED	20010730	0.50	104.39	52.19
246763	MILES,III	THOMAS	REED	20010813	0.50	90.09	45.04
246763	MILES,III	THOMAS	REED	20010827	0.50	90.37	45.18
246763	MILES,III	THOMAS	REED	20010910	0.50	98.52	49.26
246763	MILES,III	THOMAS	REED	20010924	0.50	103.97	51.98

PLAINTIFF'S EXHIBIT F

3127

A - 1249
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
246763	MILES,III	THOMAS	REED	20011008	0.50	127.89	63.94
246763	MILES,III	THOMAS	REED	20011022	0.50	124.75	62.37
246763	MILES,III	THOMAS	REED	20011105	0.50	118.33	59.16
246763	MILES,III	THOMAS	REED	20011119	0.50	158.44	79.22
246763	MILES,III	THOMAS	REED	20011203	0.50	122.45	61.22
246763	MILES,III	THOMAS	REED	20011217	0.50	129.00	64.50
246763	MILES,III	THOMAS	REED	20011231	0.50	65.93	32.96
246763	MILES,III	THOMAS	REED	20020114	0.50	74.46	37.23
278855	MILFORD	FRANKLIN		20020520	0.50	16.94	8.47
278855	MILFORD	FRANKLIN		20020603	0.50	40.41	20.20
278855	MILFORD	FRANKLIN		20020617	0.50	50.46	25.23
278855	MILFORD	FRANKLIN		20020701	0.50	48.85	24.42
278855	MILFORD	FRANKLIN		20020715	0.50	64.52	32.26
278855	MILFORD	FRANKLIN		20020729	0.50	70.37	35.18
278855	MILFORD	FRANKLIN		20020812	0.50	69.83	34.91
278855	MILFORD	FRANKLIN		20020826	0.50	67.05	33.52
278855	MILFORD	FRANKLIN		20020909	0.50	56.44	28.22
278855	MILFORD	FRANKLIN		20020923	0.50	87.30	43.65
278855	MILFORD	FRANKLIN		20021007	0.50	81.00	40.50
278855	MILFORD	FRANKLIN		20021021	0.50	81.00	40.50
278855	MILFORD	FRANKLIN		20021104	0.50	71.04	35.52
278855	MILFORD	FRANKLIN		20021118	0.50	46.17	23.08
278855	MILFORD	FRANKLIN		20021202	0.50	92.28	46.14
278855	MILFORD	FRANKLIN		20021216	0.50	55.15	27.57
282638	MILLER	ADRIAN	LAMONT	20020520	0.50	27.74	13.87
282638	MILLER	ADRIAN	LAMONT	20020603	0.50	20.27	10.13
163907	MILLER	CALVIN	EUGENE	20000424	0.35	74.59	26.10
163907	MILLER	CALVIN	EUGENE	20000508	0.35	75.00	26.25
163907	MILLER	CALVIN	EUGENE	20000508	0.80	1.65	1.32
163907	MILLER	CALVIN	EUGENE	20000522	0.50	67.50	33.75
163907	MILLER	CALVIN	EUGENE	20000522	0.55	19.43	10.68
163907	MILLER	CALVIN	EUGENE	20000522	0.25	7.50	1.87
163907	MILLER	CALVIN	EUGENE	20000522	1.00	25.00	25.00
163907	MILLER	CALVIN	EUGENE	20000605	0.50	58.03	29.01
253789	MILLER	DANA	RYAN	20000131	0.35	67.50	23.62
253789	MILLER	DANA	RYAN	20000214	0.50	74.20	37.10
253789	MILLER	DANA	RYAN	20000228	0.50	59.95	29.97
253789	MILLER	DANA	RYAN	20000228	0.35	16.00	5.60
253789	MILLER	DANA	RYAN	20000313	0.50	75.00	37.50
253789	MILLER	DANA	RYAN	20000313	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000327	0.50	67.50	33.75
253789	MILLER	DANA	RYAN	20000327	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000410	0.50	75.00	37.50
253789	MILLER	DANA	RYAN	20000410	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000424	0.35	52.50	18.37
253789	MILLER	DANA	RYAN	20000424	0.35	16.00	5.60
253789	MILLER	DANA	RYAN	20000508	0.50	74.00	37.00
253789	MILLER	DANA	RYAN	20000508	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000522	0.50	67.50	33.75
253789	MILLER	DANA	RYAN	20000522	0.80	7.50	6.00
253789	MILLER	DANA	RYAN	20000522	0.35	18.00	6.30
253789	MILLER	DANA	RYAN	20000605	0.50	67.50	33.75
253789	MILLER	DANA	RYAN	20000605	0.35	18.00	6.30
259593	MILLER	DARRIN		19990927	0.35	32.75	11.46

PLAINTIFF'S EXHIBIT

3128

A - 1250
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term "prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.

These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.



3/29

RESUME-3/03
Dr. Joseph J. Benich

FAMILY STATUS
Wife - Roberta; two children - Kiersten and J.J.

EDUCATION

9/68 - 6/72	Doctor of Business Administration Majors: Production Management and Marketing Kent State University, Kent, Ohio
1/66 - 5/68	Masters of Business Administration Majors: Economics and Marketing Case Western Reserve University, Cleveland, Ohio
9/65 - 1/66	Western Reserve University, Cleveland, Ohio Major: Law
9/61 - 6/65	Bachelor of Science in Chemical Engineering Case Institute of Technology, Cleveland, Ohio

ACADEMIC EXPERIENCE

9/93 –2003	Professor of Business Administration College of Charleston, Charleston, South Carolina
9/78 - 8/93	Associate Professor of Business Administration College of Charleston, Charleston, South Carolina
9/76 - 9/78	Associate Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/72 - 9/76	Assistant Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/69 - 6/72	Full-time Instructor, Economics Department Kent State University, Kent, Ohio
1/69 - 6/69	Teaching Fellow, Statistics Kent State University
9/68 - 12/68	Graduate Assistant Kent State University

Ackerman 5-6-11 2766

NON-ACADEMIC EXPERIENCE

6/74 -	Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts
7/78 -	Manager of Summertime Properties, Charleston, South Carolina
6/73 -	Business Consulting, J. Benich and Associates, Charleston, South Carolina
1/68 - 11/72	Business Advisor to Director of American Screw Products, Warrensville, Ohio
1/68 - 10/68	Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio
1/66 - 9/67	Industrial Market Research, Harshaw Chemical, Cleveland, Ohio
19/65 - 1/66	Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)
6/65 - 9/65	Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Thomas Miles
SCDC NUMBER: 246763 NOV 0 4 2004
INSTITUTION: Leibre PP
HOUSING UNIT: Ashley B-06
WORK ASSIGNMENT: NA-

Office Use Only
Grievance No. CU 0697-04
Code: General RW
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

The Department is Asked to reveiw and determine whether I'm entitled to recieve Back wages, which are due, from working at "Lieber Prison Industries Program" when they only paid me $0.35 an hour and not Prevailing wages as stated under South Carolina Code Ann. Sec. 24-3-430 (A-7). AS well as the fact they getting $4.00 an hour and still not Payme from 15 June thru 25 January 01 - they denied me Prevailing wages

Thomas Miles 11/2/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Thomas Miles 5/22/07
Grievant Signature Date

5-22-07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3132

Ackerman 5-6-11 2768

MILES LCI-0697-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 21, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on June 7, 2001 and that your participation in this project ended on January 29, 2002.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over three (3) years after SCDC first paid you for your participation in the project located at Lieber, over 2 ½ years after your participation in the project at Lieber ended, and nearly 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work

of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

3/35

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Thomas Miles, #246763,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. _07___-ALJ-04-_____-____
GRIEVANCE NO.: _____

Notice is hereby given that Thomas Miles does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

Thomas Miles.
Appellant's Name

Lieber C.I.
P.O. Box 205
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

6-19-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

3136

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
THOMAS MILES, #246763	)	
	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 20th day of June, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

DHWestbrook
Douglas H. Westbrook

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Darrin Miller
SCDC NUMBER: 259593
INSTITUTION: Lieber C.I.
HOUSING UNIT: Cooper B-50
WORK ASSIGNMENT: Prison Industry #2

Office Use Only
Grievance No. Lieber 0630-04
Code: General rny
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The department is asked to review and determine whether I am entitled to recieve back wages due to me from working at Lieber Prison Industry Program When they only paid me .35¢ an hour and not Prevailing Wage as required under South Carolina Code Ann. Sec. 24-3-430 (A-7) as well as fact that from 1998-03 they denied me Prevailing Wage.

ACTION REQUESTED: All money due to me be paid at Prevailing Wage and overtime Rate and Prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed ordered to filed Grievance by Court Wicker V. SCDC, Adkins V. SCDC

Darrin Miller 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carlone 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 3138

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

SEE ATTACHED

5-15-07
Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

5-22-07
Grievant Signature Date

5.15.07
~~IGC~~ IGA Signature Date

Served by: Ayr Haeman
5.22.07

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

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Inmate D. Miller, #259593 2C10630-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3141

MILLER LCI-0630-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 1 grievance form dated September 22, 2004 as well as any and all documents you submitted in support of your Step 1 grievance form.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on April 10, 2002 and that you are still participating in this project as of the date of this reply.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and,

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specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of the documents submitted in support of your Step 1 grievance form clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004.

Contrary to the claims you made in these supporting documents, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your supporting documents, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your supporting documents the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your grievance in its entirety.

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AMENDMENT TO GRIEVANCE OF DARRIN MILLER, #259593

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999; $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for 526.65 hours in 1999 at $9.68 per hour; 2493.58 hours in 2000 at $10.66 per hour; 1557.40 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 7822.92 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Darrin Miller 02-06-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0789; C, 0081,0086; F, 1250-1253; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

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	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
MI 3	McMICHAEL, BRIAN	291500	E B 15	1	4/13/04	4/14/04
	MCMILLAN, COREY	226661	M X 0	2	3/15/00	7/17/01
MI 3	McNAIR, WILLIE	285558	C B 14	2	9/20/02	9/25/02
MI 3	McNEIL, EDSEL	219506	C A 24	1	4/5/02	9/4/02
	McNEIL, KENNETH	281799	C B 30	1	6/20/02	7/16/02
ME 3	McNEIL, TONY	235846	A B 42	1	10/1/02	10/8/02
	MCRAY, MARK	269169	C B 30	1	10/16/00	1/29/00
MI 3	MENDOZA, ERIBERTO	283772	C A 28	1	8/12/02	5/2/03
	MESSINK, GREGORY	275960	S B 22	2	8/17/01	8/27/01
	MEYERS, ROBERT	229315	C B 1	0	9/27/99	2/2/00
MI 2	MICKELL, JOHN	155009	C B 25	1	6/20/02	8/28/02
MI 2	MICKELL, JOHN	155009	C B 22	1	9/23/02	10/1/02
	MILES, THOMAS	246763	S B 53	1	6/7/01	1/29/02
MI 2	MILFORD, FRANKLIN	278855	C A 19	2	5/13/02	12/16/02
	MILLER, ADRIAN	282638	A A 33	1	5/6/02	5/31/02
	MILLER, CALVIN	163907	S A 34	1	3/21/00	6/16/00
	MILLER, DANA	253789	M X 0	2	1/6/00	6/27/00
MI 3	MILLER, DARRIN	259593	C B 50	1	4/10/02	6/24/04
MI 3	MILLER, ERNEST	235474	C A 44	1	3/21/00	6/26/03
	MILLER, JOHN	268152	E B 16	1	10/12/01	10/24/01
	MILLER, MOSES	256762	C B 5	1	11/4/99	3/5/01
ME 3	MILLER, RAY	214870	C B 28	2	9/30/02	11/12/02
	MILLER, WILLIAM	277143	S B 46	1	9/5/01	6/6/02
	MILLS, BARRICK	270170	S A 42	1	8/17/01	3/5/02
	MILLS, JOSEPH	266231	C A 20	1	5/31/00	8/1/00
	MILLS, STEVEN	245363	C 0	1	11/10/99	4/3/00
MI 2	MILLS, WILBERT	244004	C B 53	1	12/20/01	5/2/03
MI 1B	MILLS, WILBERT	244004	C B 53	1	12/20/01	6/26/03
MI 3	MILLS, WILLIAM	278584	C B 4	2	11/26/01	1/8/03
	MINGO, JOHN	247878	C 0	1	11/15/99	2/9/00
	MITCHELL, ANTHONY	267907	S B 59	1	2/23/01	4/24/01
	MITCHELL, JAMES	276967	S A 30	1	8/17/01	1/22/02
	MITCHELL, MARVIN	215068	S A 23	1	7/30/01	8/27/01
	MITCHUM, HERBERT	277999	E A 26	2	10/24/01	11/30/01
	MITCHUM, OTIS	228669	C 0	1	12/21/99	4/28/00
	MITCHUM, ROBERT	266352	S A 28	1	6/6/00	9/15/00
MI 2	MIXSON, JAMES	250314	C B 12	1	8/10/99	10/10/02
	MOLEN, KEVIN	219388	S A 27	1	8/17/01	9/24/01
	MONROE, ISHMALE	242487	A A 46	1	3/28/01	1/8/01
	MONTGOMERY, MIKE	266760	M X 0	2	8/16/00	10/5/00
MI 3	MOORE, CLARENCE	293031	WA113	3		4/7/04
	MOORE, WENDELL	260478	C A 17	1	11/1/99	4/5/00
MI 3	MOOSO, J	241869	C A 0	0		10/11/99
	MORGAN, DAVID	270062	S A 16	1	4/10/02	5/20/02
MI 3	MORRIS, JR. ROY	288777	C B 54	1	6/26/03	6/10/04
MI 2	MORRISON, CHARLES	253880	C A 52	2	8/6/99	12/16/02

PLAINTIFF'S EXHIBIT A

A - 0789
June 2004

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

THE AGREEMENT is entered into this 30th day of September, 1998, by and between the South Carolina Department of Corrections (hereinafter called "SCDC") by its duly authorized agent Michael W. Moore, Director and Williams Technologies, Inc., (hereafter referred to as "Williams") by its duly authorized agent William S. Williams, Chairman.

WHEREAS, Prison Industries is a division of the South Carolina Department of Corrections charged with establishing business relationships with private enterprise so as to fulfill the intent of Section 24-3-310 Code of Laws of South Carolina, 1976 as amended; and has all necessary authorization to enter into this agreement and to bind the State of South Carolina to all the terms contained herein; and,

WHEREAS, Williams represents and warrants that it is a duly qualified South Carolina corporation, licensed to conduct business in South Carolina; and,

WHEREAS, Williams intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution (hereinafter referred to as"LCI"); and ,

WHEREAS, this agreement is made in the best interest of the State of South Carolina:

NOW, THEREFORE, the parties hereto do agree as follows:

ARTICLE 1 General:

In consideration of Williams' expenditures to construct on behalf of the State of South Carolina a building of up to 45,000 square feet on the LCI premises (the "Building") , SCDC hereby enters into this Agreement to permit Williams to use such Building and related premises during the term and in accordance with the provisions of this Agreement. The State Engineer's approval of all building plans is required. Attachment A hereto shall indicate the location of the Building and the related premises, which shall include circulation space for delivery and shipping via tractor-trailers, parking outside of the secured area sufficient for a minimum of six (6) trailers and access to the facility via access roads. SCDC shall be responsible for maintenance of such roadways and related premises.

The Building shall be constructed according to plans approved by the state in accordance with all applicable federal and state and local rules and regulations and SCDC security requirements. The State Engineer's approval of all building plans is required. The cost of the Building (excluding personal property located in the Building such as furnishings and equipment) is estimated to be $ 1,200,000 Within 90 days of completion of the Building, Williams shall provide to SCDC documentation of the expenditures to construct the Building for its review and acknowledgment.

PLAINTIFF'S EXHIBIT 3147

to and from LCI reasonable access up to twelve (12) hours per day, subject to the Department's security requirements in Section 3.1.4.

(c) Other access. SCDC will provide access to the facility during Williams' hours of operation for Williams' employees, agents, and business invitees, subject to SCDC's security requirements.

3.3 Mutual Duties of the Parties:

1. Payment for Services: Williams agrees to pay SCDC $4.00 per hour per inmate for work performed including training hours and hours in excess of the inmate's normal shift. SCDC shall be responsible to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. No compensation will be paid for time not worked. In order to accommodate holidays not observed by Williams, SCDC and Williams may agree to work ahead or to work on holidays if a mutually acceptable agreement can be reached.

Thirty (30) days prior to each anniversary date of this agreement, SCDC and Williams may negotiate an increase in the per hour rate paid by Williams to SCDC. If such an increase is requested, it shall be limited to a maximum of five percent (5%) annually or the annual percentage increase in the Consumer Price Index, whichever is lower. It is the intent of the parties that such increase shall only reflect SCDC's increased costs of prison overhead.

Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

2. Compliance with Convict Labor Laws: Williams and SCDC agree that no goods produced under this agreement shall be placed in commerce in violation of the laws of the State of South Carolina or the United States as they relate to the utilization of prison labor. Should either Federal or State Law (or the interpretation thereof) change preventing interstate shipments of goods produced under this Agreement, this Agreement shall terminate as provided in Sections 4.0.7 and 4.0.9.

ARTICLE 4 General Terms and Conditions:

4.0 General:
Williams, its employees or agents performing under the agreement are not to be deemed to be employees of SCDC nor as agents of SCDC in any manner whatsoever. Williams will not hold itself out nor claim to be an officer or employee of SCDC or of the State of South Carolina by reason hereof and will not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of SCDC or the State of South Carolina, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security benefits, or retirement membership or credit.

The State of South Carolina, SCDC, their employees (including inmates performing labor pursuant to this Agreement) and agents, are not to be deemed employees of Williams nor agents of Williams in any manner

PLAINTIFF'S EXHIBIT C

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
246763	MILES,III	THOMAS	REED	20011008	0.50	127.89	63.94
246763	MILES,III	THOMAS	REED	20011022	0.50	124.75	62.37
246763	MILES,III	THOMAS	REED	20011105	0.50	118.33	59.16
246763	MILES,III	THOMAS	REED	20011119	0.50	158.44	79.22
246763	MILES,III	THOMAS	REED	20011203	0.50	122.45	61.22
246763	MILES,III	THOMAS	REED	20011217	0.50	129.00	64.50
246763	MILES,III	THOMAS	REED	20011231	0.50	65.93	32.96
246763	MILES,III	THOMAS	REED	20020114	0.50	74.46	37.23
278855	MILFORD	FRANKLIN		20020520	0.50	16.94	8.47
278855	MILFORD	FRANKLIN		20020603	0.50	40.41	20.20
278855	MILFORD	FRANKLIN		20020617	0.50	50.46	25.23
278855	MILFORD	FRANKLIN		20020701	0.50	48.85	24.42
278855	MILFORD	FRANKLIN		20020715	0.50	64.52	32.26
278855	MILFORD	FRANKLIN		20020729	0.50	70.37	35.18
278855	MILFORD	FRANKLIN		20020812	0.50	69.83	34.91
278855	MILFORD	FRANKLIN		20020826	0.50	67.05	33.52
278855	MILFORD	FRANKLIN		20020909	0.50	56.44	28.22
278855	MILFORD	FRANKLIN		20020923	0.50	87.30	43.65
278855	MILFORD	FRANKLIN		20021007	0.50	81.00	40.50
278855	MILFORD	FRANKLIN		20021021	0.50	81.00	40.50
278855	MILFORD	FRANKLIN		20021104	0.50	71.04	35.52
278855	MILFORD	FRANKLIN		20021118	0.50	46.17	23.08
278855	MILFORD	FRANKLIN		20021202	0.50	92.28	46.14
278855	MILFORD	FRANKLIN		20021216	0.50	55.15	27.57
282638	MILLER	ADRIAN	LAMONT	20020520	0.50	27.74	13.87
282638	MILLER	ADRIAN	LAMONT	20020603	0.50	20.27	10.13
163907	MILLER	CALVIN	EUGENE	20000424	0.35	74.59	26.10
163907	MILLER	CALVIN	EUGENE	20000508	0.35	75.00	26.25
163907	MILLER	CALVIN	EUGENE	20000508	0.80	1.65	1.32
163907	MILLER	CALVIN	EUGENE	20000522	0.50	67.50	33.75
163907	MILLER	CALVIN	EUGENE	20000522	0.55	19.43	10.68
163907	MILLER	CALVIN	EUGENE	20000522	0.25	7.50	1.87
163907	MILLER	CALVIN	EUGENE	20000522	1.00	25.00	25.00
163907	MILLER	CALVIN	EUGENE	20000605	0.50	58.03	29.01
253789	MILLER	DANA	RYAN	20000131	0.35	67.50	23.62
253789	MILLER	DANA	RYAN	20000214	0.50	74.20	37.10
253789	MILLER	DANA	RYAN	20000228	0.50	59.95	29.97
253789	MILLER	DANA	RYAN	20000228	0.35	16.00	5.60
253789	MILLER	DANA	RYAN	20000313	0.50	75.00	37.50
253789	MILLER	DANA	RYAN	20000313	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000327	0.50	67.50	33.75
253789	MILLER	DANA	RYAN	20000327	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000410	0.50	75.00	37.50
253789	MILLER	DANA	RYAN	20000410	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000424	0.35	52.50	18.37
253789	MILLER	DANA	RYAN	20000424	0.35	16.00	5.60
253789	MILLER	DANA	RYAN	20000508	0.50	74.00	37.00
253789	MILLER	DANA	RYAN	20000508	0.35	20.00	7.00
253789	MILLER	DANA	RYAN	20000522	0.50	67.50	33.75
253789	MILLER	DANA	RYAN	20000522	0.80	7.50	6.00
253789	MILLER	DANA	RYAN	20000522	0.35	18.00	6.30
253789	MILLER	DANA	RYAN	20000605	0.50	67.50	33.75
253789	MILLER	DANA	RYAN	20000605	0.35	18.00	6.30
259593	MILLER	DARRIN		19990927	0.35	32.75	11.46

PLAINTIFF'S EXHIBIT F

3149

A - 1250
June 2004

Inmate	LastName	FirstName	MiddleName	PayDate	PayRate	Hours	PayAmount
259593	MILLER	DARRIN		19990927	0.55	7.25	3.98
259593	MILLER	DARRIN		19991011	0.35	59.00	20.65
259593	MILLER	DARRIN		19991011	0.55	3.75	2.06
259593	MILLER	DARRIN		19991025	0.35	56.00	19.60
259593	MILLER	DARRIN		19991108	0.50	73.50	36.75
259593	MILLER	DARRIN		19991108	0.55	40.50	22.27
259593	MILLER	DARRIN		19991122	0.50	68.50	34.25
259593	MILLER	DARRIN		19991122	0.55	15.53	8.54
259593	MILLER	DARRIN		19991206	0.50	46.03	23.01
259593	MILLER	DARRIN		19991206	0.55	11.93	6.56
259593	MILLER	DARRIN		19991220	2.50	2.00	5.00
259593	MILLER	DARRIN		19991220	0.50	66.08	33.04
259593	MILLER	DARRIN		19991220	0.55	12.15	6.68
259593	MILLER	DARRIN		20000103	0.35	27.83	9.74
259593	MILLER	DARRIN		20000103	0.55	3.85	2.11
259593	MILLER	DARRIN		20000117	0.35	66.23	23.18
259593	MILLER	DARRIN		20000117	0.55	3.35	1.84
259593	MILLER	DARRIN		20000131	0.35	42.78	14.97
259593	MILLER	DARRIN		20000214	0.50	75.00	37.50
259593	MILLER	DARRIN		20000214	0.55	7.50	4.12
259593	MILLER	DARRIN		20000214	0.80	6.50	5.20
259593	MILLER	DARRIN		20000228	0.50	67.50	33.75
259593	MILLER	DARRIN		20000228	1.05	15.00	15.75
259593	MILLER	DARRIN		20000313	0.50	74.87	37.43
259593	MILLER	DARRIN		20000327	0.35	63.00	22.05
259593	MILLER	DARRIN		20000410	0.65	75.00	48.75
259593	MILLER	DARRIN		20000410	0.75	4.69	3.51
259593	MILLER	DARRIN		20000424	0.75	75.00	56.25
259593	MILLER	DARRIN		20000424	0.75	4.87	3.65
259593	MILLER	DARRIN		20000424	0.25	5.92	1.48
259593	MILLER	DARRIN		20000508	0.75	75.00	56.25
259593	MILLER	DARRIN		20000508	0.75	13.92	10.44
259593	MILLER	DARRIN		20000508	0.25	7.27	1.81
259593	MILLER	DARRIN		20000522	0.75	67.50	50.62
259593	MILLER	DARRIN		20000522	0.75	11.87	8.90
259593	MILLER	DARRIN		20000522	0.25	5.00	1.25
259593	MILLER	DARRIN		20000605	0.75	67.50	50.62
259593	MILLER	DARRIN		20000605	0.75	22.37	16.77
259593	MILLER	DARRIN		20000605	0.25	7.05	1.76
259593	MILLER	DARRIN		20000703	0.75	60.00	45.00
259593	MILLER	DARRIN		20000703	0.75	26.17	19.62
259593	MILLER	DARRIN		20000703	0.35	4.70	1.64
259593	MILLER	DARRIN		20000703	0.25	11.05	2.76
259593	MILLER	DARRIN		20000717	0.50	118.62	59.31
259593	MILLER	DARRIN		20000731	0.50	125.36	62.68
259593	MILLER	DARRIN		20000814	0.50	100.85	50.42
259593	MILLER	DARRIN		20000828	0.50	122.93	61.46
259593	MILLER	DARRIN		20000911	0.50	63.12	31.56
259593	MILLER	DARRIN		20000925	0.50	99.97	49.98
259593	MILLER	DARRIN		20001009	0.50	103.92	51.96
259593	MILLER	DARRIN		20001023	0.50	189.85	94.92
259593	MILLER	DARRIN		20001106	0.50	177.42	88.71
259593	MILLER	DARRIN		20001120	0.50	109.02	54.51
259593	MILLER	DARRIN		20001204	0.50	120.09	60.04

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
259593	MILLER	DARRIN		20001218	0.50	163.94	81.97
259593	MILLER	DARRIN		20010101	0.50	31.88	15.94
259593	MILLER	DARRIN		20010115	0.50	143.94	71.97
259593	MILLER	DARRIN		20010129	0.50	176.46	88.23
259593	MILLER	DARRIN		20010212	0.50	179.53	89.76
259593	MILLER	DARRIN		20010312	0.50	45.00	22.50
259593	MILLER	DARRIN		20010326	0.50	96.00	48.00
259593	MILLER	DARRIN		20010409	0.50	125.78	62.89
259593	MILLER	DARRIN		20010423	0.50	141.00	70.50
259593	MILLER	DARRIN		20010507	0.50	130.33	65.16
259593	MILLER	DARRIN		20010521	0.50	149.61	74.80
259593	MILLER	DARRIN		20010604	0.50	114.75	57.37
259593	MILLER	DARRIN		20010618	0.50	127.50	63.75
259593	MILLER	DARRIN		20010702	0.50	127.50	63.75
259593	MILLER	DARRIN		20010716	0.50	109.14	54.57
259593	MILLER	DARRIN		20010730	0.50	158.46	79.23
259593	MILLER	DARRIN		20010813	0.50	127.50	63.75
259593	MILLER	DARRIN		20010827	0.50	127.50	63.75
259593	MILLER	DARRIN		20010910	0.50	128.25	64.12
259593	MILLER	DARRIN		20010924	0.50	142.50	71.25
259593	MILLER	DARRIN		20011008	0.50	150.00	75.00
259593	MILLER	DARRIN		20011022	0.50	135.00	67.50
259593	MILLER	DARRIN		20011105	0.50	90.75	45.37
259593	MILLER	DARRIN		20011119	0.50	151.11	75.55
259593	MILLER	DARRIN		20011203	0.50	116.00	58.00
259593	MILLER	DARRIN		20011217	0.50	160.00	80.00
259593	MILLER	DARRIN		20011231	0.50	75.00	37.50
259593	MILLER	DARRIN		20020114	0.50	105.00	52.50
259593	MILLER	DARRIN		20020128	0.50	140.00	70.00
259593	MILLER	DARRIN		20020211	0.50	146.74	73.37
259593	MILLER	DARRIN		20020225	0.50	154.55	77.27
259593	MILLER	DARRIN		20020311	0.50	150.00	75.00
259593	MILLER	DARRIN		20020325	0.50	29.25	14.62
259593	MILLER	DARRIN		20020422	0.50	26.75	13.37
259593	MILLER	DARRIN		20020506	0.50	52.50	26.25
259593	MILLER	DARRIN		20020520	0.50	51.96	25.98
259593	MILLER	DARRIN		20020603	0.50	56.34	28.17
259593	MILLER	DARRIN		20020617	0.50	89.14	44.57
259593	MILLER	DARRIN		20020701	0.50	87.68	43.84
259593	MILLER	DARRIN		20020715	0.50	68.46	34.23
259593	MILLER	DARRIN		20020729	0.50	95.06	47.53
259593	MILLER	DARRIN		20020812	0.50	109.35	54.67
259593	MILLER	DARRIN		20020826	0.50	122.51	61.25
259593	MILLER	DARRIN		20020909	0.50	115.15	57.57
259593	MILLER	DARRIN		20020923	0.50	111.40	55.70
259593	MILLER	DARRIN		20021007	0.50	107.20	53.60
259593	MILLER	DARRIN		20021021	0.50	131.97	65.98
259593	MILLER	DARRIN		20021104	0.50	140.93	70.46
259593	MILLER	DARRIN		20021118	0.50	126.19	63.09
259593	MILLER	DARRIN		20021202	0.50	89.28	44.64
259593	MILLER	DARRIN		20021216	0.50	61.95	30.97
259593	MILLER	DARRIN		20021230	0.50	57.93	28.96
259593	MILLER	DARRIN		20030113	0.50	53.78	26.89
259593	MILLER	DARRIN		20030127	0.50	96.38	48.19

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
259593	MILLER	DARRIN		20030210	0.50	112.83	56.41
259593	MILLER	DARRIN		20030224	0.50	110.51	55.25
259593	MILLER	DARRIN		20030310	0.50	85.10	42.55
259593	MILLER	DARRIN		20030324	0.50	78.93	39.46
259593	MILLER	DARRIN		20030407	0.50	85.62	42.81
259593	MILLER	DARRIN		20030421	0.50	76.98	38.49
259593	MILLER	DARRIN		20030505	0.50	47.29	23.64
259593	MILLER	DARRIN		20030519	0.50	99.26	49.63
259593	MILLER	DARRIN		20030602	0.50	89.90	44.95
259593	MILLER	DARRIN		20030616	0.50	100.13	50.06
259593	MILLER	DARRIN		20030630	0.50	106.73	53.36
259593	MILLER	DARRIN		20030714	0.50	134.05	67.02
259593	MILLER	DARRIN		20030728	0.50	123.64	61.82
259593	MILLER	DARRIN		20030811	0.50	117.64	58.82
259593	MILLER	DARRIN		20030825	0.50	103.19	51.59
259593	MILLER	DARRIN		20030908	0.50	86.79	43.39
259593	MILLER	DARRIN		20030922	0.50	95.32	47.66
259593	MILLER	DARRIN		20031006	0.50	103.70	51.85
259593	MILLER	DARRIN		20031020	0.50	110.28	55.14
259593	MILLER	DARRIN		20031103	0.50	98.60	49.30
259593	MILLER	DARRIN		20031117	0.50	113.01	56.50
259593	MILLER	DARRIN		20031201	0.50	90.10	45.05
259593	MILLER	DARRIN		20031215	0.50	99.76	49.88
259593	MILLER	DARRIN		20031229	0.50	101.00	50.50
259593	MILLER	DARRIN		20040112	0.50	53.24	26.62
259593	MILLER	DARRIN		20040126	0.50	93.36	46.68
259593	MILLER	DARRIN		20040209	0.50	117.18	58.59
259593	MILLER	DARRIN		20040223	0.50	108.38	54.19
259593	MILLER	DARRIN		20040308	0.50	131.24	65.62
259593	MILLER	DARRIN		20040322	0.50	128.49	64.24
259593	MILLER	DARRIN		20040405	0.50	133.89	66.94
259593	MILLER	DARRIN		20040419	0.50	97.58	48.79
259593	MILLER	DARRIN		20040503	0.50	92.12	46.06
259593	MILLER	DARRIN		20040517	0.50	119.12	59.56
259593	MILLER	DARRIN		20040531	0.50	129.30	64.65
235474	MILLER	ERNEST	ESDORNE	20000327	0.35	27.67	9.68
235474	MILLER	ERNEST	ESDORNE	20000327	0.80	7.50	6.00
235474	MILLER	ERNEST	ESDORNE	20000410	0.35	75.00	26.25
235474	MILLER	ERNEST	ESDORNE	20000410	0.55	10.97	6.03
235474	MILLER	ERNEST	ESDORNE	20000410	0.80	15.00	12.00
235474	MILLER	ERNEST	ESDORNE	20000424	0.35	75.00	26.25
235474	MILLER	ERNEST	ESDORNE	20000424	0.55	14.69	8.07
235474	MILLER	ERNEST	ESDORNE	20000424	0.25	7.00	1.75
235474	MILLER	ERNEST	ESDORNE	20000508	0.35	75.00	26.25
235474	MILLER	ERNEST	ESDORNE	20000508	0.55	25.55	14.05
235474	MILLER	ERNEST	ESDORNE	20000508	0.25	14.33	3.58
235474	MILLER	ERNEST	ESDORNE	20000522	0.50	67.50	33.75
235474	MILLER	ERNEST	ESDORNE	20000522	0.55	27.07	14.88
235474	MILLER	ERNEST	ESDORNE	20000522	0.25	7.50	1.87
235474	MILLER	ERNEST	ESDORNE	20000605	0.50	67.50	33.75
235474	MILLER	ERNEST	ESDORNE	20000605	0.55	4.75	2.61
235474	MILLER	ERNEST	ESDORNE	20000703	0.50	60.00	30.00
235474	MILLER	ERNEST	ESDORNE	20000703	0.55	17.75	9.76
235474	MILLER	ERNEST	ESDORNE	20000703	0.35	4.85	1.69

PLAINTIFF'S EXHIBIT

A - 1253
June 2004

3152

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

Subject: Your 9/14/04 request

Date: 9/20/04

This note is in response to your "prevailing wage" request for work generally described by the Williams Technologies Job Description of Production Associate. You have asked for my opinion of the "prevailing wage" for work of a similar nature in the private sector for 1999/2001 (I assume that you mean 1999, 2000, and 2001). It is also my understanding that the term " prevailing wage" not only implies work of a similar nature, but that the work should be performed in the same general geographic area.

The U.S. Department of Labor (Bureau of Labor Statistics) publishes wage data for a range of occupations in the Charleston – North Charleston Metropolitan Area. The Installation, Maintenance and Repair Occupation Sub-Category of "Maintenance and Repair Workers, General" had mean hourly wages of $11.44 in1999, $12.62 in 2000, and $13.24 in 2001 for the Charleston - North Charleston Metropolitan Area. The Production Occupations Sub-Category of "Team Assemblers" had mean hourly wages of $10.49 in 1999, $10.56 in 2000, and $10.88 in 2001 for the Charleston – North Charleston Metropolitan Area. The average of these two Sub-Categories is $10.97 for 1999, $11.59 for 2000, and $12.06 for 2001.

The possibility exists that the average prison worker would be less experienced with his prison position than his non-prison counterpart. It is also possible that the average prison worker would require more supervision than the average non-prison worker performing the same tasks. The concept of "prevailing wage" implies the average wage for a specific category of average workers. The Installation, Maintenance and Repair Occupation Sub Category of "Helpers—Installation, Maintenance, and Repair Workers" had mean hourly wages of $9.53 in 1999, $11.21 in 2000, and $10.45 in 2001. The Production Occupations Sub-Category of "Helpers–Production Workers" had mean hourly wages of $7.61 in 1999, $8.27 in 2000, and $9.09 in 2001. The average of these two "Helpers" Sub Categories is $8.40 for 1999, $9.74 for 2000, and $10.10 for 2001.
These "Helpers" Sub Category averages represent the lower end of the "prevailing wage" range for the Williams Technologies Job Description of Production Associate for 1999, 2000, and 2001. Thus the "prevailing wage" range estimate for prison workers for the Williams Technologies Job Description of Production Associate is $10.97 - $8.40 for 1999, $11.59 - $9.74 for 2000, and $12.06 - $10.10 for 2001.



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RESUME-3/03
Dr. Joseph J. Benich

FAMILY STATUS
Wife - Roberta; two children - Kiersten and J.J.

EDUCATION

9/68 - 6/72	Doctor of Business Administration Majors: Production Management and Marketing Kent State University, Kent, Ohio
1/66 - 5/68	Masters of Business Administration Majors: Economics and Marketing Case Western Reserve University, Cleveland, Ohio
9/65 - 1/66	Western Reserve University, Cleveland, Ohio Major: Law
9/61 - 6/65	Bachelor of Science in Chemical Engineering Case Institute of Technology, Cleveland, Ohio

ACADEMIC EXPERIENCE

9/93 –2003	Professor of Business Administration College of Charleston, Charleston, South Carolina
9/78 - 8/93	Associate Professor of Business Administration College of Charleston, Charleston, South Carolina
9/76 - 9/78	Associate Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/72 - 9/76	Assistant Professor and Chair of the Business Administration & Economics Department College of Charleston, Charleston, South Carolina
9/69 - 6/72	Full-time Instructor, Economics Department Kent State University, Kent, Ohio
1/69 - 6/69	Teaching Fellow, Statistics Kent State University
9/68 - 12/68	Graduate Assistant Kent State University

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NON-ACADEMIC EXPERIENCE

6/74 -	Expert Witness, Economic Litigation, Charleston, South Carolina, analyses of economic loss to individuals and/or businesses, with presentations in State and Federal courts
7/78 -	Manager of Summertime Properties, Charleston, South Carolina
6/73 -	Business Consulting, J. Benich and Associates, Charleston, South Carolina
1/68 - 11/72	Business Advisor to Director of American Screw Products, Warrensville, Ohio
1/68 - 10/68	Staff Specialist (Systems Optimizations), Cleveland Electric Illuminating Company, Cleveland, Ohio
1/66 - 9/67	Industrial Market Research, Harshaw Chemical, Cleveland, Ohio
19/65 - 1/66	Phosphor Efficiency Development, General Electric Co., Cleveland, Ohio (worked independently on a second shift due to day law school)
6/65 - 9/65	Research Chemical Engineering, Sohio Research, Warrensville, Ohio (catalyst efficiency testing and associated acetonitrile purification development).

PUBLICATIONS

"Signal-Averaged P-Wave Analysis of Normal Controls and Patients with Paroxysmal Atrial Fibrillation: A Study in Gender Differences, Age Dependence, and Reproducibility", with A Dhala, B. Leman, et al, Clinical Cardiology, November, 2002, p-525-531

"The High Resolution Signal-Averaged P-Wave Duration in Normal Patients: Influence of Race and Gender", with M. Little, B. Leman, and B. Hainer, North American Society of Pacing and Electrophysiology, abstracted, *Pacing and Clinical Electrophysiology*, April, 1997, Vol.20:4:1219

"Alternative Approaches to Tax Adjustments in Appraising Economic Loss: A Comment", *Journal of Legal Economics*, Fall 1996

"Updated Estimates of Work-Life Expectancies Based upon The Increment-Decrement Model: Comment", *Journal of Legal Economics*, Winter 1995

"Intra-Year Discounting Assumptions and Bias in Lost Earnings Analysis: A Comment", *Journal of Forensic Economics*, Winter 1993, 7(1)

"Comment: On the Relative Stability and Predictability of the Interest Rate and Earnings Growth Rate", *Journal of Forensic Economics*, Winter 1992, 6(1)

"Determining Tax-Adjusted Awards for Spouses' Lost Future Earnings", For *The Defense*, Nov. 1992

"The Just Better (JB) Method of Calculating The Present Value of Lost Future Income", *Journal of Legal Economics*, July 1992

3155

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI-0690-04
Code: General
Policy MY
Disc. Hear.
Class.
Date Received 5/9
IGC Initials
✓ IGA - ABH 7-13-07

INMATE NAME: DARRIN MILLER JI
SCDC NUMBER: 259593
INSTITUTION: LIEBER C.I.
HOUSING UNIT: WACCAMAW B-147
WORK ASSIGNMENT: PRISON INDUSTRY #2

RECEIVED
JUN 11 2007
INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins and Wicker held that §24-3-430's wage provisions were "mandatory", and created a "statutory right to the payment of a prevailing wage". These cases further held that inmates can grieve SCDC's failure to pay prevailing wages under §24-3-430, with review by the ALJ.

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4/hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was not correct, and back wages are owed.

Grievant incorporates by reference Exhibits A-H attached to grievances filed by Darrell Williams and counsel on September 22, 2004.

Darrin Miller May 8, 2007
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 7-20-07 Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Darrin Miller 8/7/07
Grievant Signature Date

IGC Signature 8/7/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3156

Ackerman 5-6-11 2792

MILLER LCI-0630-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 23, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your voluntary participation in the prison industries project at Lieber began on April 10, 2002 and, as of the date of this response, your participation continues.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. The events which lead me to review your Step 2 appeal at the current time were detailed for you in the response you received to your Step 1 grievance.

As was also explained to you in the response you received to your Step 1 grievance, the South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430.

Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy. SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly 2 ½ years after SCDC first paid you for your participation in the project located at Lieber and 30 days after days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded any reasonable time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Furthermore, even if you had met the time frames established in paragraphs 13.1 and 13.9, I completely adopt and endorse the written decision denying your Step 1 grievance, and I find that you are not entitled to any of the relief you demand in your Step 1 grievance.

Therefore, I deny your Step 2 appeal in its entirety.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

3157

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Darrin Miller, #259593, Appellant, vs. South Carolina Department of Corrections, Respondent.	NOTICE OF APPEAL DOCKET NO. 07-ALJ-04-_____ GRIEVANCE NO.: _____

Notice is hereby given that Darrin Miller does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 8-7-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

Darrin Miller
Appellant's Name

Lieber C.I.
P.O. Box 205
Mailing Address

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

[signature]
Signed

9-5-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

3158

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
DARRIN MILLER, #259593	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 6th day of Sept., 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

D H Westbrook
Douglas H. Westbrook

3159

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: ERNEST MILLER
SCDC NUMBER: 235474 NOV 08 2004 PP
INSTITUTION: Lieber
HOUSING UNIT: Cooper A-44 ✓
WORK ASSIGNMENT: CARPENTRY CLASS

Office Use Only
Grievance No. Lieber 0682-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received SEP 27 2004
IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

The department is asked to review and determine whether I am entitled to receive back wages due to me from working at Lieber Prison Industry Program when they only paid me .35 cents an hour and not Prevailing wage as required under South Carolina Code Ann. Sec. 24-3-430(A-7) as well as fact that from 1998-03 they denied me Prevailing wage

ACTION REQUESTED:

All money due to me be paid at Prevailing wage and overtime rate and Prevailing wage be paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed ordered to File Grievance by covet Wicker v. SCDC, Adkins v. SCDC

Ernest Miller 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Wardens Response.

L Carlton 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 3160

N/A
Grievant Signature Date

SCDC 10.5 (Rev November 1997)

(CONTINUED ON REVERSE SIDE)

Ackerman 5-6-11 2796

WARDEN'S DECISION AND REASON:

See attachment.

Warden Signature — Date: Oct 28, 04

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature — Date: 11-3-04

IGC Signature — Date: 11/3/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3161

J/M E Miller, #235474 LCI 0682-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3162

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3163

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Ernest Miller
SCDC NUMBER: 235474
INSTITUTION: Lieber
HOUSING UNIT: Cooper A-44
WORK ASSIGNMENT: Ward Keeper

Office Use Only
Grievance No. LCI 0682-04
Code: General MY
Policy
Disc. Hear.
Class:
Date Received
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Adkins + Wicker do require payment of Prevailing wages. Grievants were employed by W.T.E. and S.C.D.C. was W.T.E.'s "Agent" in paying our wages. Adkins + Wicker further Allow this issue of Payment of wages under S.C. code 24-3-430 to Be grieved Pursuant to S.C.D.C.'s grievance Procedures. Grievants incorporate by reference All exhibits Attached to grievances filed by Darrel Williams and Attorney Douglas Westbrook on 9-22-04

Ernest Miller 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

6-19-07
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date

2/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3164

Rec. 6/22/07

Ackerman 5-6-11 2800

MILLER LCI-0682-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 3, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 22, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on March 21, 2001 and ended June 26, 2003. Additionally, these records reflect that you returned to this project for a second work assignment that began January 21, 2005, and, as of the date of this response, your participation continues.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

3165

MILLER LCI-0682-04

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, *et seq.*, and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 3 ½ years after SCDC first paid you for the labor you provided to the project located at Lieber during your first work assignment there and 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "employee" within your supporting documents to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your appeal and grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal and grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ernest Miller, #235474

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 07-ALJ-04-_____-____

GRIEVANCE NO.: _____

Notice is hereby given that Ernest Miller does hereby appeal the final decision of the South Carolina Department of Corrections dated 6-19-07 and received on 6-22-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

1. Grievance seeks back wages, contesting SCDC policy/procedure of paying below prevailing/negotiated wages. Thus, there was no time limit to file grievance under Grievance Policy §13.9.

2. Appellant had reasonable cause under §13.9 as his right to grieve did not accrue until Adkins/Wicker and filed within a reasonable time.

3. Applying §13.1 to these facts violated due process.

4. Under 4-19-07 Court order, SCDC was required to accept filing and consider on the merits Appellant's Amendment/Exhibits.

5. Grievance proved all elements of claim for prevailing/negot. wages.

6. Dr. Benich's report is the only evidence of prevailing wages in the record. Appellant is entitled to prevailing/negotiated wages.

7. To extent Appellant worked OT he is entitled to it under SCDC policy

8. Appellant claims pre/post judgment interest, costs and attorney fees

Ernest Miller
Appellant's Name
Lieber C.I.
P.O. Box 205
Mailing Address
Ridgeville, SC 29472
City, State, Zip Code
none
Telephone Number

Signed

6-29-07
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

3168

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ERNEST MILLER, #235474	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

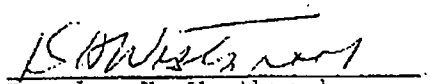
I certify that on the 20th day of July, 2007, I mailed by first class postage Appellant's Notice of Appeal, and final decision, to the following:

(1) The original ~~and one copy~~ were mailed for filing with the Administrative Law Court, to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC, to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201



Douglas H. Westbrook

3169

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Wilbert M. Wills
SCDC NUMBER: 244004
INSTITUTION: Lieber
HOUSING UNIT: C-A-62 ✓
WORK ASSIGNMENT: School

Office Use Only
Grievance No. Lieber 0625-04
Code: General RXY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) The Department is Asked to Review And determine Whether I am entitled to Receive Back wages due to me from working At Lieber Prison Industry Program When they only Paid me, 35 cents An hour And not Prevailing wage As Required under South Carolina Code Ann. Sec. 24-3-430 (A-F) as well as fact that from 1998-03 they denied me Prevailing Wage.

ACTION REQUESTED: All money due to me be Paid At Prevailing wage And overtime Rate And Prevailing wage be Paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed ordered to file Grievance By court Wicker v. SCDC, Atkins v. SCDC.

Wilbert Lee Wills 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Carroll 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

3170

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature Oct. 28, 04
Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Grievant Signature 11-2-04
Date

IGC Signature 11-2-04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3171

Inmate W. Mills #244004 LCI 0625-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams'grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3/72

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3173

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 386

INMATE GRIEVANCE FORM

STEP 2

INMATE NAME: Wilbert Lee Mills

SCDC NUMBER: 244004 NOV 04 2004 pp

INSTITUTION: Lieber

HOUSING UNIT: Cooper - A-62

WORK ASSIGNMENT: 11/19

Office Use Only
Grievance No. LCI 0625-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Payment of Prevailing Wages. grievant were employed Atkins & Wicker do Regu laying own wages. Atkins & wicker. Further Allows by WT's and SCDC Also WT's "Agent. Under S.C. code 24-3-430 to be grieved pursuant to SCDC grievance Procedures. His Issue of Payment of Wages grievant Incarparade by Reference All Exhibits Attached to grievances filed By Darrell Williams Pub. Attorney Douglas Weatbrook on 9-22-04,

Wilbert Mills 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Inmate Released
8-1-05
GA-01.12
Section 19.1

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3174

Ackerman 5-6-11 2810

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Wilbert Mills, #244004,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

Docket No. 0 -ALJ-04-_____-AP

Grievance No. _____

Notice is hereby given that Wilbert Mills does hereby appeal the final decision of the South Carolina Department of Corrections dated _____ and received on no final decision issued, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)): 1. Automatic appeal is proper under grievance policy §§13.5, 13.8 and 28 C.F.R. Part 40.7(e) because SCDC did not timely respond to grievance and the 105 day grievance processing period expired without final decision. 2. Grievance contests SCDC wage policy and "concerns policy/procedure" under §13.9 with no time limit to file. 3. There was reasonable cause under §13.9 and (1) no time limit to file and (2) compliance with §13.1. 4. Inmates' class action tolled §13.1. 5. §13.1 denied grievant reasonable time to file and thus due process. 6. SCDC failed to plead §13.1 in step 1 response and considered Amendments on the merits and thus waived §13.1. 7. SCDC was judicially estopped to raise §13.1. 8. Grievant proved all elements of claim, including prevailing wage, period(s) worked and any overtime due. 9. Grievant claims back wages, pre/post judgment interest, costs and attorney fees. 10. SCDC should process grievance for all who worked in program whether or not they personally filed a grievance.

Wilbert Mills
Appellant's Name

Kirkland C.I.
Mailing Address

4344 Broad River Rd.

Columbia, SC 29210
City, State, Zip Code

none
Telephone Number

Signed

11-6-04
Dated

Douglas H. Westbrook
23 Broad St.
Chas, SC 29401
(843) 853-9600
Attorney for Appellant

(See reverse side for instructions)

3175

Ackerman 5-6-11 2811

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
WILBERT MILLS, #244004	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	
	)	

I certify that on the 7th day of Jan., 2008, I mailed by first class postage Appellant's Notice of Appeal, and any grievance response provided to me by SCDC, to the following:

(1) The original was mailed for filing with the Administrative Law Court to:

The Honorable Jana Shealy
Clerk
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

(2) One copy was mailed pursuant to ALC Rule 54 to counsel of record for SCDC to:

Lake Summers, Esquire
Malone, Thompson, Summers, & Ott, LLC
339 Heyward St., Ste. 200
Columbia, SC 29201

Douglas H. Westbrook

3176

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

William Mills INMATE GRIEVANCE FORM

individually, and on behalf of all inmate employees (IE's) STEP 1

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 278584

INSTITUTION: B.R.C.I

HOUSING UNIT: Murray #152

WORK ASSIGNMENT: Horticulture

RECEIVED
OCT 07 2004
BRCI GRIEVANCE OFFICE

Office Use Only
Grievance No. CC1089404
Code: General MY
Policy
Disc. Hear.
Class.
Date Received OCT 26 2004
IGC Initials LC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 337.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits document a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and employment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

* "Exh." denotes exhibits attached to Darrell Williams' Grievance, which are incorporated by reference herein.

ACTION REQUESTED: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2001; and at $4 per hour for July 2001 to present, and in the future; all as determined from Exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20, 2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgment interest, costs and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certified a class action representing the class identified in Exh. A. On August 23, 200 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

William Mills 10-5-04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response

J Carlton 11-4-04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal.

3177

N/A
Grievant Signature Date

Ackerman 5-6-11 2813

WARDEN'S DECISION AND REASON:

See Attachment.

Nov. 1/04
Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

William Mills 11-4-04
Grievant Signature Date

11/4/04
IGC Signature Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3178

Jon W. Mills, # 278584 CC089404

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3180

NOV 15 2004

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

BRCI.

INMATE NAME: WILLIAM MILLS
SCDC NUMBER: 278584
INSTITUTION: BRCI
HOUSING UNIT: MULLAI-152
WORK ASSIGNMENT: HOLTCULTER

RECEIVED
NOV 09 2004
BRCI GREIVANCE OFFICE

Office Use Only
Grievance No. LG-0894-04
Code: General ✓ money
Policy
Disc. Hear
Class.
Date Received 11/9/04
IGC Initials J.L M

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

Leiber C.I.

The IGC & Warden have failed to adhere to existing SCDC Policy, procedure, and the SC Code of laws which this grievance. The Warden & IGC place emphasis upon a dismissed IM's grievance (Darrell Williams), the cessation of Williams grievance has prompted this grievance, however, Williams terminated grievance does not end inquiry of grievant's complaint. See SCDC Policy GA - 11.12 Secondly the SC Supreme Court decision in Wicker and Adkins does not dispose out of grievant's complaint/grievance. The SC Code of laws 24-3-430 and other relevant Code Sections promulgates the out come of this grievance, Wicker and Adkins only directs SCDC's attention to grant any complaint concern, inmate wages while working in PIE Industries. Therefore, The denial of grievant's complaint is arbitrary, capricious, and erroneous in light of the prevailing policy, procedure, and Code of laws.

William Mills 11-8-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

3181 (SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

Ackerman 5-6-11 2817

INSTRUCTIONS FOR COMPLETING STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use.
2. State your specific reason for further appeal. Do not submit any new issues for review.
3. Submit this completed form with your original Step 1 attached, to the Institutional Grievance Coordinator within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.
4. The decision rendered by the responsible official exhausts the appeal process of the SCDC Inmate Grievance Procedure.

3182

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Mills, William	278584	LCI-0894-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 8, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated October 5, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on November 12, 2001 and that your participation in this project ended on January 8, 2003.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court

Inmate Name	SCDC #	Grievance #
Mills, William	278584	LCI-0894-04

for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance nearly three (3) years after SCDC first paid you for your participation in the project located at Lieber, over 18 months after your participation in the project at Lieber ended, and over 30 days after the South Carolina Supreme Court issued Adkins and Wicker. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Inmate Name	SCDC #	Grievance #
Mills, William	278584	LCI-0894-04

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies,

Inmate Name	SCDC #	Grievance #
Mills, William	278584	LCI-0894-04

Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

Office Use Only
Grievance No. Lieber 0768-04
Code: General HW
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials

INMATE NAME: Roy C. Morris, Jr.
SCDC NUMBER: #286777
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper B-54
WORK ASSIGNMENT: PI-2

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, Williams Tech/Lieber were required by South Carolina Code §24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001(Exh.G,H). Since July 2001, Willaims Tech/Lieber were required to pay IE's the negotiated wage of $4.00/hr.(Statutes at Large,No.66,§37.31,eff.July 1, 2001.Exh.B,C). In fact, Williams Tech/Lieber's policy was to pay IE's, in most cases, under $1.00/hr. The September 30,1998 contract specifying a wage of $4.00/hr, the names and employment periods of all 1000+ class members from 1999 to June 2004(Exh. D,E,C,A, and F).

"Exh. denotes exhibits attached to Darrell Williams' grievance, which are incorporated by reference herein."

ACTION REQUESTED:

That IE's be paid back wages at the prevailing rate for 1999 to July 2001 and at $4.00/hr. for July 2001 to present, and in the future; all as determined from exhibits A-H; and the time cards, pay stubs, and other records for class members shown to IE's counsel July 20,2004 at Lieber in Jack Staudt's custody. IE's also request pre/post judgement interest, costs, and attorney fees.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

IE's have verbally requested Williams Tech/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which was dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Williams et.al. v. SCDC et.al., Case No.02-CP-18-134 now pending) which was certified a class action representing the class identified in Exh. A. On August 23,2004, the South Carolina Supreme Court held in the Adkins and Wicker cases that §24-3-430's IE's could file a grievance for back wages.

Roy Morris 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Cartledge 10/28/04
IGC Signature Date

☐ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 3187

N/A
Grievant Signature Date

Ackerman 5-6-11 2823

WARDEN'S DECISION AND REASON:

SEE ATTACHED

5-15-07
Warden Signature Date

☐ I accept the Warden's decision and consider the matter closed.
☑ I do not accept the Warden's decision and wish to appeal.

Roy M 5/22/07
Grievant Signature Date

Ari Nallman 5.15.07
~~IGC~~ Signature Date
IGA

Served by: Ari Nallman
5.22.07

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

3188

D/M R. Morris, #288777 LCI-08-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, etal., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

3189

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

3190

MORRIS LCI-0768-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 1 grievance form dated September 23, 2004 as well as any and all documents you submitted in support of your Step 1 grievance form.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on June 26, 2003 and that you ended your participation in this project on June 10, 2004.

After carefully considering your grievance and the arguments you made justifying the relief you request, I deny your grievance in its entirety.

As I said at the very beginning of my response, I reviewed your Step 1 form and the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 1 grievance.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and,

specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

In light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, I find that you did not submit your grievance by the deadline set forth in SCDC's inmate grievance policy. I made this finding, because you did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430.

My position is also supported by Administrative Law Judge Anderson's order in Wright, #200123, vs. SCDC, Docket No. 06-ALJ-04-00114-AP and Administrative Law Judge McLeod's order in Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance. In making this finding, I consulted with Lieber's Inmate Grievance Coordinator's [IGC] Office. Representatives of Lieber's IGC Office, in turn, consulted with SCDC's General Counsel's Office and the outside counsel retained by SCDC to defend the inmates' class action lawsuit in the case now known as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Through these consultations, I learned that inmate Darrell Williams, the class representative identified in the inmates' class action lawsuit, filed a Step 1 grievance on September 22, 2004 demanding relief that was similar if not identical to the relief you demanded in your Step 1 grievance. I also learned that Mr. Williams' grievance claimed to be a "class action" grievance on behalf of inmates including you. As a review of your Step 1 grievance clearly shows, you referenced the Step 1 grievance filed by Williams on September 22, 2004 throughout your Step 1 grievance.

Contrary to the claims you made in your Step 1 grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your Step 1 grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Therefore, to the extent you use the term "inmate/employee" within your Step 1 grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.
Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your Step 1 grievance requires or even considers such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your grievance in its entirety.

AMENDMENT TO GRIEVANCE OF ROY C. MORRIS, JR., #288777

Grievant was/is employed in the Williams Tech/Lieber Prison Industries/Private Sector Program for the provision of services. The Program was established under S.C. Code §24-3-310, 430. From 1999 to July 2001, §24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40/$10.97 for 1999, $9.74/$11.59 for 2000, and $10.10/$12.06 for 2001 (Exh. G,H; Exh. A-H to two grievances filed by Darrell Williams and counsel 9-22-04 are incorporated herein by reference).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hour (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of about $1/hour, and usually less. Exhibits document a $.35 per hour base rate (Exh. B,D,E); maximum of $1/hour (Exh. E); the 9-30-98 contract specifying a $4/hour wage (Exh. B,C); employee roster (Exh. A); and pay dates, hours, rates, and pay for Grievant (Exh. F). SCDC states rates/hours in Exh. F are incorrect after a certain date, however, as an SCDC document Exh. F should stand as prima facie evidence unless shown incorrect by other evidence.

Grievant requests back wages owed for hours in 1999 at $9.68 per hour; hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 1993.54 plus hours* in 7-1-01 to present at $4 per hour; less wages paid, §24-3-40 deductions, and soc. sec./medicare; plus interest, costs, and attorney fees.

Roy C. Morris 02/13/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0789; C, 0081,0086; F, 1262; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

Ackerman 5-6-11 2830