THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
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SC 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 9 OF 14

Lake E. Summers
Malone, Thompson, Summers & Ott LLC
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Columbia, South Carolina 29201
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E-mail: summers@mtsolawfirm.com

Counsel for SCDC

AMENDMENT TO GRIEVANCE OF JOSEPH SCHMITZ, #173987

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 898.20 hours in 1999 at $9.68 per hour; 2672.23 hours in 2000 at $10.66 per hour; 1389.68 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 8509.45 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, 0793; C, 0081,0086; F, 1330-1332; 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.

3655

AMENDMENT TO GRIEVANCE OF JOSEPH SCHMITZ, #173987

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 898.20 hours in 1999 at $9.68 per hour; 2672.23 hours in 2000 at $10.66 per hour; 1389.68 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 8509.45 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.

Joe Schmitz
(Grievant Signature) (Date)

* Attached are Exh. A, 0793; C, 0081,0086; F, 1330-1332; 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	ROGERS, CALVIN J.	262050	C B 31	1	9/25/02	4/9/03
MI 2	ROGERS, ERIC	255010	C A 42	2	11/29/01	8/27/02
MI 3	ROLDAN, FERNANDO	289490	C B 60	1	6/30/03	4/13/04
	ROPER, RASHONE	276964	S A 16	2	8/30/01	1/1/02
	ROSEMOND, JAMES	238635	C 0	1	8/11/99	4/8/00
	ROSS, CHARLIE	243958	C B 21	1	8/11/99	12/1/99
	ROSS, SAMUEL	268981	C B 52	1	10/16/00	6/27/01
	ROSSON, GERRY	258455	C A 46	1	5/31/00	11/16/00
MI 2	ROUSE, KENNETH	257559	C B 4	1	8/6/99	10/18/02
	ROWE, SHAWN	268721	S A 32	1	9/25/00	10/27/00
MI 2	RUONALA, RAYMOND	258133	S B 61	1	5/29/02	10/3/02
MI 2	SALANO, MARTIN	272142	C B 36	1	10/9/02	11/10/03
	SALISBURY, GEORGE	263724	A A 25	1	5/20/02	6/4/02
	SAMPLE, PHILLIP	262088	C B 5	1	5/30/00	9/25/00
	SAMPSON, BRAIN	255793	E B 37	1	6/27/00	7/10/00
MI 2	SAMPSON, JOSEPH	261610	C A 27	2	3/28/02	9/4/02
MI 3	SANDERS, J	257239	C A 0	0		12/6/99
MI 1B	SANDERS, SANDRA	249871	C B 7	1	2/15/00	2/6/04
	SANDERS, TERRY	219895	C B 20	1	5/1/00	8/21/00
	SANDERS, THOMAS	213149	A A 38	1	8/11/99	2/22/00
	SATTLER, JAMES	235043	C A 56	1	2/8/02	6/18/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/6/99	10/1/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/15/99	2/25/04
	SCHOFEILD, RICHARD	280804	E A 29	3	2/5/02	2/6/02
	SCOTT, ARTHUR	251957	C A 28	1	7/31/01	12/10/01
	SCOTT, CHRISTOPHER	276533	S A 15	1	7/30/01	8/22/01
MI 3	SCOTT, D	286443	C A 0	0		3/24/03
	SCOTT, GENE	192924	C 0	1	1/6/00	3/15/00
MI 3	SCOTT, ISAIAH	228008	C A 23	1	3/21/03	6/26/03
	SCOTT, JAMES	231412	S B 38	1	9/25/01	3/5/02
MI3	SCOTT, JEROME	153381	C A 51	2	7/10/01	8/22/02
MI 3	SCOTT, ROOSEVELT	275631	C A 53	3		4/8/04
	SCRIVEN, BRIAN	248731	A B 30	1	1/17/02	1/25/02
	SCRIVEN, EUGENE	216991	E B 8	1	9/25/01	4/5/02
	SCRIVEN, TERRY	238318	S A 33	1	1/14/02	4/22/02
MI 3	SEBASTIAN, JOHN	281904	C A 27	1	2/25/04	6/24/04
MI 3	SELLARS, RALPH	164295	C A 10	1	6/29/00	6/26/03
	SESSIONS, MICHAEL	232076	S A 58	2	5/30/00	9/25/00
	SHANNON, MICHEAL	267667	A A 14	1	4/30/02	5/20/02
MI 2	SHARPE, HAROLD	251233	C A 37	2	3/23/02	12/16/02
	SHARPER, HENRY	219950	A B 44	1	4/25/02	5/13/02
	SHAW, TOMMY	256140	M X 0	0	12/12/00	12/10/01
	SHEPHERD, JACOBI	257342	E A 24	1	1/14/02	2/19/02
MI 3	SHINE, GEORGE	292391	C A 4	1	3/1/04	6/24/04
	SHIRLEY, JAMES	274894	C B 28	2	6/12/01	1/9/02

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PLAINTIFF'S EXHIBIT A

A - 0793
June 2004

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

PLAINTIFF'S EXHIBIT C

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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

PLAINTIFF'S EXHIBIT C

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
235043	SATTLER	JAMES		20020701	0.50	14.44	7.22
173987	SCHMITZ	JOSEPH	W.	19990816	0.35	40.00	14.00
173987	SCHMITZ	JOSEPH	W.	19990816	0.55	8.00	4.40
173987	SCHMITZ	JOSEPH	W.	19990830	0.35	79.25	27.73
173987	SCHMITZ	JOSEPH	W.	19990830	0.55	4.50	2.47
173987	SCHMITZ	JOSEPH	W.	19990913	0.35	72.00	25.20
173987	SCHMITZ	JOSEPH	W.	19990913	0.55	23.50	12.92
173987	SCHMITZ	JOSEPH	W.	19990927	0.35	53.50	18.72
173987	SCHMITZ	JOSEPH	W.	19990927	0.55	22.25	12.23
173987	SCHMITZ	JOSEPH	W.	19991011	0.50	75.00	37.50
173987	SCHMITZ	JOSEPH	W.	19991011	0.55	54.50	29.97
173987	SCHMITZ	JOSEPH	W.	19991025	0.50	71.50	35.75
173987	SCHMITZ	JOSEPH	W.	19991025	0.55	14.50	7.97
173987	SCHMITZ	JOSEPH	W.	19991108	0.50	75.00	37.50
173987	SCHMITZ	JOSEPH	W.	19991108	0.55	11.50	6.32
173987	SCHMITZ	JOSEPH	W.	19991122	0.50	66.05	33.02
173987	SCHMITZ	JOSEPH	W.	19991206	0.50	56.15	28.07
173987	SCHMITZ	JOSEPH	W.	19991206	0.55	15.39	8.46
173987	SCHMITZ	JOSEPH	W.	19991220	2.50	2.00	5.00
173987	SCHMITZ	JOSEPH	W.	19991220	0.50	74.77	37.38
173987	SCHMITZ	JOSEPH	W.	19991220	0.55	40.35	22.19
173987	SCHMITZ	JOSEPH	W.	20000103	0.50	32.12	16.06
173987	SCHMITZ	JOSEPH	W.	20000103	0.55	6.37	3.50
173987	SCHMITZ	JOSEPH	W.	20000117	0.55	7.50	4.12
173987	SCHMITZ	JOSEPH	W.	20000117	0.50	75.00	37.50
173987	SCHMITZ	JOSEPH	W.	20000117	0.55	17.65	9.70
173987	SCHMITZ	JOSEPH	W.	20000117	0.50	15.00	7.50
173987	SCHMITZ	JOSEPH	W.	20000117	0.55	4.00	2.20
173987	SCHMITZ	JOSEPH	W.	20000131	0.50	63.95	31.97
173987	SCHMITZ	JOSEPH	W.	20000131	0.55	7.50	4.12
173987	SCHMITZ	JOSEPH	W.	20000214	0.60	75.00	45.00
173987	SCHMITZ	JOSEPH	W.	20000214	0.80	6.50	5.20
173987	SCHMITZ	JOSEPH	W.	20000214	0.55	14.75	8.11
173987	SCHMITZ	JOSEPH	W.	20000214	0.55	5.50	3.02
173987	SCHMITZ	JOSEPH	W.	20000214	0.10	63.95	6.39
173987	SCHMITZ	JOSEPH	W.	20000228	0.60	67.50	40.50
173987	SCHMITZ	JOSEPH	W.	20000228	0.55	15.90	8.74
173987	SCHMITZ	JOSEPH	W.	20000228	1.05	15.00	15.75
173987	SCHMITZ	JOSEPH	W.	20000313	0.75	75.00	56.25
173987	SCHMITZ	JOSEPH	W.	20000313	0.55	15.98	8.78
173987	SCHMITZ	JOSEPH	W.	20000313	0.75	6.50	4.87
173987	SCHMITZ	JOSEPH	W.	20000327	0.75	75.00	56.25
173987	SCHMITZ	JOSEPH	W.	20000327	0.75	14.45	10.83
173987	SCHMITZ	JOSEPH	W.	20000327	1.00	10.00	10.00
173987	SCHMITZ	JOSEPH	W.	20000327	1.00	7.50	7.50
173987	SCHMITZ	JOSEPH	W.	20000410	0.75	69.63	52.22
173987	SCHMITZ	JOSEPH	W.	20000410	0.80	7.50	6.00
173987	SCHMITZ	JOSEPH	W.	20000424	0.75	75.00	56.25
173987	SCHMITZ	JOSEPH	W.	20000424	0.75	17.43	13.07
173987	SCHMITZ	JOSEPH	W.	20000424	0.25	5.90	1.47
173987	SCHMITZ	JOSEPH	W.	20000508	0.75	75.00	56.25
173987	SCHMITZ	JOSEPH	W.	20000508	0.75	30.68	23.01
173987	SCHMITZ	JOSEPH	W.	20000508	0.25	14.42	3.60
173987	SCHMITZ	JOSEPH	W.	20000522	0.75	67.50	50.62

PLAINTIFF'S EXHIBIT F

A - 1330
June 2004

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
173987	SCHMITZ	JOSEPH	W.	20000522	0.75	38.97	29.22
173987	SCHMITZ	JOSEPH	W.	20000522	0.25	21.75	5.43
173987	SCHMITZ	JOSEPH	W.	20000522	1.00	4.00	4.00
173987	SCHMITZ	JOSEPH	W.	20000605	0.75	67.50	50.62
173987	SCHMITZ	JOSEPH	W.	20000605	0.75	3.58	2.68
173987	SCHMITZ	JOSEPH	W.	20000703	0.65	60.00	39.00
173987	SCHMITZ	JOSEPH	W.	20000703	0.75	24.62	18.46
173987	SCHMITZ	JOSEPH	W.	20000703	0.35	4.65	1.62
173987	SCHMITZ	JOSEPH	W.	20000703	0.25	14.97	3.74
173987	SCHMITZ	JOSEPH	W.	20000717	0.50	82.78	41.39
173987	SCHMITZ	JOSEPH	W.	20000731	0.50	137.67	68.83
173987	SCHMITZ	JOSEPH	W.	20000814	0.50	87.75	43.87
173987	SCHMITZ	JOSEPH	W.	20000828	0.50	96.63	48.31
173987	SCHMITZ	JOSEPH	W.	20000911	0.50	90.75	45.37
173987	SCHMITZ	JOSEPH	W.	20000925	0.50	127.06	63.53
173987	SCHMITZ	JOSEPH	W.	20001009	0.50	111.11	55.55
173987	SCHMITZ	JOSEPH	W.	20001023	0.50	112.43	56.21
173987	SCHMITZ	JOSEPH	W.	20001106	0.50	112.50	56.25
173987	SCHMITZ	JOSEPH	W.	20001120	0.50	111.38	55.69
173987	SCHMITZ	JOSEPH	W.	20001204	0.50	116.70	58.35
173987	SCHMITZ	JOSEPH	W.	20001204	0.25	6.63	1.65
173987	SCHMITZ	JOSEPH	W.	20001218	0.50	138.82	69.41
173987	SCHMITZ	JOSEPH	W.	20010101	0.50	77.79	38.89
173987	SCHMITZ	JOSEPH	W.	20010115	0.50	96.30	48.15
173987	SCHMITZ	JOSEPH	W.	20010129	0.50	124.78	62.39
173987	SCHMITZ	JOSEPH	W.	20010212	0.50	29.02	14.51
173987	SCHMITZ	JOSEPH	W.	20010226	0.50	60.52	30.26
173987	SCHMITZ	JOSEPH	W.	20010312	0.50	112.32	56.16
173987	SCHMITZ	JOSEPH	W.	20010326	0.50	111.78	55.89
173987	SCHMITZ	JOSEPH	W.	20010409	0.50	118.46	59.23
173987	SCHMITZ	JOSEPH	W.	20010423	0.50	105.97	52.98
173987	SCHMITZ	JOSEPH	W.	20010507	0.50	112.46	56.23
173987	SCHMITZ	JOSEPH	W.	20010521	0.50	140.78	70.39
173987	SCHMITZ	JOSEPH	W.	20010604	0.50	101.25	50.62
173987	SCHMITZ	JOSEPH	W.	20010618	0.50	124.06	62.03
173987	SCHMITZ	JOSEPH	W.	20010702	0.50	151.98	75.99
173987	SCHMITZ	JOSEPH	W.	20010716	0.50	141.93	70.96
173987	SCHMITZ	JOSEPH	W.	20010730	0.50	163.79	81.89
173987	SCHMITZ	JOSEPH	W.	20010813	0.50	181.00	90.50
173987	SCHMITZ	JOSEPH	W.	20010827	0.50	133.70	66.85
173987	SCHMITZ	JOSEPH	W.	20010910	0.50	140.77	70.38
173987	SCHMITZ	JOSEPH	W.	20010924	0.50	151.04	75.52
173987	SCHMITZ	JOSEPH	W.	20011008	0.50	193.20	96.60
173987	SCHMITZ	JOSEPH	W.	20011022	0.50	144.96	72.48
173987	SCHMITZ	JOSEPH	W.	20011105	0.50	126.40	63.20
173987	SCHMITZ	JOSEPH	W.	20011119	0.50	183.86	91.93
173987	SCHMITZ	JOSEPH	W.	20011203	0.50	114.34	57.17
173987	SCHMITZ	JOSEPH	W.	20011217	0.50	159.66	79.83
173987	SCHMITZ	JOSEPH	W.	20011231	0.50	68.74	34.37
173987	SCHMITZ	JOSEPH	W.	20020114	0.50	101.36	50.68
173987	SCHMITZ	JOSEPH	W.	20020128	0.50	134.28	67.14
173987	SCHMITZ	JOSEPH	W.	20020211	0.50	144.26	72.13
173987	SCHMITZ	JOSEPH	W.	20020225	0.50	137.25	68.62
173987	SCHMITZ	JOSEPH	W.	20020311	0.50	129.02	64.51

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
173987	SCHMITZ	JOSEPH	W.	20020325	0.50	131.49	65.74
173987	SCHMITZ	JOSEPH	W.	20020408	0.50	108.90	54.45
173987	SCHMITZ	JOSEPH	W.	20020422	0.50	125.42	62.71
173987	SCHMITZ	JOSEPH	W.	20020506	0.50	160.10	80.05
173987	SCHMITZ	JOSEPH	W.	20020520	0.50	124.90	62.45
173987	SCHMITZ	JOSEPH	W.	20020603	0.50	121.61	60.80
173987	SCHMITZ	JOSEPH	W.	20020617	0.50	126.13	63.06
173987	SCHMITZ	JOSEPH	W.	20020701	0.50	122.45	61.22
173987	SCHMITZ	JOSEPH	W.	20020715	0.50	101.20	50.60
173987	SCHMITZ	JOSEPH	W.	20020729	0.50	124.70	62.35
173987	SCHMITZ	JOSEPH	W.	20020812	0.50	121.83	60.91
173987	SCHMITZ	JOSEPH	W.	20020826	0.50	111.46	55.73
173987	SCHMITZ	JOSEPH	W.	20020909	0.50	116.85	58.42
173987	SCHMITZ	JOSEPH	W.	20020923	0.50	36.48	18.24
173987	SCHMITZ	JOSEPH	W.	20021104	0.50	91.54	45.77
173987	SCHMITZ	JOSEPH	W.	20021118	0.50	140.51	70.25
173987	SCHMITZ	JOSEPH	W.	20021202	0.50	112.29	56.14
173987	SCHMITZ	JOSEPH	W.	20021216	0.50	130.88	65.44
173987	SCHMITZ	JOSEPH	W.	20021230	0.50	66.06	33.03
173987	SCHMITZ	JOSEPH	W.	20030113	0.50	76.00	38.00
173987	SCHMITZ	JOSEPH	W.	20030127	0.50	124.01	62.00
173987	SCHMITZ	JOSEPH	W.	20030210	0.50	141.59	70.79
173987	SCHMITZ	JOSEPH	W.	20030224	0.50	143.49	71.74
173987	SCHMITZ	JOSEPH	W.	20030310	0.50	137.22	68.61
173987	SCHMITZ	JOSEPH	W.	20030324	0.50	124.32	62.16
173987	SCHMITZ	JOSEPH	W.	20030407	0.50	136.93	68.46
173987	SCHMITZ	JOSEPH	W.	20030421	0.50	107.01	53.50
173987	SCHMITZ	JOSEPH	W.	20030505	0.50	63.99	31.99
173987	SCHMITZ	JOSEPH	W.	20030519	0.50	134.67	67.33
173987	SCHMITZ	JOSEPH	W.	20030602	0.50	101.14	50.57
173987	SCHMITZ	JOSEPH	W.	20030616	0.50	127.43	63.71
173987	SCHMITZ	JOSEPH	W.	20030630	0.50	121.51	60.75
173987	SCHMITZ	JOSEPH	W.	20030714	0.50	144.48	72.24
173987	SCHMITZ	JOSEPH	W.	20030728	0.50	146.80	73.40
173987	SCHMITZ	JOSEPH	W.	20030811	0.50	126.94	63.47
173987	SCHMITZ	JOSEPH	W.	20030825	0.50	154.18	77.09
173987	SCHMITZ	JOSEPH	W.	20030908	0.50	118.43	59.21
173987	SCHMITZ	JOSEPH	W.	20030922	0.50	131.85	65.92
173987	SCHMITZ	JOSEPH	W.	20031006	0.50	141.31	70.65
173987	SCHMITZ	JOSEPH	W.	20031020	0.50	149.89	74.94
173987	SCHMITZ	JOSEPH	W.	20031103	0.50	154.95	77.47
173987	SCHMITZ	JOSEPH	W.	20031117	0.50	130.40	65.20
173987	SCHMITZ	JOSEPH	W.	20031201	0.50	125.69	62.84
173987	SCHMITZ	JOSEPH	W.	20031215	0.50	97.64	48.82
173987	SCHMITZ	JOSEPH	W.	20031229	0.50	123.52	61.76
173987	SCHMITZ	JOSEPH	W.	20040112	0.50	70.33	35.16
173987	SCHMITZ	JOSEPH	W.	20040126	0.50	129.51	64.75
173987	SCHMITZ	JOSEPH	W.	20040209	0.50	155.80	77.90
173987	SCHMITZ	JOSEPH	W.	20040223	0.50	114.36	57.18
173987	SCHMITZ	JOSEPH	W.	20040308	0.50	29.70	14.85
251957	SCOTT	ARTHUR	LEE	20010924	0.50	31.18	15.59
251957	SCOTT	ARTHUR	LEE	20011008	0.50	79.56	39.78
251957	SCOTT	ARTHUR	LEE	20011022	0.50	66.70	33.35
251957	SCOTT	ARTHUR	LEE	20011105	0.50	67.23	33.61

PLAINTIFF'S EXHIBIT F

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A - 1332
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

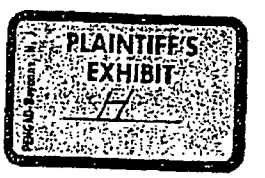
Subject: Your 9/14/04 request

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

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Joseph W Schmitz NOV 04 2004 PP
SCDC NUMBER: 173987
INSTITUTION: Lieber Corr, Inst,
HOUSING UNIT: Cooper C-A-13
WORK ASSIGNMENT: Dorm Worker

Office Use Only
Grievance No. CI 0704-04
Code: General ✓
Policy
Disc. Hear.
Class NOV 08 2004
Date Received
IGC Initials

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

1) ADKINS + WICKER require payment of prevailing wages.
2) Inmates were employed by WTI, AND SCDC was WTI agents in paying our wages.
3) ADKINS + WICKER further allows this issue of payments of wages under 24-3-430, To be grieved pursuant to SCDC procedures.
4) Grievent incorporates by reference all exhibits attached to grievances filed by Darrell Williams and Attorney Douglas H. Westbrook on 09-22-04

Joe W Schmitz 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.

Joe Schmitz 5-18-07 M. E. Monteith 5/18/07
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

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Ackerman 5-6-11 3301

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.

SCHMITZ LCI-0704-04

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 July 6, 1999 and that your participation in this project ended on October 1, 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 five (5) years after SCDC first paid you for your participation in the project located at Lieber, approximately two (2) 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.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joseph Schmitz, #173987,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Joseph Schmitz does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-18-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

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

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

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

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

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

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

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

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

Joseph Schmitz
Appellant's Name
Ridgeland C.I.
P.O. Box 2039
Mailing Address
Ridgeland, SC 29936
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

3671

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
JOSEPH SCHMITZ, #173987	)	
	)	
	)	
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

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

Office Use Only
Grievance No. Lieber 0659-04
Code: General RMY
Nelson
Adj. Com.
Class.
Date Received SEP 22 2004
IGC Initials

INMATE NAME: ARTHUR LEE SCOTT
SCDC NUMBER: 251957
INSTITUTION: LIEBER
HOUSING UNIT: WAHOO B239
WORK ASSIGNMENT: KITCHEN

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy; if Nelson Decree, specify which section of decree) THE department is asked to review and determine, whether I am entitled to receive back wages which by Law are due to me from working at prison industries program when they only paid me .35 an hour and not under prevailing wage statute South Carolina Code Ann-Sec. 24-3-430 SA-77 which is basis of my Grievance applys and likewise note that under law the department is asking to pay at prevailing wage not 4$ an hour currently getting now from Williams Tech as well as overtime Rate of pay under law

ACTION REQUESTED: That inmate be paid prevailing wage and overtime Rate of pay under law And that prevailing wage Be paid

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed and ordered to file Grievance By Court

Arthur Lee Scott 9-03-04
Grievant Signature Date

INFORMAL RESOLUTION BY IGC:

See Warden's response.

J Carlton 10/28/04
IGC Signature Date

☐ I accept the informal resolution and consider the matter closed.
☐ I do not accept the informal resolution. I wish to appeal to the Warden.

N/A
Grievant Signature Date

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SCDC 10-5 (Rev. April 1996)

Ackerman 5-6-11 3308

WARDEN'S DECISION AND REASON:

See Attachment.

☐ I accept.
☑ I do not accept.

Warden Signature Oct. 28, 04
Date

I hereby acknowledge receipt of the Warden's response. My signature in no way indicates my acceptance of the decision.

Grievant Signature 10-29-04
Date

IGC Signature 10/29/04
Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
2. Complete each section in its entirety, writing only in the space provided for inmate use.
3. Only one (1) issue is to be addressed on each form.
4. Submit the completed form to the Institutional Grievance Coordinator within seven (7) days of an alleged incident; Policy or Nelson at any time. Do not write in the space provided for the Warden's response.
5. If you are not satisfied with the Warden's decision, you may appeal to the Regional Director within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator.

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Inmate A. Scott, # 251957 LC10659-01

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.

3675

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.

3676

AMENDMENT TO GRIEVANCE OF ARTHUR SCOTT, #251957

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 424.89 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.

Arthur Scott 2-8-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0793; C, 0081,0086; F, 1332-1333; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
MI 3	ROGERS, CALVIN J.	262050	C B 31	1	9/25/02	4/9/03
MI 2	ROGERS, ERIC	255010	C A 42	2	11/29/01	8/27/02
MI 3	ROLDAN, FERNANDO	289490	C B 60	1	6/30/03	4/13/04
	ROPER, RASHONE	276964	S A 16	2	8/30/01	1/1/02
	ROSEMOND, JAMES	238635	C 0	1	8/11/99	4/8/00
	ROSS, CHARLIE	243958	C B 21	1	8/11/99	12/1/99
	ROSS, SAMUEL	268981	C B 52	1	10/16/00	6/27/01
	ROSSON, GERRY	258455	C A 46	1	5/31/00	11/16/00
MI 2	ROUSE, KENNETH	257559	C B 4	1	8/6/99	10/18/02
	ROWE, SHAWN	268721	S A 32	1	9/25/00	10/27/00
MI 2	RUONALA, RAYMOND	258133	S B 61	1	5/29/02	10/3/02
MI 2	SALANO, MARTIN	272142	C B 36	1	10/9/02	11/10/03
	SALISBURY, GEORGE	263724	A A 25	1	5/20/02	6/4/02
	SAMPLE, PHILLIP	262088	C B 5	1	5/30/00	9/25/00
	SAMPSON, BRAIN	255793	E B 37	1	6/27/00	7/10/00
MI 2	SAMPSON, JOSEPH	261610	C A 27	2	3/28/02	9/4/02
MI 3	SANDERS, I	257239	C A 0	0		12/6/99
MI 1B	SANDERS, SANDRA	249871	C B 7	1	2/15/00	2/6/04
	SANDERS, TERRY	219895	C B 20	1	5/1/00	8/21/00
	SANDERS, THOMAS	213149	A A 38	1	8/11/99	2/22/00
	[redacted]					
	SATTLER, JAMES	235043	C A 56	1	2/8/02	6/18/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/6/99	10/1/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/15/99	2/25/04
	SCHOFEILD, RICHARD	280804	E A 29	3	2/5/02	2/6/02
	SCOTT, ARTHUR	251957	C A 28	1	7/31/01	12/10/01
	SCOTT, CHRISTOPHER	276533	S A 15	1	7/30/01	8/22/01
MI 3	SCOTT, D	286443	C A 0	0		3/24/03
	SCOTT, GENE	192924	C 0	1	1/6/00	3/15/00
MI 3	SCOTT, ISAIAH	228008	C A 23	1	3/21/03	6/26/03
	SCOTT, JAMES	231412	S B 38	1	9/25/01	3/5/02
MI3	SCOTT, JEROME	153381	C A 51	2	7/10/01	8/22/02
MI 3	SCOTT, ROOSEVELT	275631	C A 53	3		4/8/04
	SCRIVEN, BRIAN	248731	A B 30	1	1/17/02	1/25/02
	SCRIVEN, EUGENE	216991	E B 8	1	9/25/01	4/5/02
	SCRIVEN, TERRY	238318	S A 33	1	1/14/02	4/22/02
MI 3	SEBASTIAN, JOHN	281904	C A 27	1	2/25/04	6/24/04
MI 3	SELLARS, RALPH	164295	C A 10	1	6/29/00	6/26/03
	SESSIONS, MICHAEL	232076	S A 58	2	5/30/00	9/25/00
	SHANNON, MICHEAL	267667	A A 14	1	4/30/02	5/20/02
MI 2	SHARPE, HAROLD	251233	C A 37	2	3/23/02	12/16/02
	SHARPER, HENRY	219950	A B 44	1	4/25/02	5/13/02
	SHAW, TOMMY	256140	MX 0	0	12/12/00	12/10/01
	SHEPHERD, JACOBI	257342	E A 24	1	1/14/02	2/19/02
MI 3	SHINE, GEORGE	292391	C A 4	1	3/1/04	6/24/04
	SHIRLEY, JAMES	274894	C B 28	2	6/12/01	1/9/02

PLAINTIFF'S EXHIBIT

A - 0793
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
3679

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

00826

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
173987	SCHMITZ	JOSEPH	W.	20020325	0.50	131.49	65.74
173987	SCHMITZ	JOSEPH	W.	20020408	0.50	108.90	54.45
173987	SCHMITZ	JOSEPH	W.	20020422	0.50	125.42	62.71
173987	SCHMITZ	JOSEPH	W.	20020506	0.50	160.10	80.05
173987	SCHMITZ	JOSEPH	W.	20020520	0.50	124.90	62.45
173987	SCHMITZ	JOSEPH	W.	20020603	0.50	121.61	60.80
173987	SCHMITZ	JOSEPH	W.	20020617	0.50	126.13	63.06
173987	SCHMITZ	JOSEPH	W.	20020701	0.50	122.45	61.22
173987	SCHMITZ	JOSEPH	W.	20020715	0.50	101.20	50.60
173987	SCHMITZ	JOSEPH	W.	20020729	0.50	124.70	62.35
173987	SCHMITZ	JOSEPH	W.	20020812	0.50	121.83	60.91
173987	SCHMITZ	JOSEPH	W.	20020826	0.50	111.46	55.73
173987	SCHMITZ	JOSEPH	W.	20020909	0.50	116.85	58.42
173987	SCHMITZ	JOSEPH	W.	20020923	0.50	36.48	18.24
173987	SCHMITZ	JOSEPH	W.	20021104	0.50	91.54	45.77
173987	SCHMITZ	JOSEPH	W.	20021118	0.50	140.51	70.25
173987	SCHMITZ	JOSEPH	W.	20021202	0.50	112.29	56.14
173987	SCHMITZ	JOSEPH	W.	20021216	0.50	130.88	65.44
173987	SCHMITZ	JOSEPH	W.	20021230	0.50	66.06	33.03
173987	SCHMITZ	JOSEPH	W.	20030113	0.50	76.00	38.00
173987	SCHMITZ	JOSEPH	W.	20030127	0.50	124.01	62.00
173987	SCHMITZ	JOSEPH	W.	20030210	0.50	141.59	70.79
173987	SCHMITZ	JOSEPH	W.	20030224	0.50	143.49	71.74
173987	SCHMITZ	JOSEPH	W.	20030310	0.50	137.22	68.61
173987	SCHMITZ	JOSEPH	W.	20030324	0.50	124.32	62.16
173987	SCHMITZ	JOSEPH	W.	20030407	0.50	136.93	68.46
173987	SCHMITZ	JOSEPH	W.	20030421	0.50	107.01	53.50
173987	SCHMITZ	JOSEPH	W.	20030505	0.50	63.99	31.99
173987	SCHMITZ	JOSEPH	W.	20030519	0.50	134.67	67.33
173987	SCHMITZ	JOSEPH	W.	20030602	0.50	101.14	50.57
173987	SCHMITZ	JOSEPH	W.	20030616	0.50	127.43	63.71
173987	SCHMITZ	JOSEPH	W.	20030630	0.50	121.51	60.75
173987	SCHMITZ	JOSEPH	W.	20030714	0.50	144.48	72.24
173987	SCHMITZ	JOSEPH	W.	20030728	0.50	146.80	73.40
173987	SCHMITZ	JOSEPH	W.	20030811	0.50	126.94	63.47
173987	SCHMITZ	JOSEPH	W.	20030825	0.50	154.18	77.09
173987	SCHMITZ	JOSEPH	W.	20030908	0.50	118.43	59.21
173987	SCHMITZ	JOSEPH	W.	20030922	0.50	131.85	65.92
173987	SCHMITZ	JOSEPH	W.	20031006	0.50	141.31	70.65
173987	SCHMITZ	JOSEPH	W.	20031020	0.50	149.89	74.94
173987	SCHMITZ	JOSEPH	W.	20031103	0.50	154.95	77.47
173987	SCHMITZ	JOSEPH	W.	20031117	0.50	130.40	65.20
173987	SCHMITZ	JOSEPH	W.	20031201	0.50	125.69	62.84
173987	SCHMITZ	JOSEPH	W.	20031215	0.50	97.64	48.82
173987	SCHMITZ	JOSEPH	W.	20031229	0.50	123.52	61.76
173987	SCHMITZ	JOSEPH	W.	20040112	0.50	70.33	35.16
173987	SCHMITZ	JOSEPH	W.	20040126	0.50	129.51	64.75
173987	SCHMITZ	JOSEPH	W.	20040209	0.50	155.80	77.90
173987	SCHMITZ	JOSEPH	W.	20040223	0.50	114.36	57.18
173987	SCHMITZ	JOSEPH	W.	20040308	0.50	29.70	14.85
251957	SCOTT	ARTHUR	LEE	20010924	0.50	31.18	15.59
251957	SCOTT	ARTHUR	LEE	20011008	0.50	79.56	39.78
251957	SCOTT	ARTHUR	LEE	20011022	0.50	66.70	33.35
251957	SCOTT	ARTHUR	LEE	20011105	0.50	67.23	33.61

PLAINTIFF'S EXHIBIT
C

3681

A - 1332
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
251957	SCOTT	ARTHUR	LEE	20011119	0.50	68.99	34.49
251957	SCOTT	ARTHUR	LEE	20011203	0.50	70.16	35.08
251957	SCOTT	ARTHUR	LEE	20011217	0.50	41.07	20.53
276533	SCOTT	CHRISTOPHE		20010813	0.50	46.84	23.42
276533	SCOTT	CHRISTOPHE		20010827	0.50	41.79	20.89
286443	SCOTT	DEXTER	T	20021007	0.50	12.39	6.19
286443	SCOTT	DEXTER	T	20021021	0.50	52.50	26.25
286443	SCOTT	DEXTER	T	20021104	0.50	52.50	26.25
286443	SCOTT	DEXTER	T	20021118	0.50	58.21	29.10
286443	SCOTT	DEXTER	T	20021202	0.50	45.96	22.98
286443	SCOTT	DEXTER	T	20021216	0.50	76.98	38.49
286443	SCOTT	DEXTER	T	20021230	0.50	34.52	17.26
286443	SCOTT	DEXTER	T	20030113	0.50	40.83	20.41
286443	SCOTT	DEXTER	T	20030127	0.50	61.06	30.53
286443	SCOTT	DEXTER	T	20030210	0.50	56.68	28.34
286443	SCOTT	DEXTER	T	20030224	0.50	30.75	15.37
286443	SCOTT	DEXTER	T	20030310	0.50	21.12	10.56
286443	SCOTT	DEXTER	T	20030324	0.50	38.20	19.10
192924	SCOTT	GENE	WADE	19991108	0.35	15.00	5.25
192924	SCOTT	GENE	WADE	19991108	0.55	13.50	7.42
192924	SCOTT	GENE	WADE	19991122	0.35	64.92	22.72
192924	SCOTT	GENE	WADE	19991206	0.35	46.30	16.20
192924	SCOTT	GENE	WADE	19991220	2.50	2.00	5.00
192924	SCOTT	GENE	WADE	19991220	0.35	71.20	24.92
192924	SCOTT	GENE	WADE	20000103	0.35	19.00	6.65
192924	SCOTT	GENE	WADE	20000103	0.55	0.52	0.28
192924	SCOTT	GENE	WADE	20000117	0.50	60.98	30.49
192924	SCOTT	GENE	WADE	20000117	0.35	7.50	2.62
192924	SCOTT	GENE	WADE	20000131	0.35	54.75	19.16
192924	SCOTT	GENE	WADE	20000214	0.50	71.22	35.61
192924	SCOTT	GENE	WADE	20000228	0.35	54.08	18.92
192924	SCOTT	GENE	WADE	20000313	0.35	66.03	23.11
228008	SCOTT	ISAIAH		19990816	0.50	56.00	28.00
228008	SCOTT	ISAIAH		19990816	0.70	8.00	5.60
228008	SCOTT	ISAIAH		19990830	0.50	79.25	39.62
228008	SCOTT	ISAIAH		19990830	0.70	4.50	3.15
228008	SCOTT	ISAIAH		19990913	0.50	72.00	36.00
228008	SCOTT	ISAIAH		19990913	0.70	22.25	15.57
228008	SCOTT	ISAIAH		19990927	0.50	55.00	27.50
228008	SCOTT	ISAIAH		19990927	0.70	14.00	9.80
228008	SCOTT	ISAIAH		19991011	0.50	75.00	37.50
228008	SCOTT	ISAIAH		19991011	0.55	6.50	3.57
228008	SCOTT	ISAIAH		19991025	0.50	59.50	29.75
228008	SCOTT	ISAIAH		19991108	0.35	52.50	18.37
228008	SCOTT	ISAIAH		19991206	0.50	34.95	17.47
228008	SCOTT	ISAIAH		19991220	2.50	2.00	5.00
228008	SCOTT	ISAIAH		19991220	0.35	63.52	22.23
228008	SCOTT	ISAIAH		20000103	0.50	26.28	13.14
228008	SCOTT	ISAIAH		20000117	0.35	72.70	25.44
228008	SCOTT	ISAIAH		20000131	0.50	64.85	32.42
228008	SCOTT	ISAIAH		20000214	0.50	75.00	37.50
228008	SCOTT	ISAIAH		20000228	0.35	52.50	18.37
228008	SCOTT	ISAIAH		20000313	0.50	73.57	36.78
228008	SCOTT	ISAIAH		20000327	0.50	66.58	33.29

A - 1333
June 2004

3682

Ackerman 5-6-11 3317

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.



3683

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

3685

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LC/06904
Code: General NAV
Policy
Disc. Hear.
Class.
Date Received NOV 01 2004
IGC Initials

INMATE NAME: ARTHUR LEE SCOTT
SCDC NUMBER: 165957
INSTITUTION: Lieber CORR INST
HOUSING UNIT: WANDA-B-239
INMATE ASSIGNMENT: NONE

RECEIVED NOV 05 2004

Nov. 1, 04 pp

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
I Feel that the Warden decision is incorrect, I base my Appeal on the Prevailing wage statute of south Carolina Code Ann Sec. 24-3-430 (A-F) which is the basis of my grievance As I've stated in my Step 1. Grievance, I Feel I am entitled to back wages, overtim Rate of pay, Prevailing wages under this Law for working at Prison Industry. SCDC/Williams Tech program at Lieber CORR. INST, Not the current pay they (Williams) Are paying S.C.D.C. Now. I'm Asking S.C.D.C to pay me back wages, overtime pay of Rate, Prevailing wages under south Carolina Code Ann. Sec. 24-3-430 (A-F)

Arthur Scott 11-1-04
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.

Arthur Scott 5-22-07
Grievant Signature Date

Ann Hallman 5-22-07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3686

Ackerman 5-6-11 3321

SCOTT LCI-0659-04

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 you began participating in the prison industries project at Lieber on July 31, 2001 and that your participation in this project ended on December 10, 2002.

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

As I said at the very beginning of my response, I reviewed your Step 2 appeal 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, 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.
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.

3689

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Arthur Lee Scott, #251957

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Arthur Lee Scott 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.

Arthur Lee Scott
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

3690

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ARTHUR LEE SCOTT, #251957	)	
	)	
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

3691

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Isaiah Scott INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 228008

INSTITUTION: Lieber

HOUSING UNIT: Cooper A-12 ✓

WORK ASSIGNMENT: Farm

Office Use Only

Grievance No. Lieber 0921-04

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

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

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

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's hav verbally requested WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which wa dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willi et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending] which was certifi a class action representing the class identified in Exh. A. On August 23, 20 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Isaiah Scott 9-27-04
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.

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 3692

Ackerman 5-6-11 3327

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.

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J/M I. Scott, # 228008 CC1072-04

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. SGDC.

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.

3655

AMENDMENT TO GRIEVANCE OF ISAIAH SCOTT, #228008

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 631.25 hours in 1999 at $9.68 per hour; 1790.19 hours in 2000 at $10.66 per hour; 1119.90 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 1388.18 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.

Isaiah Scott 03/19/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0793; C, 0081,0086; F, 1333-1334; 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	ROGERS, CALVIN J.	262050	C B 31	1	9/25/02	4/9/03
MI 2	ROGERS, ERIC	255010	C A 42	2	11/29/01	8/27/02
MI 3	ROLDAN, FERNANDO	289490	C B 60	1	6/30/03	4/13/04
	ROPER, RASHONE	276964	S A 16	2	8/30/01	1/1/02
	ROSEMOND, JAMES	238635	C 0	1	8/11/99	4/8/00
	ROSS, CHARLIE	243958	C B 21	1	8/11/99	12/1/99
	ROSS, SAMUEL	268981	C B 52	1	10/16/00	6/27/01
	ROSSON, GERRY	258455	C A 46	1	5/31/00	11/16/00
MI 2	ROUSE, KENNETH	257559	C B 4	1	8/6/99	10/18/02
	ROWE, SHAWN	268721	S A 32	1	9/25/00	10/27/00
MI 2	RUONALA, RAYMOND	258133	S B 61	1	5/29/02	10/3/02
MI 2	SALANO, MARTIN	272142	C B 36	1	10/9/02	11/10/03
	SALISBURY, GEORGE	263724	A A 25	1	5/20/02	6/4/02
	SAMPLE, PHILLIP	262088	C B 5	1	5/30/00	9/25/00
	SAMPSON, BRAIN	255793	E B 37	1	6/27/00	7/10/00
MI 2	SAMPSON, JOSEPH	261610	C A 27	2	3/28/02	9/4/02
MI 3	SANDERS, I	257239	C A 0	0		12/6/99
MI 1B	SANDERS, SANDRA	249871	C B 7	1	2/15/00	2/6/04
	SANDERS, TERRY	219895	C B 20	1	5/1/00	8/21/00
	SANDERS, THOMAS	213149	A A 38	1	8/11/99	2/22/00
	[redacted]					
	SATTLER, JAMES	235043	C A 56	1	2/8/02	6/18/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/6/99	10/1/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/15/99	2/25/04
	SCHOFEILD, RICHARD	280804	E A 29	3	2/5/02	2/6/02
	SCOTT, ARTHUR	251957	C A 28	1	7/31/01	12/10/01
	SCOTT, CHRISTOPHER	276533	S A 15	1	7/30/01	8/22/01
MI 3	SCOTT, D	286443	C A 0	0		3/24/03
	SCOTT, GENE	192924	C 0	1	1/6/00	3/15/00
MI 3	SCOTT, ISAIAH	228008	C A 23	1	3/21/03	6/26/03
	SCOTT, JAMES	231412	S B 38	1	9/25/01	3/5/02
MI3	SCOTT, JEROME	153381	C A 51	2	7/10/01	8/22/02
MI 3	SCOTT, ROOSEVELT	275631	C A 53	3		4/8/04
	SCRIVEN, BRIAN	248731	A B 30	1	1/17/02	1/25/02
	SCRIVEN, EUGENE	216991	E B 8	1	9/25/01	4/5/02
	SCRIVEN, TERRY	238318	S A 33	1	1/14/02	4/22/02
MI 3	SEBASTIAN, JOHN	281904	C A 27	1	2/25/04	6/24/04
MI 3	SELLARS, RALPH	164295	C A 10	1	6/29/00	6/26/03
	SESSIONS, MICHAEL	232076	S A 58	2	5/30/00	9/25/00
	SHANNON, MICHEAL	267667	A A 14	1	4/30/02	5/20/02
MI 2	SHARPE, HAROLD	251233	C A 37	2	3/23/02	12/16/02
	SHARPER, HENRY	219950	A B 44	1	4/25/02	5/13/02
	SHAW, TOMMY	256140	M X 0	0	12/12/00	12/10/01
	SHEPHERD, JACOBI	257342	E A 24	1	1/14/02	2/19/02
MI 3	SHINE, GEORGE	292391	C A 4	1	3/1/04	6/24/04
	SHIRLEY, JAMES	274894	C B 28	2	6/12/01	1/9/02

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PLAINTIFF'S EXHIBIT A

A - 0793
June 2004

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND) LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

PLAINTIFF'S EXHIBIT C

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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

PLAINTIFF'S EXHIBIT C
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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
251957	SCOTT	ARTHUR	LEE	20011119	0.50	68.99	34.49
251957	SCOTT	ARTHUR	LEE	20011203	0.50	70.16	35.08
251957	SCOTT	ARTHUR	LEE	20011217	0.50	41.07	20.53
276533	SCOTT	CHRISTOPHE		20010813	0.50	46.84	23.42
276533	SCOTT	CHRISTOPHE		20010827	0.50	41.79	20.89
286443	SCOTT	DEXTER	T	20021007	0.50	12.39	6.19
286443	SCOTT	DEXTER	T	20021021	0.50	52.50	26.25
286443	SCOTT	DEXTER	T	20021104	0.50	52.50	26.25
286443	SCOTT	DEXTER	T	20021118	0.50	58.21	29.10
286443	SCOTT	DEXTER	T	20021202	0.50	45.96	22.98
286443	SCOTT	DEXTER	T	20021216	0.50	76.98	38.49
286443	SCOTT	DEXTER	T	20021230	0.50	34.52	17.26
286443	SCOTT	DEXTER	T	20030113	0.50	40.83	20.41
286443	SCOTT	DEXTER	T	20030127	0.50	61.06	30.53
286443	SCOTT	DEXTER	T	20030210	0.50	56.68	28.34
286443	SCOTT	DEXTER	T	20030224	0.50	30.75	15.37
286443	SCOTT	DEXTER	T	20030310	0.50	21.12	10.56
286443	SCOTT	DEXTER	T	20030324	0.50	38.20	19.10
192924	SCOTT	GENE	WADE	19991108	0.35	15.00	5.25
192924	SCOTT	GENE	WADE	19991108	0.55	13.50	7.42
192924	SCOTT	GENE	WADE	19991122	0.35	64.92	22.72
192924	SCOTT	GENE	WADE	19991206	0.35	46.30	16.20
192924	SCOTT	GENE	WADE	19991220	2.50	2.00	5.00
192924	SCOTT	GENE	WADE	19991220	0.35	71.20	24.92
192924	SCOTT	GENE	WADE	20000103	0.35	19.00	6.65
192924	SCOTT	GENE	WADE	20000103	0.55	0.52	0.28
192924	SCOTT	GENE	WADE	20000117	0.50	60.98	30.49
192924	SCOTT	GENE	WADE	20000117	0.35	7.50	2.62
192924	SCOTT	GENE	WADE	20000131	0.35	54.75	19.16
192924	SCOTT	GENE	WADE	20000214	0.50	71.22	35.61
192924	SCOTT	GENE	WADE	20000228	0.35	54.08	18.92
192924	SCOTT	GENE	WADE	20000313	0.35	66.03	23.11
228008	SCOTT	ISAIAH		19990816	0.50	56.00	28.00
228008	SCOTT	ISAIAH		19990816	0.70	8.00	5.60
228008	SCOTT	ISAIAH		19990830	0.50	79.25	39.62
228008	SCOTT	ISAIAH		19990830	0.70	4.50	3.15
228008	SCOTT	ISAIAH		19990913	0.50	72.00	36.00
228008	SCOTT	ISAIAH		19990913	0.70	22.25	15.57
228008	SCOTT	ISAIAH		19990927	0.50	55.00	27.50
228008	SCOTT	ISAIAH		19990927	0.70	14.00	9.80
228008	SCOTT	ISAIAH		19991011	0.50	75.00	37.50
228008	SCOTT	ISAIAH		19991011	0.55	6.50	3.57
228008	SCOTT	ISAIAH		19991025	0.50	59.50	29.75
228008	SCOTT	ISAIAH		19991108	0.35	52.50	18.37
228008	SCOTT	ISAIAH		19991206	0.50	34.95	17.47
228008	SCOTT	ISAIAH		19991220	2.50	2.00	5.00
228008	SCOTT	ISAIAH		19991220	0.35	63.52	22.23
228008	SCOTT	ISAIAH		20000103	0.50	26.28	13.14
228008	SCOTT	ISAIAH		20000117	0.35	72.70	25.44
228008	SCOTT	ISAIAH		20000131	0.50	64.85	32.42
228008	SCOTT	ISAIAH		20000214	0.50	75.00	37.50
228008	SCOTT	ISAIAH		20000228	0.35	52.50	18.37
228008	SCOTT	ISAIAH		20000313	0.50	73.57	36.78
228008	SCOTT	ISAIAH		20000327	0.50	66.58	33.29

PLAINTIFF'S EXHIBIT

A - 1333
June 2004

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
228008	SCOTT	ISAIAH		20000410	0.50	75.00	37.50
228008	SCOTT	ISAIAH		20000424	0.50	65.23	32.61
228008	SCOTT	ISAIAH		20000508	0.50	67.50	33.75
228008	SCOTT	ISAIAH		20000522	0.50	67.50	33.75
228008	SCOTT	ISAIAH		20000605	0.50	62.97	31.48
228008	SCOTT	ISAIAH		20000703	0.50	42.00	21.00
228008	SCOTT	ISAIAH		20000717	0.50	22.50	11.25
228008	SCOTT	ISAIAH		20000731	0.50	102.61	51.30
228008	SCOTT	ISAIAH		20000814	0.50	80.17	40.08
228008	SCOTT	ISAIAH		20000828	0.50	90.35	45.17
228008	SCOTT	ISAIAH		20000911	0.50	48.13	24.06
228008	SCOTT	ISAIAH		20000925	0.50	59.80	29.90
228008	SCOTT	ISAIAH		20001009	0.50	101.97	50.98
228008	SCOTT	ISAIAH		20001023	0.50	97.23	48.61
228008	SCOTT	ISAIAH		20001106	0.50	97.50	48.75
228008	SCOTT	ISAIAH		20001120	0.50	87.75	43.87
228008	SCOTT	ISAIAH		20001204	0.50	46.45	23.22
228008	SCOTT	ISAIAH		20001218	0.50	121.06	60.53
228008	SCOTT	ISAIAH		20010101	0.50	49.27	24.63
228008	SCOTT	ISAIAH		20010115	0.50	80.95	40.47
228008	SCOTT	ISAIAH		20010129	0.50	94.00	47.00
228008	SCOTT	ISAIAH		20010212	0.50	93.56	46.78
228008	SCOTT	ISAIAH		20010226	0.50	93.60	46.80
228008	SCOTT	ISAIAH		20010312	0.50	72.20	36.10
228008	SCOTT	ISAIAH		20010326	0.50	97.91	48.95
228008	SCOTT	ISAIAH		20010409	0.50	98.48	49.24
228008	SCOTT	ISAIAH		20010423	0.50	112.50	56.25
228008	SCOTT	ISAIAH		20010507	0.50	77.98	38.99
228008	SCOTT	ISAIAH		20010521	0.50	101.88	50.94
228008	SCOTT	ISAIAH		20010604	0.50	35.38	17.69
228008	SCOTT	ISAIAH		20010618	0.50	76.68	38.34
228008	SCOTT	ISAIAH		20010702	0.50	84.78	42.39
228008	SCOTT	ISAIAH		20010716	0.50	130.19	65.09
228008	SCOTT	ISAIAH		20010730	0.50	111.15	55.57
228008	SCOTT	ISAIAH		20010813	0.50	105.87	52.93
228008	SCOTT	ISAIAH		20010827	0.50	121.59	60.79
228008	SCOTT	ISAIAH		20010910	0.50	122.46	61.23
228008	SCOTT	ISAIAH		20010924	0.50	122.40	61.20
228008	SCOTT	ISAIAH		20011008	0.50	148.50	74.25
228008	SCOTT	ISAIAH		20011022	0.50	127.42	63.71
228008	SCOTT	ISAIAH		20011105	0.50	75.78	37.89
228008	SCOTT	ISAIAH		20011119	0.50	114.10	57.05
228008	SCOTT	ISAIAH		20011203	0.50	98.17	49.08
228008	SCOTT	ISAIAH		20011217	0.50	52.06	26.03
228008	SCOTT	ISAIAH		20030407	0.50	25.32	12.66
228008	SCOTT	ISAIAH		20030630	0.50	33.17	16.58
153381	SCOTT	JEROME	-	20010716	0.50	10.26	5.13
153381	SCOTT	JEROME	-	20010730	0.50	52.10	26.05
153381	SCOTT	JEROME	-	20010813	0.50	52.38	26.19
153381	SCOTT	JEROME	-	20010827	0.50	41.66	20.83
153381	SCOTT	JEROME	-	20010910	0.50	78.52	39.26
153381	SCOTT	JEROME	-	20010924	0.50	75.00	37.50
153381	SCOTT	JEROME	-	20011008	0.50	112.51	56.25
153381	SCOTT	JEROME	-	20011022	0.50	125.80	62.90

PLAINTIFF'S EXHIBIT

3701

A - 1334
June 2004

To: Douglas Westbrook, Attorney at Law

From: Dr. Joseph Benich, Economic Loss Expert

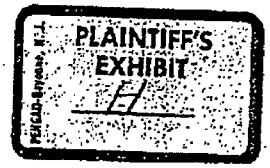
Subject: Your 9/14/04 request

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.



3702

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

3704

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-7-04

INMATE NAME: Isaiah SCOTT
SCDC NUMBER: 228008
INSTITUTION: Lieber Corr Inst
HOUSING UNIT: Cooper C-A-12
WORK ASSIGNMENT: Dorm Worker

NOV 08 2004 PP

Office Use Only
Grievance No. LCI 0721-04
Code: General RNY
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

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

1) ADKINS + Wicker require payment of prevailing wages.
2) Inmates were employed by WTI, AND SCDC was WTI agents in paying our wages
3) ADKINS + Wicker further allows this issue of payment's of wages under 24-3-430. To grieved pursuant to SCDC procedures.
4) Grievent incorporates by reference all exhibits attached to grievances Filed DARRELL WILLIAMS + ATTORNEY Douglas H. WESTBROOK ON 09-22-04.

Isaiah Scott 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.

Isaiah Scott 5/22/07
Grievant Signature Date

IGC Signature + CA 5-22-07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3705

Ackerman 5-6-11 3340

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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SCOTT LCI-0721-04

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 March 21, 2003 and that your participation in this project ended on June 26, 2003.

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

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

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

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

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

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

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

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

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

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

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

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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.

3709

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Isaiah Scott, #228008,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

DOCKET NO. 07 -ALJ-04-

GRIEVANCE NO.:

Notice is hereby given that Isaiah Scott 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

Isaiah Scott
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

3710

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ISAIAH SCOTT, #228008	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

I certify that on the 10th 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: Jerome Scott
SCDC NUMBER: 153381
INSTITUTION: Lieber
HOUSING UNIT: WANDA D-189 3 Tmo B4
WORK ASSIGNMENT: Dorm

Office Use Only
Grievance No. Lieber 0629-04
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 the Prison industry failure to Pay back wages and Prevailing wage as required by South Carolina Code Ann. Sec. 24-3-430 & A-17 and from 1998-2003 they have only Paid .35 cents an hour on not Prevailing wage as required by law

ACTION REQUESTED: That Back Wages be Paid at Prevailing wage as well overtime at current Law and Prevailing wage be Paid.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed and ordered to file Grievance by Court
Adkins v. SCDC. DP. No 25860 ; Wicker v. SCDC. 25859

Jerome Scott 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's response.

L Carr 10/28/04
IGC Signature Date

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

N/A
Grievant Signature Date

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SCDC 10-5 (Rev. November 1997)

Ackerman 5-6-11 3347

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.

Inmate J. Scott #153381 LC10629-04

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 JEROME SCOTT, #153381

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 2964.41 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, 0793; C, 0081,0086; F, 1334-1335; 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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AMENDMENT TO GRIEVANCE OF JEROME SCOTT, #153381

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 2964.41 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, 0793; C, 0081,0086; F, 1334-1335; 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	ROGERS, CALVIN J.	262050	C B 31	1	9/25/02	4/9/03
MI 2	ROGERS, ERIC	255010	C A 42	2	11/29/01	8/27/02
MI 3	ROLDAN, FERNANDO	289490	C B 60	1	6/30/03	4/13/04
	ROPER, RASHONE	276964	S A 16	2	8/30/01	1/1/02
	ROSEMOND, JAMES	238635	C 0	1	8/11/99	4/8/00
	ROSS, CHARLIE	243958	C B 21	1	8/11/99	12/1/99
	ROSS, SAMUEL	268981	C B 52	1	10/16/00	6/27/01
	ROSSON, GERRY	258455	C A 46	1	5/31/00	11/16/00
MI 2	ROUSE, KENNETH	257559	C B 4	1	8/6/99	10/18/02
	ROWE, SHAWN	268721	S A 32	1	9/25/00	10/27/00
MI 2	RUONALA, RAYMOND	258133	S B 61	1	5/29/02	10/3/02
MI 2	SALANO, MARTIN	272142	C B 36	1	10/9/02	11/10/03
	SALISBURY, GEORGE	263724	A A 25	1	5/20/02	6/4/02
	SAMPLE, PHILLIP	262088	C B 5	1	5/30/00	9/25/00
	SAMPSON, BRAIN	255793	E B 37	1	6/27/00	7/10/00
MI 2	SAMPSON, JOSEPH	261610	C A 27	2	3/28/02	9/4/02
MI 3	SANDERS, I	257239	C A 0	0		12/6/99
MI 1B	SANDERS, SANDRA	249871	C B 7	1	2/15/00	2/6/04
	SANDERS, TERRY	219895	C B 20	1	5/1/00	8/21/00
	SANDERS, THOMAS	213149	A A 38	1	8/11/99	2/22/00
	[redacted]					
	SATTLER, JAMES	235043	C A 56	1	2/8/02	6/18/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/6/99	10/1/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/15/99	2/25/04
	SCHOFEILD, RICHARD	280804	E A 29	3	2/5/02	2/6/02
	SCOTT, ARTHUR	251957	C A 28	1	7/31/01	12/10/01
	SCOTT, CHRISTOPHER	276533	S A 15	1	7/30/01	8/22/01
MI 3	SCOTT, D	286443	C A 0	0		3/24/03
	SCOTT, GENE	192924	C 0	1	1/6/00	3/15/00
MI 3	SCOTT, ISAIAH	228008	C A 23	1	3/21/03	6/26/03
	SCOTT, JAMES	231412	S B 38	1	9/25/01	3/5/02
MI3	SCOTT, JEROME	153381	C A 51	2	7/10/01	8/22/02
MI 3	SCOTT, ROOSEVELT	275631	C A 53	3		4/8/04
	SCRIVEN, BRIAN	248731	A B 30	1	1/17/02	1/25/02
	SCRIVEN, EUGENE	216991	E B 8	1	9/25/01	4/5/02
	SCRIVEN, TERRY	238318	S A 33	1	1/14/02	4/22/02
MI 3	SEBASTIAN, JOHN	281904	C A 27	1	2/25/04	6/24/04
MI 3	SELLARS, RALPH	164295	C A 10	1	6/29/00	6/26/03
	SESSIONS, MICHAEL	232076	S A 58	2	5/30/00	9/25/00
	SHANNON, MICHEAL	267667	A A 14	1	4/30/02	5/20/02
MI 2	SHARPE, HAROLD	251233	C A 37	2	3/23/02	12/16/02
	SHARPER, HENRY	219950	A B 44	1	4/25/02	5/13/02
	SHAW, TOMMY	256140	M X 0	0	12/12/00	12/10/01
	SHEPHERD, JACOBI	257342	E A 24	1	1/14/02	2/19/02
MI 3	SHINE, GEORGE	292391	C A 4	1	3/1/04	6/24/04
	SHIRLEY, JAMES	274894	C B 28	2	6/12/01	1/9/02

PLAINTIFF'S EXHIBIT A 3718

A - 0793
June 2004

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LEASE

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

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

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

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

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

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

ARTICLE 1 General:

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

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

PLAINTIFF'S EXHIBIT C

3719

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.

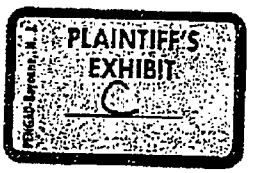
Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

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



3720

Ackerman 5-6-11 3355

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
228008	SCOTT	ISAIAH		20000410	0.50	75.00	37.50
228008	SCOTT	ISAIAH		20000424	0.50	65.23	32.61
228008	SCOTT	ISAIAH		20000508	0.50	67.50	33.75
228008	SCOTT	ISAIAH		20000522	0.50	67.50	33.75
228008	SCOTT	ISAIAH		20000605	0.50	62.97	31.48
228008	SCOTT	ISAIAH		20000703	0.50	42.00	21.00
228008	SCOTT	ISAIAH		20000717	0.50	22.50	11.25
228008	SCOTT	ISAIAH		20000731	0.50	102.61	51.30
228008	SCOTT	ISAIAH		20000814	0.50	80.17	40.08
228008	SCOTT	ISAIAH		20000828	0.50	90.35	45.17
228008	SCOTT	ISAIAH		20000911	0.50	48.13	24.06
228008	SCOTT	ISAIAH		20000925	0.50	59.80	29.90
228008	SCOTT	ISAIAH		20001009	0.50	101.97	50.98
228008	SCOTT	ISAIAH		20001023	0.50	97.23	48.61
228008	SCOTT	ISAIAH		20001106	0.50	97.50	48.75
228008	SCOTT	ISAIAH		20001120	0.50	87.75	43.87
228008	SCOTT	ISAIAH		20001204	0.50	46.45	23.22
228008	SCOTT	ISAIAH		20001218	0.50	121.06	60.53
228008	SCOTT	ISAIAH		20010101	0.50	49.27	24.63
228008	SCOTT	ISAIAH		20010115	0.50	80.95	40.47
228008	SCOTT	ISAIAH		20010129	0.50	94.00	47.00
228008	SCOTT	ISAIAH		20010212	0.50	93.56	46.78
228008	SCOTT	ISAIAH		20010226	0.50	93.60	46.80
228008	SCOTT	ISAIAH		20010312	0.50	72.20	36.10
228008	SCOTT	ISAIAH		20010326	0.50	97.91	48.95
228008	SCOTT	ISAIAH		20010409	0.50	98.48	49.24
228008	SCOTT	ISAIAH		20010423	0.50	112.50	56.25
228008	SCOTT	ISAIAH		20010507	0.50	77.98	38.99
228008	SCOTT	ISAIAH		20010521	0.50	101.88	50.94
228008	SCOTT	ISAIAH		20010604	0.50	35.38	17.69
228008	SCOTT	ISAIAH		20010618	0.50	76.68	38.34
228008	SCOTT	ISAIAH		20010702	0.50	84.78	42.39
228008	SCOTT	ISAIAH		20010716	0.50	130.19	65.09
228008	SCOTT	ISAIAH		20010730	0.50	111.15	55.57
228008	SCOTT	ISAIAH		20010813	0.50	105.87	52.93
228008	SCOTT	ISAIAH		20010827	0.50	121.59	60.79
228008	SCOTT	ISAIAH		20010910	0.50	122.46	61.23
228008	SCOTT	ISAIAH		20010924	0.50	122.40	61.20
228008	SCOTT	ISAIAH		20011008	0.50	148.50	74.25
228008	SCOTT	ISAIAH		20011022	0.50	127.42	63.71
228008	SCOTT	ISAIAH		20011105	0.50	75.78	37.89
228008	SCOTT	ISAIAH		20011119	0.50	114.10	57.05
228008	SCOTT	ISAIAH		20011203	0.50	98.17	49.08
228008	SCOTT	ISAIAH		20011217	0.50	52.06	26.03
228008	SCOTT	ISAIAH		20030407	0.50	25.32	12.66
228008	SCOTT	ISAIAH		20030630	0.50	33.17	16.58
153381	SCOTT	JEROME	-	20010716	0.50	10.26	5.13
153381	SCOTT	JEROME	-	20010730	0.50	52.10	26.05
153381	SCOTT	JEROME	-	20010813	0.50	52.38	26.19
153381	SCOTT	JEROME	-	20010827	0.50	41.66	20.83
153381	SCOTT	JEROME	-	20010910	0.50	78.52	39.26
153381	SCOTT	JEROME	-	20010924	0.50	75.00	37.50
153381	SCOTT	JEROME	-	20011008	0.50	112.51	56.25
153381	SCOTT	JEROME	-	20011022	0.50	125.80	62.90

PLAINTIFF'S EXHIBIT F 3721

A - 1334
June 2004

Ackerman 5-6-11 3356

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
153381	SCOTT	JEROME	-	20011105	0.50	101.17	50.58
153381	SCOTT	JEROME	-	20011119	0.50	116.15	58.07
153381	SCOTT	JEROME	-	20011203	0.50	84.00	42.00
153381	SCOTT	JEROME	-	20011217	0.50	100.28	50.14
153381	SCOTT	JEROME	-	20011231	0.50	31.52	15.76
153381	SCOTT	JEROME	-	20020114	0.50	61.62	30.81
153381	SCOTT	JEROME	-	20020128	0.50	79.64	39.82
153381	SCOTT	JEROME	-	20020211	0.50	51.93	25.96
153381	SCOTT	JEROME	-	20020225	0.50	114.90	57.45
153381	SCOTT	JEROME	-	20020311	0.50	122.67	61.33
153381	SCOTT	JEROME	-	20020325	0.50	111.50	55.75
153381	SCOTT	JEROME	-	20020408	0.50	108.71	54.35
153381	SCOTT	JEROME	-	20020422	0.50	131.45	65.72
153381	SCOTT	JEROME	-	20020506	0.50	145.20	72.60
153381	SCOTT	JEROME	-	20020520	0.50	147.64	73.82
153381	SCOTT	JEROME	-	20020603	0.50	141.00	70.50
153381	SCOTT	JEROME	-	20020617	0.50	134.55	67.27
153381	SCOTT	JEROME	-	20020701	0.50	139.91	69.95
153381	SCOTT	JEROME	-	20020715	0.50	120.42	60.21
153381	SCOTT	JEROME	-	20020729	0.50	146.27	73.13
153381	SCOTT	JEROME	-	20020812	0.50	109.11	54.55
153381	SCOTT	JEROME	-	20020826	0.50	116.54	58.27
275631	SCOTT	ROOSEVELT.		20030811	0.50	49.97	24.98
275631	SCOTT	ROOSEVELT		20030811	0.50	41.31	20.65
275631	SCOTT	ROOSEVELT		20030811	0.50	65.50	32.75
275631	SCOTT	ROOSEVELT		20030825	0.50	49.00	24.50
275631	SCOTT	ROOSEVELT		20030908	0.50	53.05	26.52
275631	SCOTT	ROOSEVELT		20030922	0.50	67.50	33.75
275631	SCOTT	ROOSEVELT		20031006	0.50	60.00	30.00
275631	SCOTT	ROOSEVELT		20031020	0.50	74.02	37.01
231412	SCOTT, JR	JAMES	CLYDE	20011022	0.50	77.15	38.57
231412	SCOTT, JR	JAMES	CLYDE	20011105	0.50	110.00	55.00
231412	SCOTT, JR	JAMES	CLYDE	20011119	0.50	135.57	67.78
231412	SCOTT, JR	JAMES	CLYDE	20011203	0.50	112.53	56.26
231412	SCOTT, JR	JAMES	CLYDE	20011217	0.50	110.01	55.00
231412	SCOTT, JR	JAMES	CLYDE	20011231	0.50	62.78	31.39
231412	SCOTT, JR	JAMES	CLYDE	20020114	0.50	77.44	38.72
248731	SCRIVEN	BRYAN	T.	20020128	0.50	19.45	9.72
248731	SCRIVEN	BRYAN	T.	20020211	0.50	1.21	0.60
238318	SCRIVEN	TERRY		20010226	0.50	29.69	14.84
238318	SCRIVEN	TERRY		20020129	0.50	36.69	18.34
238318	SCRIVEN	TERRY		20020211	0.50	54.76	27.38
238318	SCRIVEN	TERRY		20020225	0.50	54.65	27.32
238318	SCRIVEN	TERRY		20020311	0.50	52.09	26.04
238318	SCRIVEN	TERRY		20020325	0.50	39.26	19.63
238318	SCRIVEN	TERRY		20020408	0.50	67.03	33.51
238318	SCRIVEN	TERRY		20020422	0.50	70.98	35.49
238318	SCRIVEN	TERRY		20020506	0.50	4.60	2.30
216991	SCRIVEN, JR.	EUGENE		20011022	0.50	64.42	32.21
216991	SCRIVEN, JR.	EUGENE		20011105	0.50	64.84	32.42
216991	SCRIVEN, JR.	EUGENE		20011119	0.50	63.98	31.99
216991	SCRIVEN, JR.	EUGENE		20011203	0.50	71.06	35.53
216991	SCRIVEN, JR.	EUGENE		20011217	0.50	94.65	47.32
216991	SCRIVEN, JR.	EUGENE		20011231	0.50	47.23	23.61

PLAINTIFF'S EXHIBIT F

3722

A - 1335
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.



3723

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

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: Jerome Scott
NOV 0 3 2004
SCDC NUMBER: 153381
INSTITUTION: ~~Lieber~~ ACI
HOUSING UNIT: STONO-B-4
WORK ASSIGNMENT:

Office Use Only
Grievance No. CCI-0629-04
Code: General MM4
Policy
Disc. Hear.
Class.
Date Received
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): Adkins and Wicker do require payment of prevailing wages. Greavant's were employed by WTI, and SCDC was WTI's "agent" in paying our Wages. Adkins & Wicker further allow this issue of payment of wages under SC Code 24-3-430 to be greaved pursuant to SCDC's greavance proceedure. Greavant incorporates by refference all exhibits attached to greavances filed by Darrell Williams & Attorney Douglas Westbrook on 9-22-04.

Jerome Scott 11/2/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

5-14-07
Signature Date

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

Jerome Scott 5/22/07
Grievant Signature Date

5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3726

SCOTT LCI-0629-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on July 10, 2001 and that your participation in this project ended on August 22, 2002.

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

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

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

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

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

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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 three (3) years after SCDC first paid you for your participation in the project located at Lieber, over two (2) years after your participation 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.

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

Jerome Scott, #153381,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

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

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

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

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

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

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

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

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

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

Jerome Scott
Appellant's Name
Allendale C.I.
P.O. Box 1151
Mailing Address
Fairfax, SC 29827
City, State, Zip Code
none
Telephone Number

D H Westbrook
Signed

5-30-07
Dated

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

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STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
JEROME SCOTT, 153381	)	
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

Roosevelt Scott INMATE GRIEVANCE FORM

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

INMATE NAME:

SCDC NUMBER: 275631

INSTITUTION: Lieber

HOUSING UNIT: C-A-53

WORK ASSIGNMENT: P21 Wood

Office Use Only
Grievance No. Lieber 0748-04
Code: General MH
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials TC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work program. From 1999 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's the "prevailing wage" for work of a similar nature in the private sector. This prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 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.

Roosevelt Scott 275631 9-27
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)

3732 (CONTINUED ON REVERSE SIDE)

Ackerman 5-6-11 3367

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.

Roosevelt Scott 11-03-04
Grievant Signature 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.

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J/M R. Scott, #275631 LCI 0748-04

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 ROOSEVELT SCOTT, #275631

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 460.35 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, 0793; C, 0081,0086; F, 1335; 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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AMENDMENT TO GRIEVANCE OF ROOSEVELT SCOTT, #275631

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 460.35 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, 0793; C, 0081,0086; F, 1335; H, 1-3.
* An hours "plus" figure here means Grievant may have worked past the latest date in Exh. F, June 2004, requiring addition to figure.

	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
MI 3	ROGERS, CALVIN J.	262050	C B 31	1	9/25/02	4/9/03
MI 2	ROGERS, ERIC	255010	C A 42	2	11/29/01	8/27/02
MI 3	ROLDAN, FERNANDO	289490	C B 60	1	6/30/03	4/13/04
	ROPER, RASHONE	276964	S A 16	2	8/30/01	1/1/02
	ROSEMOND, JAMES	238635	C 0	1	8/11/99	4/8/00
	ROSS, CHARLIE	243958	C B 21	1	8/11/99	12/1/99
	ROSS, SAMUEL	268981	C B 52	1	10/16/00	6/27/01
	ROSSON, GERRY	258455	C A 46	1	5/31/00	11/16/00
MI 2	ROUSE, KENNETH	257559	C B 4	1	8/6/99	10/18/02
	ROWE, SHAWN	268721	S A 32	1	9/25/00	10/27/00
MI 2	RUONALA, RAYMOND	258133	S B 61	1	5/29/02	10/3/02
MI 2	SALANO, MARTIN	272142	C B 36	1	10/9/02	11/10/03
	SALISBURY, GEORGE	263724	A A 25	1	5/20/02	6/4/02
	SAMPLE, PHILLIP	262088	C B 5	1	5/30/00	9/25/00
	SAMPSON, BRAIN	255793	E B 37	1	6/27/00	7/10/00
MI 2	SAMPSON, JOSEPH	261610	C A 27	2	3/28/02	9/4/02
MI 3	SANDERS, I	257239	C A 0	0		12/6/99
MI 1B	SANDERS, SANDRA	249871	C B 7	1	2/15/00	2/6/04
	SANDERS, TERRY	219895	C B 20	1	5/1/00	8/21/00
	SANDERS, THOMAS	213149	A A 38	1	8/11/99	2/22/00
	[redacted]					
	SATTLER, JAMES	235043	C A 56	1	2/8/02	6/18/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/6/99	10/1/02
MI 3	SCHMITZ, JOSEPH	173987	C A 13	1	7/15/99	2/25/04
	SCHOFEILD, RICHARD	280804	E A 29	3	2/5/02	2/6/02
	SCOTT, ARTHUR	251957	C A 28	1	7/31/01	12/10/01
	SCOTT, CHRISTOPHER	276533	S A 15	1	7/30/01	8/22/01
MI 3	SCOTT, D	286443	C A 0	0		3/24/03
	SCOTT, GENE	192924	C 0	1	1/6/00	3/15/00
MI 3	SCOTT, ISAIAH	228008	C A 23	1	3/21/03	6/26/03
	SCOTT, JAMES	231412	S B 38	1	9/25/01	3/5/02
MI3	SCOTT, JEROME	153381	C A 51	2	7/10/01	8/22/02
MI 3	SCOTT, ROOSEVELT	275631	C A 53	3		4/8/04
	SCRIVEN, BRIAN	248731	A B 30	1	1/17/02	1/25/02
	SCRIVEN, EUGENE	216991	E B 8	1	9/25/01	4/5/02
	SCRIVEN, TERRY	238318	S A 33	1	1/14/02	4/22/02
MI 3	SEBASTIAN, JOHN	281904	C A 27	1	2/25/04	6/24/04
MI 3	SELLARS, RALPH	164295	C A 10	1	6/29/00	6/26/03
	SESSIONS, MICHAEL	232076	S A 58	2	5/30/00	9/25/00
	SHANNON, MICHEAL	267667	A A 14	1	4/30/02	5/20/02
MI 2	SHARPE, HAROLD	251233	C A 37	2	3/23/02	12/16/02
	SHARPER, HENRY	219950	A B 44	1	4/25/02	5/13/02
	SHAW, TOMMY	256140	MX 0	0	12/12/00	12/10/01
	SHEPHERD, JACOBI	257342	E A 24	1	1/14/02	2/19/02
MI 3	SHINE, GEORGE	292391	C A 4	1	3/1/04	6/24/04
	SHIRLEY, JAMES	274894	C B 28	2	6/12/01	1/9/02

PLAINTIFF'S EXHIBIT A

A - 0793
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 3739

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.

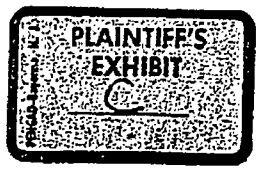
Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

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 3375

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
153381	SCOTT	JEROME	-	20011105	0.50	101.17	50.58
153381	SCOTT	JEROME	-	20011119	0.50	116.15	58.07
153381	SCOTT	JEROME	-	20011203	0.50	84.00	42.00
153381	SCOTT	JEROME	-	20011217	0.50	100.28	50.14
153381	SCOTT	JEROME	-	20011231	0.50	31.52	15.76
153381	SCOTT	JEROME	-	20020114	0.50	61.62	30.81
153381	SCOTT	JEROME	-	20020128	0.50	79.64	39.82
153381	SCOTT	JEROME	-	20020211	0.50	51.93	25.96
153381	SCOTT	JEROME	-	20020225	0.50	114.90	57.45
153381	SCOTT	JEROME	-	20020311	0.50	122.67	61.33
153381	SCOTT	JEROME	-	20020325	0.50	111.50	55.75
153381	SCOTT	JEROME	-	20020408	0.50	108.71	54.35
153381	SCOTT	JEROME	-	20020422	0.50	131.45	65.72
153381	SCOTT	JEROME	-	20020506	0.50	145.20	72.60
153381	SCOTT	JEROME	-	20020520	0.50	147.64	73.82
153381	SCOTT	JEROME	-	20020603	0.50	141.00	70.50
153381	SCOTT	JEROME	-	20020617	0.50	134.55	67.27
153381	SCOTT	JEROME	-	20020701	0.50	139.91	69.95
153381	SCOTT	JEROME	-	20020715	0.50	120.42	60.21
153381	SCOTT	JEROME	-	20020729	0.50	146.27	73.13
153381	SCOTT	JEROME	-	20020812	0.50	109.11	54.55
153381	SCOTT	JEROME	-	20020826	0.50	116.54	58.27
275631	SCOTT	ROOSEVELT		20030811	0.50	49.97	24.98
275631	SCOTT	ROOSEVELT		20030811	0.50	41.31	20.65
275631	SCOTT	ROOSEVELT		20030811	0.50	65.50	32.75
275631	SCOTT	ROOSEVELT		20030825	0.50	49.00	24.50
275631	SCOTT	ROOSEVELT		20030908	0.50	53.05	26.52
275631	SCOTT	ROOSEVELT		20030922	0.50	67.50	33.75
275631	SCOTT	ROOSEVELT		20031006	0.50	60.00	30.00
275631	SCOTT	ROOSEVELT		20031020	0.50	74.02	37.01
231412	SCOTT, JR	JAMES	CLYDE	20011022	0.50	77.15	38.57
231412	SCOTT, JR	JAMES	CLYDE	20011105	0.50	110.00	55.00
231412	SCOTT, JR	JAMES	CLYDE	20011119	0.50	135.57	67.78
231412	SCOTT, JR	JAMES	CLYDE	20011203	0.50	112.53	56.26
231412	SCOTT, JR	JAMES	CLYDE	20011217	0.50	110.01	55.00
231412	SCOTT, JR	JAMES	CLYDE	20011231	0.50	62.78	31.39
231412	SCOTT, JR	JAMES	CLYDE	20020114	0.50	77.44	38.72
248731	SCRIVEN	BRYAN	T.	20020128	0.50	19.45	9.72
248731	SCRIVEN	BRYAN	T.	20020211	0.50	1.21	0.60
238318	SCRIVEN	TERRY		20010226	0.50	29.69	14.84
238318	SCRIVEN	TERRY		20020129	0.50	36.69	18.34
238318	SCRIVEN	TERRY		20020211	0.50	54.76	27.38
238318	SCRIVEN	TERRY		20020225	0.50	54.65	27.32
238318	SCRIVEN	TERRY		20020311	0.50	52.09	26.04
238318	SCRIVEN	TERRY		20020325	0.50	39.26	19.63
238318	SCRIVEN	TERRY		20020408	0.50	67.03	33.51
238318	SCRIVEN	TERRY		20020422	0.50	70.98	35.49
238318	SCRIVEN	TERRY		20020506	0.50	4.60	2.30
216991	SCRIVEN, JR.	EUGENE		20011022	0.50	64.42	32.21
216991	SCRIVEN, JR.	EUGENE		20011105	0.50	64.84	32.42
216991	SCRIVEN, JR.	EUGENE		20011119	0.50	63.98	31.99
216991	SCRIVEN, JR.	EUGENE		20011203	0.50	71.06	35.53
216991	SCRIVEN, JR.	EUGENE		20011217	0.50	94.65	47.32
216991	SCRIVEN, JR.	EUGENE		20011231	0.50	47.23	23.61

PLAINTIFF'S EXHIBIT F

3741

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

3744

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Roosevelt Scott NOV 04 2004
SCDC NUMBER: #275631 PP
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper A-53
WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. LCI 0748-04
Code: General NH
Policy
Disc. Hear.
Class. NOV 08 2004
Date Received
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Adkins & Wicker do require payment of prevailing wage. Greavants were employed by W.T.I, and SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker further allow this issue of payment of wages under SC Code 24-3-430 to be grieved pursuant to SCDC's grievance procedures. Grievants incorporate by reference all exhibits attached to grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04.

Roosevelt Scott 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.

275631
Roosevelt Scott 5-17-07
Grievant Signature Date

TCI IGC Signature 5/17/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

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Ackerman 5-6-11 3380

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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SCOTT LCI-0748-04

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 April 19, 2004and 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

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

Roosevelt Scott, #275631,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Roosevelt Scott 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.

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

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

3750

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ROOSEVELT SCOTT, #275631	)	
	)	
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

3751

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: RALPH SELLERS
SCDC NUMBER: 164295
INSTITUTION: Lieber
HOUSING UNIT: STONO B-37
WORK ASSIGNMENT: Dorm

Office Use Only
Grievance No. Lieber 0614-04
Code: General MJ
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 the failure of its Prison Industries Program to Pay the Prevailing wage as required by South Carolina Code Ann. Sec. 24-3-430 & A-77 when they only have been Paying me .35 cents an hour from 1998-2003 they have been violating the law

ACTION REQUESTED: That SCDC Pay Prevailing wage and not the Pay I was Getting and they begin Paying Prevailing wage

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed and Ordered to file Grievance Adkins v. SCDC. Op. No. Wicker v. SCDC. Op. No.

Ralph Sellers 9/23/04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Sellers: 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. 3752

N/A
Date

Ackerman 5-6-11 3387

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.

3753

Inmate Ralph Sellers, #164295 LCI0614-04

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.

3754

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.

3755

AMENDMENT TO GRIEVANCE OF RALPH SELLARS, #164295

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; 855.12 hours in 2000 at $10.66 per hour; 1333.46 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 5738.90 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, 0793; C, 0081,0086; F, 1336-1337; 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.

3756

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Ralph SELLers
SCDC NUMBER: 164295
INSTITUTION: ~~Lieber~~ Allendale Nov. 2, 04
HOUSING UNIT: ~~5Y640-B-37~~ F-3 B-52 P.P
WORK ASSIGNMENT: Dorm

Office Use Only
Grievance No. ALO-04-04
Code: General MP
Policy
Disc. Heat
Class.
Date Received NOV 0 2 2004
IGC Initials LC

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

I'm Appealing this To the Responsible Official AT S.C.D.C Headquarters. First, I Disagree With the Warden's Response And believe it To be INACCURATE AS A MATTER OF LAW And Policy, SECONDLY, SINCE this ISSUE INVOLVES QUESTIONS OF Policy And LAW Which Are Beyond the SCOPE OF THE Warden's position And Authority, I Respectfully Request That This Appeal Be Forwarded To Headquaters For Answering This ISSUE.

Ralph Sellers 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.

Ralph Sellers 6-25-07
Grievant Signature Date

6/25/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3757

Ackerman 5-6-11 3392

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Sellers, Ralph	164295	LCI-0614-04

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 June 29, 2000 and ended June 26, 2003 and that your second voluntary work assignment in this project began on May 31, 2005 and ended on October 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

Inmate Name	SCDC #	Grievance #
Sellers, Ralph	164295	LCI-0614-04

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 four (4) years after SCDC began paying you for your participation in the project located at Lieber during your first work assignment there, nearly 13 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 #
Sellers, Ralph	164295	LCI-0614-04

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.

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 #:
Sellers, Ralph	164295	LCI-0614-04

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

Ralph Sellers, #164295

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Ralph Sellers 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.

Ralph Sellers
Appellant's Name

Allendale C.I.
Mailing Address

Hwy 47, P.O. Box 1151

Fairfax, SC 29827
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

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

(See reverse side for instructions)

3762

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
RALPH SELLERS, #164295	)	
	)	
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

3763

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

GEORGE SHINE INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 291391

INSTITUTION: LIBER

HOUSING UNIT: COOPER A-4 ✓

WORK ASSIGNMENT: P-I-2

Office Use Only

Grievance No. Lieber072504

Code: General RM

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials CC

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1999 to present, IE's were/are employed in the Williams Tech/Lieber service work 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, 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.

George Shine

Grievant Signature Date 9-30-04

ACTION TAKEN BY IGC:

See Warden's response.

L Carrington 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. 3764

Grievant Signature Date

Ackerman 5-6-11 3399

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature — Date: 10.28.04

☐ 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

3765

J/R D. Akins, #292391 LC10725-04

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.

3767

AMENDMENT TO GRIEVANCE OF GEORGE SHINE, #292391

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 405.50 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.

(Grievant Signature) (Date)

* Attached are Exh. A, 0793; C, 0081,0086; F, 1338-1339; 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.

3768

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

Office Use Only
Grievance No. LCI 0725-04
Code: General RM
Policy
Disc. Heat
Class.
Date Received
IGC Initials

INMATE NAME: George Shine
SCDC NUMBER: 292391
INSTITUTION: LIEBER CORR. INST. NOV 08 2004
HOUSING UNIT: COOPER A-4 MaCI
WORK ASSIGNMENT: P-I-2

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

AdKing & WICKER do REQUIRE PAYMENT OF PREVAILING WAGES. GRIEVANTS WERE EMPLOYED bY WTI, AND S.C.D.C. WAS WTI's AGENT "IN PAYING OUR WAGES. AdKINS & WICKER FURTHER ALLOW THIS ISSUE OF PAYMENT OF WAGES UNDER S.C CODE 24-3-430 TO bE GRIEVED PURSUANT TO SC.D.C's GRIEVANCE PROCEDURE, GRIEVANT INCCAPORATES bY REFERENCE ALL EXHIbITS ATTACHED TO GRIEVANCES FILED bY DARRELL WILLIAMS AND ATTORNEY DOUGLAS WESTbROOK ON 9-22-04

George Shine
Grievant Signature

Date 11-2-04

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.

George Shine
Grievant Signature

5-22-07
Date

Georgina Ramey
IGC Signature

5/22/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3769

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Shine, George	292391	LCI-0725-04

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 March 1, 2004 and that your participation in this project ended on July 7, 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 #
Shine, George	292391	LCI-0725-04

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 six (6) 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 #
Shine, George	292391	LCI-0725-04

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 #
Shine, George	292391	LCI-0725-04

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

George Shine, #292391

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that George Shine 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.

George Shine
Appellant's Name

MacDougal C.I.
Mailing Address

1516 Old Gilliard Rd.

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-09
Dated

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

(See reverse side for instructions)

3774

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
GEORGE SHINE, #292391	)	
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

3775

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: ARCHIE BELL SIMMONS
SCDC NUMBER: 161419
INSTITUTION: LIEBER
HOUSING UNIT: E-B-46
WORK ASSIGNMENT: UNIT CLERK

Office Use Only
Grievance No. Lieber 0593-04
Code: General MV
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials CC

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

IN MARCH, OF THE YEAR 2000, I BEGAN WORKING AT PRISON INDUSTRIES BUILDING II, AT LIEBER CORRECTIONAL INSTITUTION. AT SAID TIME I RECIEVED .35¢ HOURLY WAGES ON A JOB THAT SHOULD HAVE BEEN PAYING ME PREVAILING WAGES, UNDER SOUTH CAROLINA CODE ANN. SEC. 24-3-430 (A-7). THE DEPARTMENT IS ASKED TO REVIEW AND DETERMIN WHETHER I'M INTITLE TO RECEIVE WITH-HELD WAGES UNDEA SAID CODE.

ACTION REQUESTED: THAT ALL BACK WAGES DUE TO ME, INCLUDING OVER-TIME PAY, BE PAID TO ME AT PREVAILING WAGE AND OVER-TIME RATE

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

LAWSUIT WAS FILED ORDERED TO FILE GRIEVANCE BY COURT.
WICKER V/S S.C.D.C.
AND
ADKINS V/S S.C.D.C.

Archie Bell Simmons
ARCHIE BELL SIMMONS
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate Simmons: 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.

L Carlton 10/27/04
IGC Signature Date

DA
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

3776 (CONTINUED ON REVERSE SIDE)

Ackerman 5-6-11 3411

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.

Archie Simmons 10-29-04
Grievant Signature Date

10/29/04
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.

3777

Inmate Simmons, #161419 LC10593-04

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.

3778

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.

3779

AMENDMENT TO GRIEVANCE OF Archie Simmons, #161419

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; 1210.94 hours in 2000 at $10.66 per hour; 1403.31 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 4119.90 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.

Feb. 13, 2006

Archie Simmons
(Grievant Signature) (Date)

* Attached are Exh. A, 0794; C, 0081,0086; F, 1342-1343; 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
	SIERRA, ANGEL	246717	C 0	1	11/29/99	4/24/00
	SILVIS, RICHARD	275273	E B 32	1	7/10/01	7/17/01
	SIMMONS, ALBERT	272982	E A 28	1	9/25/01	10/29/01
MI 3	SIMMONS, ARCHIE	161419	C B 46	2	3/14/00	11/4/02
	SIMMONS, CHRIS	276081	E A 31	1	7/27/01	9/17/01
MI 2	SIMMONS, DETRICK	197509	C B 37	1	3/15/00	5/2/03
MI 2	SIMMONS, DETRICK	197509	C B 37	1	12/23/03	6/24/04
MI 3	SIMMONS, KENNETH	278911	S A 37	1	7/3/02	6/24/04
	SIMMONS, KEVIN	273253	C B 14	1	7/26/01	2/21/02
	SIMMONS, LAVARRIO	270191	C A 28	1	3/8/01	8/16/01
	SIMMONS, RICHARD	177760	MX 0	2	7/28/00	8/24/01
MI 3	SIMMONS, RONALD	267937	C B 14	1	7/19/01	6/26/03
MI 3	SIMMONS, STEPHONE	300422	C A 17	1	4/16/04	6/24/04
MI 3	SIMMONS, T	257560	C A 0	0		10/25/99
MI 2	SIMPSON, EDWARDS	220017	C B 52	1	8/11/99	9/3/02
	SIMPSON, JACKIE	218627	S A 29	2	4/11/02	4/19/02
MI 3	SIMPSON, JACKIE	218627	WD277	3	7/8/03	10/27/03
MI 3	SIMPSON, VIRGIL	281888	C A 17	1	5/29/02	5/7/03
MI 3	SIMPSON, VIRGIL	281888	C A 53	1	5/29/02	4/7/04
	SIMPSONS, TASWAN	238270	S B 52	1	8/17/01	4/5/02
	SIMS, BRYSON	254678	MX 0	2	1/6/00	12/18/01
MI 3	SIMS, DAVID	278067	C A 29	1	6/19/02	1/20/04
	SIMS, MICHAEL	263155	C 0	1	11/4/99	5/2/00
	SINGLETON, JOHN	156097	C A 12	1	2/15/00	6/13/00
MI 3	SINGLETON, JONATHAN	287670	C B 26	1	6/26/03	9/18/03
	SINKLER, ISAAC	196139	E A 15	1	9/25/01	1/14/02
	SMALLS, BENJAMIN	219966	S B 12	1	2/15/00	2/13/01
	SMITH, AARON	259712	C 0	1	8/6/99	1/5/00
MI 2	SMITH, ANTHONY	294015	C A 35	1	3/10/04	3/16/04
	SMITH, GERALD	281415	A B 5	1	5/13/02	6/25/02
	SMITH, JAMES	248821	C B 7	1	8/14/00	9/29/00
	SMITH, JEREMY	215272	C A 47	1	5/21/01	2/28/02
	SMITH, JOE	161281	S A 26	2	8/30/01	11/30/01
	SMITH, JONATHAN	270764	E A 27	1	2/16/01	3/8/01
	SMITH, KEVIN	272440	C B 52	2	2/19/01	11/8/01
MI 3	SMITH, KEVIN	272440	C A 36	1	11/8/02	5/2/03
MI 2	SMITH, LARRY	241178	C A 62	1	10/13/00	12/4/03
MI 3	SMITH, ROBERT	199324	S B 18	1	1/21/03	6/27/03
MI 3	SMITH, ROBERT G.	246106	E A 24	3		3/17/04
MI 3	SMITH, TIMOTHY	296539	C A 6	1	3/29/04	6/24/04
MI 2	SMOOT, LEROY	234775	S B 25	1	2/23/01	9/6/02
	SNOW, DARYL	232890	C B 47	1	5/29/01	11/14/01
MI 3	SPANN, DERRIAN	254859	C A 35	1	2/4/02	6/16/03
MI 3	SPANN, DERRIAN	254859	S B 43	1	3/10/04	3/12/04
MI 3	SPEARS, JEFFERY	281697	C B 30	1	4/28/04	6/24/04
	STALEY, GENE	211893	C B 41	1	1/10/00	4/27/01

PLAINTIFF'S EXHIBIT A

A - 0794
June 2004

3781

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
3782

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 ID	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
197509	SIMMON	DECRTICK	-	20040419	0.50	137.39	68.69
197509	SIMMON	DECRTICK	-	20040503	0.50	144.92	72.46
197509	SIMMON	DECRTICK	-	20040517	0.50	152.58	76.29
197509	SIMMON	DECRTICK	-	20040531	0.50	134.75	67.37
161419	SIMMONS	ARCHIE		20000327	0.35	61.45	21.50
161419	SIMMONS	ARCHIE		20000410	0.35	69.87	24.45
161419	SIMMONS	ARCHIE		20000424	0.35	62.60	21.91
161419	SIMMONS	ARCHIE		20000508	0.35	65.97	23.08
161419	SIMMONS	ARCHIE		20000522	0.50	67.50	33.75
161419	SIMMONS	ARCHIE		20000522	0.55	10.92	6.00
161419	SIMMONS	ARCHIE		20000522	0.25	7.50	1.87
161419	SIMMONS	ARCHIE		20000703	0.50	59.90	29.95
161419	SIMMONS	ARCHIE		20000703	0.35	7.50	2.62
161419	SIMMONS	ARCHIE		20000717	0.50	26.07	13.03
161419	SIMMONS	ARCHIE		20000731	0.50	65.33	32.66
161419	SIMMONS	ARCHIE		20000814	0.50	73.90	36.95
161419	SIMMONS	ARCHIE		20000814	0.50	4.50	2.25
161419	SIMMONS	ARCHIE		20000828	0.50	74.58	37.29
161419	SIMMONS	ARCHIE		20000911	0.50	66.24	33.12
161419	SIMMONS	ARCHIE		20000925	0.50	70.83	35.41
161419	SIMMONS	ARCHIE		20001009	0.50	27.75	13.87
161419	SIMMONS	ARCHIE		20001023	0.50	92.95	46.47
161419	SIMMONS	ARCHIE		20001106	0.50	88.43	44.21
161419	SIMMONS	ARCHIE		20001120	0.50	94.16	47.08
161419	SIMMONS	ARCHIE		20001204	0.50	34.42	17.21
161419	SIMMONS	ARCHIE		20001218	0.50	53.77	26.88
161419	SIMMONS	ARCHIE		20010101	0.50	24.80	12.40
161419	SIMMONS	ARCHIE		20010115	0.50	112.28	56.14
161419	SIMMONS	ARCHIE		20010129	0.50	40.33	20.16
161419	SIMMONS	ARCHIE		20010212	0.50	92.89	46.44
161419	SIMMONS	ARCHIE		20010226	0.50	103.53	51.76
161419	SIMMONS	ARCHIE		20010312	0.50	105.63	52.81
161419	SIMMONS	ARCHIE		20010326	0.50	68.39	34.19
161419	SIMMONS	ARCHIE		20010409	0.50	116.28	58.14
161419	SIMMONS	ARCHIE		20010423	0.50	93.90	46.95
161419	SIMMONS	ARCHIE		20010507	0.50	165.92	82.96
161419	SIMMONS	ARCHIE		20010521	0.50	182.92	91.46
161419	SIMMONS	ARCHIE		20010604	0.50	94.67	47.33
161419	SIMMONS	ARCHIE		20010618	0.50	97.19	48.59
161419	SIMMONS	ARCHIE		20010702	0.50	129.38	64.69
161419	SIMMONS	ARCHIE		20010716	0.50	67.88	33.94
161419	SIMMONS	ARCHIE		20010730	0.50	12.90	6.45
161419	SIMMONS	ARCHIE		20010813	0.50	18.00	9.00
161419	SIMMONS	ARCHIE		20010827	0.50	76.00	38.00
161419	SIMMONS	ARCHIE		20010910	0.50	89.65	44.82
161419	SIMMONS	ARCHIE		20010924	0.50	99.00	49.50
161419	SIMMONS	ARCHIE		20011008	0.50	88.25	44.12
161419	SIMMONS	ARCHIE		20011022	0.50	99.00	49.50
161419	SIMMONS	ARCHIE		20011105	0.50	99.00	49.50
161419	SIMMONS	ARCHIE		20011119	0.50	33.75	16.87
161419	SIMMONS	ARCHIE		20011217	0.50	104.00	52.00
161419	SIMMONS	ARCHIE		20011231	0.50	56.95	28.47
161419	SIMMONS	ARCHIE		20020114	0.50	52.75	26.37
161419	SIMMONS	ARCHIE		20020128	0.50	111.38	55.69

PLAINTIFF'S EXHIBIT F

A - 1342
June 2004

3784

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
161419	SIMMONS	ARCHIE		20020211	0.50	127.50	63.75
161419	SIMMONS	ARCHIE		20020225	0.50	221.34	110.67
161419	SIMMONS	ARCHIE		20020311	0.50	121.58	60.79
161419	SIMMONS	ARCHIE		20020325	0.50	185.04	92.52
161419	SIMMONS	ARCHIE		20020408	0.50	129.96	64.98
161419	SIMMONS	ARCHIE		20020422	0.50	137.74	68.87
161419	SIMMONS	ARCHIE		20020506	0.50	153.22	76.61
161419	SIMMONS	ARCHIE		20020520	0.50	180.74	90.37
161419	SIMMONS	ARCHIE		20020603	0.50	208.38	104.19
161419	SIMMONS	ARCHIE		20020617	0.50	186.03	93.01
161419	SIMMONS	ARCHIE		20020701	0.50	135.00	67.50
161419	SIMMONS	ARCHIE		20020715	0.50	110.04	55.02
161419	SIMMONS	ARCHIE		20020729	0.50	166.00	83.00
161419	SIMMONS	ARCHIE		20020812	0.50	197.76	98.88
161419	SIMMONS	ARCHIE		20020826	0.50	150.00	75.00
161419	SIMMONS	ARCHIE		20020909	0.50	119.06	59.53
161419	SIMMONS	ARCHIE		20020923	0.50	150.00	75.00
161419	SIMMONS	ARCHIE		20021007	0.50	170.45	85.22
161419	SIMMONS	ARCHIE		20021021	0.50	150.00	75.00
161419	SIMMONS	ARCHIE		20021104	0.50	100.86	50.43
161419	SIMMONS	ARCHIE		20021118	0.50	10.69	5.34
276081	SIMMONS	CHRIS	JEROME	20010813	0.50	49.66	24.83
276081	SIMMONS	CHRIS	JEROME	20010827	0.50	55.16	27.58
276081	SIMMONS	CHRIS	JEROME	20010910	0.50	41.16	20.58
276081	SIMMONS	CHRIS	JEROME	20010924	0.50	37.37	18.68
257411	SIMMONS	DARRELL	LAMAR	20000522	0.50	0.65	0.32
278911	SIMMONS	KENNETH	M.	20020715	0.50	21.28	10.64
278911	SIMMONS	KENNETH	M.	20020729	0.50	36.54	18.27
278911	SIMMONS	KENNETH	M.	20020812	0.50	47.25	23.62
278911	SIMMONS	KENNETH	M.	20020826	0.50	58.17	29.08
278911	SIMMONS	KENNETH	M.	20020909	0.50	67.50	33.75
278911	SIMMONS	KENNETH	M.	20020923	0.50	75.00	37.50
278911	SIMMONS	KENNETH	M.	20021007	0.50	89.48	44.74
278911	SIMMONS	KENNETH	M.	20021021	0.50	104.49	52.24
278911	SIMMONS	KENNETH	M.	20021104	0.50	118.78	59.39
278911	SIMMONS	KENNETH	M.	20021118	0.50	106.78	53.39
278911	SIMMONS	KENNETH	M.	20021202	0.50	93.20	46.60
278911	SIMMONS	KENNETH	M.	20021216	0.50	103.66	51.83
278911	SIMMONS	KENNETH	M.	20021230	0.50	52.50	26.25
278911	SIMMONS	KENNETH	M.	20030113	0.50	59.68	29.84
278911	SIMMONS	KENNETH	M.	20030127	0.50	81.82	40.91
278911	SIMMONS	KENNETH	M.	20030210	0.50	100.16	50.08
278911	SIMMONS	KENNETH	M.	20030224	0.50	100.55	50.27
278911	SIMMONS	KENNETH	M.	20030310	0.50	91.80	45.90
278911	SIMMONS	KENNETH	M.	20030324	0.50	109.14	54.57
278911	SIMMONS	KENNETH	M.	20030407	0.50	92.26	46.13
278911	SIMMONS	KENNETH	M.	20030421	0.50	104.33	52.16
278911	SIMMONS	KENNETH	M.	20030505	0.50	72.96	36.48
278911	SIMMONS	KENNETH	M.	20030519	0.50	39.41	19.70
278911	SIMMONS	KENNETH	M.	20030825	0.50	17.50	8.75
278911	SIMMONS	KENNETH	M.	20030908	0.50	17.50	8.75
278911	SIMMONS	KENNETH	M.	20030922	0.50	17.50	8.75
278911	SIMMONS	KENNETH	M.	20031006	0.50	17.50	8.75
278911	SIMMONS	KENNETH	M.	20031020	0.50	17.50	8.75

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

3786

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

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

3788

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI 0593-04
Code: General NH
Policy
Disc. Hear.
Class.
Date Received NOV 01 2004
IGC Initials

INMATE NAME: ARCHIE SIMMONS
SCDC NUMBER: 161419 Nov. 1, 04
INSTITUTION: LIEBER
HOUSING UNIT: EDISTO B-46
WORK ASSIGNMENT: UNIT CLERK

RECEIVED
NOV 0 5 2004
INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction)

IN the ADKINS OPINION, the COURT held that INMATES may file a grievance to Protest the Departments failure to pay in accordance with the "Mandatory" Statutory Provisions. ONE of the Five Justices (J. PLEICONES) held in a concurring OPINION that 24-3-430 was intended for the inmates' benefit, and that they could sue under 41-10-10, et seq.; The PAYMENT of WAGES ACT. IF any case, such as WICKER where the Court upheld that the Department was not allowed to Pay INMATES less than prevailing wage, We also who work at LIEBER'S PRISON INDUSTRIES Should Be Paid not Less.

Archie Simmons 10-29-04
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 Simmons 5-22-07
Grievant Signature Date

Ann Hallman 5-22-07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3789

SCDC 10-5A (November 1997)

Ackerman 5-6-11 3424

SIMMONS LCI-0593-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated October 29, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated September 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 November 4, 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

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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 2 ½ 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.
Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your grievance.

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

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

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that the South Carolina Payment of Wages Act does not apply to the monies SCDC paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

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

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

Archie Simmons, #161419,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Archie Simmons 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 Simmons
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

5-31-07
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
	)	
ARCHIE SIMMONS, #161419	)	
	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
	)	
Respondent/Appellee.	)	

I certify that on the 5TH day of Jan, 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

Kenneth M. Simmons INMATE GRIEVANCE FORM

STEP 1

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

INMATE NAME:

SCDC NUMBER: 278911

INSTITUTION: LIEBER

HOUSING UNIT: Shrm-A-37 ✓

WORK ASSIGNMENT: PIR

Office Use Only

Grievance No. Lieber 0796-04

Code: General NM

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 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 09-27-04 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. 3795

N/A Date

Ackerman 5-6-11 3430

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

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2/M K. Simmons, # 278911 LC10756-04

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 KENNETH SIMMONS, #278911

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 3574.18 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, 0794; C, 0081,0086; F, 1343-1344; 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: Simmons, Kenneth
SCDC NUMBER: 273911
INSTITUTION: M.C.I MacDougall C.I
HOUSING UNIT: B-1
WORK ASSIGNMENT: PI

RECEIVED
JUN 07 2007
INMATE GRIEVANCE

Office Use Only
Grievance No. LCI 756-04
Code: General ✓ PI Money
Policy
Disc. Hear.
Class.
Date Received 5/29/07
IGC Initials GR
✓ 16A - A&H
7-13-07

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

I do not agree with decision

05-29-07
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.

8-3-07
Grievant Signature Date

Georgina Ramsey 8/3/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3800

Ackerman 5-6-11 3435

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Simmons, Kenneth	278911	LCI-0756-04

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 July 3, 2002 and that your participation in this project ended on November 7, 2005.

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

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

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

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

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

Inmate Name	SCDC #	Grievance #
Simmons, Kenneth	278911	LCI-0756-04

Moreover, you filed your Step 1 grievance over 26 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.

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Kenneth Simmons, #278911

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Kenneth Simmons 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.

Kenneth Simmons
Appellant's Name

MacDougal C.I.
Mailing Address

1516 Old Gilliard Rd.

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-08
Dated

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

(See reverse side for instructions)

3803

STATE OF SOUTH CAROLINA)	IN THE ADMINISTRATIVE LAW COURT
)	
KENNETH SIMMONS, #278911)	
)	
Grievant/Appellant,)	
)	
vs.)	CERTIFICATE OF SERVICE
)	
SOUTH CAROLINA DEPARTMENT)	
OF CORRECTIONS,)	
)	
Respondent/Appellee.)	
)	
)	

I certify that on the 19th 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

3804

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Ronald N. Simmons
SCDC NUMBER: 267937
INSTITUTION: Lieber. Corr. Inst
HOUSING UNIT: WAND A125 A122
WORK ASSIGNMENT: Laundry

Office Use Only
Grievance No. Lieber 0656-04
Code: General RMY
Policy
Disc. Hear.
Class.
Date Received SEP 29 2004
IGC Initials

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

The Department is asked to review and determine, whether I am entitled to receive back wages which by law are due to me from working at prison Industries program when they only paid me .35 an hour and not under prevailing wage status South Carolina Code Ann. Sec. 24-3-430 (A-F) which is basis of my Grievance applys and likewise note that under law the dept. is asked to pay prevailing wage not $4.00 an hour currently getting from Williams Tech as well as overtime rate of pay under law.

ACTION REQUESTED:
That Inmate be paid prevailing wage and overtime rate of pay under law and that prevailing wage be paid.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Lawsuit was filed and ordered to file grievance by court.

Ronald N. Simmons 9/23/04
Grievant Signature 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. 3805

N/A

Ackerman 5-6-11 3440

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.

3806

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: RONALD N. SIMMONS
SCDC NUMBER: 367937
INSTITUTION: Lieber Corr. Inst
HOUSING UNIT: WANDO A122
WORK ASSIGNMENT: Educational Carpentry

Office Use Only
Grievance No. LCI0983-04
Code: General OM
Policy
Disc. Hear.
Class.
Date Received NOV 09 2004
IGC Initials CC

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

I'm asking SCDC to review and determine, whether I am entitled to receive back wages in accordance with the "mandatory statutory provision", 24-3-430 is intended to benefit inmates, I'm not benefitting or had benefitted while working at Evans Rule/SCDC prison Industry Program. I believe that according to SC code 24-3-430 that I'm entitled to prevailing wages, back wages which this statute directs for me and other inmates benefit. I'm asking to be compensated for back wages, prevailing wages, overtime rate of pay for participating in the EVANS Rule/SCDC prison Industry program, which this law provides 24-3-430 SC code.

ACTION REQUESTED:

That inmates be paid prevailing wages, back pay, overtime rate of pay according to the statutory mandatory provision law.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

WAS told by prison Coordinator Jack Staust who's office is at Evans Rule/SCDC prison Industry #1 plant, to file a grievance if I did not like my pay or get a job transfer.

Ronald N. Simmons 11-08-04
Grievant Signature Date

ACTION TAKEN BY IGC:

Duplicate to LCI 0052-04

☒ I accept the action taken by the IGC and consider the matter closed.
☐ I do not accept the action taken and wish to appeal. 3807

IGC Signature Date

Grievant Signature Date

Ackerman 5-6-11 3442

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.

3808

Inmate R. Simmons #269937 2C10656-04

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.

3809

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.

3810

AMENDMENT TO GRIEVANCE OF RONALD SIMMONS, #267937

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 4498.65 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, 0794; C, 0081,0086; F, 1345-1346; 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.

3811

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

RECEIVED
NOV 05 2004
INMATE GRIEVANCE

INMATE NAME: Ronald N. Simmons
SCDC NUMBER: 267937
INSTITUTION: ~~Lieber Corr Inst~~ Nov. 1, 04 P.P.
HOUSING UNIT: ~~WA-122~~ Ridgeland C.B. 4/3
WORK ASSIGNMENT: Education Carpentry

Office Use Only
Grievance No. LC 0670-04
Code: General NN
Policy
Disc. Hear.
Class.
Date Received NOV 01 2004
IGC Initials LC

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

I feel that the warden's decision is incorrect, I base my appeal on the prevailing wage statute of South Carolina code ANN. Sec. 24-3-930(A-F). which is basis of my grievance, AS I've stated in my step 1 Grievance, I believe I am entitled to back wages, overtime pay of rate, prevailing wages under this law for working at SCDC prison Industry/Williams tech program at Lieber Corr. Inst, Not the current pay that William Tech is paying SCDC Now. I'm asking SCDC to pay me back wages, lost wage, overtime rate of pay, prevailing wages under South Carolina Code ANN Sec 24-3-930 (B-F).

Ronald N. Simmons 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.

Ronald N. Simmons 6/22/07 — Grievant Signature Date
M.E. Monteith 6/22/07 — IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3812

Ackerman 5-6-11 3447

SIMMONS LCI-0656-04

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 August 2, 2002 and ended June 26, 2003 and that your second voluntary work assignment in this project began on March 7, 2005 and ended May 18, 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 two (2) years after SCDC began paying you for your participation in the project located at Lieber during your first work assignment there, nearly 13 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.

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.

3814

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.

3815

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ronald Simmons, #267937,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Ronald Simmons 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

Ronald Simmons
Appellant's Name
Ridgeland C.I.
P.O. Box 2039
Mailing Address
Ridgeland, SC 29936
City, State, Zip Code
none
Telephone Number

Signed

6-27-07
Dated

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

3816

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
RONALD SIMMONS, #267937	)	
	)	
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

D H Westbrook
Douglas H. Westbrook

3817

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 302393

INSTITUTION: L-C I

HOUSING UNIT: Cooper B-27 ✓

WORK ASSIGNMENT: PI-2

Office Use Only

Grievance No. Lieber 0739-04

Code: General NLV

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, 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.

Samuel Simmons 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)

3818

(CONTINUED ON REVERSE SIDE)

WARDEN'S DECISION AND REASON:

See Attachment

Warden Signature — Date: Oct. 28, 04

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

Grievant Signature — Date: 11-2-04

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.

3819

J/M S. Simmons #302393 LC10739-04

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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11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Simmons, Samuel

SCDC NUMBER: 130239 3 NOV 0 8 2004

INSTITUTION: Lieber Corr. Inst. PP

HOUSING UNIT: Cooper B-27

WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. CCI 0739-04
Code: General RM
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 grieven 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.

Samuel Simmons 11-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

6-19-07
Signature Date

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

Samuel Simmons 6-27-07
Grievant Signature Date

IGC Signature 6/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3822 Rec. 6/22/07

Ackerman 5-6-11 3457

SIMMONS LCI-0739-04

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 first voluntary work assignment in the prison industries project at Lieber began on July 22, 2004 and ended July 27, 2005. Additionally, these records reflect that you returned to this project for a second work assignment that began October 14, 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.

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

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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 60 days 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 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.

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SIMMONS LCI-0739-04

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

Samuel Simmons, #302393, Appellant, vs. South Carolina Department of Corrections, Respondent.	NOTICE OF APPEAL DOCKET NO. _07__-ALJ-04-_____-____ GRIEVANCE NO.: _____

Notice is hereby given that Samuel Simmons does hereby appeal the final decision of the South Carolina Department of Corrections dated 6-19-07 and received on 6-22-07 or 6-27-07, a copy of which is attached. A general statement of the grounds for appeal is (See S.C. Code Ann. § 1-23-380(A)(6)):

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

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

Signed
7-13-07
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
SAMUEL SIMMONS, #302393	)	
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

D. H. Westbrook
Douglas H. Westbrook

3827

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

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

STEP 1

INMATE NAME:

SCDC NUMBER: 300-922

INSTITUTION: LIEC

HOUSING UNIT: Cooper A-28 ✓

WORK ASSIGNMENT: Maryda Line

Office Use Only
Grievance No. Lieber0781-04
Code: General MM
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, 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.

Stephanie Simmons 9-27-04
Grievant Signature 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. 3828

N/A
Grievant Signature Date

Ackerman 5-6-11 3463

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.

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J/R S. Simmons, # 300922 LC10781-04

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 STEPHONE SIMMONS, #300422

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 172.41 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, 0794; C, 0081,0086; F, 1346; 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.

Armsetr	Last Name	First Name	Middle Name	Workdate	Pay Rate	Hours	Pay Amount
267937	SIMMONS	RONALD	N.	20020908	0.50	107.39	53.69
267937	SIMMONS	RONALD	N.	20020923	0.50	128.53	64.26
267937	SIMMONS	RONALD	N.	20021007	0.50	122.09	61.04
267937	SIMMONS	RONALD	N.	20021021	0.50	124.83	62.41
267937	SIMMONS	RONALD	N.	20021104	0.50	125.34	62.67
267937	SIMMONS	RONALD	N.	20021118	0.50	132.75	66.37
267937	SIMMONS	RONALD	N.	20021202	0.50	96.39	48.19
267937	SIMMONS	RONALD	N.	20021216	0.50	117.58	58.79
267937	SIMMONS	RONALD	N.	20021230	0.50	62.51	31.25
267937	SIMMONS	RONALD	N.	20030113	0.50	58.19	29.09
267937	SIMMONS	RONALD	N.	20030127	0.50	94.40	47.20
267937	SIMMONS	RONALD	N.	20030210	0.50	115.57	57.78
267937	SIMMONS	RONALD	N.	20030224	0.50	94.69	47.34
267937	SIMMONS	RONALD	N.	20030224	0.50	94.69	47.34
267937	SIMMONS	RONALD	N.	20030310	0.50	95.03	47.51
267937	SIMMONS	RONALD	N.	20030324	0.50	79.31	39.65
267937	SIMMONS	RONALD	N.	20030407	0.50	103.73	51.86
267937	SIMMONS	RONALD	N.	20030421	0.50	82.23	41.11
267937	SIMMONS	RONALD	N.	20030505	0.50	44.59	22.29
267937	SIMMONS	RONALD	N.	20030519	0.50	101.27	50.63
267937	SIMMONS	RONALD	N.	20030602	0.50	78.68	39.34
267937	SIMMONS	RONALD	N.	20030616	0.50	105.25	52.62
267937	SIMMONS	RONALD	N.	20030630	0.50	41.68	20.84
300422	SIMMONS	STEPHONE		20040517	0.50	69.18	34.59
300422	SIMMONS	STEPHONE		20040517	0.50	49.60	24.80
300422	SIMMONS	STEPHONE		20040531	0.50	53.63	26.81
257560	SIMMONS	TRAVIS		19991011	0.35	45.50	15.92
257560	SIMMONS	TRAVIS		19991011	0.55	1.50	0.82
257560	SIMMONS	TRAVIS		19991025	0.35	14.00	4.90
272982	SIMMONS, JR.	ALBERT		20011008	0.50	39.70	19.85
272982	SIMMONS, JR.	ALBERT		20011022	0.50	28.62	14.31
272982	SIMMONS, JR.	ALBERT		20011105	0.50	22.91	11.45
220017	SIMPSON	EDWARD	LARRY	19990816	0.35	24.00	8.40
220017	SIMPSON	EDWARD	LARRY	19990816	0.55	6.00	3.30
220017	SIMPSON	EDWARD	LARRY	19990830	0.35	78.50	27.47
220017	SIMPSON	EDWARD	LARRY	19990830	0.55	4.50	2.47
220017	SIMPSON	EDWARD	LARRY	19990913	0.35	72.00	25.20
220017	SIMPSON	EDWARD	LARRY	19990913	0.55	22.75	12.51
220017	SIMPSON	EDWARD	LARRY	19990927	0.35	58.25	20.38
220017	SIMPSON	EDWARD	LARRY	19990927	0.55	30.00	16.50
220017	SIMPSON	EDWARD	LARRY	19991011	0.35	75.00	26.25
220017	SIMPSON	EDWARD	LARRY	19991011	0.55	15.50	8.52
220017	SIMPSON	EDWARD	LARRY	19991025	0.15	75.00	11.25
220017	SIMPSON	EDWARD	LARRY	19991025	0.50	73.25	36.62
220017	SIMPSON	EDWARD	LARRY	19991025	0.55	24.00	13.20
220017	SIMPSON	EDWARD	LARRY	19991108	0.50	75.00	37.50
220017	SIMPSON	EDWARD	LARRY	19991122	0.50	65.90	32.95
220017	SIMPSON	EDWARD	LARRY	19991206	0.50	55.80	27.90
220017	SIMPSON	EDWARD	LARRY	19991220	2.50	2.00	5.00
220017	SIMPSON	EDWARD	LARRY	19991220	0.50	71.85	35.92
220017	SIMPSON	EDWARD	LARRY	20000103	0.50	33.47	16.73
220017	SIMPSON	EDWARD	LARRY	20000103	0.55	4.55	2.50
220017	SIMPSON	EDWARD	LARRY	20000117	0.55	7.50	4.12
220017	SIMPSON	EDWARD	LARRY	20000117	0.50	15.00	7.50

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PLAINTIFF'S EXHIBIT F

A - 1346
June 2004

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Stephone Simmons
SCDC NUMBER: 300-922 NOV 04 2004
INSTITUTION: Lieber Corr. PP
HOUSING UNIT: Cooper-A
WORK ASSIGNMENT: D-I-2

Office Use Only
Grievance No. LCI 0781-04
Code: General
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 wage. Grievants were employed by WTI, and SCDC was WTI's "Agent" in paying our wages. Adkins & Wicker further allow this issue of payment of wages under S.C. Code 24-3-430 to be grieved pursuant to SCDC's grievance procedures. Grievants incorporate by reference all exhibits to grievances filed by Darrell Williams and Attorney Douglas Westbrook on 9-22-04.

Stephone Simmons 11-3-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Released 5-1-06

Signature Date

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

Grievant Signature Date IGC Signature Date

3834 (SEE REVERSE SIDE FOR INSTRUCTIONS)

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
SIMMONS, STEPHONE	300422 RELEASED 5/1/06	LCI-0781-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your participation in the prison industries project at Lieber first started on May 17, 2004 and ended November 29, 2004. Additionally, your pay records show that you again participated in this project from May 30, 2005 through January 9, 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.

Inmate Name	SCDC #	Grievance #
SIMMONS, STEPHONE	300422 RELEASED 5/1/06	LCI-0781-04

The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

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

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

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

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

Moreover, you filed your Step 1 grievance over 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.

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Inmate Name	SCDC #	Grievance #
SIMMONS, STEPHONE	300422 RELEASED 5/1/06	LCI-0781-04

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 #
SIMMONS, STEPHONE	300422 RELEASED 5/1/06	LCI-0781-04

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

Stephone Simmons, #300422,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

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

Stephone Simmons
Appellant's Name
c/o Mrs. Alberta Simmons
4009 Winter Park Dr
Mailing Address

Columbia, SC 29201
City, State, Zip Code
none available
Telephone Number

Signed

2-6-08
Dated:

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

3839 (See reverse side for instructions)

STATE OF SOUTH CAROLINA STEPHONE SIMMONS, #300422 GRIEVANT/APPELLANT, VS. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, RESPONDENT/APPELLEE.	IN THE ADMINISTRATIVE LAW COURT CERTIFICATE OF SERVICE

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

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

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

INMATE NAME:

SCDC NUMBER: 220017

INSTITUTION: LIEBER

HOUSING UNIT: Cooper-A-116

WORK ASSIGNMENT: P.I. 1

Office Use Only

Grievance No. Lieber 0752-04

Code: General NM

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 documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

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

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

Edward Larry Simpson
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

L Corson 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. 3841

N/A
Grievant Signature Date

Ackerman 5-6-11 3476

WARDEN'S DECISION AND REASON:

See Attachment.

Warden Signature — Date: O.V. 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.

Edward Simpson 11-3-04
Grievant Signature — Date

IGC Signature — Date: 11/3/04

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

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J/M E. Simpson, #220017 LCI 0752-04

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 EDWARD SIMPSON, #220017

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 867.32 hours in 1999 at $9.68 per hour; 2671.00 hours in 2000 at $10.66 per hour; 1762.15 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 4117.29 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.

(Grievant Signature) (Date)

* Attached are Exh. A, 0794; C, 0081,0086; F, 1346-1348; 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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11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Edward L. Simpson
SCDC NUMBER: 220017 NOV 08 2004 PP
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper A-16 NCI
WORK ASSIGNMENT: P.I. 1

Office Use Only
Grievance No. LCI 0952-04
Code: General OM
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 W.T.I., and S.C.D.C. was W.T.I.'s Agent in Paying out Wages. Adkins and 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. Grievances filed by Dattel Williams and Attorney Douglas Westbrook on 9-22-04

Edward L. Simpson
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.

Edward Simpson 5-22-07
Grievant Signature Date

S. Pitt 5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3846

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Simpson, Edward	220017	LCI-0752-04

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 September 30, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on August 11, 1999 and that your participation in this project ended on September 3, 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 #
Simpson, Edward	220017	LCI-0752-04

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 five (5) years after SCDC first paid you for your participation in the project located at Lieber, over two (2) years after your participation in the project at Lieber ended, and 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.

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Inmate Name	SCDC #	Grievance #
Simpson, Edward	220017	LCI-0752-04

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 #
Simpson, Edward	220017	LCI-0752-04

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.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Edward Simpson, #220017,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Edward Simpson 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.

Edward Simpson
Appellant's Name

Livesay Pre-Release Center
Mailing Address

P.O. Box 580

Una, SC 29378
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)

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Ackerman 5-6-11 3486

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
EDWARD SIMPSON, #220017	)	
	)	
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

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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

INMATE NAME: listed on attached Exh. A *
SCDC NUMBER: 281888
INSTITUTION: Lieber Corr. Inst
HOUSING UNIT: Cooper A-53 W/D283
WORK ASSIGNMENT: P.I. - II

Office Use Only
Grievance No. LCI0954-04
Code: General OGY
Policy
Disc. Heat
Class.
Date Received NOV 04 2004
IGC Initials CC
12/4/04

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, B). 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 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.

Virgil Simpson 11-[illegible]-04
Grievant Signature Date

ACTION TAKEN BY IGC:

SEE WARDEN'S RESPONSE

Ann Ackerman 5.15.07
~~IGC~~ IGA Signature Date

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

N/A
Grievant Signature Date 12

SCDC 10-5 (Rev. November 1991) 3853 (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.

[signature] 5-22-07
Grievant Signature Date

[signature] 5.15.07
~~IGC~~ Signature Date
IGA

Signed by: [signature] 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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SIMPSON LCI-0954-04

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 November 1, 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 September 22, 2004 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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SIMPSON LCI-0954-04

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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SIMPSON LCI-0954-04

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.

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AMENDMENT TO GRIEVANCE OF VIRGIL SIMPSON, #281888

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 4212.97 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.

Virgil Simpson (Grievant Signature) 2-7-06 (Date)

* Attached are Exh. A, 0794; C, 0081,0086; F, 1348-1349; 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
	SIERRA, ANGEL	246717	C 0	1	11/29/99	4/24/00
	SILVIS, RICHARD	275273	E B 32	1	7/10/01	7/17/01
	SIMMONS, ALBERT	272982	E A 28	1	9/25/01	10/29/01
MI 3	SIMMONS, ARCHIE	161419	C B 46	2	3/14/00	11/4/02
	SIMMONS, CHRIS	276081	E A 31	1	7/27/01	9/17/01
MI 2	SIMMONS, DETRICK	197509	C B 37	1	3/15/00	5/2/03
MI 2	SIMMONS, DETRICK	197509	C B 37	1	12/23/03	6/24/04
MI 3	SIMMONS, KENNETH	278911	S A 37	1	7/3/02	6/24/04
	SIMMONS, KEVIN	273253	C B 14	1	7/26/01	2/21/02
	SIMMONS, LAVARRIO	270191	C A 28	1	3/8/01	8/16/01
	SIMMONS, RICHARD	177760	M X 0	2	7/28/00	8/24/01
MI 3	SIMMONS, RONALD	267937	C B 14	1	7/19/01	6/26/03
MI 3	SIMMONS, STEPHONE	300422	C A 17	1	4/16/04	6/24/04
MI 3	SIMMONS, T	257560	C A 0	0		10/25/99
MI 2	SIMPSON, EDWARDS	220017	C B 52	1	8/11/99	9/3/02
	SIMPSON, JACKIE	218627	S A 29	2	4/11/02	4/19/02
MI 3	SIMPSON, JACKIE	218627	WD277	3	7/8/03	10/27/03
MI 3	SIMPSON, VIRGIL	281888	C A 17	1	5/29/02	5/7/03
MI 3	SIMPSON, VIRGIL	281888	C A 53	1	5/29/02	4/7/04
	SIMPSONS, TASWAN	238270	S B 52	1	8/17/01	4/5/02
	SIMS, BRYSON	254678	M X 0	2	1/6/00	12/18/01
MI 3	SIMS, DAVID	278067	C A 29	1	6/19/02	1/20/04
	SIMS, MICHAEL	263155	C 0	1	11/4/99	5/2/00
	SINGLETON, JOHN	156097	C A 12	1	2/15/00	6/13/00
MI 3	SINGLETON, JONATHAN	287670	C B 26	1	6/26/03	9/18/03
	SINKLER, ISAAC	196139	E A 15	1	9/25/01	1/14/02
	SMALLS, BENJAMIN	219966	S B 12	1	2/15/00	2/13/01
	SMITH, AARON	259712	C 0	1	8/6/99	1/5/00
MI 2	SMITH, ANTHONY	294015	C A 35	1	3/10/04	3/16/04
	SMITH, GERALD	281415	A B 5	1	5/13/02	6/25/02
	SMITH, JAMES	248821	C B 7	1	8/14/00	9/29/00
	SMITH, JEREMY	215272	C A 47	1	5/21/01	2/28/02
	SMITH, JOE	161281	S A 26	2	8/30/01	11/30/01
	SMITH, JONATHAN	270764	E A 27	1	2/16/01	3/8/01
	SMITH, KEVIN	272440	C B 52	2	2/19/01	11/8/01
MI 3	SMITH, KEVIN	272440	C A 36	1	11/8/02	5/2/03
MI 2	SMITH, LARRY	241178	C A 62	1	10/13/00	12/4/03
MI 3	SMITH, ROBERT	199324	S B 18	1	1/21/03	6/27/03
MI 3	SMITH, ROBERT G.	246106	E A 24	3		3/17/04
MI 3	SMITH, TIMOTHY	296539	C A 6	1	3/29/04	6/24/04
MI 2	SMOOT, LEROY	234775	S B 25	1	2/23/01	9/6/02
	SNOW, DARYL	232890	C B 47	1	5/29/01	11/14/01
MI 3	SPANN, DERRIAN	254859	C A 35	1	2/4/02	6/16/03
MI 3	SPANN, DERRIAN	254859	S B 43	1	3/10/04	3/12/04
MI 3	SPEARS, JEFFERY	281697	C B 30	1	4/28/04	6/24/04
	STALEY, GENE	211893	C B 41	1	1/10/00	4/27/01



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June 2004

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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 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 anoual 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

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220017	SIMPSON	EDWARD	LARRY	20010521	0.50	109.83	54.91
220017	SIMPSON	EDWARD	LARRY	20010604	0.50	80.42	45.21
220017	SIMPSON	EDWARD	LARRY	20010618	0.50	111.75	55.87
220017	SIMPSON	EDWARD	LARRY	20010702	0.50	125.19	62.59
220017	SIMPSON	EDWARD	LARRY	20010716	0.50	127.12	63.56
220017	SIMPSON	EDWARD	LARRY	20010730	0.50	163.55	81.77
220017	SIMPSON	EDWARD	LARRY	20010813	0.50	157.78	78.89
220017	SIMPSON	EDWARD	LARRY	20010827	0.50	161.76	80.88
220017	SIMPSON	EDWARD	LARRY	20010910	0.50	134.68	67.34
220017	SIMPSON	EDWARD	LARRY	20010924	0.50	133.74	66.87
220017	SIMPSON	EDWARD	LARRY	20011008	0.50	167.91	83.95
220017	SIMPSON	EDWARD	LARRY	20011022	0.50	177.96	88.98
220017	SIMPSON	EDWARD	LARRY	20011105	0.50	138.30	69.15
220017	SIMPSON	EDWARD	LARRY	20011119	0.50	140.19	70.09
220017	SIMPSON	EDWARD	LARRY	20011203	0.50	125.19	62.59
220017	SIMPSON	EDWARD	LARRY	20011217	0.50	145.36	72.68
220017	SIMPSON	EDWARD	LARRY	20011231	0.50	61.78	30.89
220017	SIMPSON	EDWARD	LARRY	20020114	0.50	94.16	47.08
220017	SIMPSON	EDWARD	LARRY	20020128	0.50	110.20	55.10
220017	SIMPSON	EDWARD	LARRY	20020211	0.50	133.70	66.85
220017	SIMPSON	EDWARD	LARRY	20020225	0.50	133.71	66.85
220017	SIMPSON	EDWARD	LARRY	20020311	0.50	132.71	66.35
220017	SIMPSON	EDWARD	LARRY	20020325	0.50	130.28	65.14
220017	SIMPSON	EDWARD	LARRY	20020408	0.50	123.24	61.62
220017	SIMPSON	EDWARD	LARRY	20020422	0.50	135.00	67.50
220017	SIMPSON	EDWARD	LARRY	20020506	0.50	131.21	65.60
220017	SIMPSON	EDWARD	LARRY	20020520	0.50	134.20	67.10
220017	SIMPSON	EDWARD	LARRY	20020603	0.50	144.14	72.07
220017	SIMPSON	EDWARD	LARRY	20020617	0.50	139.94	69.97
220017	SIMPSON	EDWARD	LARRY	20020701	0.50	132.30	66.15
220017	SIMPSON	EDWARD	LARRY	20020715	0.50	118.76	59.38
220017	SIMPSON	EDWARD	LARRY	20020729	0.50	134.59	67.29
220017	SIMPSON	EDWARD	LARRY	20020812	0.50	132.25	66.12
220017	SIMPSON	EDWARD	LARRY	20020826	0.50	132.34	66.17
220017	SIMPSON	EDWARD	LARRY	20020909	0.50	89.24	44.62
218627	SIMPSON	JACKIE		20020506	0.50	5.25	2.62
238270	SIMPSON	TASWAN	O'DELL	20010827	0.50	14.07	7.03
238270	SIMPSON	TASWAN	O'DELL	20010910	0.50	52.14	26.07
238270	SIMPSON	TASWAN	O'DELL	20010924	0.50	52.44	26.22
238270	SIMPSON	TASWAN	O'DELL	20011008	0.50	68.82	34.41
238270	SIMPSON	TASWAN	O'DELL	20011022	0.50	87.62	43.81
238270	SIMPSON	TASWAN	O'DELL	20011105	0.50	94.83	47.41
238270	SIMPSON	TASWAN	O'DELL	20011119	0.50	79.67	39.83
238270	SIMPSON	TASWAN	O'DELL	20011203	0.50	68.19	34.09
238270	SIMPSON	TASWAN	O'DELL	20011217	0.50	81.70	40.85
238270	SIMPSON	TASWAN	O'DELL	20020114	0.50	55.42	27.71
238270	SIMPSON	TASWAN	O'DELL	20020128	0.50	76.73	38.36
238270	SIMPSON	TASWAN	O'DELL	20020211	0.50	84.86	42.43
238270	SIMPSON	TASWAN	O'DELL	20020225	0.50	93.77	46.88
238270	SIMPSON	TASWAN	O'DELL	20020311	0.50	102.26	51.13
238270	SIMPSON	TASWAN	O'DELL	20020325	0.50	92.43	46.21
238270	SIMPSON	TASWAN	O'DELL	20020408	0.50	47.92	23.96
281888	SIMPSON	VIRGIL		20020603	0.50	8.03	4.01
281888	SIMPSON	VIRGIL		20020617	0.50	50.04	25.02

PLAINTIFF'S EXHIBIT F

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281888	SIMPSON	VIRGIL		20020701	0.50	36.72	18.36
281888	SIMPSON	VIRGIL		20020715	0.50	41.58	20.79
281888	SIMPSON	VIRGIL		20020729	0.50	38.50	19.25
281888	SIMPSON	VIRGIL		20020812	0.50	65.55	32.77
281888	SIMPSON	VIRGIL		20020826	0.50	72.72	36.36
281888	SIMPSON	VIRGIL		20020909	0.50	67.47	33.73
281888	SIMPSON	VIRGIL		20020923	0.50	87.72	43.86
281888	SIMPSON	VIRGIL		20021007	0.50	90.00	45.00
281888	SIMPSON	VIRGIL		20021021	0.50	99.82	49.91
281888	SIMPSON	VIRGIL		20021104	0.50	54.46	27.23
281888	SIMPSON	VIRGIL		20021118	0.50	59.97	29.98
281888	SIMPSON	VIRGIL		20021202	0.50	50.22	25.11
281888	SIMPSON	VIRGIL		20021216	0.50	82.38	41.19
281888	SIMPSON	VIRGIL		20021230	0.50	63.00	31.50
281888	SIMPSON	VIRGIL		20030113	0.50	60.33	30.16
281888	SIMPSON	VIRGIL		20030127	0.50	77.36	38.68
281888	SIMPSON	VIRGIL		20030210	0.50	82.35	41.17
281888	SIMPSON	VIRGIL		20030224	0.50	67.98	33.99
281888	SIMPSON	VIRGIL		20030310	0.50	77.10	38.55
281888	SIMPSON	VIRGIL		20030324	0.50	78.33	39.16
281888	SIMPSON	VIRGIL		20030407	0.50	68.21	34.10
281888	SIMPSON	VIRGIL		20030421	0.50	69.87	34.93
281888	SIMPSON	VIRGIL		20030505	0.50	59.67	29.83
281888	SIMPSON	VIRGIL		20030519	0.50	30.68	15.34
281888	SIMPSON	VIRGIL		20030602	0.50	95.73	47.86
281888	SIMPSON	VIRGIL		20030616	0.50	119.93	59.96
281888	SIMPSON	VIRGIL		20030630	0.50	107.92	53.96
281888	SIMPSON	VIRGIL		20030714	0.50	132.66	66.33
281888	SIMPSON	VIRGIL		20030728	0.50	123.79	61.89
281888	SIMPSON	VIRGIL		20030811	0.50	115.72	57.86
281888	SIMPSON	VIRGIL		20030825	0.50	122.66	61.33
281888	SIMPSON	VIRGIL		20030908	0.50	92.65	46.32
281888	SIMPSON	VIRGIL		20030922	0.50	110.67	55.33
281888	SIMPSON	VIRGIL		20031006	0.50	97.89	48.94
281888	SIMPSON	VIRGIL		20031020	0.50	115.97	57.98
281888	SIMPSON	VIRGIL		20031103	0.50	117.59	58.79
281888	SIMPSON	VIRGIL		20031117	0.50	112.75	56.37
281888	SIMPSON	VIRGIL		20031201	0.50	77.18	38.59
281888	SIMPSON	VIRGIL		20031215	0.50	100.01	50.00
281888	SIMPSON	VIRGIL		20031229	0.50	98.40	49.20
281888	SIMPSON	VIRGIL		20040112	0.50	57.85	28.92
281888	SIMPSON	VIRGIL		20040126	0.50	103.41	51.70
281888	SIMPSON	VIRGIL		20040209	0.50	117.98	58.99
281888	SIMPSON	VIRGIL		20040223	0.50	76.81	38.40
281888	SIMPSON	VIRGIL		20040308	0.50	131.52	65.76
281888	SIMPSON	VIRGIL		20040322	0.50	165.99	82.99
281888	SIMPSON	VIRGIL		20040405	0.50	148.80	74.40
281888	SIMPSON	VIRGIL		20040419	0.50	29.03	14.51
281888	SIMPSON	VIRGIL		20000131	0.35	67.50	23.62
254678	SIMS	BRYSON		20000214	0.50	74.02	37.01
254678	SIMS	BRYSON		20000228	0.50	59.80	29.90
254678	SIMS	BRYSON		20000228	0.35	16.00	5.60
254678	SIMS	BRYSON		20000313	0.50	67.50	33.75
254678	SIMS	BRYSON		20000313	0.35	20.00	7.00

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

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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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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

3867

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Virgil Simpson
SCDC NUMBER: 281888
INSTITUTION: Lieber Correctional Inst.
HOUSING UNIT: Wando D-283
WORK ASSIGNMENT: P.I. #2

RECEIVED JUN 12 2007 INMATE GRIEVANCE

Office Use Only
Grievance No. LCI-0954-07
Code: General V MY-PT
Policy
Disc. Hear.
Class.
Date Received 5/31
IGC Initials
✔ IGA - ABH 7-13-07

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

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

SCDC owes Grievant back wages, because it failed to pay prevailing wages prior to July 1, 2001, and $4.00 per hour thereafter. And what it did pay was but a fraction of these amounts. Thus, the wage rate SCDC paid was 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.

Virgil Simpson 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.

Virgil Simpson 8-2-07
Grievant Signature Date

IGC Signature 8-2-07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3868

Ackerman 5-6-11 3503

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.

3869

ID

SIMPOSON LCI-0954-04

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 November 1, 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 September 22, 2004 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 over 30 days after SCDC first paid you for your participation in the project located at Lieber. 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.

3870

//

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Virgil Simpson, #281888,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Virgil Simpson 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.

Virgil Simpson
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

11-6-07
Dated

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

(See reverse side for instructions)

3871

Ackerman 5-6-11 3506

STATE OF SOUTH CAROLINA VIRGIL SIMPSON, #281888 Grievant/Appellant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent/Appellee.	)	IN THE ADMINISTRATIVE LAW COURT CERTIFICATE OF SERVICE

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

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

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

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

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

D. Westbrook
Douglas H. Westbrook

3872

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

DAVID R SIMS JNMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 278067

INSTITUTION: Lieber

HOUSING UNIT: C - A - 29

WORK ASSIGNMENT: PI 2

Office Use Only
Grievance No. Lieber 0702-04
Code: General 104
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 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.

David R Sims 9-22-04
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. 3873

N/A
Grievant Signature Date

Ackerman 5-6-11 3508

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

IGE 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.

3874

J/M D. Sims, # 278067 LCI 0702-04

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.

3875

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.

3876

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

Office Use Only 07024

Grievance No. LCI 30004

Code: General VM

Policy

Disc. Hear.

Class.

Date Received NOV 08 2004

IGC Initials

INMATE NAME: David A Sims

SCDC NUMBER: 278067

INSTITUTION: Lieber

HOUSING UNIT: C-A-29

WORK ASSIGNMENT: PI-2

NOV 08 2004 RECEIVED MAY 24 2007 INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction)

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

David A Sims 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.

David A Sims 5/22/07 — A Warden 5/22/07

Grievant Signature / Date — IGC Signature / Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3877

Ackerman 5-6-11 3512

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Sims, David	278067	LCI-0702-04

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 July 21, 2004 and that your participation in this project ended on August 26, 2004.

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

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, this 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 #
Sims, David	278067	LCI-0702-04

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 two (2) months after SCDC first paid you for your participation in the project located at Lieber, over 30 days 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
Sims, David	278067	LCI-0702-04

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 #
Sims, David	278067	LCI-0702-04

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

David Sims, #278067

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that David Sims 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.

David Sims
Appellant's Name

Tyger River C.I.
Mailing Address

200 Prison Rd.

Enoree, SC 29335
City, State, Zip Code

none
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)

3882

Ackerman 5-6-11 3517

STATE OF SOUTH CAROLINA DAVID SIMS, #278067 Grievant/Appellant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent/Appellee.	IN THE ADMINISTRATIVE LAW COURT CERTIFICATE OF SERVICE

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

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

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

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

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

D. Westbrook

Douglas H. Westbrook

3883

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Jonathan Singleton, #287670,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

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

Jonathan Singleton
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-09
Dated

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

(See reverse side for instructions)

3884

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
JONATHAN SINGLETON, #287670	)	
	)	
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

Douglas H. Westbrook

3885

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

D

INMATE NAME: Kevin S. Smith
SCDC NUMBER: 272440
INSTITUTION: Lieber C. I.
HOUSING UNIT: Cooper A-36 ✓
WORK ASSIGNMENT: P. I. #1 / Tire Plant

Office Use Only
Grievance No. Lieber 0619-04
Code: General MH
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 wages as required under South Carolina Code Ann. Sec. 24-3-430 (A-7) As well as Fact That from 1998-2003 Ther denied me Prevailing Wage.

ACTION REQUESTED: All monies Due to me be Paid at Prevailing wage and, over time rate and, Prevailing wage be Paid now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Law Suit was Filed, ordered to File ~~Grievance~~ Grievance By court: Wicker V.s S.C.D.C., Adkins V.s SCDC

Kevin S. Smith 9-23-04
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.

L Carrington 10/28/04
IGC Signature Date

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

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Ackerman 5-6-11 3521

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~~ Signature Date
IGA

Served by: 5/24/07

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.

3887

SMITH LCI-0619-04

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 November 8, 2002 and that your participation in this project ended on May 2, 2003.

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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Inmate K. Smith, #272440 LCI 0619-04

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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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 KEVIN S. SMITH, #272440

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; 360.33 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 1370.85 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.

Kevin Smith 2-13-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0794; C, 0081,0086; F, 1354; 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
	SIERRA, ANGEL	246717	C 0	1	11/29/99	4/24/00
	SILVIS, RICHARD	275273	E B 32	1	7/10/01	7/17/01
	SIMMONS, ALBERT	272982	E A 28	1	9/25/01	10/29/01
MI 3	SIMMONS, ARCHIE	161419	C B 46	2	3/14/00	11/4/02
	SIMMONS, CHRIS	276081	E A 31	1	7/27/01	9/17/01
MI 2	SIMMONS, DETRICK	197509	C B 37	1	3/15/00	5/2/03
MI 2	SIMMONS, DETRICK	197509	C B 37	1	12/23/03	6/24/04
MI 3	SIMMONS, KENNETH	278911	S A 37	1	7/3/02	6/24/04
	SIMMONS, KEVIN	273253	C B 14	1	7/26/01	2/21/02
	SIMMONS, LAVARRIO	270191	C A 28	1	3/8/01	8/16/01
	SIMMONS, RICHARD	177760	MX 0	2	7/28/00	8/24/01
MI 3	SIMMONS, RONALD	267937	C B 14	1	7/19/01	6/26/03
MI 3	SIMMONS, STEPHONE	300422	C A 17	1	4/16/04	6/24/04
MI 3	SIMMONS, T	257560	C A 0	0		10/25/99
MI 2	SIMPSON, EDWARDS	220017	C B 52	1	8/11/99	9/3/02
	SIMPSON, JACKIE	218627	S A 29	2	4/11/02	4/19/02
MI 3	SIMPSON, JACKIE	218627	WD277	3	7/8/03	10/27/03
MI 3	SIMPSON, VIRGIL	281888	C A 17	1	5/29/02	5/7/03
MI 3	SIMPSON, VIRGIL	281888	C A 53	1	5/29/02	4/7/04
	SIMPSONS, TASWAN	238270	S B 52	1	8/17/01	4/5/02
	SIMS, BRYSON	254678	MX 0	2	1/6/00	12/18/01
MI 3	SIMS, DAVID	278067	C A 29	1	6/19/02	1/20/04
	SIMS, MICHAEL	263155	C 0	1	11/4/99	5/2/00
	SINGLETON, JOHN	156097	C A 12	1	2/15/00	6/13/00
MI 3	SINGLETON, JONATHAN	287670	C B 26	1	6/26/03	9/18/03
	SINKLER, ISAAC	196139	E A 15	1	9/25/01	1/14/02
	SMALLS, BENJAMIN	219966	S B 12	1	2/15/00	2/13/01
	SMITH, AARON	259712	C 0	1	8/6/99	1/5/00
MI 2	SMITH, ANTHONY	294015	C A 35	1	3/10/04	3/16/04
	SMITH, GERALD	281415	A B 5	1	5/13/02	6/25/02
	SMITH, JAMES	248821	C B 7	1	8/14/00	9/29/00
	SMITH, JEREMY	215272	C A 47	1	5/21/01	2/28/02
	SMITH, JOE	161281	S A 26	2	8/30/01	11/30/01
	SMITH, JONATHAN	270764	E A 27	1	2/16/01	3/8/01
	SMITH, KEVIN	272440	C B 52	2	2/19/01	11/8/01
MI 3	SMITH, KEVIN	272440	C A 36	1	11/8/02	5/2/03
MI 2	SMITH, LARRY	241178	C A 62	1	10/13/00	12/4/03
MI 3	SMITH, ROBERT	199324	S B 18	1	1/21/03	6/27/03
MI 3	SMITH, ROBERT G.	246106	E A 24	3		3/17/04
MI 3	SMITH, TIMOTHY	296539	C A 6	1	3/29/04	6/24/04
MI 2	SMOOT, LEROY	234775	S B 25	1	2/23/01	9/6/02
	SNOW, DARYL	232890	C B 47	1	5/29/01	11/14/01
MI 3	SPANN, DERRIAN	254859	C A 35	1	2/4/02	6/16/03
MI 3	SPANN, DERRIAN	254859	S B 43	1	3/10/04	3/12/04
MI 3	SPEARS, JEFFERY	281697	C B 30	1	4/28/04	6/24/04
	STALEY, GENE	211893	C B 41	1	1/10/00	4/27/01

PLAINTIFF'S EXHIBIT 4

A - 0794
June 2004

3894

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 C
3895

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



3896

Ackerman 5-6-11 3531

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
270764	SMITH	JONATHAN	JOSEPH	20010226	0.50	14.04	7.02
270764	SMITH	JONATHAN	JOSEPH	20010312	0.50	33.49	16.74
272440	SMITH	KEVIN	SYLVESTER	20010326	0.50	21.81	10.90
272440	SMITH	KEVIN	SYLVESTER	20010409	0.50	58.63	29.31
272440	SMITH	KEVIN	SYLVESTER	20010423	0.50	43.75	21.87
272440	SMITH	KEVIN	SYLVESTER	20010507	0.50	30.93	15.46
272440	SMITH	KEVIN	SYLVESTER	20010521	0.50	81.74	40.87
272440	SMITH	KEVIN	SYLVESTER	20010604	0.50	7.53	3.76
272440	SMITH	KEVIN	SYLVESTER	20010618	0.50	44.39	22.19
272440	SMITH	KEVIN	SYLVESTER	20010702	0.50	71.55	35.77
272440	SMITH	KEVIN	SYLVESTER	20010716	0.50	34.03	17.01
272440	SMITH	KEVIN	SYLVESTER	20010730	0.50	82.67	41.33
272440	SMITH	KEVIN	SYLVESTER	20010813	0.50	75.33	37.66
272440	SMITH	KEVIN	SYLVESTER	20010827	0.50	97.50	48.75
272440	SMITH	KEVIN	SYLVESTER	20010910	0.50	101.25	50.62
272440	SMITH	KEVIN	SYLVESTER	20010924	0.50	112.50	56.25
272440	SMITH	KEVIN	SYLVESTER	20011008	0.50	112.50	56.25
272440	SMITH	KEVIN	SYLVESTER	20011022	0.50	112.50	56.25
272440	SMITH	KEVIN	SYLVESTER	20011105	0.50	112.50	56.25
272440	SMITH	KEVIN	SYLVESTER	20011119	0.50	45.00	22.50
272440	SMITH	KEVIN	SYLVESTER	20021230	0.50	25.20	12.60
272440	SMITH	KEVIN	SYLVESTER	20030113	0.50	39.70	19.85
272440	SMITH	KEVIN	SYLVESTER	20030127	0.50	43.52	21.76
272440	SMITH	KEVIN	SYLVESTER	20030210	0.50	43.85	21.92
272440	SMITH	KEVIN	SYLVESTER	20030224	0.50	70.62	35.31
272440	SMITH	KEVIN	SYLVESTER	20030310	0.50	54.82	27.41
272440	SMITH	KEVIN	SYLVESTER	20030324	0.50	60.00	30.00
272440	SMITH	KEVIN	SYLVESTER	20030407	0.50	50.98	25.49
272440	SMITH	KEVIN	SYLVESTER	20030421	0.50	51.68	25.84
272440	SMITH	KEVIN	SYLVESTER	20030505	0.50	40.08	20.04
272440	SMITH	KEVIN	SYLVESTER	20030519	0.50	4.62	2.31
241178	SMITH	LARRY		20001023	0.50	57.53	28.76
241178	SMITH	LARRY		20001106	0.50	63.04	31.52
241178	SMITH	LARRY		20001120	0.50	47.83	23.91
241178	SMITH	LARRY		20001204	0.50	48.19	24.09
241178	SMITH	LARRY		20001218	0.50	133.70	66.85
241178	SMITH	LARRY		20010101	0.50	67.22	33.61
241178	SMITH	LARRY		20010115	0.50	59.29	29.64
241178	SMITH	LARRY		20010129	0.50	82.50	41.25
241178	SMITH	LARRY		20010212	0.50	67.57	33.78
241178	SMITH	LARRY		20010226	0.50	77.50	38.75
241178	SMITH	LARRY		20010312	0.50	74.30	37.15
241178	SMITH	LARRY		20010326	0.50	71.58	35.79
241178	SMITH	LARRY		20010409	0.50	67.35	33.67
241178	SMITH	LARRY		20010423	0.50	70.42	35.21
241178	SMITH	LARRY		20010507	0.50	101.78	50.89
241178	SMITH	LARRY		20010521	0.50	114.75	57.37
241178	SMITH	LARRY		20010604	0.50	80.96	40.48
241178	SMITH	LARRY		20010618	0.50	96.11	48.05
241178	SMITH	LARRY		20010702	0.50	92.85	46.42
241178	SMITH	LARRY		20010716	0.50	98.06	49.03
241178	SMITH	LARRY		20010730	0.50	141.26	70.63
241178	SMITH	LARRY		20010813	0.50	37.20	18.60
241178	SMITH	LARRY		20010827	0.50	96.11	48.05

PLAINTIFF'S EXHIBIT F

3897

A - 1354
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.



3898

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

3899

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

3500

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. LCI-0619-04
Code: General
Policy
Disc. Hear.
Class.
Date Received 5/24
IGC Initials

INMATE NAME: Kevin S. Smith
SCDC NUMBER: 272440
INSTITUTION: Lieber Correction
HOUSING UNIT: S-B-53
WORK ASSIGNMENT: Carpentry

RECEIVED
JUN 04 2007
INMATE GRIEVANCE

IGA - ABH 7/23

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 S.C.D.C.'s failure to pay prevailing wages under §24-3-430, with review by the ALJ.

S.C.D.C. owes Grievant back wages, because it fail to pay prevailing wages prior to July 1st, 2001, and $4/hour thereafter. And what it did pay was but a fraction of these amount Thus, the wages rate S.C.D.C. 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.

Kevin S. Smith 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.

Kevin Smith 8-1-07
Grievant Signature Date

Ramona 8/1/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3901

SMITH LCI-0619-04

As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated May 22, 2007. Along with reviewing your Step 2 appeal, I have also reviewed all of the materials you submitted in support of your Step 1 grievance dated September 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 November 8, 2002 and that your participation in this project ended on May 2, 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 nearly two (2) years after SCDC first paid you for your participation in the project located at Lieber, over 20 months after your participation in this project ended, 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.

3902

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kevin S. Smith, #272440,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

GRIEVANCE NO.: _____

Notice is hereby given that Kevin S. Smith does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 8-1-07, 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

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

Signed

8-6-07
Dated

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

3903

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
KEVIN S. SMITH, #272440	)	
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

3504

Robert S.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Robert D. Smith
SCDC NUMBER: 199324
INSTITUTION: Lieber
HOUSING UNIT: Stone B-T 19
WORK ASSIGNMENT: Green House

Office Use Only
Grievance No. Lieber 0665-04
Code: General MY
Policy
Disc. Hear.
Class.
Date Received SEP 22 2004
IGC Initials LC

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

The Department is asked to review and Determine whether I am entitled to recieve back WAGES, 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 Caroling 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.

Robert D. Smith 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.

3905

N/A
Grievant Signature Date

Ackerman 5-6-11 3540

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.

Robert P. Smith 10/29/04
Grievant Signature Date

IGC Signature 10/29/04 Date

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

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

3906

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Robert D. Smith INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 199324

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Stono B-7

WORK ASSIGNMENT: Green House

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, §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 (William 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.

Robert D. Smith 199324 9/29/04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Order dated 8665-04 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.

3907

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

Ackerman 5-6-11 3542

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.

3908

Inmate R. Smith, #199324 LCI 0665-04

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.

3509

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.

3510

AMENDMENT TO GRIEVANCE OF ROBERT D. SMITH, #199324

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; 1323.31 hours in 2000 at $10.66 per hour; 1271.01 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 2349.47 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.

Robert D. Smith 2/9/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0794; C, 0081,0086; F, 1356-1357; 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
	SIERRA, ANGEL	246717	C 0	1	11/29/99	4/24/00
	SILVIS, RICHARD	275273	E B 32	1	7/10/01	7/17/01
	SIMMONS, ALBERT	272982	E A 28	1	9/25/01	10/29/01
MI 3	SIMMONS, ARCHIE	161419	C B 46	2	3/14/00	11/4/02
	SIMMONS, CHRIS	276081	E A 31	1	7/27/01	9/17/01
MI 2	SIMMONS, DETRICK	197509	C B 37	1	3/15/00	5/2/03
MI 2	SIMMONS, DETRICK	197509	C B 37	1	12/23/03	6/24/04
MI 3	SIMMONS, KENNETH	278911	S A 37	1	7/3/02	6/24/04
	SIMMONS, KEVIN	273253	C B 14	1	7/26/01	2/21/02
	SIMMONS, LAVARRIO	270191	C A 28	1	3/8/01	8/16/01
	SIMMONS, RICHARD	177760	M X 0	2	7/28/00	8/24/01
MI 3	SIMMONS, RONALD	267937	C B 14	1	7/19/01	6/26/03
MI 3	SIMMONS, STEPHONE	300422	C A 17	1	4/16/04	6/24/04
MI 3	SIMMONS, T	257560	C A 0	0		10/25/99
MI 2	SIMPSON, EDWARDS	220017	C B 52	1	8/11/99	9/3/02
	SIMPSON, JACKIE	218627	S A 29	2	4/11/02	4/19/02
MI 3	SIMPSON, JACKIE	218627	WD277	3	7/8/03	10/27/03
MI 3	SIMPSON, VIRGIL	281888	C A 17	1	5/29/02	5/7/03
MI 3	SIMPSON, VIRGIL	281888	C A 53	1	5/29/02	4/7/04
	SIMPSONS, TASWAN	238270	S B 52	1	8/17/01	4/5/02
	SIMS, BRYSON	254678	M X 0	2	1/6/00	12/18/01
MI 3	SIMS, DAVID	278067	C A 29	1	6/19/02	1/20/04
	SIMS, MICHAEL	263155	C 0	1	11/4/99	5/2/00
	SINGLETON, JOHN	156097	C A 12	1	2/15/00	6/13/00
MI 3	SINGLETON, JONATHAN	287670	C B 26	1	6/26/03	9/18/03
	SINKLER, ISAAC	196139	E A 15	1	9/25/01	1/14/02
	SMALLS, BENIAMIN	219966	S B 12	1	2/15/00	2/13/01
	SMITH, AARON	259712	C 0	1	8/6/99	1/5/00
MI 2	SMITH, ANTHONY	294015	C A 35	1	3/10/04	3/16/04
	SMITH, GERALD	281415	A B 5	1	5/13/02	6/25/02
	SMITH, JAMES	248821	C B 7	1	8/14/00	9/29/00
	SMITH, JEREMY	215272	C A 47	1	5/21/01	2/28/02
	SMITH, JOE	161281	S A 26	2	8/30/01	11/30/01
	SMITH, JONATHAN	270764	E A 27	1	2/16/01	3/8/01
	SMITH, KEVIN	272440	C B 52	2	2/19/01	11/8/01
MI 3	SMITH, KEVIN	272440	C A 36	1	11/8/02	5/2/03
MI 2	SMITH, LARRY	241178	C A 62	1	10/13/00	12/4/03
MI 3	SMITH, ROBERT	199324	S B 18	1	1/21/03	6/27/03
MI 3	SMITH, ROBERT G.	246106	E A 24	3		3/17/04
MI 3	SMITH, TIMOTHY	296539	C A 6	1	3/29/04	6/24/04
MI 2	SMOOT, LEROY	234775	S B 25	1	2/23/01	9/6/02
	SNOW, DARYL	232890	C B 47	1	5/29/01	11/14/01
MI 3	SPANN, DERRIAN	254859	C A 35	1	2/4/02	6/16/03
MI 3	SPANN, DERRIAN	254859	S B 43	1	3/10/04	3/12/04
MI 3	SPEARS, JEFFERY	281697	C B 30	1	4/28/04	6/24/04
	STALEY, GENE	211893	C B 41	1	1/10/00	4/27/01

PLAINTIFF'S EXHIBIT A

STATE OF SOUTH CAROLINA)

LEASE

COUNTY OF RICHLAND)

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

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

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

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

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

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

ARTICLE 1 General:

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

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

A-0081
June 2004

00021

PLAINTIFF'S EXHIBIT C

3913

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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

PLAINTIFF'S EXHIBIT C

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
241178	SMITH	LARRY		20031020	0.50	127.84	63.92
241178	SMITH	LARRY		20031103	0.50	134.75	67.37
241178	SMITH	LARRY		20031117	0.50	144.77	72.38
241178	SMITH	LARRY		20031201	0.50	119.07	59.53
241178	SMITH	LARRY		20031215	0.50	42.75	21.37
199324	SMITH	ROBERT	D.	20000327	0.80	7.50	6.00
199324	SMITH	ROBERT	D.	20000327	0.35	27.15	9.50
199324	SMITH	ROBERT	D.	20000410	0.35	72.97	25.53
199324	SMITH	ROBERT	D.	20000424	0.35	65.01	22.75
199324	SMITH	ROBERT	D.	20000508	0.35	75.00	26.25
199324	SMITH	ROBERT	D.	20000508	0.55	2.95	1.62
199324	SMITH	ROBERT	D.	20000522	0.50	67.50	33.75
199324	SMITH	ROBERT	D.	20000522	0.55	5.85	3.21
199324	SMITH	ROBERT	D.	20000522	0.25	7.50	1.87
199324	SMITH	ROBERT	D.	20000605	0.50	62.43	31.21
199324	SMITH	ROBERT	D.	20000703	0.35	64.18	22.46
199324	SMITH	ROBERT	D.	20000717	0.50	63.50	31.75
199324	SMITH	ROBERT	D.	20000731	0.50	72.35	36.17
199324	SMITH	ROBERT	D.	20000814	0.50	67.28	33.64
199324	SMITH	ROBERT	D.	20000828	0.50	66.90	33.45
199324	SMITH	ROBERT	D.	20000911	0.50	64.72	32.36
199324	SMITH	ROBERT	D.	20000925	0.50	58.10	29.05
199324	SMITH	ROBERT	D.	20001009	0.50	72.40	36.20
199324	SMITH	ROBERT	D.	20001023	0.50	34.88	17.44
199324	SMITH	ROBERT	D.	20001106	0.50	85.97	42.98
199324	SMITH	ROBERT	D.	20001120	0.50	97.88	48.94
199324	SMITH	ROBERT	D.	20001204	0.50	70.83	35.41
199324	SMITH	ROBERT	D.	20001218	0.50	68.47	34.23
199324	SMITH	ROBERT	D.	20010101	0.50	41.99	20.99
199324	SMITH	ROBERT	D.	20010115	0.50	80.25	40.12
199324	SMITH	ROBERT	D.	20010129	0.50	80.96	40.48
199324	SMITH	ROBERT	D.	20010212	0.50	64.12	32.06
199324	SMITH	ROBERT	D.	20010226	0.50	98.11	49.05
199324	SMITH	ROBERT	D.	20010312	0.50	94.12	47.06
199324	SMITH	ROBERT	D.	20010326	0.50	92.14	46.07
199324	SMITH	ROBERT	D.	20010409	0.50	132.78	66.39
199324	SMITH	ROBERT	D.	20010423	0.50	110.22	55.11
199324	SMITH	ROBERT	D.	20010507	0.50	105.38	52.69
199324	SMITH	ROBERT	D.	20010521	0.50	104.39	52.19
199324	SMITH	ROBERT	D.	20010604	0.50	96.75	48.37
199324	SMITH	ROBERT	D.	20010618	0.50	100.02	50.01
199324	SMITH	ROBERT	D.	20010702	0.50	111.77	55.88
199324	SMITH	ROBERT	D.	20010716	0.50	69.64	34.82
199324	SMITH	ROBERT	D.	20010730	0.50	111.41	55.70
199324	SMITH	ROBERT	D.	20010813	0.50	110.11	55.05
199324	SMITH	ROBERT	D.	20010827	0.50	101.96	50.98
199324	SMITH	ROBERT	D.	20010910	0.50	112.91	56.45
199324	SMITH	ROBERT	D.	20010924	0.50	133.66	66.83
199324	SMITH	ROBERT	D.	20011008	0.50	132.90	66.45
199324	SMITH	ROBERT	D.	20011022	0.50	146.98	73.49
199324	SMITH	ROBERT	D.	20011105	0.50	119.19	59.59
199324	SMITH	ROBERT	D.	20011119	0.50	69.67	34.83
199324	SMITH	ROBERT	D.	20011203	0.50	90.44	45.22
199324	SMITH	ROBERT	D.	20011217	0.50	86.02	43.01

PLAINTIFF'S EXHIBIT F

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A - 1356
June 2004

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
199324	SMITH	ROBERT	D.	20020114	0.50	83.56	41.78
199324	SMITH	ROBERT	D.	20020128	0.50	67.58	33.79
199324	SMITH	ROBERT	D.	20020211	0.50	111.91	55.95
199324	SMITH	ROBERT	D.	20020225	0.50	57.88	28.94
199324	SMITH	ROBERT	D.	20020311	0.50	71.56	35.78
199324	SMITH	ROBERT	D.	20020325	0.50	55.79	27.89
199324	SMITH	ROBERT	D.	20020408	0.50	111.20	55.60
199324	SMITH	ROBERT	D.	20020422	0.50	112.18	56.09
199324	SMITH	ROBERT	D.	20020506	0.50	62.04	31.02
199324	SMITH	ROBERT	D.	20020520	0.50	69.81	34.90
199324	SMITH	ROBERT	D.	20020603	0.50	37.60	18.80
199324	SMITH	ROBERT	D.	20030127	0.50	15.06	7.53
199324	SMITH	ROBERT	D.	20030210	0.50	44.58	22.29
199324	SMITH	ROBERT	D.	20030224	0.50	39.97	19.98
199324	SMITH	ROBERT	D.	20030310	0.50	38.26	19.13
199324	SMITH	ROBERT	D.	20030324	0.50	49.35	24.67
199324	SMITH	ROBERT	D.	20030407	0.50	31.00	15.50
199324	SMITH	ROBERT	D.	20030714	0.50	5.25	2.62
296539	SMITH	TIMOTHY	A.	20040405	0.50	17.64	8.82
296539	SMITH	TIMOTHY	A.	20040419	0.50	45.45	22.72
296539	SMITH	TIMOTHY	A.	20040503	0.50	44.86	22.43
296539	SMITH	TIMOTHY	A.	20040517	0.50	46.81	23.40
296539	SMITH	TIMOTHY	A.	20040531	0.50	56.01	28.00
234775	SMOOT	LEROY		20010409	0.50	35.81	17.90
234775	SMOOT	LEROY		20010409	0.50	52.09	26.04
234775	SMOOT	LEROY		20010423	0.50	83.78	41.89
234775	SMOOT	LEROY		20010507	0.50	96.70	48.35
234775	SMOOT	LEROY		20010521	0.50	89.97	44.98
234775	SMOOT	LEROY		20010604	0.50	41.54	20.77
234775	SMOOT	LEROY		20010618	0.50	47.17	23.58
234775	SMOOT	LEROY		20010702	0.50	82.60	41.30
234775	SMOOT	LEROY		20010716	0.50	67.02	33.51
234775	SMOOT	LEROY		20010730	0.50	37.93	18.96
234775	SMOOT	LEROY		20010813	0.50	43.23	21.61
234775	SMOOT	LEROY		20010827	0.50	47.61	23.80
234775	SMOOT	LEROY		20010910	0.50	91.02	45.51
234775	SMOOT	LEROY		20010924	0.50	109.61	54.80
234775	SMOOT	LEROY		20011008	0.50	126.72	63.36
234775	SMOOT	LEROY		20011022	0.50	119.13	59.56
234775	SMOOT	LEROY		20011105	0.50	56.00	28.00
234775	SMOOT	LEROY		20011119	0.50	110.97	55.48
234775	SMOOT	LEROY		20011203	0.50	87.25	43.62
234775	SMOOT	LEROY		20011217	0.50	68.95	34.47
234775	SMOOT	LEROY		20020114	0.50	78.19	39.09
234775	SMOOT	LEROY		20020128	0.50	118.72	59.36
234775	SMOOT	LEROY		20020211	0.50	105.65	52.82
234775	SMOOT	LEROY		20020225	0.50	118.23	59.11
234775	SMOOT	LEROY		20020311	0.50	89.51	44.75
234775	SMOOT	LEROY		20020325	0.50	64.62	32.31
234775	SMOOT	LEROY		20020408	0.50	108.60	54.30
234775	SMOOT	LEROY		20020422	0.50	123.85	61.92
234775	SMOOT	LEROY		20020506	0.50	144.19	72.09
234775	SMOOT	LEROY		20020520	0.50	130.43	65.21
234775	SMOOT	LEROY		20020603	0.50	114.24	57.12

PLAINTIFF'S EXHIBIT F

A - 1357
June 2004

3916

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

INMATE NAME: Robert D. Smith
SCDC NUMBER: 199324
INSTITUTION: Lieber CI Nov. 1, 04
HOUSING UNIT: Steno B-19 P.P.
WORK ASSIGNMENT: Green Maint.

Office Use Only
Grievance No. LCI 0665-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received NOV 01 2004
IGC Initials

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

I am appealing this to the Responsible Official at SCDC Headquarters. First, I disagree with the Warden's responce and believe it to be inaccurate as to a matter of law and policy. Secondly, since this issue involves questions of policy and law which are beyond the scope of the Warden's position and authority I respectfully request that this appeal be directly forwarded to the person responsible at Headquarters for answering this issue.

Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

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)

3920

Ackerman 5-6-11 3555

JCTIONS FOR COMPLETING STEP 2

omplete form in its entirety, writing only in the space provided f

State your specific reason for further appeal. Do not submit any

Submit this completed form with your original Step 1 attached, Coordinator within five (5) days of your receipt of the Warden's provided for the responsible official.

The decision rendered by the responsible official exhausts the Grievance Procedure.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Robert Smith
SCDC NUMBER: 199324
INSTITUTION: Lieber
HOUSING UNIT: Stone B-19
WORK ASSIGNMENT: Green House

Office Use Only
Grievance No. Lieber 06-0500
Code: General MY
Policy
Disc. Hear.
Class.
Date Received
IGC Initials

INMATE'S REASON FOR APPEAL (state specific dissatisfaction): ~~Ck~~ Adkins and Wicker do require payment of prevailing wages. Greavants were employed By WTI and SCDC was WTI's "agent" in paying our wages Adkins & Wicker Further allow this issue of Payment of wages under S.C. Code 2433-430 to be greave Pursuant to SC.DC greavance proceddure Greavant ~~inc~~. Incopprates By ref-Ference all exhibits attached to greva Fited by Darrell Williams & Attorney Douglas Westbrooken 9-22-04

Robert D. Smith 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.

Robert D. Smith 5-23-07
Grievant Signature Date

5/23/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3522

Ackerman 5-6-11 3557

SMITH LCI-0650-04

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 January 21, 2003 and that your participation in this project ended on or about June 30, 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 20 months after SCDC first paid you for your participation in the project located at Lieber, approximately 15 months after your participation 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.

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

Robert Smith, #199324,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Robert Smith does hereby appeal the final decision of the South Carolina Department of Corrections dated 5-14-07 and received on 5-23-07, 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.

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

L. D. 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
	)	
ROBERT SMITH, #199324	)	
	)	
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

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Timothy A. Smith INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 296539

INSTITUTION: Lieber CI.

HOUSING UNIT: CA06

WORK ASSIGNMENT: P.I. 2

Office Use Only

Grievance No. Lieber 0720-04

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 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required to pay IE's the negotiated wage of $4.00 per hour (Statutes at Large, No. 66, 837.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

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

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

Grievant Signature 9-27-2004 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.

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N/A

Ackerman 5-6-11 3563

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

3929

D/N J. Smith, #296539 CA0720-04

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.

3930

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.

3931

AMENDMENT TO GRIEVANCE OF TIMOTHY SMITH, #296539

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 210.77 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, 0794; C, 0081,0086; F, 1357; 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.

3532

11-7-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. KCI 0720-04
Code: General CM
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: Timothy A. Smith NOV 04 2004
SCDC NUMBER: 296539
INSTITUTION: ~~Kirkland C.I.~~ Kerci RECEIVED
HOUSING UNIT: CA06 MAY 24 2007
WORK ASSIGNMENT: P.I. 2 INMATE GRIEVANCE

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.

Grievant Signature 11-2-04 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.

Grievant Signature 5-22-07 Date

IGC Signature 5-22-07 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

3933

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Smith, Timothy	296539	LCI-0720-04

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 March 29, 2004 and that your participation in this project ended on October 19, 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 #
Smith, Timothy	296539	LCI-0720-04

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 approximately six (6) 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 #
Smith, Timothy	296539	LCI-0720-04

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 #
Smith, Timothy	296539	LCI-0720-04

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

Timothy Smith, #296539,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Timothy Smith 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.

Timothy Smith
Appellant's Name

Kershaw C.I.
Mailing Address

4848 Goldmine Hwy

Kershaw, SC 29067
City, State, Zip Code

none
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)

3938

Ackerman 5-6-11 3573

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
TIMOTHY SMITH, #296539	)	
	)	
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

3539

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Jeffrey Spears INMATE GRIEVANCE FORM

STEP 1

Office Use Only
Grievance No. Lieber 0743-04
Code: General RN
Policy
Disc. Hear.
Class.
Date Received SEP 30 2004
IGC Initials TC

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

INMATE NAME:
SCDC NUMBER: 281697
INSTITUTION: Lieber
HOUSING UNIT: C-B-37 ✓
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 24-3-430 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.

Jeff Spears 7-27-04
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. 3540

N/A
Date

Ackerman 5-6-11 3575

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: 11-03-04

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

3961

Inm J Spears, #281697 LCI 0743-04

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.

3942

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.

3943

AMENDMENT TO GRIEVANCE OF JEFF SPEARS, #281697

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 110.52 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, 0794; C, 0081,0086; F, 1359; 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.

3944

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Jeffrey Spears
SCDC NUMBER: 281697
INSTITUTION: Lieber MacDougall
HOUSING UNIT: C-B-37
WORK ASSIGNMENT: P.I 2

NOV 0 8 20

Office Use Only
Grievance No. LCI 0243-04
Code: General OM
Policy
Disc. Hear.
Class.
Date Received
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 11-9-0 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 6-19-05 Date

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

Grievant Signature 6-22-05 Date

IGC Signature Georgina Ramey 6/22/05 Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3945

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
Spears, Jeffrey	281697	LCI-0743-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on April 27, 2004 and ended November 5, 2004. Additionally, these records reflect that you returned to this project for a second work assignment that began November 11, 2004 and ended December 10, 2004.

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

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

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

Inmate Name	SCDC #	Grievance #
Spears, Jeffrey	281697	LCI-0743-04

The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

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

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

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

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

Moreover, you filed your Step 1 grievance five (5) months after SCDC first paid you for the labor you provided to the project located at Lieber during your first work assignment there 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.

Inmate Name	SCDC #	Grievance #
Spears, Jeffrey	281697	LCI-0743-04

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

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

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

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

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

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

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of $4.00 per

Inmate Name	SCDC #	Grievance #
Spears, Jeffrey	281697	LCI-0743-04

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

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

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

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

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

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

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Jeffrey Spears, #281697,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Jeffrey Spears 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.

Jeffrey Spears
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)

3950

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
JEFFREY SPEARS, #281697	)	
	)	
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

3951

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Alvin Stewart INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 278595

INSTITUTION: Lieber

HOUSING UNIT: CA-57 WC 25e

WORK ASSIGNMENT: PI 2

Office Use Only

Grievance No. Lieber0787-04

Code: General NM

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, §37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and 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. 3952

Grievant Signature N/A Date

Ackerman 5-6-11 3587

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

Signed by: Ann Hallman
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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J/M Q Stewart, # 278595 LCI 0787-04

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.

3955

STEWART LCI-0787-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on October 24, 2001 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 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.

AMENDMENT TO GRIEVANCE OF ALVIN STEWART, #278595

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 6829.07 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) 2-23-06 (Date)

* Attached are Exh. A, 0795; C, 0081,0086; F, 1363-1364; 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
	STEELE, CHRISTOPHER	241447	S B 53	1	7/12/02	8/15/02
MI 3	STEPHENS, BRIAN	131066	C B 63	1	1/18/02	2/20/03
	STEVENS, JEFFREY	167227	S A 34	1	11/3/00	2/1/01
	STEVENS, VERNON	246800	C B 45	1	6/6/00	11/13/01
	STEVENSON, COLIN	272245	S B 33	2	12/15/00	4/10/02
MI 3	STEVENSON, MARVIN	210502	C B 36	1	5/31/00	6/26/03
MI 3	STEWART, ALVIN	278595	C A 57	1	10/24/01	6/24/04
	STEWART, RICKY	269015	C A 1	1	10/18/00	3/5/01
MI 3	STINSON, JEFF	260047	C A 9	1	9/21/99	6/24/04
MI 3	STOGNER, CHRISTOPHER	273665	E A 30	1	6/11/04	6/14/04
	STONE, MENDELL	283376	S A 29	1	5/29/02	7/12/02
MI 3	STROUSE, R	260048	C A 0	0		10/25/99
MI 3	SULLIVAN, BUDDY	298225	E B 55	3		3/17/04
MI 1B	SULLIVAN, MICHAEL	265327	C B 49	1	6/6/00	1/16/04
	SULLIVAN, WARREN	240015	C 0	1	2/15/00	5/12/00
	SUMMERS, JAMES	241133	C B 52	1	3/27/00	4/24/01
	SUMPTER, MERVIN	271271	C A 30	1	1/12/01	2/21/02
	SUMTER, JOHN	262545	C B 26	1	4/6/01	6/27/01
	SUTTON, RANDY	240637	M 0	1	1/6/00	4/3/00
	SWEAT, CHARLES	231115	A A 17	1	9/30/99	2/22/00
	TARTER, MARK	281878	A A 33	0	4/17/02	5/13/02
MI 2	TATOM, DAVID	287658	C B 28	1	6/26/03	11/6/03
	TAYLOR, SYDNEY	235995	C A 9	2	7/1/99	8/8/02
MI 2	TEVIS, JEFFREY R	216442	C B 27	1	4/22/04	6/24/04
	THEODORE, ANTONIO	276366	E B 2	2	8/24/01	9/18/01
	THOMAS, CHAUNCEY	244243	C A 28	2	6/12/01	2/1/02
	THOMAS, CLIFFORD	139956	C A 10	1	8/11/99	11/13/00
	THOMAS, DERRICK	259051	C B 47	1	6/6/00	3/28/01
MI 3	THOMAS, WILLIAM	272501	C A 32	1	10/29/01	6/1/03
MI 3	THOMAS, WILLIAM L.	272501	C A 15	1	5/27/04	6/3/04
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	10/13/00	5/2/03
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	12/16/03	6/24/04
	THOMPSON, GARY	269401	C A 20	1	10/16/00	2/8/01
MO 1E	THOMPSON, JOE	278849	C A 28	2	11/26/01	9/5/02
	THOMPSON, PAUL	280785	C A 26	1	1/18/02	8/12/02
	THOMPSON, SAMMIE	269035	A A 25	1	10/16/00	12/11/01
	THRIFT, MARK	198706	C B 16	3	10/22/01	10/23/01
	TIMBERLAKE, WESLEY	229756	E A 30	2	6/7/01	6/19/01
	TIMMONS, D'ANGELO	272523	S A 58	1	9/4/01	10/12/01
MI 3	TINO, JAMES	145030	C B 58	1	7/18/02	5/2/03
	TONEY, DAVID	231620	MX 0	1	3/15/00	12/11/01
	TONEY, RICKFORD	215019	C B 61	1	3/29/00	12/4/01
	TOWNSEND, CLAUDIS	238349	E A 26	1	10/13/00	11/21/00
	TRAN, TRIN	255695	MX 0	2	7/21/00	11/30/00
	TROTTER, RANDY	268936	C B 61	1	10/16/00	3/5/01
	TROUGHT, MARLON	257675	C 0	1	2/15/00	5/8/00

PLAINTIFF'S EXHIBIT A 3960

STATE OF SOUTH CAROLINA)

LEASE

COUNTY OF RICHLAND)

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

PLAINTIFF'S EXHIBIT C

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
210502	STEVENSON	MARVIN		20020812	0.50	121.50	60.75
210502	STEVENSON	MARVIN		20020826	0.50	104.44	52.22
210502	STEVENSON	MARVIN		20020909	0.50	109.53	54.76
210502	STEVENSON	MARVIN		20020923	0.50	120.56	60.28
210502	STEVENSON	MARVIN		20021007	0.50	132.50	66.25
210502	STEVENSON	MARVIN		20021021	0.50	128.07	64.03
210502	STEVENSON	MARVIN		20021104	0.50	122.94	61.47
210502	STEVENSON	MARVIN		20021118	0.50	129.07	64.53
210502	STEVENSON	MARVIN		20021202	0.50	97.51	48.75
210502	STEVENSON	MARVIN		20021216	0.50	116.11	58.05
210502	STEVENSON	MARVIN		20021230	0.50	58.99	29.49
210502	STEVENSON	MARVIN		20030113	0.50	80.86	40.43
210502	STEVENSON	MARVIN		20030127	0.50	102.82	51.41
210502	STEVENSON	MARVIN		20030210	0.50	121.14	60.57
210502	STEVENSON	MARVIN		20030224	0.50	128.60	64.30
210502	STEVENSON	MARVIN		20030310	0.50	121.72	60.86
210502	STEVENSON	MARVIN		20030324	0.50	134.10	67.05
210502	STEVENSON	MARVIN		20030407	0.50	125.68	62.84
210502	STEVENSON	MARVIN		20030421	0.50	122.98	61.49
210502	STEVENSON	MARVIN		20030505	0.50	88.29	44.14
210502	STEVENSON	MARVIN		20030519	0.50	131.38	65.69
210502	STEVENSON	MARVIN		20030602	0.50	102.78	51.39
210502	STEVENSON	MARVIN		20030616	0.50	134.64	67.32
210502	STEVENSON	MARVIN		20030630	0.50	90.79	45.39
278595	STEWART	ALVIN		20011119	0.50	62.03	31.01
278595	STEWART	ALVIN		20011203	0.50	41.38	20.69
278595	STEWART	ALVIN		20011217	0.50	54.59	27.29
278595	STEWART	ALVIN		20020114	0.50	54.45	27.22
278595	STEWART	ALVIN		20020128	0.50	67.18	33.59
278595	STEWART	ALVIN		20020211	0.50	98.25	49.12
278595	STEWART	ALVIN		20020225	0.50	85.25	42.62
278595	STEWART	ALVIN		20020311	0.50	86.04	43.02
278595	STEWART	ALVIN		20020325	0.50	86.84	43.42
278595	STEWART	ALVIN		20020408	0.50	79.20	39.60
278595	STEWART	ALVIN		20020422	0.50	77.20	38.60
278595	STEWART	ALVIN		20020506	0.50	85.70	42.85
278595	STEWART	ALVIN		20020520	0.50	107.14	53.57
278595	STEWART	ALVIN		20020603	0.50	58.08	29.04
278595	STEWART	ALVIN		20020617	0.50	76.31	38.15
278595	STEWART	ALVIN		20020701	0.50	105.80	52.90
278595	STEWART	ALVIN		20020715	0.50	91.46	45.73
278595	STEWART	ALVIN		20020729	0.50	101.63	50.81
278595	STEWART	ALVIN		20020812	0.50	106.35	53.17
278595	STEWART	ALVIN		20020826	0.50	107.25	53.62
278595	STEWART	ALVIN		20020909	0.50	64.50	32.25
278595	STEWART	ALVIN		20020923	0.50	99.27	49.63
278595	STEWART	ALVIN		20021007	0.50	107.81	53.90
278595	STEWART	ALVIN		20021021	0.50	109.53	54.76
278595	STEWART	ALVIN		20021104	0.50	100.13	50.06
278595	STEWART	ALVIN		20021118	0.50	128.58	64.29
278595	STEWART	ALVIN		20021202	0.50	106.45	53.22
278595	STEWART	ALVIN		20021216	0.50	101.84	50.92
278595	STEWART	ALVIN		20021230	0.50	66.73	33.36
				20030113	0.50	85.99	42.99

PLAINTIFF'S EXHIBIT F

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A - 1363
June 2004

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
278595	STEWART	ALVIN		20030127	0.50	113.93	56.96
278595	STEWART	ALVIN		20030210	0.50	127.11	63.55
278595	STEWART	ALVIN		20030224	0.50	136.72	68.36
278595	STEWART	ALVIN		20030310	0.50	126.31	63.15
278595	STEWART	ALVIN		20030324	0.50	132.00	66.00
278595	STEWART	ALVIN		20030407	0.50	125.92	62.96
278595	STEWART	ALVIN		20030421	0.50	119.94	59.97
278595	STEWART	ALVIN		20030505	0.50	93.70	46.85
278595	STEWART	ALVIN		20030519	0.50	134.57	67.28
278595	STEWART	ALVIN		20030602	0.50	112.80	56.40
278595	STEWART	ALVIN		20030616	0.50	134.85	67.42
278595	STEWART	ALVIN		20030630	0.50	104.89	52.44
278595	STEWART	ALVIN		20030714	0.50	119.92	59.96
278595	STEWART	ALVIN		20030728	0.50	122.11	61.05
278595	STEWART	ALVIN		20030811	0.50	107.95	53.97
278595	STEWART	ALVIN		20030825	0.50	113.85	56.92
278595	STEWART	ALVIN		20030908	0.50	33.08	16.54
278595	STEWART	ALVIN		20030922	0.50	100.18	50.09
278595	STEWART	ALVIN		20031006	0.50	98.29	49.14
278595	STEWART	ALVIN		20031020	0.50	103.33	51.66
278595	STEWART	ALVIN		20031103	0.50	103.31	51.65
278595	STEWART	ALVIN		20031117	0.50	121.12	60.56
278595	STEWART	ALVIN		20031201	0.50	110.61	55.30
278595	STEWART	ALVIN		20031215	0.50	119.74	59.87
278595	STEWART	ALVIN		20031229	0.50	122.45	61.22
278595	STEWART	ALVIN		20040112	0.50	79.88	39.94
278595	STEWART	ALVIN		20040126	0.50	107.73	53.86
278595	STEWART	ALVIN		20040209	0.50	107.28	53.64
278595	STEWART	ALVIN		20040223	0.50	131.89	65.94
278595	STEWART	ALVIN		20040308	0.50	132.07	66.03
278595	STEWART	ALVIN		20040322	0.50	139.90	69.95
278595	STEWART	ALVIN		20040405	0.50	128.66	64.33
278595	STEWART	ALVIN		20040419	0.50	125.30	62.65
278595	STEWART	ALVIN		20040503	0.50	145.74	72.87
278595	STEWART	ALVIN		20040517	0.50	161.63	80.81
278595	STEWART	ALVIN		20040531	0.50	127.35	63.67
269015	STEWART	RICKY	OLIVER	20001023	0.50	9.45	4.72
269015	STEWART	RICKY	OLIVER	20001106	0.50	48.88	24.44
269015	STEWART	RICKY	OLIVER	20001120	0.50	50.24	25.12
269015	STEWART	RICKY	OLIVER	20001204	0.50	36.85	18.42
269015	STEWART	RICKY	OLIVER	20001218	0.50	80.73	40.36
269015	STEWART	RICKY	OLIVER	20010101	0.50	37.03	18.51
269015	STEWART	RICKY	OLIVER	20010115	0.50	58.43	29.21
269015	STEWART	RICKY	OLIVER	20010129	0.50	65.62	32.81
269015	STEWART	RICKY	OLIVER	20010212	0.50	60.97	30.48
269015	STEWART	RICKY	OLIVER	20010226	0.50	29.90	14.95
260047	STINSON	JEFF	SCOTT	19991011	0.35	75.00	26.25
260047	STINSON	JEFF	SCOTT	19991011	0.55	39.50	21.72
260047	STINSON	JEFF	SCOTT	19991025	0.15	75.00	11.25
260047	STINSON	JEFF	SCOTT	19991025	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	19991025	0.55	44.00	24.20
260047	STINSON	JEFF	SCOTT	19991108	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	19991108	0.55	42.75	23.51
260047	STINSON	JEFF	SCOTT	19991122	0.35	68.17	23.85

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.



3965

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

3967

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Alvin Stewart
SCDC NUMBER: 278595
INSTITUTION: Lieber Correctional Inst.
HOUSING UNIT: Wando C-256 171
WORK ASSIGNMENT: Wando C&D Dorm

RECEIVED
JUN 12 2007
INMATE GRIEVANCE

Office Use Only
Grievance No. LCI 0787-07
Code: General MY
Policy
Disc. Hear.
Class.
Date Received 5/31
IGC Initials JR

✔ 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.

Grievant Signature 5/23/07 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 Date

Randall 8/1/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3968

Ackerman 5-6-11 3603

Lieber PI Back Wage Claim Step 2 Reply

Stewart, Alvin	278595	LCI-0787-04

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 your voluntary participation in the prison industries project at Lieber began on October 24, 2001 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 #
Stewart, Alvin	278595	LCI-0787-04

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 and 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.

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

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alvin Stewart, #278595,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Alvin Stewart does hereby appeal the final decision of the South Carolina Department of Corrections dated 7-20-07 and received on 8-1-07, 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

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

Signed
8-9-07
Dated

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

397/

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
ALVIN STEWART, #278595	)	
	)	
Grievant/Appellant,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent/Appellee.	)	

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

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

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

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

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

D H Westbrook
Douglas H. Westbrook

3972

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 260047

INSTITUTION: Lieber Corr. Inst.

HOUSING UNIT: Cooper A-9

WORK ASSIGNMENT: Maintenance Dept.

Office Use Only

Grievance No. Lieber 0786-04

Code: General RMY

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, §37.31, eff. July 1, 2001; Exh. B, C). In fact, WTI/Lieber's policy was to pay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hour base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Lieber contract specifying a wage of $4 per hour, the names and emplo ment periods of all 1000 plus class members, and the pay dates, rates, hours, and pay for all class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

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

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

Jeff S. Stinson 9-27-04

Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

G 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.

Jeff S. Stinson 11-02-04

Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 3973 (CONTINUED ON REVERSE SIDE)

Ackerman 5-6-11 3608

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.

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D/K J Stinson, # 260047 LEU 1060-04

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.

3976

AMENDMENT TO GRIEVANCE OF JEFF S. STINSON, #260047

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 755.85 hours in 1999 at $9.68 per hour; 3561.19 hours in 2000 at $10.66 per hour; 2294.55 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 12,380.50 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.

Jeff S. Stinson 2-06-06
(Grievant Signature) (Date)

* Attached are Exh. A, 0795; C, 0081,0086; F, 1364-1367; 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
	STEELE, CHRISTOPHER	241447	S B 53	1	7/12/02	8/15/02
MI 3	STEPHENS, BRIAN	131066	C B 63	1	1/18/02	2/20/03
	STEVENS, JEFFREY	167227	S A 34	1	11/3/00	2/1/01
	STEVENS, VERNON	246800	C B 45	1	6/6/00	11/13/01
	STEVENSON, COLIN	272245	S B 33	2	12/15/00	4/10/02
MI 3	STEVENSON, MARVIN	210502	C B 36	1	5/31/00	6/26/03
MI 3	STEWART, ALVIN	278595	C A 57	1	10/24/01	6/24/04
	STEWART, RICKY	269015	C A 1	1	10/18/00	3/5/01
MI 3	STINSON, JEFF	260047	C A 9	1	9/21/99	6/24/04
MI 3	STOGNER, CHRISTOPHER	273665	E A 30	1	6/11/04	6/14/04
	STONE, MENDELL	283376	S A 29	1	5/29/02	7/12/02
MI 3	STROUSE, R	260048	C A 0	0		10/25/99
MI 3	SULLIVAN, BUDDY	298225	E B 55	3		3/17/04
MI 1B	SULLIVAN, MICHAEL	265327	C B 49	1	6/6/00	1/16/04
	SULLIVAN, WARREN	240015	C 0	1	2/15/00	5/12/00
	SUMMERS, JAMES	241133	C B 52	1	3/27/00	4/24/01
	SUMPTER, MERVIN	271271	C A 30	1	1/12/01	2/21/02
	SUMTER, JOHN	262545	C B 26	1	4/6/01	6/27/01
	SUTTON, RANDY	240637	M 0	1	1/6/00	4/3/00
	SWEAT, CHARLES	231115	A A 17	1	9/30/99	2/22/00
	TARTER, MARK	281878	A A 33	0	4/17/02	5/13/02
MI 2	TATOM, DAVID	287658	C B 28	1	6/26/03	11/6/03
	TAYLOR, SYDNEY	235995	C A 9	2	7/1/99	8/8/02
MI 2	TEVIS, JEFFREY R.	216442	C B 27	1	4/22/04	6/24/04
	THEODORE, ANTONIO	276366	E B 2	2	8/24/01	9/18/01
	THOMAS, CHAUNCEY	244243	C A 28	2	6/12/01	2/1/02
	THOMAS, CLIFFORD	139956	C A 10	1	8/11/99	11/13/00
	THOMAS, DERRICK	259051	C B 47	1	6/6/00	3/28/01
MI 3	THOMAS, WILLIAM	272501	C A 32	1	10/29/01	6/1/03
MI 3	THOMAS, WILLIAM L.	272501	C A 15	1	5/27/04	6/3/04
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	10/13/00	5/2/03
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	12/16/03	6/24/04
	THOMPSON, GARY	269401	C A 20	1	10/16/00	2/8/01
MO 1E	THOMPSON, JOE	278849	C A 28	2	11/26/01	9/5/02
	THOMPSON, PAUL	280785	C A 26	1	1/18/02	8/12/02
	THOMPSON, SAMMIE	269035	A A 25	1	10/16/00	12/11/01
	THRIFT, MARK	198706	C B 16	3	10/22/01	10/23/01
	TIMBERLAKE, WESLEY	229756	E A 30	2	6/7/01	6/19/01
	TIMMONS, D'ANGELO	272523	S A 58	1	9/4/01	10/12/01
MI 3	TINO, JAMES	145030	C B 58	1	7/18/02	5/2/03
	TONEY, DAVID	231620	MX 0	1	3/15/00	12/11/01
	TONEY, RICKFORD	215019	C B 61	1	3/29/00	12/4/01
	TOWNSEND, CLAUDIS	238349	E A 26	1	10/13/00	11/21/00
	TRAN, TRIN	255695	MX 0	2	7/21/00	11/30/00
	TROTTER, RANDY	268936	C B 61	1	10/16/00	3/5/01
	TROUGHT, MARLON	257675	C 0	1	2/15/00	5/8/00

PLAINTIFF'S EXHIBIT
A
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STATE OF SOUTH CAROLINA)

LEASE

COUNTY OF RICHLAND)

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.

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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.

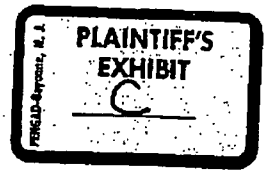
Williams and SCDC may mutually agree upon a bonus plan for inmates based on productivity and quality control. Such bonus will be paid in its entirety by Williams to SCDC for distribution to inmates.

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



Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
278595	STEWART	ALVIN		20030127	0.50	113.93	56.96
278595	STEWART	ALVIN		20030210	0.50	127.11	63.55
278595	STEWART	ALVIN		20030224	0.50	136.72	68.36
278595	STEWART	ALVIN		20030310	0.50	126.31	63.15
278595	STEWART	ALVIN		20030324	0.50	132.00	66.00
278595	STEWART	ALVIN		20030407	0.50	125.92	62.96
278595	STEWART	ALVIN		20030421	0.50	119.94	59.97
278595	STEWART	ALVIN		20030505	0.50	93.70	46.85
278595	STEWART	ALVIN		20030519	0.50	134.57	67.28
278595	STEWART	ALVIN		20030602	0.50	112.80	56.40
278595	STEWART	ALVIN		20030616	0.50	134.85	67.42
278595	STEWART	ALVIN		20030630	0.50	104.89	52.44
278595	STEWART	ALVIN		20030714	0.50	119.92	59.96
278595	STEWART	ALVIN		20030728	0.50	122.11	61.05
278595	STEWART	ALVIN		20030811	0.50	107.95	53.97
278595	STEWART	ALVIN		20030825	0.50	113.85	56.92
278595	STEWART	ALVIN		20030908	0.50	33.08	16.54
278595	STEWART	ALVIN		20030922	0.50	100.18	50.09
278595	STEWART	ALVIN		20031006	0.50	98.29	49.14
278595	STEWART	ALVIN		20031020	0.50	103.33	51.66
278595	STEWART	ALVIN		20031103	0.50	103.31	51.65
278595	STEWART	ALVIN		20031117	0.50	121.12	60.56
278595	STEWART	ALVIN		20031201	0.50	110.61	55.30
278595	STEWART	ALVIN		20031215	0.50	119.74	59.87
278595	STEWART	ALVIN		20031229	0.50	122.45	61.22
278595	STEWART	ALVIN		20040112	0.50	79.88	39.94
278595	STEWART	ALVIN		20040126	0.50	107.73	53.86
278595	STEWART	ALVIN		20040209	0.50	107.28	53.64
278595	STEWART	ALVIN		20040223	0.50	131.89	65.94
278595	STEWART	ALVIN		20040308	0.50	132.07	66.03
278595	STEWART	ALVIN		20040322	0.50	139.90	69.95
278595	STEWART	ALVIN		20040405	0.50	128.66	64.33
278595	STEWART	ALVIN		20040419	0.50	125.30	62.65
278595	STEWART	ALVIN		20040503	0.50	145.74	72.87
278595	STEWART	ALVIN		20040517	0.50	161.63	80.81
278595	STEWART	ALVIN		20040531	0.50	127.35	63.67
269015	STEWART	RICKY	OLIVER	20001023	0.50	9.45	4.72
269015	STEWART	RICKY	OLIVER	20001106	0.50	48.88	24.44
269015	STEWART	RICKY	OLIVER	20001120	0.50	50.24	25.12
269015	STEWART	RICKY	OLIVER	20001204	0.50	36.85	18.42
269015	STEWART	RICKY	OLIVER	20001218	0.50	80.73	40.36
269015	STEWART	RICKY	OLIVER	20010101	0.50	37.03	18.51
269015	STEWART	RICKY	OLIVER	20010115	0.50	58.43	29.21
269015	STEWART	RICKY	OLIVER	20010129	0.50	65.62	32.81
269015	STEWART	RICKY	OLIVER	20010212	0.50	60.97	30.48
269015	STEWART	RICKY	OLIVER	20010226	0.50	29.90	14.95
260047	STINSON	JEFF	SCOTT	19991011	0.35	75.00	26.25
260047	STINSON	JEFF	SCOTT	19991011	0.55	39.50	21.72
260047	STINSON	JEFF	SCOTT	19991025	0.15	75.00	11.25
260047	STINSON	JEFF	SCOTT	19991025	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	19991025	0.55	44.00	24.20
260047	STINSON	JEFF	SCOTT	19991108	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	19991108	0.55	42.75	23.51
260047	STINSON	JEFF	SCOTT	19991122	0.35	68.17	23.85

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
260047	STINSON	JEFF	SCOTT	19991122	0.55	27.04	14.87
260047	STINSON	JEFF	SCOTT	19991206	0.35	54.00	18.90
260047	STINSON	JEFF	SCOTT	19991206	0.55	25.53	14.04
260047	STINSON	JEFF	SCOTT	19991220	2.50	2.00	5.00
260047	STINSON	JEFF	SCOTT	19991220	0.35	64.52	22.58
260047	STINSON	JEFF	SCOTT	19991220	0.55	56.31	30.97
260047	STINSON	JEFF	SCOTT	20000103	0.50	31.43	15.71
260047	STINSON	JEFF	SCOTT	20000103	0.55	0.60	0.33
260047	STINSON	JEFF	SCOTT	20000117	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	20000117	0.55	29.35	16.14
260047	STINSON	JEFF	SCOTT	20000117	0.55	7.50	4.12
260047	STINSON	JEFF	SCOTT	20000117	0.50	15.00	7.50
260047	STINSON	JEFF	SCOTT	20000117	0.55	4.00	2.20
260047	STINSON	JEFF	SCOTT	20000131	0.50	61.07	30.53
260047	STINSON	JEFF	SCOTT	20000131	0.55	7.50	4.12
260047	STINSON	JEFF	SCOTT	20000214	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	20000214	0.55	59.01	32.45
260047	STINSON	JEFF	SCOTT	20000228	0.50	67.50	33.75
260047	STINSON	JEFF	SCOTT	20000228	0.55	53.95	29.67
260047	STINSON	JEFF	SCOTT	20000228	1.05	15.00	15.75
260047	STINSON	JEFF	SCOTT	20000313	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	20000313	0.55	47.03	25.86
260047	STINSON	JEFF	SCOTT	20000313	0.55	6.50	3.57
260047	STINSON	JEFF	SCOTT	20000327	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	20000327	0.55	55.83	30.70
260047	STINSON	JEFF	SCOTT	20000327	0.80	10.00	8.00
260047	STINSON	JEFF	SCOTT	20000327	0.80	7.50	6.00
260047	STINSON	JEFF	SCOTT	20000410	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	20000410	0.55	47.52	26.13
260047	STINSON	JEFF	SCOTT	20000410	0.80	15.00	12.00
260047	STINSON	JEFF	SCOTT	20000424	0.65	75.00	48.75
260047	STINSON	JEFF	SCOTT	20000424	0.75	37.82	28.36
260047	STINSON	JEFF	SCOTT	20000508	0.50	75.00	37.50
260047	STINSON	JEFF	SCOTT	20000508	0.25	15.00	3.75
260047	STINSON	JEFF	SCOTT	20000508	0.55	30.57	16.81
260047	STINSON	JEFF	SCOTT	20000522	0.65	67.50	43.87
260047	STINSON	JEFF	SCOTT	20000522	0.75	58.02	43.51
260047	STINSON	JEFF	SCOTT	20000522	0.25	24.65	6.16
260047	STINSON	JEFF	SCOTT	20000522	0.15	75.00	11.25
260047	STINSON	JEFF	SCOTT	20000605	0.65	67.50	43.87
260047	STINSON	JEFF	SCOTT	20000605	0.75	39.95	29.96
260047	STINSON	JEFF	SCOTT	20000605	0.25	6.90	1.72
260047	STINSON	JEFF	SCOTT	20000703	0.65	60.00	39.00
260047	STINSON	JEFF	SCOTT	20000703	0.75	73.02	54.76
260047	STINSON	JEFF	SCOTT	20000703	0.25	21.57	5.39
260047	STINSON	JEFF	SCOTT	20000717	0.50	133.10	66.55
260047	STINSON	JEFF	SCOTT	20000731	0.50	204.74	102.37
260047	STINSON	JEFF	SCOTT	20000814	0.50	112.95	56.47
260047	STINSON	JEFF	SCOTT	20000828	0.50	140.43	70.21
260047	STINSON	JEFF	SCOTT	20000911	0.50	84.73	42.36
260047	STINSON	JEFF	SCOTT	20000925	0.50	135.26	67.63
260047	STINSON	JEFF	SCOTT	20001009	0.50	149.87	74.93
260047	STINSON	JEFF	SCOTT	20001023	0.50	239.58	119.79
260047	STINSON	JEFF	SCOTT	20001106	0.50	203.92	101.96

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
260047	STINSON	JEFF	SCOTT	20001120	0.50	112.19	56.09
260047	STINSON	JEFF	SCOTT	20001204	0.50	102.88	51.44
260047	STINSON	JEFF	SCOTT	20001218	0.50	225.94	112.97
260047	STINSON	JEFF	SCOTT	20010101	0.50	103.84	51.92
260047	STINSON	JEFF	SCOTT	20010115	0.50	160.04	80.02
260047	STINSON	JEFF	SCOTT	20010129	0.50	192.61	96.30
260047	STINSON	JEFF	SCOTT	20010212	0.50	217.50	108.75
260047	STINSON	JEFF	SCOTT	20010226	0.50	206.92	103.46
260047	STINSON	JEFF	SCOTT	20010312	0.50	210.89	105.44
260047	STINSON	JEFF	SCOTT	20010326	0.50	110.07	55.03
260047	STINSON	JEFF	SCOTT	20010409	0.50	210.79	105.39
260047	STINSON	JEFF	SCOTT	20010423	0.50	167.36	83.68
260047	STINSON	JEFF	SCOTT	20010507	0.50	176.22	88.11
260047	STINSON	JEFF	SCOTT	20010521	0.50	176.08	88.04
260047	STINSON	JEFF	SCOTT	20010604	0.50	114.80	57.40
260047	STINSON	JEFF	SCOTT	20010618	0.50	156.11	78.05
260047	STINSON	JEFF	SCOTT	20010702	0.50	195.16	97.58
260047	STINSON	JEFF	SCOTT	20010716	0.50	160.75	80.37
260047	STINSON	JEFF	SCOTT	20010730	0.50	192.79	96.39
260047	STINSON	JEFF	SCOTT	20010813	0.50	201.63	100.81
260047	STINSON	JEFF	SCOTT	20010827	0.50	182.20	91.10
260047	STINSON	JEFF	SCOTT	20010910	0.50	169.51	84.75
260047	STINSON	JEFF	SCOTT	20010924	0.50	171.04	85.52
260047	STINSON	JEFF	SCOTT	20011008	0.50	247.32	123.66
260047	STINSON	JEFF	SCOTT	20011022	0.50	221.50	110.75
260047	STINSON	JEFF	SCOTT	20011105	0.50	201.44	100.72
260047	STINSON	JEFF	SCOTT	20011119	0.50	222.84	111.42
260047	STINSON	JEFF	SCOTT	20011203	0.50	184.71	92.35
260047	STINSON	JEFF	SCOTT	20011217	0.50	251.92	125.96
260047	STINSON	JEFF	SCOTT	20020114	0.50	150.02	75.01
260047	STINSON	JEFF	SCOTT	20020128	0.50	193.94	96.97
260047	STINSON	JEFF	SCOTT	20020211	0.50	221.36	110.68
260047	STINSON	JEFF	SCOTT	20020225	0.50	210.15	105.07
260047	STINSON	JEFF	SCOTT	20020311	0.50	195.30	97.65
260047	STINSON	JEFF	SCOTT	20020325	0.50	195.40	97.70
260047	STINSON	JEFF	SCOTT	20020408	0.50	181.00	90.50
260047	STINSON	JEFF	SCOTT	20020422	0.50	219.50	109.75
260047	STINSON	JEFF	SCOTT	20020506	0.50	159.25	79.62
260047	STINSON	JEFF	SCOTT	20020520	0.50	188.89	94.44
260047	STINSON	JEFF	SCOTT	20020603	0.50	153.06	76.53
260047	STINSON	JEFF	SCOTT	20020617	0.50	168.54	84.27
260047	STINSON	JEFF	SCOTT	20020701	0.50	166.76	83.38
260047	STINSON	JEFF	SCOTT	20020715	0.50	137.06	68.53
260047	STINSON	JEFF	SCOTT	20020729	0.50	146.24	73.12
260047	STINSON	JEFF	SCOTT	20020812	0.50	143.80	71.90
260047	STINSON	JEFF	SCOTT	20020826	0.50	181.26	90.63
260047	STINSON	JEFF	SCOTT	20020909	0.50	154.86	77.43
260047	STINSON	JEFF	SCOTT	20020923	0.50	162.45	81.22
260047	STINSON	JEFF	SCOTT	20021007	0.50	200.45	100.22
260047	STINSON	JEFF	SCOTT	20021021	0.50	191.23	95.61
260047	STINSON	JEFF	SCOTT	20021104	0.50	177.74	88.87
260047	STINSON	JEFF	SCOTT	20021118	0.50	208.50	104.25
260047	STINSON	JEFF	SCOTT	20021202	0.50	190.26	95.13
260047	STINSON	JEFF	SCOTT	20021216	0.50	209.76	104.88

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Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
260047	STINSON	JEFF	SCOTT	20021230	0.50	150.47	75.23
260047	STINSON	JEFF	SCOTT	20030113	0.50	161.91	80.95
260047	STINSON	JEFF	SCOTT	20030127	0.50	148.58	74.29
260047	STINSON	JEFF	SCOTT	20030210	0.50	205.49	102.74
260047	STINSON	JEFF	SCOTT	20030224	0.50	208.17	104.08
260047	STINSON	JEFF	SCOTT	20030310	0.50	180.43	90.21
260047	STINSON	JEFF	SCOTT	20030324	0.50	160.13	80.06
260047	STINSON	JEFF	SCOTT	20030407	0.50	152.57	76.28
260047	STINSON	JEFF	SCOTT	20030421	0.50	145.28	72.64
260047	STINSON	JEFF	SCOTT	20030505	0.50	127.30	63.65
260047	STINSON	JEFF	SCOTT	20030519	0.50	154.49	77.24
260047	STINSON	JEFF	SCOTT	20030602	0.50	103.11	51.55
260047	STINSON	JEFF	SCOTT	20030616	0.50	154.85	77.42
260047	STINSON	JEFF	SCOTT	20030630	0.50	135.41	67.70
260047	STINSON	JEFF	SCOTT	20030714	0.50	144.39	72.19
260047	STINSON	JEFF	SCOTT	20030728	0.50	111.19	55.59
260047	STINSON	JEFF	SCOTT	20030811	0.50	135.53	67.76
260047	STINSON	JEFF	SCOTT	20030825	0.50	138.13	69.06
260047	STINSON	JEFF	SCOTT	20030908	0.50	117.90	58.95
260047	STINSON	JEFF	SCOTT	20030922	0.50	134.94	67.47
260047	STINSON	JEFF	SCOTT	20031006	0.50	137.98	68.99
260047	STINSON	JEFF	SCOTT	20031020	0.50	143.94	71.97
260047	STINSON	JEFF	SCOTT	20031103	0.50	139.00	69.50
260047	STINSON	JEFF	SCOTT	20031117	0.50	147.70	73.85
260047	STINSON	JEFF	SCOTT	20031201	0.50	127.64	63.82
260047	STINSON	JEFF	SCOTT	20031215	0.50	131.44	65.72
260047	STINSON	JEFF	SCOTT	20031229	0.50	123.26	61.63
260047	STINSON	JEFF	SCOTT	20040112	0.50	89.00	44.50
260047	STINSON	JEFF	SCOTT	20040126	0.50	133.54	66.77
260047	STINSON	JEFF	SCOTT	20040209	0.50	145.56	72.78
260047	STINSON	JEFF	SCOTT	20040223	0.50	152.71	76.35
260047	STINSON	JEFF	SCOTT	20040308	0.50	147.00	73.50
260047	STINSON	JEFF	SCOTT	20040322	0.50	161.33	80.66
260047	STINSON	JEFF	SCOTT	20040405	0.50	138.76	69.38
260047	STINSON	JEFF	SCOTT	20040419	0.50	136.96	68.48
260047	STINSON	JEFF	SCOTT	20040503	0.50	141.16	70.58
260047	STINSON	JEFF	SCOTT	20040517	0.50	150.71	75.35
283376	STONE	MENDELL		20040531	0.50	148.11	74.05
283376	STONE	MENDELL		20020603	0.50	8.24	4.12
283376	STONE	MENDELL		20020617	0.50	30.45	15.22
283376	STONE	MENDELL		20020701	0.50	38.92	19.46
260048	STROUSE	RODNEY		20020715	0.50	33.59	16.79
260048	STROUSE	RODNEY		19991011	0.35	45.50	15.92
260048	STROUSE	RODNEY		19991011	0.55	1.50	0.82
265327	SULLIVAN	MICHAEL	ANTONIO	19991025	0.35	28.00	9.80
265327	SULLIVAN	MICHAEL	ANTONIO	20000731	0.50	103.84	51.92
265327	SULLIVAN	MICHAEL	ANTONIO	20000814	0.50	96.05	48.02
265327	SULLIVAN	MICHAEL	ANTONIO	20000828	0.50	90.87	45.43
265327	SULLIVAN	MICHAEL	ANTONIO	20000911	0.50	83.55	41.77
265327	SULLIVAN	MICHAEL	ANTONIO	20000925	0.50	104.73	52.36
265327	SULLIVAN	MICHAEL	ANTONIO	20000925	0.50	130.68	65.34
265327	SULLIVAN	MICHAEL	ANTONIO	20001009	0.50	103.38	51.69
265327	SULLIVAN	MICHAEL	ANTONIO	20001023	0.50	129.93	64.96
265327	SULLIVAN	MICHAEL	ANTONIO	20001106	0.50	126.28	63.14

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

INMATE NAME: Jeff S. Stinson
SCDC NUMBER: # 260047
INSTITUTION: Lieber Corr. Inst. NOV 03 2004
HOUSING UNIT: Cooper PP
WORK ASSIGNMENT: Maintenance - PI #2

Office Use Only
Grievance No. LCI 0786-04
Code: General MM
Policy
Disc. Hear.
Class.
Date Received
IGC Initials

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

The type work that is required at PI #2, Williams Technologies has proven to separate the men from the boy's, so to speak. It's very physical & very demanding. I feel that I should be paid a higher wage for the type work I do & the ~~ammou~~ amount of work. — It is my hope that we inmates will reach a higher status Financially; which I stand that it is right & Fare.

Jeff S. Stinson 11-02-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

D. Ward Ellis 5-19-07
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.

Jeff S. Stinson 5-22-07
Grievant Signature Date

IGC Signature 5/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

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Ackerman 5-6-11 3623

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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STINSON LCI-0786-04

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 September 21, 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

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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 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.

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

Jeff Stinson, #260047,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that Jeff Stinson 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

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

Signed
6-11-07
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
JEFF STINSON, #260047	)	
Grievant/Appellant,	)	
vs.	)	CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
Respondent/Appellee.	)	

I certify that on the 15th 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 385

Jeffrey R. Tevis INMATE GRIEVANCE FORM

STEP 1

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

INMATE NAME:

SCDC NUMBER: 216442

INSTITUTION: Lieber C.I.

HOUSING UNIT: CA-38

WORK ASSIGNMENT: PI-2

Office Use Only
Grievance No. Lieber 0719-04
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 fo 2000, and $10.10 to $12.06 for 2001 (Exh. G, B). 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.

Jeffrey R. Tevis 216442 Grievant Signature Date 27 Sept 04

ACTION TAKEN BY IGC:

See Warden's response.

Inmate Released 3-1-05 GR-01.12 Section 19.1

IGC Signature Date 10/28/04

☐ 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) 3995

(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 5-23-08 received

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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Jack D. Davis, #216442 LC10719-04

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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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Jeffrey Tevis

SCDC NUMBER: #216442 (former)

INSTITUTION: Lieber (former)

HOUSING UNIT: _____

WORK ASSIGNMENT: _____

Office Use Only
Grievance No. CC 0719-04
Code: General MH
Policy _____
Disc. Hear. _____
Class. _____
Date Received _____
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. Thus, the wage rate SCDC paid was not correct and back wages are owed. Overtime pay is also owed if earned under SCDC policy. Darrell Williams' 9-22-04 greivance and the within grievance both were filed individually and on behalf of all inmates, so SCDC should process grievance for all inmates who worked in the program regardless of filing. Inmate also claims entitlement to pre/post judgment interest, costs, and attorney fees. Finally, Exhibits A-H to Mr. Williams' greivance of Sept. 22, 2004 are hereby incorporated by reference.

X _____ 6-13-08
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

_____
Signature Date

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

_____ _____ _____ _____
Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

3939

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Jeffrey Tevis, #216442 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 Jeffrey Tevis 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.

Jeffrey Tevis
Appellant's Name

9406 State Route 708
Mailing Address

Lakeview, Ohio 43331

none
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)

4006

Ackerman 5-6-11 3635

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
JEFFREY TEVIS, #216442	)	
Grievant/Appellant,	)	
vs.	)	CERTIFICATE OF SERVICE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,	)	
Respondent/Appellee.	)	

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

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

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

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

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

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

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

Douglas H. Westbrook

4001

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: WILLIAM L. THOMAS
SCDC NUMBER: 242501
INSTITUTION: LIEBER C.I.
HOUSING UNIT: COOPER A-16 ✓
WORK ASSIGNMENT:

Office Use Only
Grievance No. Lieber0678-04
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 ENTITIED 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 THE PREVAILING WAGE AS REQUIRED UNDER SOUTH CAROLINA CODE ANN. SEC. 24-3-430 (A-7) AS WELL AS FACT THAT FROM 1998 - 03 THEY DENIED ME PREVAILING WAGE.

ACTION REQUESTED:

ALL MONEY DUE TO ME BE PAID AT PREVAILING WAGE AND OVER TIME RATE AND PREVAILING WAGE BE PAID NOW.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

LAW SUIT WAS FILED ORDERED TO FILE GRIEVANCE BY COURT WICKER V. S.C.D.C, ADKINS V. S.C.D.C

William L. Thomas 9-23-04
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.

4002

G. Carlton 10/28/04
IGC Signature Date

N/A
Grievant Signature Date

Ackerman 5-6-11 3637

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.

4003

J/M W. Thomas, #27250 LC10628-04

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.

4005

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 2

Office Use Only
Grievance No. LCI 0678-04
Code: General ✓
Policy
Disc. Hear.
Class.
Date Received NOV 04 2004
IGC Initials

INMATE NAME: WILLIAM L. THOMAS
SCDC NUMBER: 272501 NOV 0 4 2004
INSTITUTION: LIEBER CORR. INST. PP
HOUSING UNIT: COOPER A-15
WORK ASSIGNMENT:

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

ADKINS & WICKER DO REQUIRE PAYMENT OF PREVAILING WAGES GRIEVANTS WERE EMPLOYED BY WTI AND S.C.D.C WAS WTI'S "AGENT" IN PAYING OUR WAGES. ADKINS & WICKER FURTHER ALLOWS THIS ISSUE OF PAYMENT OF WAGES UNDER S.C. CODE 24-3-430 TO BE GRIEVED PURSUANT TO S.C.D.C GRIEVANCE PROCEDURES. GRIEVANT INCORPORATES BY REFERANCE ALL EXHIBITS ATTACHED TO GRIEVANCE FILED BY DARRELL WILLIAMS AND ATTORNEY DOUGLAS WESTBROOK ON 9-22-04

William L. Thomas
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 6-19-07
Date

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

William Thomas
Grievant Signature Date

IGC Signature 6/22/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

4006

Ackerman 5-6-11 3641

THOMAS LCI-0678-04

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 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 November 14, 2001 and ended July 2, 2003. Additionally, these records reflect that you returned to this project for a second work assignment that began May 5, 2004 and ended June 3, 2004 and, finally, that you returned to this project for a third work assignment that began on December 6, 2004 and ended April 23, 2007.

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

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

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

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

4007

THOMAS LCI-0678-04

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 three (3) 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.

4008

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

William Thomas, #272501,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Notice is hereby given that William Thomas 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

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

Signed
7-18-07
Dated

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

4010

Ackerman 5-6-11 3645

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
WILLIAM THOMAS, #272501	)	
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

D H Westbrook
Douglas H. Westbrook

4011

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Curtis Thompson
SCDC NUMBER: 266448
INSTITUTION: Lieber Correctional Institution
HOUSING UNIT: Cooper A-54
WORK ASSIGNMENT: P.I. -2

Office Use Only
Grievance No. Lieber 0680-04
Code: General MM
Policy
Disc. Hear.
Class. SEP 29 2004
Date Received SEP 28 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 paid 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

Curtis Thompson 23-Sept.-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.

Grievant Signature. Date

SCDC 10-5 (Rev. November 1997)

4 of 2

Ackerman 5-6-11 3647

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 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.

4013

J/R C. Thompson #240148 LC10680-04

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 CURTIS THOMPSON, #266448

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; 274.67 hours in 2000 at $10.66 per hour; 1012.36 hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 5366.59 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, 0795; C, 0081,0086; F, 1375-1377; 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
	STEELE, CHRISTOPHER	241447	S B 53	1	7/12/02	8/15/02
MI 3	STEPHENS, BRIAN	131066	C B 63	1	1/18/02	2/20/03
	STEVENS, JEFFREY	167227	S A 34	1	11/3/00	2/1/01
	STEVENS, VERNON	246800	C B 45	1	6/6/00	11/13/01
	STEVENSON, COLIN	272245	S B 33	2	12/15/00	4/10/02
MI 3	STEVENSON, MARVIN	210502	C B 36	1	5/31/00	6/26/03
MI 3	STEWART, ALVIN	278595	C A 57	1	10/24/01	6/24/04
	STEWART, RICKY	269015	C A 1	1	10/18/00	3/5/01
MI 3	STINSON, JEFF	260047	C A 9	1	9/21/99	6/24/04
MI 3	STOGNER, CHRISTOPHER	273665	E A 30	1	6/11/04	6/14/04
	STONE, MENDELL	283376	S A 29	1	5/29/02	7/12/02
MI 3	STROUSE, R	260048	C A 0	0		10/25/99
MI 3	SULLIVAN, BUDDY	298225	E B 55	3		3/17/04
MI 1B	SULLIVAN, MICHAEL	263327	C B 49	1	6/6/00	1/16/04
	SULLIVAN, WARREN	240015	C 0	1	2/15/00	5/12/00
	SUMMERS, JAMES	241153	C B 52	1	3/27/00	4/24/01
	SUMPTER, MERVIN	271271	C A 30	1	1/12/01	2/21/02
	SUMTER, JOHN	262545	C B 26	1	4/6/01	6/27/01
	SUTTON, RANDY	240637	M 0	1	1/6/00	4/3/00
	SWEAT, CHARLES	231115	A A 17	1	9/30/99	2/22/00
	TARTER, MARK	281878	A A 33	0	4/17/02	5/13/02
MI 2	TATUM, DAVID	287658	C B 28	1	6/26/03	11/6/03
	TAYLOR, SYDNEY	235995	C A 9	2	7/1/99	8/8/02
MI 2	TEVIS, JEFFREY R.	216442	C B 27	1	4/22/04	6/24/04
	THEODORE, ANTONIO	276366	E B 2	2	8/24/01	9/18/01
	THOMAS, CHAUNCEY	244243	C A 28	2	6/12/01	2/1/02
	THOMAS, CLIFFORD	139956	C A 10	1	8/11/99	11/13/00
	THOMAS, DERRICK	259051	C B 47	1	6/6/00	3/28/01
MI 3	THOMAS, WILLIAM	272501	C A 32	1	10/29/01	6/1/03
MI 3	THOMAS, WILLIAM L.	272501	C A 15	1	5/27/04	6/3/04
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	10/13/00	5/2/03
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	12/16/03	6/24/04
	THOMPSON, GARY	269401	C A 20	1	10/16/00	2/8/01
MO 1E	THOMPSON, JOE	278849	C A 28	2	11/26/01	9/5/02
	THOMPSON, PAUL	280785	C A 26	1	1/18/02	8/12/02
	THOMPSON, SAMMIE	269035	A A 25	1	10/16/00	12/11/01
	THRIFT, MARK	198706	C B 16	3	10/22/01	10/23/01
	TIMBERLAKE, WESLEY	229756	E A 30	2	6/7/01	6/19/01
	TIMMONS, D'ANGELO	272523	S A 58	1	9/4/01	10/12/01
MI 3	TINO, JAMES	145030	C B 58	1	7/18/02	5/2/03
	TONEY, DAVID	231620	M X 0	1	3/15/00	12/11/01
	TONEY, RICKFORD	215019	C B 61	1	3/29/00	12/4/01
	TOWNSEND, CLAUDIS	238349	E A 26	1	10/13/00	11/21/00
	TRAN, TRIN	235695	M X 0	2	7/21/00	11/30/00
	TROTTER, RANDY	268936	C B 61	1	10/16/00	3/5/01
	TROUGHT, MARLON	257675	C 0	1	2/15/00	5/8/00

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	NAME	SCDC	DORM	SHIFT	HIRED	RELEASED
	STEELE, CHRISTOPHER	241447	S B 53	1	7/12/02	8/15/02
MI 3	STEPHENS, BRIAN	131066	C B 63	1	1/18/02	2/20/03
	STEVENS, JEFFREY	167227	S A 34	1	11/3/00	2/1/01
	STEVENS, VERNON	246800	C B 45	1	6/6/00	11/13/01
	STEVENSON, COLIN	272245	S B 93	2	12/15/00	4/10/02
MI 3	STEVENSON, MARVIN	210502	C B 36	1	5/31/00	6/26/03
MI 3	STEWART, ALVIN	278595	C A 57	1	10/24/01	6/24/04
	STEWART, RICKY	269015	C A 1	1	10/18/00	3/5/01
MI 3	STINSON, JEFF	260047	C A 9	1	9/21/99	6/24/04
MI 3	STOGNER, CHRISTOPHER	273665	E A 30	1	6/11/04	6/14/04
	STONE, MENDELL	283376	S A 29	1	5/29/02	7/12/02
MI 3	STROUSE, R	260048	C A 0	0		10/25/99
MI 3	SULLIVAN, BUDDY	298225	E B 55	3		3/17/04
MI 1B	SULLIVAN, MICHAEL	263327	C B 49	1	6/6/00	1/16/04
	SULLIVAN, WARREN	240015	C 0	1	2/15/00	5/12/00
	SUMMERS, JAMES	241133	C B 52	1	3/27/00	4/24/01
	SUMPTER, MERVIN	271271	C A 30	1	1/12/01	2/21/02
	SUMTER, JOHN	262545	C B 26	1	4/6/01	6/27/01
	SUTTON, RANDY	240637	M 0	1	1/6/00	4/3/00
	SWEAT, CHARLES	231115	A A 17	1	9/30/99	2/22/00
	TARTER, MARK	281878	A A 33	0	4/17/02	5/13/02
MI 2	TATOM, DAVID	287658	C B 28	1	6/26/03	11/6/03
	TAYLOR, SYDNEY	235995	C A 9	2	7/1/99	8/8/02
MI 2	TEVIS, JEFFREY R.	216442	C B 27	1	4/22/04	6/24/04
	THEODORE, ANTONIO	276366	E B 2	2	8/24/01	9/18/01
	THOMAS, CHAUNCEY	244243	C A 28	2	6/12/01	2/1/02
	THOMAS, CLIFFORD	139956	C A 10	1	8/11/99	11/13/00
	THOMAS, DERRICK	259051	C B 47	1	6/6/00	3/28/01
MI 3	THOMAS, WILLIAM	272501	C A 32	1	10/29/01	6/1/03
MI 3	THOMAS, WILLIAM L.	272501	C A 15	1	5/27/04	6/3/04
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	10/13/00	5/2/03
MI 1B	THOMPSON, CURTIS	266448	C A 54	1	12/16/03	6/24/04
	THOMPSON, GARY	269401	C A 20	1	10/16/00	2/8/01
MO 1E	THOMPSON, JOE	278849	C A 28	2	11/26/01	9/5/02
	THOMPSON, PAUL	280785	C A 26	1	1/18/02	8/12/02
	THOMPSON, SAMMIE	269035	A A 25	1	10/16/00	12/11/01
	THRIFT, MARK	198706	C B 16	3	10/22/01	10/23/01
	TIMBERLAKE, WESLEY	229756	E A 30	2	6/7/01	6/19/01
	TIMMONS, D'ANGELO	272523	S A 58	1	9/4/01	10/12/01
MI 3	TINO, JAMES	145030	C B 58	1	7/18/02	5/2/03
	TONEY, DAVID	231620	M X 0	1	3/15/00	12/11/01
	TONEY, RICKFORD	215019	C B 61	1	3/29/00	12/4/01
	TOWNSEND, CLAUDIS	238349	E A 26	1	10/13/00	11/21/00
	TRAN, TRIN	255695	M X 0	2	7/21/00	11/30/00
	TROTTER, RANDY	268936	C B 61	1	10/16/00	3/5/01
	TROUGHT, MARLON	257675	C 0	1	2/15/00	5/8/00

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STATE OF SOUTH CAROLINA)

LEASE

COUNTY OF RICHLAND)

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.

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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

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259051	THOMAS	DERRICK	L	20010101	0.50	36.57	18.28
259051	THOMAS	DERRICK	L	20010115	0.50	90.86	45.43
259051	THOMAS	DERRICK	L	20010129	0.50	93.33	46.66
259051	THOMAS	DERRICK	L	20010212	0.50	67.70	33.85
259051	THOMAS	DERRICK	L	20010226	0.50	106.01	53.00
259051	THOMAS	DERRICK	L	20010312	0.50	88.18	44.09
259051	THOMAS	DERRICK	L	20010326	0.50	61.03	30.51
259051	THOMAS	DERRICK	L	20010409	0.50	14.59	7.29
272501	THOMAS	WILLIAM	LEON	20020114	0.50	47.00	23.50
272501	THOMAS	WILLIAM	LEON	20020128	0.50	70.25	35.12
272501	THOMAS	WILLIAM	LEON	20020211	0.50	80.08	40.04
272501	THOMAS	WILLIAM	LEON	20020225	0.50	82.42	41.21
272501	THOMAS	WILLIAM	LEON	20020311	0.50	90.00	45.00
272501	THOMAS	WILLIAM	LEON	20020325	0.50	81.68	40.84
272501	THOMAS	WILLIAM	LEON	20020408	0.50	72.00	36.00
272501	THOMAS	WILLIAM	LEON	20020422	0.50	82.56	41.28
272501	THOMAS	WILLIAM	LEON	20020506	0.50	105.44	52.72
272501	THOMAS	WILLIAM	LEON	20020520	0.50	143.69	71.84
272501	THOMAS	WILLIAM	LEON	20020603	0.50	103.62	51.81
272501	THOMAS	WILLIAM	LEON	20020617	0.50	123.05	61.52
272501	THOMAS	WILLIAM	LEON	20020701	0.50	109.21	54.60
272501	THOMAS	WILLIAM	LEON	20020715	0.50	92.36	46.18
272501	THOMAS	WILLIAM	LEON	20020729	0.50	61.08	30.54
272501	THOMAS	WILLIAM	LEON	20020812	0.50	130.43	65.21
272501	THOMAS	WILLIAM	LEON	20020826	0.50	148.01	74.00
272501	THOMAS	WILLIAM	LEON	20020909	0.50	131.60	65.80
272501	THOMAS	WILLIAM	LEON	20020923	0.50	134.25	67.12
272501	THOMAS	WILLIAM	LEON	20021007	0.50	163.85	81.92
272501	THOMAS	WILLIAM	LEON	20021021	0.50	125.04	62.52
272501	THOMAS	WILLIAM	LEON	20021104	0.50	124.51	62.25
272501	THOMAS	WILLIAM	LEON	20021118	0.50	142.19	71.09
272501	THOMAS	WILLIAM	LEON	20021202	0.50	128.88	64.44
272501	THOMAS	WILLIAM	LEON	20021216	0.50	137.30	68.65
272501	THOMAS	WILLIAM	LEON	20021230	0.50	80.03	40.01
272501	THOMAS	WILLIAM	LEON	20030113	0.50	88.35	44.17
272501	THOMAS	WILLIAM	LEON	20030127	0.50	117.19	58.59
272501	THOMAS	WILLIAM	LEON	20030210	0.50	113.11	56.55
272501	THOMAS	WILLIAM	LEON	20030224	0.50	116.15	58.07
272501	THOMAS	WILLIAM	LEON	20030310	0.50	107.16	53.58
272501	THOMAS	WILLIAM	LEON	20030324	0.50	124.78	62.39
272501	THOMAS	WILLIAM	LEON	20030407	0.50	96.48	48.24
272501	THOMAS	WILLIAM	LEON	20030421	0.50	103.68	51.84
272501	THOMAS	WILLIAM	LEON	20030505	0.50	95.04	47.52
272501	THOMAS	WILLIAM	LEON	20030519	0.50	151.64	75.82
272501	THOMAS	WILLIAM	LEON	20030602	0.50	114.72	57.36
272501	THOMAS	WILLIAM	LEON	20040531	0.50	17.50	8.75
272501	THOMAS	WILLIAM	LEON	20040531	0.50	41.76	20.88
272501	THOMAS	WILLIAM	LEON	20040531	0.50	142.50	71.25
272501	THOMAS	WILLIAM	LEON	20040531	0.50	154.73	77.36
266448	THOMPSON	CURTIS	JEROME	20001023	0.50	24.37	12.18
266448	THOMPSON	CURTIS	JEROME	20001106	0.50	51.01	25.50
266448	THOMPSON	CURTIS	JEROME	20001120	0.50	54.67	27.33
266448	THOMPSON	CURTIS	JEROME	20001204	0.50	34.30	17.15
266448	THOMPSON	CURTIS	JEROME	20001218	0.50	73.95	36.97

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266448	THOMPSON	CURTIS	JEROME	20010101	0.50	36.37	18.18
266448	THOMPSON	CURTIS	JEROME	20010115	0.50	55.53	27.76
266448	THOMPSON	CURTIS	JEROME	20010129	0.50	60.95	30.47
266448	THOMPSON	CURTIS	JEROME	20010212	0.50	74.85	37.42
266448	THOMPSON	CURTIS	JEROME	20010226	0.50	80.47	40.23
266448	THOMPSON	CURTIS	JEROME	20010312	0.50	70.27	35.13
266448	THOMPSON	CURTIS	JEROME	20010326	0.50	71.98	35.99
266448	THOMPSON	CURTIS	JEROME	20010409	0.50	61.82	30.91
266448	THOMPSON	CURTIS	JEROME	20010423	0.50	74.53	37.26
266448	THOMPSON	CURTIS	JEROME	20010507	0.50	97.50	48.75
266448	THOMPSON	CURTIS	JEROME	20010521	0.50	84.79	42.39
266448	THOMPSON	CURTIS	JEROME	20010604	0.50	89.88	44.94
266448	THOMPSON	CURTIS	JEROME	20010618	0.50	92.14	46.07
266448	THOMPSON	CURTIS	JEROME	20010702	0.50	97.65	48.82
266448	THOMPSON	CURTIS	JEROME	20010716	0.60	86.28	43.14
266448	THOMPSON	CURTIS	JEROME	20010730	0.50	64.40	32.20
266448	THOMPSON	CURTIS	JEROME	20010813	0.50	98.89	48.44
266448	THOMPSON	CURTIS	JEROME	20010827	0.50	95.81	47.90
266448	THOMPSON	CURTIS	JEROME	20010910	0.50	55.03	27.51
266448	THOMPSON	CURTIS	JEROME	20010924	0.50	67.32	33.66
266448	THOMPSON	CURTIS	JEROME	20011008	0.50	112.50	56.25
266448	THOMPSON	CURTIS	JEROME	20011022	0.50	102.03	51.01
266448	THOMPSON	CURTIS	JEROME	20011105	0.50	100.76	50.38
266448	THOMPSON	CURTIS	JEROME	20011119	0.50	117.62	58.81
266448	THOMPSON	CURTIS	JEROME	20011203	0.50	81.48	40.74
266448	THOMPSON	CURTIS	JEROME	20011217	0.50	131.55	65.77
266448	THOMPSON	CURTIS	JEROME	20020114	0.50	86.36	43.18
266448	THOMPSON	CURTIS	JEROME	20020128	0.50	108.84	54.47
266448	THOMPSON	CURTIS	JEROME	20020211	0.50	127.55	63.77
266448	THOMPSON	CURTIS	JEROME	20020225	0.50	103.90	51.95
266448	THOMPSON	CURTIS	JEROME	20020311	0.50	111.95	55.97
266448	THOMPSON	CURTIS	JEROME	20020325	0.50	105.77	52.88
266448	THOMPSON	CURTIS	JEROME	20020408	0.50	105.88	52.94
266448	THOMPSON	CURTIS	JEROME	20020422	0.50	96.42	48.21
266448	THOMPSON	CURTIS	JEROME	20020506	0.50	72.51	36.25
266448	THOMPSON	CURTIS	JEROME	20020520	0.50	106.83	53.41
266448	THOMPSON	CURTIS	JEROME	20020603	0.50	104.09	52.04
266448	THOMPSON	CURTIS	JEROME	20020617	0.50	109.87	54.93
266448	THOMPSON	CURTIS	JEROME	20020701	0.50	104.84	52.42
266448	THOMPSON	CURTIS	JEROME	20020715	0.50	103.82	51.91
266448	THOMPSON	CURTIS	JEROME	20020729	0.50	104.35	52.17
266448	THOMPSON	CURTIS	JEROME	20020812	0.50	114.78	57.39
266448	THOMPSON	CURTIS	JEROME	20020826	0.50	109.94	54.97
266448	THOMPSON	CURTIS	JEROME	20020909	0.50	108.26	54.13
266448	THOMPSON	CURTIS	JEROME	20020923	0.50	115.74	57.87
266448	THOMPSON	CURTIS	JEROME	20021007	0.50	116.03	58.01
266448	THOMPSON	CURTIS	JEROME	20021021	0.50	102.31	51.16
266448	THOMPSON	CURTIS	JEROME	20021104	0.50	122.90	61.45
266448	THOMPSON	CURTIS	JEROME	20021118	0.50	127.31	63.65
266448	THOMPSON	CURTIS	JEROME	20021202	0.50	91.08	45.54
266448	THOMPSON	CURTIS	JEROME	20021216	0.50	108.59	54.29
266448	THOMPSON	CURTIS	JEROME	20021230	0.50	56.88	28.44
266448	THOMPSON	CURTIS	JEROME	20030113	0.50	84.33	42.16
266448	THOMPSON	CURTIS	JEROME	20030127	0.50	101.02	50.51

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 Adjusments 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

4025

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

11-7-04

INMATE NAME: Curtis Thompson
SCDC NUMBER: 266443 NOV 0 8 2004
INSTITUTION: ~~Lieber Corr. Inst.~~ WPRC PP
HOUSING UNIT: Cooper A-54
WORK ASSIGNMENT: P. I. #2

Office Use Only
Grievance No. LCI-2150-04
Code: General ✓
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'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 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.

Curtis Thompson 11-2-04
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.

Grievant Signature Date IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

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THOMPSON LCI-0680-04

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 16, 2003 and that your participation in this project ended on November 8, 2004.

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

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

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

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

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

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

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

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

Moreover, you filed your Step 1 grievance nearly 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.
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.

4025

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Curtis Thompson, #266448 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 Curtis Thompson 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.

Curtis Thompson
Appellant's Name

412 N. Mullins St.
Mailing Address

Mullins, SC 29574

(843) 464-7544
City, State, Zip Code

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)

4030

Ackerman 5-6-11 3665

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
CURTIS THOMPSON, #266448	)	
	)	
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

4031

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: James M. Tisio
SCDC NUMBER: #145030
INSTITUTION: Lieber Corr. Inst.
HOUSING UNIT: Cooper B-58 ✓
WORK ASSIGNMENT: Commissary

Office Use Only
Grievance No. Lieber 0679-04
Code: General VM
Policy
Disc. Hear.
Class.
Date Received
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 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

James M. Tisio 9/25/04
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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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 Coordinator.

4033

S/M J. Dino, #141530 2C10679-04

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.

4034

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.



4035

AMENDMENT TO GRIEVANCE OF JAMES TINO, #145030

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 1442.89 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.

James Tino 145030 2/3/06
(Grievant Signature) (Date)

* Attached are Exh. A, 0795; C, 0081,0086; F, 1378-1379; 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.

280785	THOMPSON	PAUL		20020603	0.50	66.34	33.17
280785	THOMPSON	PAUL		20020617	0.50	81.32	40.66
280785	THOMPSON	PAUL		20020701	0.50	72.94	36.47
280785	THOMPSON	PAUL		20020715	0.50	47.36	23.68
280785	THOMPSON	PAUL		20020729	0.50	70.36	35.18
280785	THOMPSON	PAUL		20020812	0.50	84.86	42.43
280785	THOMPSON	PAUL		20020826	0.50	9.00	4.50
269035	THOMPSON	SAMMIE	LEE	20001023	0.50	16.22	8.11
269035	THOMPSON	SAMMIE	LEE	20001106	0.50	87.17	43.59
269035	THOMPSON	SAMMIE	LEE	20001120	0.50	76.29	38.14
269035	THOMPSON	SAMMIE	LEE	20001204	0.50	37.24	18.62
269035	THOMPSON	SAMMIE	LEE	20001218	0.50	121.79	60.89
269035	THOMPSON	SAMMIE	LEE	20010101	0.50	50.90	25.45
269035	THOMPSON	SAMMIE	LEE	20010115	0.50	69.71	34.85
269035	THOMPSON	SAMMIE	LEE	20010129	0.50	88.83	44.41
269035	THOMPSON	SAMMIE	LEE	20010212	0.50	76.17	38.08
269035	THOMPSON	SAMMIE	LEE	20010226	0.50	64.20	32.10
269035	THOMPSON	SAMMIE	LEE	20010312	0.50	63.13	31.56
269035	THOMPSON	SAMMIE	LEE	20010326	0.50	71.87	35.93
269035	THOMPSON	SAMMIE	LEE	20010409	0.50	42.12	21.06
269035	THOMPSON	SAMMIE	LEE	20010423	0.50	5.74	2.87
269035	THOMPSON	SAMMIE	LEE	20010507	0.50	93.50	46.75
269035	THOMPSON	SAMMIE	LEE	20010521	0.50	86.83	43.41
269035	THOMPSON	SAMMIE	LEE	20010604	0.50	26.92	13.46
269035	THOMPSON	SAMMIE	LEE	20010618	0.50	92.00	46.00
269035	THOMPSON	SAMMIE	LEE	20010702	0.50	92.04	46.02
269035	THOMPSON	SAMMIE	LEE	20010716	0.50	94.17	47.08
269035	THOMPSON	SAMMIE	LEE	20010730	0.50	90.97	45.48
269035	THOMPSON	SAMMIE	LEE	20010813	0.50	91.26	45.63
269035	THOMPSON	SAMMIE	LEE	20010827	0.50	65.03	32.51
269035	THOMPSON	SAMMIE	LEE	20010910	0.50	98.85	49.42
269035	THOMPSON	SAMMIE	LEE	20010924	0.50	118.72	59.36
269035	THOMPSON	SAMMIE	LEE	20011008	0.50	173.31	86.65
269035	THOMPSON	SAMMIE	LEE	20011022	0.50	112.31	56.15
269035	THOMPSON	SAMMIE	LEE	20011105	0.50	108.41	54.20
269035	THOMPSON	SAMMIE	LEE	20011119	0.50	132.13	66.08
269035	THOMPSON	SAMMIE	LEE	20011203	0.50	97.50	48.75
269035	THOMPSON	SAMMIE	LEE	20011217	0.50	69.44	34.72
229756	TIMBERLAKE	WESLEY		20010702	0.50	26.25	13.12
272523	TIMMONS	DEANGELO	K.	20010910	0.50	11.34	5.67
272523	TIMMONS	DEANGELO	K.	20010924	0.50	2.71	1.35
272523	TIMMONS	DEANGELO	K.	20011008	0.50	24.68	12.34
272523	TIMMONS	DEANGELO	K.	20011022	0.50	11.67	5.83
145030	TINO	JAMES	NEAL	20020729	0.50	6.65	3.32
145030	TINO	JAMES	NEAL	20020812	0.50	42.00	21.00
145030	TINO	JAMES	NEAL	20020826	0.50	56.16	28.08
145030	TINO	JAMES	NEAL	20020909	0.50	46.06	23.03
145030	TINO	JAMES	NEAL	20020923	0.50	75.00	37.50
145030	TINO	JAMES	NEAL	20021007	0.50	75.00	37.50
145030	TINO	JAMES	NEAL	20021021	0.50	75.00	37.50
145030	TINO	JAMES	NEAL	20021104	0.50	90.00	45.00
145030	TINO	JAMES	NEAL	20021118	0.50	86.76	43.37
145030	TINO	JAMES	NEAL	20021202	0.50	68.28	34.14
145030	TINO	JAMES	NEAL	20021216	0.50	72.97	36.48

PLAINTIFF'S EXHIBIT F

4037

A - 1378
June 2004

145030	TINO	JAMES	NEAL	20021230	0.50	37.24	18.62
145030	TINO	JAMES	NEAL	20030113	0.50	44.08	22.04
145030	TINO	JAMES	NEAL	20030127	0.50	62.38	31.19
145030	TINO	JAMES	NEAL	20030210	0.50	96.95	46.47
145030	TINO	JAMES	NEAL	20030224	0.50	74.78	37.39
145030	TINO	JAMES	NEAL	20030310	0.50	93.75	46.87
145030	TINO	JAMES	NEAL	20030324	0.50	96.65	48.32
145030	TINO	JAMES	NEAL	20030407	0.50	75.35	37.67
145030	TINO	JAMES	NEAL	20030421	0.50	81.90	40.95
145030	TINO	JAMES	NEAL	20030505	0.50	75.18	37.59
231620	TONEY	DAVID	ANTHONY	20030519	0.50	10.78	5.38
231620	TONEY	DAVID	ANTHONY	20000327	0.35	52.50	18.37
231620	TONEY	DAVID	ANTHONY	20000327	0.35	16.00	5.60
231620	TONEY	DAVID	ANTHONY	20000410	0.35	95.00	33.25
231620	TONEY	DAVID	ANTHONY	20000424	0.35	60.00	21.00
231620	TONEY	DAVID	ANTHONY	20000424	0.35	16.00	5.60
231620	TONEY	DAVID	ANTHONY	20000508	0.35	94.00	32.90
231620	TONEY	DAVID	ANTHONY	20000522	0.35	85.50	29.92
231620	TONEY	DAVID	ANTHONY	20000522	0.80	7.50	6.00
231620	TONEY	DAVID	ANTHONY	20000605	0.35	67.50	23.62
231620	TONEY	DAVID	ANTHONY	20000605	0.35	18.00	6.30
231620	TONEY	DAVID	ANTHONY	20000605	0.25	7.50	1.87
231620	TONEY	DAVID	ANTHONY	20000619	0.50	67.50	33.75
231620	TONEY	DAVID	ANTHONY	20000619	0.70	9.00	6.30
231620	TONEY	DAVID	ANTHONY	20000619	0.15	67.50	10.12
231620	TONEY	DAVID	ANTHONY	20000703	0.50	60.00	30.00
231620	TONEY	DAVID	ANTHONY	20000703	0.55	3.50	1.92
231620	TONEY	DAVID	ANTHONY	20000703	0.35	22.00	7.70
231620	TONEY	DAVID	ANTHONY	20000717	0.50	80.10	40.05
231620	TONEY	DAVID	ANTHONY	20000731	0.50	53.20	26.60
231620	TONEY	DAVID	ANTHONY	20000814	0.50	80.10	40.05
231620	TONEY	DAVID	ANTHONY	20000828	0.50	89.00	44.50
231620	TONEY	DAVID	ANTHONY	20000911	0.50	70.15	35.07
231620	TONEY	DAVID	ANTHONY	20000925	0.50	89.00	44.50
231620	TONEY	DAVID	ANTHONY	20001009	0.50	80.10	40.05
231620	TONEY	DAVID	ANTHONY	20001023	0.50	111.50	55.75
231620	TONEY	DAVID	ANTHONY	20001106	0.50	111.50	55.75
231620	TONEY	DAVID	ANTHONY	20001120	0.50	100.35	50.17
231620	TONEY	DAVID	ANTHONY	20001204	0.50	78.05	39.02
231620	TONEY	DAVID	ANTHONY	20001218	0.50	110.35	55.17
231620	TONEY	DAVID	ANTHONY	20010101	0.50	55.75	27.87
231620	TONEY	DAVID	ANTHONY	20010115	0.50	77.15	38.57
231620	TONEY	DAVID	ANTHONY	20010129	0.50	62.30	31.15
231620	TONEY	DAVID	ANTHONY	20010129	2.54	1.00	2.54
231620	TONEY	DAVID	ANTHONY	20010212	0.50	111.50	55.75
231620	TONEY	DAVID	ANTHONY	20010212	2.54	2.00	5.08
231620	TONEY	DAVID	ANTHONY	20010226	0.50	89.20	44.60
231620	TONEY	DAVID	ANTHONY	20010312	0.50	111.50	55.75
231620	TONEY	DAVID	ANTHONY	20010326	0.50	111.50	55.75
231620	TONEY	DAVID	ANTHONY	20010409	0.50	101.20	50.60
231620	TONEY	DAVID	ANTHONY	20010423	0.50	126.50	63.25
231620	TONEY	DAVID	ANTHONY	20010507	0.50	113.85	56.92
231620	TONEY	DAVID	ANTHONY	20010521	0.50	113.85	56.92
231620	TONEY	DAVID	ANTHONY	20010604	0.50	101.20	50.60

4038

11-8-04

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: James N Tino

SCDC NUMBER: 145030 NOV 0 8 2004

INSTITUTION: Lieber PP

HOUSING UNIT: Cooper B 58

WORK ASSIGNMENT: Commissary

Office Use Only
Grievance No. CC10679-04
Code: General MY
Policy
Disc. Hear.
Class. NOV 0 8 2004
Date Received
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.

James) Tino 11/4/04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Released
1-9-07
(Died)

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) 4039

Ackerman 5-6-11 3674

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

James Tino, #145030 released, deceased,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

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

James Tino
Appellant's Name

c/o Ms. Kimberly Edwards (daughter)
Mailing Address

3426 Henrys Knob Rd.

Clover, SC 29710
City, State, Zip Code

(803) 222-9957
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)

4040

Ackerman 5-6-11 3675

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
JAMES TINO, #145030	)	
	)	
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

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

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

Douglas H. Westbrook

4041

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

James Trumper INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: James Trumper 247429

INSTITUTION: LIEBER

HOUSING UNIT: Cooper - A - 60 ✓

WORK ASSIGNMENT: Dorm

Office Use Only

Grievance No: Lieber0758-04

Code: General RM4

Policy

Disc. Hear.

Class.

Date Received SEP 30 2004

IGC Initials LE

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.

4042

Grievant Signature Date

Ackerman 5-6-11 3677

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 11-2-04 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.

4043

J/M J. Dunagan, # 24/429 LCI0758-04

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.

4044

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.

4045

AMENDMENT TO GRIEVANCE OF JAMES TRUMPER, #247429

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 2417.09 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) 2-4-06 (Date)

* Attached are Exh. A, 0796; C, 0081,0086; F, 1381-1382; 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.

4046

215019	TONEY	RICKFORD		20010730	0.50	134.10	67.05
215019	TONEY	RICKFORD		20010813	0.50	152.76	76.38
215019	TONEY	RICKFORD		20010827	0.50	111.80	55.90
215019	TONEY	RICKFORD		20010910	0.50	115.99	57.99
215019	TONEY	RICKFORD		20010924	0.50	67.58	33.79
215019	TONEY	RICKFORD		20011008	0.50	142.05	71.02
215019	TONEY	RICKFORD		20011022	0.50	133.30	66.65
215019	TONEY	RICKFORD		20011105	0.50	115.02	57.51
215019	TONEY	RICKFORD		20011119	0.50	66.56	33.28
215019	TONEY	RICKFORD		20011203	0.50	99.11	49.55
238349	TOWNSEND	CLAUDIS		20011217	0.50	62.40	31.20
238349	TOWNSEND	CLAUDIS		20001106	0.50	111.12	55.56
238349	TOWNSEND	CLAUDIS		20001120	0.50	65.49	32.74
255695	TRAN	TRIN		20001204	0.50	20.65	10.32
255695	TRAN	TRIN		20000731	0.50	46.65	23.32
255695	TRAN	TRIN		20000814	0.50	59.85	29.92
255695	TRAN	TRIN		20000828	0.50	66.50	33.25
255695	TRAN	TRIN		20000911	0.50	53.20	26.60
255695	TRAN	TRIN		20000925	0.50	80.10	40.05
255695	TRAN	TRIN		20001009	0.50	72.60	36.30
255695	TRAN	TRIN		20001023	0.50	52.50	26.25
255695	TRAN	TRIN		20001023	0.35	7.50	2.62
255695	TRAN	TRIN		20001106	0.50	52.50	26.25
255695	TRAN	TRIN		20001120	0.50	59.85	29.92
255695	TRAN	TRIN		20001204	0.50	42.00	21.00
268936	TROTTER	RANDY	L.	20010129	0.50	115.52	57.76
268936	TROTTER	RANDY	L.	20001023	0.50	16.77	8.38
268936	TROTTER	RANDY	L.	20001106	0.50	52.26	26.13
268936	TROTTER	RANDY	L.	20001120	0.50	50.90	25.45
268936	TROTTER	RANDY	L.	20001204	0.50	42.58	21.29
268936	TROTTER	RANDY	L.	20001218	0.50	83.00	41.50
268936	TROTTER	RANDY	L.	20010101	0.50	37.17	18.59
268936	TROTTER	RANDY	L.	20010115	0.50	60.00	30.00
268936	TROTTER	RANDY	L.	20010129	0.50	67.33	33.66
268936	TROTTER	RANDY	L.	20010212	0.50	62.05	31.02
257675	TROUGHT	MARLON	PERNELL	20010226	0.50	22.68	11.34
257675	TROUGHT	MARLON	PERNELL	20000228	0.50	26.50	13.25
257675	TROUGHT	MARLON	PERNELL	20000313	0.50	74.45	37.22
257675	TROUGHT	MARLON	PERNELL	20000327	0.55	6.50	3.57
257675	TROUGHT	MARLON	PERNELL	20000327	0.50	75.00	37.50
257675	TROUGHT	MARLON	PERNELL	20000327	0.60	7.50	6.00
257675	TROUGHT	MARLON	PERNELL	20000410	0.50	67.50	33.75
257675	TROUGHT	MARLON	PERNELL	20000424	0.50	75.00	37.50
247429	TRUMPER	JAMES		20000508	0.50	74.65	37.32
247429	TRUMPER	JAMES		20020520	0.50	56.53	28.26
247429	TRUMPER	JAMES		20020603	0.50	45.91	22.95
247429	TRUMPER	JAMES		20020617	0.50	73.70	36.85
247429	TRUMPER	JAMES		20020701	0.50	74.05	37.02
247429	TRUMPER	JAMES		20020715	0.50	49.02	24.51
247429	TRUMPER	JAMES		20020729	0.50	70.45	35.22
247429	TRUMPER	JAMES		20020812	0.50	85.18	42.59
247429	TRUMPER	JAMES		20020826	0.50	86.12	43.06
247429	TRUMPER	JAMES		20020909	0.50	79.84	39.92
				20020923	0.50	89.48	44.74

PLAINTIFF'S EXHIBIT F

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A - 1381
June 2004

247429	TRUMPER	JAMES		20021007	0.50	78.36	39.18
247429	TRUMPER	JAMES		20021021	0.50	84.66	42.34
247429	TRUMPER	JAMES		20021104	0.50	58.23	29.11
247429	TRUMPER	JAMES		20021118	0.50	68.25	34.12
247429	TRUMPER	JAMES		20021202	0.50	90.00	45.00
247429	TRUMPER	JAMES		20021216	0.50	101.08	50.54
247429	TRUMPER	JAMES		20021230	0.50	38.22	19.11
247429	TRUMPER	JAMES		20030113	0.50	71.33	35.66
247429	TRUMPER	JAMES		20030127	0.50	88.02	44.01
247429	TRUMPER	JAMES		20030210	0.50	114.48	57.24
247429	TRUMPER	JAMES		20030224	0.50	110.40	55.20
247429	TRUMPER	JAMES		20030310	0.50	74.67	37.33
247429	TRUMPER	JAMES		20030324	0.50	76.68	38.34
247429	TRUMPER	JAMES		20030407	0.50	96.50	48.25
247429	TRUMPER	JAMES		20030421	0.50	93.65	46.82
247429	TRUMPER	JAMES		20030505	0.50	79.42	39.71
247429	TRUMPER	JAMES		20030519	0.50	118.99	59.49
247429	TRUMPER	JAMES		20030602	0.50	87.92	43.96
247429	TRUMPER	JAMES		20030616	0.50	106.81	53.40
250034	TUCKER	CLINTON		20030630	0.50	69.12	34.56
250034	TUCKER	CLINTON		20000214	0.35	7.00	2.45
250034	TUCKER	CLINTON		20000228	0.35	66.32	23.21
250034	TUCKER	CLINTON		20000313	0.35	85.50	29.92
250034	TUCKER	CLINTON		20000327	0.50	67.50	33.75
250034	TUCKER	CLINTON		20000327	0.35	20.00	7.00
250034	TUCKER	CLINTON		20000410	0.50	75.00	37.50
250034	TUCKER	CLINTON		20000410	0.35	20.00	7.00
250034	TUCKER	CLINTON		20000424	0.35	60.00	21.00
250034	TUCKER	CLINTON		20000424	0.35	16.00	5.60
250034	TUCKER	CLINTON		20000508	0.50	73.85	36.92
250034	TUCKER	CLINTON		20000508	0.35	20.00	7.00
250034	TUCKER	CLINTON		20000522	0.50	67.50	33.75
250034	TUCKER	CLINTON		20000522	0.25	7.50	1.87
250034	TUCKER	CLINTON		20000522	0.35	16.00	5.60
250034	TUCKER	CLINTON		20000605	0.50	67.50	33.75
250034	TUCKER	CLINTON		20000605	0.35	18.00	6.30
250034	TUCKER	CLINTON		20000619	0.70	10.00	7.00
250034	TUCKER	CLINTON		20000619	0.50	75.00	37.50
250034	TUCKER	CLINTON		20000703	0.50	60.00	30.00
250034	TUCKER	CLINTON		20000703	0.55	18.07	9.93
250034	TUCKER	CLINTON		20000703	0.35	26.00	9.10
250034	TUCKER	CLINTON		20000703	0.25	7.07	1.76
250034	TUCKER	CLINTON		20000717	0.50	93.50	46.75
250034	TUCKER	CLINTON		20000731	0.50	102.40	51.20
250034	TUCKER	CLINTON		20000814	0.50	80.10	40.05
250034	TUCKER	CLINTON		20000828	0.50	39.90	19.95
250034	TUCKER	CLINTON		20000911	0.50	61.25	30.62
250034	TUCKER	CLINTON		20000925	0.50	71.20	35.60
250034	TUCKER	CLINTON		20001009	0.50	101.75	50.87
250034	TUCKER	CLINTON		20001023	0.50	62.80	31.16
250034	TUCKER	CLINTON		20001023	0.35	7.50	2.62
250034	TUCKER	CLINTON		20010423	0.50	19.87	9.93
250034	TUCKER	CLINTON		20010507	0.50	47.17	23.58
250034	TUCKER	CLINTON		20010521	0.50	99.57	49.78

4048

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 JJ.

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 11-7-04
INMATE GRIEVANCE FORM
STEP 2

Office Use Only
Grievance No. 01 0758-04
Code: General RMY
Policy
Disc. Hear.
Class.
Date Received NOV 10 2004
IGC Initials

INMATE NAME: James Trumper
SCDC NUMBER: 247429
INSTITUTION: LIEBER Corr. Inst.
HOUSING UNIT: Cooper - A - 60 WA111
WORK ASSIGNMENT: Dorm

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 SC Code 24-3-430 to be grieved Pursuant to SCDC's Grievant Procedure. Grievent Incorporates by reference Attached to Grievances Filed by Purrell Williams and Attorney Douglas Westbrook on 09-22-04

Grievant Signature 11-02-04 Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

Signature 2-11-08 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 2/13/08 Date

IGC Signature 2/12/1(Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

4052

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
TRUMPER, JAMES	247429	LCI-0758-04

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 30, 2003. Additionally, your pay records show that you again participated in this project from February 7, 2005 through October 1, 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

Ackerman 5-6-11 3688

Inmate Name	SCDC #	Grievance #
TRUMPER, JAMES	247429	LCI-0758-04

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 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.

Inmate Name	SCDC #	Grievance #
TRUMPER, JAMES	247429	LCI-0758-04

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

Inmate Name	SCDC #	Grievance #
TRUMPER, JAMES	247429	LCI-0758-04

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 3691

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

James Trumper, #247429,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

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

James Trumper
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

LC O'Neill [illegible]
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)

4057

Ackerman 5-6-11 3692

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
JAMES TRUMPER, #247429	)	
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

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

LCI-1726-05

Office Use Only
Grievance No. ~~TCI-1014-05~~ (MY)
Code: General
Policy
Disc. Hear.
Class.
Date Received 11/17/05 10/25/05
IGC Initials CC KR
12-27-05

INMATE NAME: James Wells
SCDC NUMBER: #180458
INSTITUTION: Turbeville
HOUSING UNIT: SE loc B-155A
WORK ASSIGNMENT: Warden Area

RECEIVED
OCT 18 2005
OPERATIONS REVIEW
TURBEVILLE CI

NOV 28 2005
INMATE GRIEVANCE

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) Grievant was/is employed in the WTI/Lieber service work program. From 1999/July 2001, S.C. Code 24-3-430 required WTI/Lieber to pay Grievant the prevailing wage for work of similar nature in the private sector. The prevailing wage was $8.40 to $10.97 for 1999, $9.74 to $11.59 for 2000, and $10.10 to $12.06 for 2001 (Exh. G,H).* Since July 2001, WTI/Lieber were required to pay Grievant the negotiated wage of $4/hr (Stat. at Large, No. 66, §37.31; Exh. B,C). In fact, SCDC policy was to pay a maximum of approx. $1/hr, and usually less. Exhibits document a .35/hr base rate (Exh. B,D,E), maximum of $1/hr (Exh E), the 9-30-98 contract specifying a $4/hr wage (Exh B,C), employee roster (Exh A), and pay dates, rates, hours, and pay for Grievant (Exh F).

* Exhibits A-H attached to two grievances filed by Darrell Williams #219730 and counsel on 9-22-04 are incorporated herein by reference. Attached are Exhibits A, 0796; C, 0081, 0086; F, 1394-1395; and H, 1-3.

ACTION REQUESTED: Back wages for hrs in 1999 at 9.68/hr; 645.23 hrs in 2000 at 10.66/hr; hrs in 1-1-01/6-30-01 at 11.08/hr; and 69.14 hrs * 7-1-01/present at $4/hr; less wages paid, §24-3-40 deductions, and soc. sec/medicare; plus interest, costs, and atty fees.

* Hours "plus" indicates possible work past latest date in Exh F, June 2004.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Workers have requested WTI/Lieber to pay prevailing wages, and Darrell Williams in 2001 grieved improper wages which was dismissed for want of jurisdiction. In 2002, Williams brought a class action for improper wages. On Aug. 23, 2004, the SC Sup. Court in Adkins and Wicker held the prevailing wage provision was mandatory and workers could file a grievance for back wages.

James Wells 10-18-05
Grievant Signature Date

ACTION TAKEN BY IGC: Sent to CCI
Due to Contents, forwarded to Central Office - to be held pending Judge's decision. S Carrylon 11-21-05

4059

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

Ackerman 5-6-11 3694

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.

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Lieber PI Back Wage Claim Step 1 Reply

Inmate Name	SCDC #	Grievance #
Wells, James	180458	LCI-1726-05

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 18, 2005 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 December 12, 2001 and that your participation in this project ended on February 1, 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

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Inmate Name	SCDC #	Grievance #
Wells, James	180458	LCI-1726-05

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 #
Wells, James	180458	LCI-1726-05

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.

Inmate Name	SCDC #	Grievance #
Wells, James	180458	LCI-1726-05

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 JAMES WELLS, #180458

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; 645.23 hours in 2000 at $10.66 per hour; hours in 1-1-01 to 6-30-01 at $11.08 per hour; and 69.14 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.

James Wells 10-18-05
(Grievant Signature) (Date)

* Attached are Exh. A, 0796; C, 0081, 0086; F, 1394-1395; & 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	TRUMPER,JR. JAMES	247429	C A 60	1	4/16/02	6/26/03
	TUCKER, CLINTON	250034	C B 25	1	4/16/01	8/8/02
	TUCKER, WALKER	155569	M X 0	2	1/6/00	11/9/01
	TURNER, JOEL	247816	C A 29	2	4/24/02	7/29/02
	TUTOR, THOMAS	271189	C A 14	1	2/23/01	5/8/02
	TWITTY, IRVING	270014	C B 23	1	6/12/01	9/7/01
	VARGAS, RICHARD	258788	S B 3	1	1/17/02	2/19/02
	VARN, JAMES	270672	E A 22	2	7/23/01	8/7/01
	VARNER, WALTER	249997	E A 33	1	10/13/00	11/7/00
	VEREEN, KIRK	156086	C B 57	2	10/1/99	7/6/01
MI 2	VEREEN, RODNEY	276373	C A 21	1	2/6/04	2/25/04
MI 2	VEREEN, RODNEY	276373	C A 21	1	7/30/01	5/2/03
MI 2	VEREEN, STEPHEN	278586	C A 26	1	4/5/02	11/10/03
	VERNON, JEROME	218574	C B 11	1	6/27/00	8/16/00
	VICTOR, WILLIAM	197756	A B 51	1	10/11/02	10/14/02
	VINCENT, ROMAN	166965	E B 21	2	7/23/01	8/1/01
	VOTEE, JULIAN	235377	C A 35	2	2/28/00	6/27/00
	WADE, RYAN	268804	C B 31	2	8/30/01	6/19/02
	WAGNER, RICHARD	232518	S A 27	2	10/29/01	2/4/02
MI 3	WALKER, A	259990	C A 0	0		11/8/99
	WALKER, JOHN	267588	C B 60	1	7/21/00	1/26/01
MI 3	WALKER, JOSEPH	162475	C B 31	1	3/17/04	6/14/04
	WALKER, MARKE	235682	C B 48	1	6/13/00	8/18/00
	WALLACE, JERRY	251519	C B 10	1	4/6/00	7/24/01
MI 3	WALLACE, W	196083	C A 0	0		2/12/01
	WARING, ERNEST	276677	S A 30	1	10/16/01	4/19/02
	WASHINGTON, JULIUS	228909	C B 43	1	2/14/00	6/4/02
	WASHINGTON, SAMUEL	153789	M X 0	2	1/4/00	1/30/01
	WASHINGTON, SHAROD	280549	C B 14	2	1/11/02	8/19/02
	WATFORD, RICKY	257422	C 0	1	3/15/00	4/3/00
	WATSON, JOHN	248444	C 0	1	1/4/00	1/20/00
MI 1B	WATSON, MICHAEL	234236	C A 53	1	6/28/00	6/26/03
	WATSON, PAUL	270346	E A 25	1	12/7/00	1/8/01
	WELDON, JOHN	259827	C B 8	1	2/22/00	11/9/99
	WELLS, CHARLES	254954	C B 1	1	4/12/00	8/10/00
	WELLS, JAMES	180458	C A 35	2	12/12/01	2/1/02
	WELLS, LEROY	274255	C A 14	2	7/24/01	10/30/01
	WELLS, MARVIN	255658	C 0	1	1/24/00	3/21/00
	WELLS, RAY	173651	A A 12	1	6/1/01	6/6/01
	WELLS, SAMUEL	259660	C B 34	1	9/9/99	7/7/00
	WELLS, STEVEN	276642	S A 22	2	3/23/02	4/5/02
	WERTS, KIDRICK	277770	S A 15	2	9/14/01	10/2/01
MO 1E	WESSON, EDWARD	233529	C B 49	2	6/6/00	8/29/02
	WESTON, FRANK	261379	C B 33	2	10/20/99	7/10/00
	WHEELER, DARIN	257719	C B 20	1	7/20/00	8/4/00
MI 2	WHEELING, DEMETRIUS	264976	C B 50	1	5/14/04	6/24/04

PLAINTIFF'S EXHIBIT

4066

A - 0796
June 2004

STATE OF SOUTH CAROLINA)

LEASE

COUNTY OF RICHLAND)

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
4067

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
234236	WATSON	MICHAEL		20010910	0.50	128.19	64.09
234236	WATSON	MICHAEL		20010924	0.50	122.23	61.11
234236	WATSON	MICHAEL		20011008	0.50	162.00	81.00
234236	WATSON.	MICHAEL		20011022	0.50	114.70	57.35
234236	WATSON	MICHAEL		20011105	0.50	123.96	61.98
234236	WATSON	MICHAEL		20011119	0.50	118.38	59.19
234236	WATSON	MICHAEL		20011203	0.50	119.25	59.62
234236	WATSON	MICHAEL		20011217	0.50	141.01	70.50
234236	WATSON	MICHAEL		20020114	0.50	87.75	43.87
234236	WATSON	MICHAEL		20020128	0.50	124.79	62.39
234236	WATSON	MICHAEL		20020211	0.50	126.94	63.47
234236	WATSON	MICHAEL		20020225	0.50	131.24	65.62
234236	WATSON	MICHAEL		20020311	0.50	122.86	61.43
234236	WATSON	MICHAEL		20020325	0.50	122.69	61.34
234236	WATSON	MICHAEL		20020408	0.50	104.41	52.20
234236	WATSON	MICHAEL		20020422	0.50	114.50	57.25
234236	WATSON	MICHAEL		20020506	0.50	123.45	61.72
234236	WATSON	MICHAEL		20020520	0.50	126.03	63.01
234236	WATSON	MICHAEL		20020603	0.50	111.21	55.60
234236	WATSON	MICHAEL		20020617	0.50	118.46	59.23
234236	WATSON	MICHAEL		20020701	0.50	111.72	55.86
234236	WATSON	MICHAEL		20020715	0.50	101.03	50.51
234236	WATSON	MICHAEL		20020729	0.50	120.64	60.32
234236	WATSON	MICHAEL		20020812	0.50	115.34	57.67
234236	WATSON	MICHAEL		20020826	0.50	135.84	67.92
234236	WATSON	MICHAEL		20020909	0.50	136.40	68.20
234236	WATSON	MICHAEL		20020923	0.50	198.75	99.37
234236	WATSON	MICHAEL		20021007	0.50	168.42	84.21
234236	WATSON	MICHAEL		20021021	0.50	160.31	80.15
234236	WATSON	MICHAEL		20021104	0.50	128.83	64.41
234236	WATSON	MICHAEL		20021118	0.50	139.29	69.64
234236	WATSON	MICHAEL		20021202	0.50	114.53	57.26
234236	WATSON	MICHAEL		20021216	0.50	173.49	86.74
234236	WATSON	MICHAEL		20021230	0.50	74.65	37.32
234236	WATSON	MICHAEL		20030113	0.50	91.89	45.94
234236	WATSON	MICHAEL		20030127	0.50	118.12	59.06
234236	WATSON	MICHAEL		20030210	0.50	133.25	66.62
234236	WATSON	MICHAEL		20030224	0.50	115.38	57.69
234236	WATSON	MICHAEL		20030310	0.50	110.75	55.37
234236	WATSON	MICHAEL		20030324	0.50	131.26	65.63
234236	WATSON	MICHAEL		20030407	0.50	130.73	65.36
234236	WATSON	MICHAEL		20030421	0.50	118.93	59.46
234236	WATSON	MICHAEL		20030505	0.50	98.24	49.12
234236	WATSON	MICHAEL		20030519	0.50	139.02	69.51
234236	WATSON	MICHAEL		20030602	0.50	113.70	56.85
234236	WATSON	MICHAEL		20030616	0.50	129.96	64.98
234236	WATSON	MICHAEL		20030630	0.50	62.69	31.34
259827	WELDON	JOHN		19991206	0.35	40.67	14.23
259827	WELDON	JOHN		19991220	2.50	2.00	5.00
259827	WELDON	JOHN		19991220	0.35	58.08	20.32
259827	WELDON	JOHN		20000103	0.35	14.80	5.18
259827	WELDON	JOHN		20000117	0.35	62.73	21.95
180458	WELLS	JAMES	D.	20000703	0.35	62.06	21.72
180458	WELLS	JAMES	D.	20000717	0.50	32.89	16.44

PLAINTIFF'S EXHIBIT

4065

A - 1394
June 2004

Ackerman 5-6-11 3704

Inmate #	Last Name	First Name	Middle Name	Pay Date	Pay Rate	Hours	Pay Amount
180458	WELLS	JAMES	D.	20000731	0.50	42.99	21.49
180458	WELLS	JAMES	D.	20000814	0.50	69.12	34.56
180458	WELLS	JAMES	D.	20000828	0.50	61.92	30.96
180458	WELLS	JAMES	D.	20000911	0.50	38.43	19.21
180458	WELLS	JAMES	D.	20000925	0.50	66.72	33.36
180458	WELLS	JAMES	D.	20001009	0.50	66.50	33.25
180458	WELLS	JAMES	D.	20001023	0.50	40.27	20.13
180458	WELLS	JAMES	D.	20001106	0.50	82.28	41.14
180458	WELLS	JAMES	D.	20001120	0.50	65.65	32.82
180458	WELLS	JAMES	D.	20001204	0.50	16.40	8.20
180458	WELLS	JAMES	D.	20020129	0.50	44.09	22.04
180458	WELLS	JAMES	D.	20020211	0.50	25.05	12.52
274255	WELLS	LEROY		20010827	0.50	47.24	23.62
274255	WELLS	LEROY		20010910	0.50	43.05	21.52
274255	WELLS	LEROY		20010924	0.50	42.61	21.30
274255	WELLS	LEROY		20011008	0.50	63.62	31.81
274255	WELLS	LEROY		20011022	0.50	67.50	33.75
274255	WELLS	LEROY		20011105	0.50	52.50	26.25
255658	WELLS	MARVIN		20000131	0.35	26.15	9.15
255658	WELLS	MARVIN		20000214	0.35	67.50	23.62
255658	WELLS	MARVIN		20000228	0.35	57.88	20.25
255658	WELLS	MARVIN		20000313	0.35	45.17	15.80
255658	WELLS	MARVIN		20000327	0.50	41.60	20.80
173651	WELLS	RAY	LEE	20010618	0.50	15.75	7.87
259660	WELLS, JR	SAM		19990927	0.35	54.50	19.07
259660	WELLS, JR	SAM		19990927	0.55	10.75	5.91
259660	WELLS, JR	SAM		19991011	0.50	69.50	34.75
259660	WELLS, JR	SAM		19991011	0.55	5.50	3.02
259660	WELLS, JR	SAM		19991025	0.50	71.50	35.75
259660	WELLS, JR	SAM		19991108	0.50	75.00	37.50
259660	WELLS, JR	SAM		19991122	0.50	67.50	33.75
259660	WELLS, JR	SAM		19991122	0.55	7.50	4.12
259660	WELLS, JR	SAM		19991206	0.50	46.34	23.17
259660	WELLS, JR	SAM		19991206	0.55	5.00	2.75
259660	WELLS, JR	SAM		19991220	2.50	2.00	5.00
259660	WELLS, JR	SAM		19991220	0.50	70.97	35.48
259660	WELLS, JR	SAM		19991220	0.55	7.50	4.12
259660	WELLS, JR	SAM		20000103	0.50	33.92	16.96
259660	WELLS, JR	SAM		20000103	0.55	2.63	1.44
259660	WELLS, JR	SAM		20000117	0.55	7.50	4.12
259660	WELLS, JR	SAM		20000117	0.50	67.50	33.75
259660	WELLS, JR	SAM		20000117	0.55	4.88	2.68
259660	WELLS, JR	SAM		20000131	0.50	64.82	32.41
259660	WELLS, JR	SAM		20000131	0.55	7.50	4.12
259660	WELLS, JR	SAM		20000214	0.50	74.26	37.13
259660	WELLS, JR	SAM		20000214	0.80	6.50	5.20
259660	WELLS, JR	SAM		20000214	0.55	5.50	3.02
259660	WELLS, JR	SAM		20000228	0.50	64.90	32.45
259660	WELLS, JR	SAM		20000228	1.05	15.00	15.75
259660	WELLS, JR	SAM		20000313	0.50	74.06	37.03
259660	WELLS, JR	SAM		20000327	0.50	75.00	37.50
259660	WELLS, JR	SAM		20000410	0.65	67.43	43.82
259660	WELLS, JR	SAM		20000410	0.80	7.50	6.00
259660	WELLS, JR	SAM		20000424	0.75	75.00	56.25

4070

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 DUE: 5/23/07
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: James Wells
SCDC NUMBER: 180458
INSTITUTION: Turbeville
HOUSING UNIT: Selec, B 260
WORK ASSIGNMENT: Warden Area - EHSO

RECEIVED
MAY 29 2007
INMATE GRIEVANCE

Office Use Only
Grievance No. LCI-1776-05
Code: General ✓ (HY)(PE)
Policy
Disc. Hear.
Class.
Date Received 05/22/07
IGC Initials
✓ IGA - ABH 7-13-07

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):
Adkins and Wicker held that 524-3-430'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 524-3-430, 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 files by Darrell Williams and counsel on September 22, 2004.

James Wells 5/20/07
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 Wells 8-8-07
Grievant Signature Date

IGC Signature 8/8/07
Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

Lieber PI Back Wage Claim Step 2 Reply

Inmate Name	SCDC #	Grievance #
Wells, James	180458	LCI-1726-05

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 20, 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 18, 2005.

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 12, 2001 and that your participation in this project ended on February 1, 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.

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Inmate Name	SCDC #	Grievance #
Wells, James	180458	LCI-1726-05

Moreover, you filed your Step 1 grievance nearly four (4) years after SCDC first paid you for your participation in the project located at Lieber, over 3 ½ years after your participation in the project ended, and over one (1) year 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

James Wells, #180458,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

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

James Wells
Appellant's Name

Kershaw C.I.,
Mailing Address

4848 Goldmine Hwy

Kershaw, SC 29067
City, State, Zip Code

none
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)

4077

Ackerman 5-6-11 3712

STATE OF SOUTH CAROLINA	)	IN THE ADMINISTRATIVE LAW COURT
	)	
JAMES WELLS, #180458	)	
	)	
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

4078

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Ray Lee Wells
SCDC NUMBER: 173651
INSTITUTION: Lieber
HOUSING UNIT: Ashley B-05
WORK ASSIGNMENT: N/A

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

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)
The Department is asked to review and determine wheather I am entitled to recieve back wages, which are due me, from working at lieber Prison Industry program from which I was only paid 35¢ an hour and not prevailing wages as stated under South Carolina Code Ann. sec 24-3-430 (A-D). As well as the fact SCDC was getting $4.00 an hour for the time I put in working at Prison Industries denying me my prevailing wages.

ACTION REQUESTED: That all money due me be paid to me at prevailing wages as well as overtime, moreover, the prevailing wages due me be paid to me now.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Law suit was filed, ordered to file grievance by Court under Wicker-vs-SCDC and Adkins-vs-SCDC.

Ray Lee Wells 9-21-2004
Grievant Signature Date

ACTION TAKEN BY IGC:
Inmate Wells: Current Court decision addressing wages does not apply to Lieber Prison Industry Service Program; therefore, this is being returned to you unprocessed.

L Carrington 9/30/04
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)

Exh B 4079

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.

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

Office Use Only
Grievance No. LCI 0882-04
Code: General CLV
Policy
Disc. Hear.
Class.
Date Received 11-01-04
IGC Initials LCI

INMATE NAME: Ray Lee Wells
SCDC NUMBER: 173651
INSTITUTION: Lieber
HOUSING UNIT: Ashley B-05
WORK ASSIGNMENT: Unit

Nov. 1, 04 P.M.

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 from which I was only paid 35¢ an hour and not prevailing wages as stated under South Carolina Code Ann. sec 24-3-430(A-7). Additionally, SCDC was being paid $4.00 an hour for the labor and time I worked for Prison Industries denying me my prevailing wages. This is the second grievance I filed on this matter, the first dated Sept 23, 2004 being non-processed.

ACTION REQUESTED: That all money due to me be paid at prevailing wages, as well as overtime, and this money be paid to me at SCDC's earliest convinient time.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:
Law suit was filed, ordered to file grievance by court under - Wicker-v-SCDC and Adkins-v-SCDC.

Ray Lee Wells 10-29-04
Grievant Signature Date

ACTION TAKEN BY IGC:

SEE WARDEN'S RESPONSE

Ray Ackerman 5-15-07
~~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.

IGA n/a
Grievant Signature Date

SCDC 10-5 (Rev. November 1977)

(CONTINUED ON REVERSE SIDE)

Ackerman 5-6-11 3716

WARDEN'S DECISION AND REASON:

SEE ATTACHED

Warden Signature 5-10-07 Date

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

Grievant Signature 5-22-07 Date

~~IGC~~ IGA Signature 5/15/07 Date

Served by: [signature] 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.

Lieber PI Back Wage Claim Step 1 Reply

Inmate Name	SCDC #	Grievance #
Wells, Ray Lee	173651	LCI-0938-04

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 June 1, 2001 and that your participation in this project ended on June 6, 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

Inmate Name	SCDC #	Grievance #
Wells, Ray Lee	173651	LCI-0938-04

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 #
Wells, Ray Lee	173651	LCI-0938-04

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 #
Wells, Ray Lee	173651	LCI-0938-04

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.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Ray Wells, #173651,

Appellant;

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Ray Wells 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.

Ray Wells
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)

4087

Ackerman 5-6-11 3722

STATE OF SOUTH CAROLINA RAY WELLS, #173651 Grievant/Appellant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent/Appellee.	)	IN THE ADMINISTRATIVE LAW COURT CERTIFICATE OF SERVICE

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

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

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

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

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

Douglas H. Westbrook

4088

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 384

INMATE GRIEVANCE FORM

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

INMATE NAME: listed on attached Exh. A *

SCDC NUMBER: 264976

INSTITUTION: Lieber C Inst

HOUSING UNIT: Cooper B #50 ✓

WORK ASSIGNMENT: PI 2

Office Use Only
Grievance No. Lieber 0747-04
Code: General OMV
Policy
Disc. Hear.
Class.
Date Received SEP 20 2004
IGC Initials TC

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

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

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

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's hav verbally requested WTI/Lieber to pay them prevailing wages, Darrell Williams in 2001 formally protested the improper wages, and filed a grievance which wa dismissed for want of jurisdiction. In 2002, Williams filed a lawsuit (Willi et al. v. SCDC, et al., Case No. 02-CP-18-134, now pending) which was certifi a class action representing the class identified in Exh. A. On August 23, 20 the S.C. Supreme Court held in the Adkins and Wicker cases that 24-3-430's prevailing wage provision was mandatory, and IE's could file a grievance for back wages.

Darrell Williams 9-27-0
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response.

Inmate Released
11-1-04
GA-01.12 Section 19.1

J Carlton 10/28/04
IGC Signature Date

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

N/A
Grievant Signature Date

SCDC 10-5 (Rev. November 1997) 4089

(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 5-23-08

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.

4090

D. Wheeling, #264976 LCI 0747-04

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.

4091

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.

4092

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 2

INMATE NAME: Demetrius Wheeling #264976 (former)
SCDC NUMBER:
INSTITUTION: Lieber (former)
HOUSING UNIT:
WORK ASSIGNMENT:

Office Use Only
Grievance No. LCI 0747-04
Code: General MV
Policy
Disc. Hear.
Class.
Date Received
IGC Initials

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

Adking 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. Thus, the wage rate SCDC paid was not correct and back wages are owed. Overtime pay is also owed if earned under SCDC policy. Darrell Williams' 9-22-04 grievance and the within grievance were both filed individually and on behalf of all inmates, so SCDC should process grievance for all inmates who worked in the program regardless of filing. Inmate also claims entitlement to pre/post judgment interest, costs, and attorney fees. Finally, Exhibits A-H to Mr. Williams' grievance of Sept. 22, 2004 are hereby incorporated by reference.

X [signature] 6-13-05
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

Atty for Brown

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 10-8A (November 1997)

4093

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Demetrius Wheeling, #264976-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 Demetrius Wheeling 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 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.

Demetrius Wheeling
Appellant's Name

Oakhurst Trailer Park
143 Yahro Rd., Lot 20
Mailing Address

Kings Mountain, NC 28086
City, State, Zip Code

(704) 258-0211
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)

4054

Ackerman 5-6-11 3729

STATE OF SOUTH CAROLINA)	IN THE ADMINISTRATIVE LAW COURT
)	
DEMETRIUS WHEELING, #264976)	
)	
Grievant/Appellant,)	
)	
vs.)	CERTIFICATE OF SERVICE
)	
SOUTH CAROLINA DEPARTMENT)	
OF CORRECTIONS,)	
)	
Respondent/Appellee.)	
)	

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

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

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

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

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

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

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

Douglas H. Westbrook

4095

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM
STEP 1

INMATE NAME: Kenneth White
SCDC NUMBER: 228409
INSTITUTION: Lieber Corr I
HOUSING UNIT: Cooper A-11
WORK ASSIGNMENT: NO Job

Office Use Only
Grievance No. Lieber 0613-04
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 detekmine whether I am entitled to Receive back wages due to me from working at Lieber Prison Industry Program when they only paid me, 35¢ ~~AN~~ hour and not Prevailing Wage as Required under South Carolina Code Ann. Sec. 24-3-43 (A-7) as well as fact that from 1998-03 they denied me Prevailing Wage.

ACTION REQUESTED: All money due to me. be paid at Prevailing wage and overtime Rate and Prevailing be paid NOW.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

Lawsuit was filed ordered to file Grievance by Court Wicker V. SCDC, Adkins V. SCDC

Kenneth White 9-23-04
Grievant Signature Date

ACTION TAKEN BY IGC:

Inmate White: 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.

IGC Signature 10/28/04
Date

4096

Grievant Signature Date

Ackerman 5-6-11 3731

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.

Kenneth White 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.

4097

Inmate Kenneth White, #228409 LC10613-04

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.

4058

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.

4099

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

Office Use Only
Grievance No. CCI 0613-04
Code: General INM
Policy
Disc. Hear.
Class.
Date Received NOV 08 2004
IGC Initials

INMATE NAME: Kenneth White
SCDC NUMBER: 098404
INSTITUTION: Lieber
HOUSING UNIT: Cooper A-II
WORK ASSIGNMENT: Dorm Janitor

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

Adkins & Wicker do Require payment of prevailing wages. Grievants were employed by W-I and SCDC was Joint Agent in paying are wages. Adkins & Wicker further allows this Issue of Payment of Wages Under S.C. Code 41-10-30 to be grieved pursuant to SCDC Grievance Procedures. Grievants Incorporate by Reference all exhibits attached to Grievance filed by Darren Williams and Attorney Douglas Westbrook on 9-24-04

Kenneth White 1-2-04
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

SEE ATTACHED

6-19-07
Signature Date

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

Kenneth White 6-22-07
Grievant Signature Date

6/22/07
IGC Signature Date

(SEE REVERSE SIDE FOR INSTRUCTIONS)

SCDC 10-5A (November 1997)

4100 Rec 6/22/07

Ackerman 5-6-11 3735

Lieber PI Back Wage Claim Step 2 Response

Inmate Name	SCDC #	Grievance #
White, Kenneth	228409	LCI-0613-04

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

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that your first voluntary work assignment in the prison industries project at Lieber began on November 9, 1999 and ended March 14, 2000. Additionally, these records reflect that you returned to this project for a second work assignment that began May 10, 2002and ended June 26, 2003 and, finally, that you returned to this project for a third work assignment that began on August 9, 2005 and ended December 28, 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

Ackerman 5-6-11 3736

Inmate Name	SCDC #	Grievance #
White, Kenneth	228409	LCI-0613-04

Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

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

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

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

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

Moreover, you filed your Step 1 grievance nearly five (5) years after SCDC first paid you for the labor you provided to the project located at Lieber during your first work assignment there, over 4 ½ years after your first work assignment in the 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 #
White, Kenneth	228409	LCI-0613-04

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

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

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

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

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

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

I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was $8.40 to $10.97 per hour in 1999, $9.74 to $11.79 per hour in 2000, and $10.10 to $12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr.

Inmate Name	SCDC #	Grievance #
White, Kenneth	228409	LCI-0613-04

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.

Ackerman 5-6-11 3739

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Kenneth White, #228409,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Kenneth White does herel 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.

Kenneth White
Appellant's Name

Lieber C.I.
Mailing Address

P.O. Box 205

Ridgeville, SC 29472
City, State, Zip Code

none
Telephone Number

Signed

11-6-09
Dated

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

(See reverse side for instructions)

4105

Ackerman 5-6-11 3740

STATE OF SOUTH CAROLINA KENNETH WHITE, #228409 Grievant/Appellant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent/Appellee.	)	IN THE ADMINISTRATIVE LAW COURT CERTIFICATE OF SERVICE

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

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

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

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

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

Douglas H. Westbrook

4106

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Re by Williams INMATE GRIEVANCE FORM

in ividually, and on STEP 1
be alf of all inmate employees (IE's)
INMATE NAME: Li ted on attached Exh. A *
SCDC NUMBER: 76486
INSTITUTION: L eber Correctional Inst.
HOUSING UNIT: ooper A40 ✓
WORK ASSIGNMEI T: PI 2

Office Use Only
Grievance No. Lieber0774-04
Code: General RM
Policy
Disc. Hear.
Class.
Date Received
IGC Initials

STATE GRIEVANI E (include documentation, and date of incident; if SCDC Policy, indicate which policy) From 1998 to present, IE's ere/are employed in the Williams Tech/Lieber service work program. From 19 9 to July 2001, WTI/Lieber were required by S.C. Code 24-3-430 to pay IE's th "prevailing wage" for work of a similar nature in the private sector. This revailing wage was $8.40 to $10.97 for 1998, $9.74 to $11.59 fo 2000, and $10.) to $12.06 for 2001 (Exh. G, H). Since July 2001, WTI/Lieber were required o 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 ay IE's, in most cases, under $1.00 per hour. Exhibits documen a $.35 per hou base pay rate, maximum pay of $1.00 per hour, the September 30 1998 WTI/Liebe contract specifying a wage of $4 per hour, the names and emplo ment periods o all 1000 plus class members, and the pay dates, rates, hours, and pay for al class members from 1999 to June 2004 (Exh. D, E, C, A, and F).

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

ACTION REQUES D: That IE's be paid back wages at the prevailing wage rate fo 1999 to July 2 01; and at $4 per hour for July 2001 to present, and in the future; all as etermined from Exhibits A-H; and the time cards, pay stubs, and other records or 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 f~~ ee.

SPECIFY HOW AI) WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT: IE's have verbally reque ted WTI/Lieber to pay them prevailing wages. Darrell Williams in 2001 formal protested the improper wages, and filed a grievance which was dismissed for ant 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. Supre e Court held in the Adkins and Wicker cases that 24-3-430's prevailing wag provision was mandatory, and IE's could fil a grievance for Back wages.

Darrell Williams Jr. 9-27-2004
Grievant Signature Date

ACTION TAKEN B IGC:

See Warden's response.

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

IGC Signature 10/28/04 Date

Grievant Signature Date

SCDC 10-5 (Rev. November 1997)

(CONTINUED ON REVERSE SIDE)

4107

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 6/8/07 Date

IGC Signature 6-8-07 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 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.

4108

Lieber PI Back Wage Claim Step 1 Reply

Inmate Name	SCDC #	Grievance #
Williams, Bobby	261486	LCI-0774-04

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 July 15, 2004 and ended January 25, 2005. Additionally, these records reflect that you returned to this project for a second work assignment that began March 9, 2005 and ended July 11, 2005.

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

4109

Inmate Name	SCDC #	Grievance #
Williams, Bobby	261486	LCI-0774-04

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 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 #
Williams, Bobby	261486	LCI-0774-04

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 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.

Inmate Name	SCDC #	Grievance #
Williams, Bobby	261486	LCI-0774-04

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 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.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION

Bobby Williams, #261486,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

NOTICE OF APPEAL

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

Grievance No. _____

Notice is hereby given that Bobby Williams 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.

Bobby Williams
Appellant's Name

Ridgeland C.I.
Mailing Address

P.O. Box 2039

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

none
Telephone Number

Signed

11-6-11
Dated

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

(See reverse side for instructions)

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Ackerman 5-6-11 3748

STATE OF SOUTH CAROLINA BOBBY WILLIAMS, #261486 Grievant/Appellant, vs. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Respondent/Appellee.	IN THE ADMINISTRATIVE LAW COURT CERTIFICATE OF SERVICE

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

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

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

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

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

Douglas H. Westbrook

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