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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James Randall Davis, Special Master/Referee

Opinion No. 2016-5402 (S.C. Ct. App. Filed May 4, 2016)

Palmetto Mortuary Transport, Inc.,..... Petitioner,

v.

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

APPENDIX VOLUME I

John J. Pringle, Jr., SC Bar No. 11208
Lyndey Ritz Zwingelberg, SC Bar No. 100804
Adams and Reese LLP
1501 Main Street, Fifth Floor
Post Office Box 2285 (29202)
Columbia, South Carolina 29201
(803) 254-4190

ATTORNEYS FOR PETITIONER

Other Counsel of Record:

Reginald I. Lloyd
The Lloyd Law Firm, LLC
Post Office 1555
Camden, South Carolina 29021
(803) 432-0004

ATTORNEYS FOR RESPONDENTS

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The South Carolina Court of Appeals

Palmetto Mortuary Transport, Inc., Respondent,

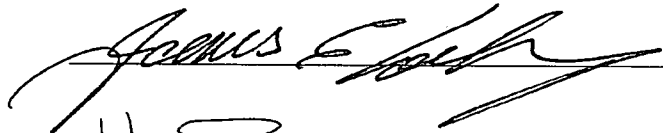
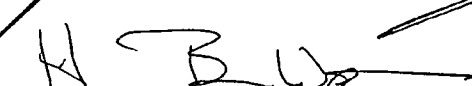
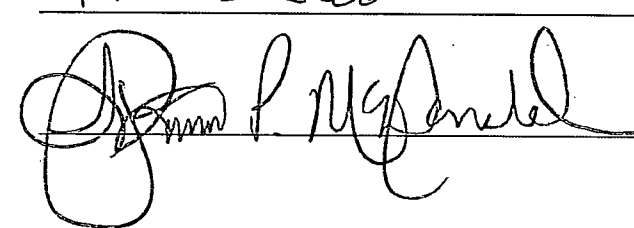
v.

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

Appellate Case No. 2014-001819

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C. J.
 J.
 J.

Columbia, South Carolina

cc:

Reginald I. Lloyd, Esquire
John Julius Pringle, Jr., Esquire
Christopher Todd Hagins, Esquire
Lyndey Ritz Zwingelberg, Esquire
James Randall Davis, Esquire

FILED

June 23, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Palmetto Mortuary Transport, Inc., Respondent,

v.

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

Appellate Case No. 2014-001819

Appeal From Lexington County
James Randall Davis, Special Referee

Opinion No. 5402
Heard February 10, 2016 – Filed May 4, 2016

REVERSED AND REMANDED

Reginald I. Lloyd, of Lloyd Law Firm, LLC; of Camden,
and Christopher Todd Hagins, of The Hagins Law Firm,
LLC, of Columbia, for Appellants.

John Julius Pringle, Jr. and Lyndey Ritz Zwingelberg,
both of Adams and Reese LLP, of Columbia, for
Respondent.

WILLIAMS, J.: Knight Systems, Inc. (Knight Systems) and Robert L. "Buddy" Knight (collectively "Appellants") appeal the special referee's order ruling in favor of Palmetto Mortuary Transport, Inc. (Palmetto). Appellants argue the special referee erred in failing to find (1) the geographic restriction in the parties' covenant not to compete (the Covenant) is unreasonable and void, (2) the Covenant's

territorial restriction is unsupported by independent and valuable consideration, (3) the Covenant is void as a matter of public policy, and (4) the Covenant became void after any breach by Palmetto. We reverse and remand.

FACTS/PROCEDURAL HISTORY

Knight Systems, owned and operated by Buddy, engaged primarily in the mortuary transport business until 2007. On January 5, 2007, Knight Systems entered into an asset purchase agreement (the Agreement) with Palmetto, a business owned by Donald and Ellen Lintal. Pursuant to the Agreement, Knight Systems sold various tangible assets, goodwill, and customer accounts—including body removal service contracts with Richland County, Lexington County, and the University of South Carolina—to Palmetto in exchange for a purchase price of \$590,000. The Agreement also contained an exclusive sales provision that obligated Palmetto to purchase body bags at specified discounted prices from Knight Systems for ten years. The provision listed four types of body bags: heavy duty, lightweight, odor-proof, and water retrieval.

In addition to the Agreement, Palmetto executed the Covenant with Appellants. In consideration of \$1,000, Appellants agreed not to provide mortuary transport services within 150 miles of their business—located in Lexington County—for ten years following the closing date of the sale.

The subject of dispute in the instant litigation began in June 2011, when Richland County issued a request for proposal (RFP) seeking mortuary transport services from a provider for a period of five years. At that time, Palmetto still held the services contract with Richland County as a result of the Agreement. Palmetto timely submitted a response to the RFP.

On June 16, 2011, one day before responses to the RFP were due, Buddy recorded a telephone conversation he had with Donald Lintal. In that conversation, Buddy accused Palmetto of breaching the Agreement by buying infant body bags from other manufacturers in 2008. Donald relayed that he did not believe these purchases were significant and he was "not trying to get around" the Agreement. Donald claimed the amount of bags Palmetto purchased from sources other than Knight Systems only totaled \$884.97. This amount included thirty-one infant body bags at \$192.75, four extra-large body bags at \$213.72, six heavy duty body bags at \$208.50, and six water retrieval body bags at \$270.

Donald, however, asserted that because infant and extra-large body bags were not the type of bags Palmetto was required to purchase from Knight Systems pursuant to the Agreement, the total amount Palmetto paid for body bags falling within the exclusive sales provision was \$478.50. In comparison, from January 2007 to June 2011, Palmetto purchased more than \$45,000 worth of body bags from Knight Systems under the Agreement. Therefore, Donald contended the sales that allegedly violated the Agreement constituted less than 1% of Palmetto's overall purchases from Knight Systems.

After this telephone conversation, Buddy consulted with his attorney and submitted a response to the RFP on June 17, 2011. Buddy stated he felt Knight Systems would be "left out in the cold" by Palmetto's alleged breach of contract. After the RFP deadline passed, Buddy contacted an official at the Richland County Procurement Office, seeking a determination that Knight Systems be awarded the mortuary transport services contract because it was the only provider of odor-proof body bags required by the RFP. Buddy also informed the official that Knight Systems would be taking all of its odor-proof body bags off the market. Although Palmetto asserted its response to the RFP contained the lowest price for services and had the highest total of points from the Richland County Procurement Office, Richland County awarded Knight Systems the mortuary transport services contract for a five-year term.

On October 26, 2011, Palmetto filed a complaint against Appellants. On June 6, 2013, Palmetto amended its complaint and included causes of action for breach of contract, breach of contract accompanied by a fraudulent act, and intentional interference with prospective contractual relations. Palmetto alleged Appellants breached the Covenant by providing mortuary transport services within the restricted 150-mile radius of Lexington County. Palmetto also claimed Buddy intentionally made false representations to Richland County that Knight Systems had the exclusive ability to supply odor-proof body bags—as required by the RFP—because Knight Systems was obligated under the Agreement to sell the odor-proof bags to Palmetto.

Appellants answered and counterclaimed for breach of contract on July 2, 2013. According to Appellants, Palmetto first breached the Agreement by purchasing body bags from another source in violation of the exclusive sales provision. Appellants also contended the Covenant was unenforceable because it was not

supported by adequate consideration and contained unreasonable restrictions in duration and geographic scope.

By consent order, the case was referred to a court-appointed special referee and tried on December 18, 2013. In an order issued on July 22, 2014, the special referee ruled in favor of Palmetto. The special referee found the Covenant was supported by valuable consideration and reasonably limited in time and geographic scope. Further, the special referee held Appellants breached the Agreement by refusing to make the odor-proof bags available for purchase and violated the Covenant by submitting a response to the Richland County RFP. Lastly, the special referee found Palmetto's purchase of body bags from other manufacturers did not constitute a material breach of the Agreement that excused Appellants' performance of their contractual duties.

In light of his rulings, the special referee ordered Appellants to pay attorney's fees and damages of \$373,264.54 in lost profits resulting from their wrongful competition with Palmetto. The special referee also ordered Palmetto to pay damages of \$478.50 to Appellants for purchasing body bags in violation of the exclusive sales provision. Finally, the special referee issued a permanent injunction against Appellants, requiring them to comply with the terms of the Covenant for a term of five years and seven months following the date of his order, with the exception of their performance of the services contract with Richland County. This appeal followed.

STANDARD OF REVIEW

"When legal and equitable actions are maintained in one suit, this court is presented with a divided scope of review, and each action retains its own identity as legal or equitable for purposes of review on appeal." *Wright v. Craft*, 372 S.C. 1, 17, 640 S.E.2d 486, 495 (Ct. App. 2006).

"A breach of contract action is an action at law." *Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464, 688 S.E.2d 597, 599 (Ct. App. 2010). "[W]hen reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law, and the appellate court will not disturb the [special referee]'s findings of fact as long as they are reasonably supported by the evidence." *Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc.*, 405 S.C. 643, 649, 748 S.E.2d 801, 804 (Ct. App. 2013) (alterations in original)

(quoting *Mazloom v. Mazloom*, 382 S.C. 307, 316, 675 S.E.2d 746, 751 (Ct. App. 2009)). "[T]he interpretation of an unambiguous contract is a question of law, as is the question of whether a non-competition clause is reasonable." *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 12, 738 S.E.2d 480, 486 (Ct. App. 2013).

Actions for injunctive relief sound in equity. *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). "In equitable actions, an appellate court may review the record and make findings of fact in accordance with its own view of the preponderance of the evidence." *Id.*

LAW/ANALYSIS

I. Geographic Scope

Appellants contend the special referee erred in finding the Covenant's territorial restriction of a 150-mile radius was reasonable and enforceable. We agree.

In South Carolina, our courts will generally uphold and enforce a covenant not to compete arising out of the sale of a business if it is (1) reasonably limited as to time and territory, (2) supported by valuable consideration, and (3) not detrimental to the public interest. *S.C. Fin. Corp. of Anderson v. West Side Fin. Co.*, 236 S.C. 109, 119, 113 S.E.2d 329, 334 (1960).

This court will uphold a geographic restriction in a covenant not to compete ancillary to the sale of a business if it is "reasonably restricted as to the place of territory" and is no "more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Metts v. Wenberg*, 158 S.C. 411, 415, 155 S.E. 734, 735 (1930). To determine whether a territorial restriction in a covenant not to compete is reasonable, the court must examine (1) the whole subject matter of the contract, (2) the kind and character of the business, (3) its location, (4) the purpose to be accomplished by the restriction, and (5) all circumstances showing the intentions of the parties in making the contract. *Reeves v. Sargeant*, 200 S.C. 494, 501, 21 S.E.2d 184, 188 (1942). Therefore, we must naturally decide each case on its own facts. *Id.* at 502, 21 S.E.2d at 188. South Carolina does not follow the "blue pencil" rule and, thus, "restrictions in a non-compete clause cannot be rewritten by a court or limited by the parties' agreement, but must stand or fall on their own terms." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 588, 694 S.E.2d 15, 18 (2010).

Our supreme court previously addressed the validity of a similar territorial restriction in *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958). In *Somerset*, a silversmith in the retail business of selling silver, china, crystal, and jewelry sold his shop located in the Five Points area of Columbia, South Carolina, to a local competitor. 233 S.C. at 327–28, 104 S.E.2d at 345–46. As part of the sale, the seller covenanted not to engage in the business of selling silverware or jewelry in South Carolina for twenty years. *Id.* at 328, 104 S.E.2d at 346. Following the sale, the purchaser briefly employed the seller as manager of the shop but soon terminated his employment after about three months. *Id.* at 329, 104 S.E.2d at 346. The seller subsequently brought a declaratory judgment action, seeking a determination that, among other things, the geographic restriction was unreasonable and the covenant was void. *Id.* at 326, 104 S.E.2d at 345. The circuit court granted declaratory judgment, concluding the restriction was unreasonable and, thus, the covenant was void as against public policy. *Id.*

On appeal, our supreme court affirmed, finding no rational basis for the extent of the statewide restriction. *Id.* at 330, 104 S.E.2d at 347. The court noted the shop was a relatively small retail store, with its sales coming almost entirely from the greater Columbia area. *Id.* at 330, 104 S.E.2d at 346. Indeed, Columbia sales accounted for 95% of its revenue prior to the sale. *Id.* at 328, 104 S.E.2d at 345. Therefore, the court found that, to protect the purchaser's interest in the shop, it was not necessary to prohibit the seller from engaging in similar business in "Charleston, Spartanburg, Greenville[,] or numerous other cities in South Carolina." *Id.* at 330, 104 S.E.2d at 346. The court also rejected the purchaser's argument that the seller was estopped from attacking the validity of the covenant because the seller, who indicated he had no intention of going back into the business, told the purchaser during negotiations that he could make the restriction for the entire state. *Id.* at 330–31, 104 S.E.2d at 347. Likewise, the court declined to apply the "blue pencil" doctrine to redraw the scope of the restriction to make it reasonable because the covenant was "clearly indivisible" and "furnishe[d] no basis for dividing this territory." *Id.* at 332, 104 S.E.2d at 348.

Turning to the instant case, the special referee found the 150-mile restriction was reasonable based upon two pieces of testimony. First, the special referee noted Donald testified he wished to keep open the option of expanding Palmetto's business throughout other counties in South Carolina. The record, however, indicated Knight Systems—a small business located in Lexington County at the

time of the sale—only engaged in the mortuary transport business in Richland and Lexington counties prior to the sale to Palmetto. In fact, at the time of Palmetto's purchase, Knight Systems only had services contracts with Richland County, Lexington County, and the University of South Carolina in Columbia. We do not believe Palmetto's tentative desire to expand its business throughout the state—without more evidence of definitive planning, acquisitions, or other overt acts—supports a finding that the restriction is reasonable.

Second, the special referee relied upon Buddy's testimony that he did not intend to get back into the mortuary transport business after the sale to Palmetto. As suggested in *Somerset*, we do not believe Appellants' intention of not returning to the mortuary transport business is a relevant factor for analyzing whether a territorial restriction is reasonable. We also note Donald testified that Palmetto included the 150-mile restriction in the Covenant. Although Knight Systems, with the assistance of counsel, agreed to the territorial restriction in the Covenant, we believe no rational basis exists for enforcing a territorial restriction covering the entire state and parts of neighboring states that prohibits Appellants from engaging in the mortuary transport business. In our view, the 150-mile restriction was overly broad and did not protect the rights and interests of Palmetto in a reasonable manner. *See Metts*, 158 S.C. at 415, 155 S.E. at 735 (holding a territorial restriction must not be "more enlarged than essential for a reasonable protection of the rights of the purchasing party"). Accordingly, contrary to the special referee, we find the geographic restriction in the covenant is unreasonable and, therefore, is unenforceable.

Further, although the Covenant's enforceability clause invites us to "blue pencil" the territorial restriction to one we find reasonable if the 150-mile restriction is deemed unenforceable, our longstanding precedent provides this court cannot modify the restriction. *See, e.g., Poynter Invs.*, 387 S.C. at 588, 694 S.E.2d at 18 (holding that "restrictions in a non-compete clause cannot be rewritten by a court or limited by the parties' agreement, but must stand or fall on their own terms"). In *Team IA, Inc. v. Lucas*, this court held that, while a nationwide territorial restriction in an employment non-compete agreement was overly broad and unreasonable, a smaller alternative restriction—or "step-down provision"—agreed to by the parties and contained in the contract could be valid and enforced by a court. 395 S.C. 237, 246, 717 S.E.2d 103, 107 (Ct. App. 2011). In the instant case, however, the Covenant contains no step-down provision. Thus, we find it would be impermissible for this court to redraw a smaller territorial restriction

because doing so would amount to rewriting the Covenant to add an arbitrary term upon which the parties did not negotiate or agree. *See Lowcountry Open Land Tr. v. Charleston S. Univ.*, 376 S.C. 399, 410, 656 S.E.2d 775, 781 (Ct. App. 2008) ("Courts only have the authority to specifically enforce contracts that the parties themselves have made; they do not have the authority to alter contracts or make new contracts for the parties.").

II. Remaining Issues

In light of our finding that the Covenant's territorial restriction is unreasonable and void, we decline to address the remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

CONCLUSION

Based on the foregoing, we hold the Covenant's 150-mile territorial restriction is unreasonable and unenforceable. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

LOCKEMY and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James Randall Davis, Special Master/Referee

Appellate Case No. 2014-001819

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SC Court of Appeals

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

v.

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

RESPONDENT'S PETITION FOR REHEARING

Pursuant to Rules 221(a) and 240 of the *South Carolina Rules of Appellate Procedure*, Respondent Palmetto Mortuary Transport, Inc. ("Respondent") respectfully files this Petition for Rehearing of the Court's decision filed May 4, 2016 (Op. No. 5402) (the "Opinion"). For the reasons stated herein, no public policy of the State of South Carolina supports the Court's conclusion that a sophisticated business and its owner ("Appellants") could

1. advertise and actively pursue the sale of their mortuary transport business, including three five-year cycle contracts for services (R. p. 268, lines 2-9; p. 268, lines 17-24; p. 269, lines 3-13);
2. negotiate a complex asset purchase agreement ("Agreement") (including a covenant not to compete) while represented by an attorney and financial advisors

(R. p. 239, line 11 – p. 240, line 15; p. 244, line 4 – p. 245, line 14; p. 302, lines 5-9; p. 349, line 20 – p. 353, line 19);

3. bargain for the ability to retain their body bag manufacturing business and continue use of their business' trade name (R. pp. 372-407);
4. negotiate a requirement that the purchaser of their mortuary transport business ("Respondent") purchase body bags exclusively from Appellants in order to sustain Appellants' ongoing manufacturing business (R. p. 375 at § 3.4.8);
5. receive \$590,000.00 from the above-referenced transaction (R. p. 372-407); and later
6. bid on (and win) one of the five-year cycle mortuary transport contracts transferred to Respondent as a part of the Agreement by breaching its agreement to sell body bags to Respondent (R. p. 394 at Exhibit 3.2.6; p. 344, line 22 – p. 345, line 11; R. p. 166, line 6 – p. 168, line 13; p. 241, lines 14-24; p. 346, line 14 – p. 347, line 25), and
7. actively seek to regain the two other five-year cycle contracts transferred to Respondent as a part of the Agreement (R. p. 355, lines 19-21).

See Reeves v. Sargeant, 200 S.C. 494, 21 S.E.2d 184 (1942) ("Certainly it is not going too far to say that there can be no sound public policy which operates to give countenance to the open disregard and violation of personal contracts entered into in good faith and upon valid consideration.").

STANDARD OF REVIEW

Rule 221(a), SCACR, authorizes a party who believes the Court overlooked or misapprehended points of law and/or fact to petition for rehearing. *Arnold v. Carolina*

Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933). A properly drawn petition for rehearing must state "the points supposed to have been overlooked or misapprehended by the court." *See Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 564 S.E.2d 322 (2001). "The purpose of such a petition is to aid the court in deciding correctly a case heard by it." *Arnold*, 168 S.C. 163, 167 S.E. at 238.

ARGUMENTS

I. THIS COURT MISAPPLIED APPLICABLE LAW AND OVERLOOKED EVIDENCE IN THE RECORD DEMONSTRATING THE COVENANT NOT TO COMPETE ("COVENANT") WAS REASONABLE.

In South Carolina, the presumption is that covenants not to compete arising out of the sale of a business "will, in conformity with the just and equitable principles of the common law, be generally upheld and enforced." *Metts v. Weinberg*, 158 S.C. 411, 155 S.E. 734 (1930). This is consistent with the state's deep and robust public policy of enforcing private contractual agreements. See *American Bankers Life Assur. Co. of Florida v. Frederick*, 315 S.C. 97, 101, 431 S.E.2d 636, 639 (Ct. App. 1993) ("The duty of this Court is limited to the interpretation of the contract made by the parties, regardless of its wisdom or folly, apparent unreasonableness, or failure of the parties to guard their rights carefully.").¹

Our appellate courts have routinely recognized the fundamental right of private parties to contract as they choose, by upholding the validity of contractual provisions limiting one party's liability to another, see e.g., *Huckaby v. Confederate Motor Speedway, Inc.*, 276 S.C. 629, 281 S.E.2d 223 (1981), and selecting a forum for dispute resolution, see, e.g., *Minorplanet Sys. USA Limited v. American Aire, Inc.*, 368 S.C. 146, 628 S.E.2d 43 (2006).² These types of private contractual provisions have as equally

¹ As set forth herein, Respondent does not suggest that the Agreement is any way "unreasonable" to Appellants. In fact, as the record demonstrates, Appellants undoubtedly "guarded their rights carefully" throughout.

² See also *Calhoun v. WHA Medical Clinic, PLLC*, 632 S.E.2d 563 (N.C. App. 2006): "Since the right of private contract is no small part of the liberty of the citizen, the usual and most important function of courts is to enforce and maintain contracts rather than to enable parties to escape their obligations." *Id.* at 573 (citation omitted).

strong public policy considerations as do those involved in the enforcement of a covenant not to compete, including the Covenant presently before this Court.

In order to be enforceable, a non-compete agreement must be “(1) supported by a valuable consideration, (2) . . . reasonably limited as to time, and (3) . . . reasonably restricted as to the place of the territory.” *Somerset v. Reyner*, 233 S.C. 324, 329 104 S.E.2d 344, 346 (1958) (citations omitted). “Of course in all cases it is essential that the restrictive covenant be incidental to another lawful contract of sale involving some interest requiring the protection of the restraint.” *Reeves*, 200 S.C. 494, 21 S.E.2d at 188.

“[T]he restraint must be reasonable, not oppressive, or out of proportion to the benefits which the vendee may in reason expect to follow from the restrictive features of the contract, and not injurious to the interests of the public.” *Reeves*, 200 S.C. 494, 21 S.E.2d at 187 (citations omitted). Each case is necessarily decided on its own facts and circumstances. *Id.* at 501, 21 S.E.2d at 188. Case law requires the Court to examine several factors, including (1) the whole subject matter of the contract, (2) the kind and character of the business, (3) location, (4) the purpose to be accomplished by the restriction, and (5) all circumstances which show the intentions of the parties and which must have entered into the making of the contract. *Id.*

In this case, the Court misapprehended applicable law and erred in its application of the facts by solely relying upon *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344

(1958), and failing to apply all of the considerations compelled by *Reeves*. Through these shortcomings, the Court unwittingly contravened public policy by reversing the lower court’s order enforcing the parties’ private contract (R. pp. 372-407) (the “Agreement”), including the Covenant (*id.* at p. 394 at Exhibit 3.2.6).

Rather than upholding the intentions of the parties at the time of contracting, the Court applied a rigid public policy analysis that fails to consider the specific aspects of this particular business transaction between sophisticated parties and the actions of the parties to the Agreement. “[T]he use of public policy to void written contracts is dangerous because public policy is often a two-edged sword.” *Westvaco Corp. v. United Paperworkers Intern. Union, AFL-CIO ex rel. Local Union 676*, 171 F.3d 971 (4th Cir. 1999). In doing so, the Court rewarded a wrongdoer, providing a windfall to a bad actor, and created precedent which hurts business interests in this State.

A. Application of the factors in *Reeves* to evidence in the record leads to a compelling conclusion that the Covenant is reasonable and enforceable.

Reeves v. Sargeant, 200 S.C. 494, 21 S.E.2d 184, requires the Court to examine several factors, including (1) the whole subject matter of the contract, (2) the kind and character of the business, (3) location, (4) the purpose to be accomplished by the restriction, and (5) all circumstances which show the intentions of the parties and which must have entered into the making of the contract. *Id.* at 494, 21 S.E.2d at 188. The Court failed to consider all five factors in this case, narrowly focusing on the existing location of the business at the time of contracting. *See* Opinion.

As stated in *Metts v. Weinberg*, 158 S.C. 411, 155 S.E. 734 (1930), “[a] geographic restriction in a covenant not to compete ancillary to the sale of a business” should be upheld so long as “it is ‘reasonably restricted as to the place of territory’ and is no ‘more enlarged than essential for a reasonable protection of the rights of the purchasing party.’” *Id.* at 415, 155 S.E. at 735. Undisputedly, the location of the business at the time of execution of the non-compete agreement is one factor to consider;

however, it is not the only one. *Reeves* at 494, 21 S.E.2d at 188 (listing “location” as one of five factors to be applied). This Court erred in narrowly limiting its review of the Covenant to the existing location of Appellants’ business at the time of contracting as the other four factors support enforcement of the Covenant.

The “whole subject matter” of the parties’ Agreement (R. pp. 372-407) supports enforcement of the Covenant. The restriction on Appellants’ future ability to provide mortuary transport services arose in connection with the sale of Appellants’ business to Respondent for a purchase price of \$590,000.00. (R. pp. 372-407; R. p. 128, lines 8-12.) Thus, this is not a case of a non-compete agreement arising within the scope of an employment relationship and the more rigorous standard in evaluating the reasonableness of covenants not to compete contained in the employment context is not applicable. *See Hagemeyer North America, Inc. v. Thompson*, 2:05-3425, 2006 WL 516733, *4 (D.S.C. Mar. 1, 2006) (“As a general rule, such covenants are given greater deference in the context of a sale of business than in the employment context.”) (citation omitted); *American Hot Rod Ass’n, Inc. v. Carrier*, 500 F.2d 1269, 1277 (4th Cir. 1974) (holding “restrictive covenants not to compete in employment contracts ... are scrutinized more rigorously than similar covenants incident to a sale of business”).

In exchange for the Covenant, Appellants not only received a generous payment of money from Respondent, but the right to continue to operate their existing body bag manufacturing business without any limitation whatsoever. Appellants specifically negotiated an exclusivity provision compelling a ten-year commitment from Respondent to purchase body bags from Appellants for use in conjunction with Respondent’s transport business. (R. p. 375 at § 3.4.8) (“Exclusivity Provision”). It was reasonably

foreseeable to Appellants at the time of contracting that Respondent would be required to purchase a substantial portion of its body bags from Appellants given Appellants' years of prior experience in the business.

The Exclusivity Provision guaranteed sizable future profits to Appellants and their continued manufacturing enterprise. In fact, Respondent paid Appellants more than \$45,000.00 for body bags between the time of the contracting, in January 2007, and initiation of the subject litigation, in October 2011. (R. p. 160, lines 10-20; pp. 408-448.) The ten-year period of the parties' Exclusivity Provision was not coincidental; it paralleled language in the corresponding Covenant. (R. p. 394 at Exhibit 3.2.6.) As such, while the Agreement placed limitations on Appellants' ability to perform mortuary transport services for a period of ten years, the same contract allowed, and moreover enhanced, Appellants' ancillary body bag manufacturing business during the exact time period of time.

The kind and character of the parties' business interests including the potential for future expansion of Respondent's business location further supports enforcement of the Covenant. The Court unreasonably focused on the location of Appellants' existing business at the time of the sale—characterizing the purchased business as “a small business located in Lexington County at the time of sale” and “only engaged in the mortuary transport business in Richland and Lexington counties.” *See* Opinion. The

Court refused to give weight to Respondent's “desire to expand its business throughout the state,” requiring Respondent to submit “more evidence of definitive planning, acquisitions, or other overt acts” in support of its *Id.* In so ruling, the Court unfairly created a new standard for enforcement of non-compete agreements in this State,

compelling purchasers of businesses to take active or overt steps toward expanding the business prior to purchase, in order to justify a territorial non-compete area beyond the existing customer base. There are no South Carolina case decisions supporting such an expanded test.

Moreover, the Court failed to acknowledge that evidence of Respondent's active or overt steps to expand actually exists in the Record. Appellant Knight confirmed that he provided Respondent with the "contact names of funeral homes that I did business for." (R. p. 304, lines.13-15.) This evidence, combined with Don Lintal's testimony of Respondent's intention to expand the mortuary transport business throughout the state (R. p. 208, line 12 – p. 209, line 13; p. 209, line 25 – p. 210, line 10), justified a larger territorial restriction in this case.³

Moreover, Appellant Knight stated a clear intention to get out of the mortuary transport business (R. p. 308, lines 7-8), rendering the Covenant reasonable. This Court's Opinion states "[a]s suggested in *Somerset*, we do not believe Appellants' intention of not returning to the mortuary transport business is a relevant factor for analyzing whether a territorial restriction is reasonable." However, as *Reeves* makes clear, such an intention must be reviewed under the applicable factors, including the "purpose to be accomplished by the restriction." *Id.* at 494, 21 S.E.2d at 188. The combined evidence of Respondent's intention to expand Appellants' prior mortuary transport business throughout the state

and Appellant Knight's intention to get out of the mortuary transport business, supports enforcement of the Non-Compete Agreement. Knight's admission that he read and understood the Exclusivity Provision and Covenant and did not object to either provision

³ In fact, evidence in the record shows Respondent has added customers that Appellants did not serve and that Respondent does business outside the area encompassed by the contracts purchased from Appellants. (R. p. 551, line 16 – p. 552, line 10.).

before signing reflects his willingness to be bound by the provisions' terms. (R. p. 353, line 16 – p. 354, line 13; p. 349, lines 9-19.)

The intentions of the parties at the time of entering into the Agreement were clear: Appellants intended to cede their mortuary transport service business to Respondents for a sizable profit (\$590,000.00) and a guaranteed future revenue stream—their body bag business—spurred by Respondent's promise to purchase certain body bags solely from Appellants. This exchange assured Appellants a substantial future revenue stream which justified the limitations on Appellants' ability to provide mortuary transport services in the State. In return, Respondent received assurance that Appellants would not compete for ten years and obtained a ten-year fixed price for the purchase of certain body bags, enabling Respondent to predict future costs in light of anticipated statewide business growth. The symbiotic relationship between the Covenant and the Exclusivity Provision could not be more clear.

For these reasons, the subject case is not similar to those where concerns regarding a person's future livelihood override private contractual arrangements. *See, e.g., Milliken & Co. v. Morin*, 399 S.C. 23, 731 S.E.2d 288 (2012) (stating a non-compete agreement should be “no greater than necessary to protect the employer's legitimate interests” and “not unduly harsh in that it curtails the employee's ability to earn a living”). The Covenant, in light of the Exclusivity Provision, should have been enforced

because it protected both parties' legitimate business interests and did not curtail Appellants' ability to earn a living. In fact, enforcement of both the Covenant and Exclusivity Provision would have financially benefitted both parties. Accordingly, this

Court should reconsider the purported public policy considerations on which its Opinion is based in light of the facts of this case, and conclude the Opinion was in error.

B. A comparison of the facts in this case with those in *Somerset* reveals that the result in *Somerset* is not dispositive here.

The facts of this case demonstrate the reasonableness of the Covenant. The Court's narrow focus and short-sighted application of the facts in *Somerset*, without reflecting upon other considerations from *Reeves*, reflects the Court's misunderstanding of the facts and misapplication of the law.

Here, the Agreement executed by the parties involved a complicated transaction between sophisticated business entities, both represented by competent counsel and financial advisors. (R. p. 239, line 11 – p. 240, line 15; p. 244, line 4 – p. 245, line 14; p. 302, lines 5-9; p. 349, line 20 – p. 353, line 19.) The transaction occurred after months of Appellants' intentional advertising of the mortuary transport business, solicitations of sophisticated business purchasers, and negotiations between the parties directly and, later, between their legal representatives. (*Id.*; see also R. p. 260, lines 9-12; p. 268, lines 2-9; p. 268, lines 17-24; p. 269, lines 3-13.)

In particular, and unlike the plaintiff in *Somerset*, 233 S.C. at 329, 104 S.E.2d at 346, both Respondent and Appellants were represented by attorneys in the negotiation and drafting of the Agreement, including specifically the Covenant. (*See id.*)

Appellants' attorney was present at the closing that took place on January 5, 2007. (R. p. 268, lines 13-16, p. 306, lines 4-20; p. 354, lines 1-13.) Appellants also received advice from their accountant at the closing with respect to financial implications of executing the Agreement and Covenant. (R. p. 266, line 20 – p. 267, line 2; p. 305, lines 6-15.) These

circumstances are substantially different from *Somerset*, in which (1) the plaintiff was never represented by counsel, (2) the defendant was at all times represented by counsel, and (3) the defendant's counsel drafted all the transaction documents. *Id.*, 233 S.C. at 329, 104 S.E.2d at 346.

Moreover, as the Court's Opinion notes, in *Somerset*, "[f]ollowing the sale[,] the purchaser briefly employed the seller as the manager of the shop but soon terminated his employment after about three months." *See* Opinion (citing *Somerset* at 233 S.C. at 329, 104 S.E.2d at 346). The fact that the plaintiff was purportedly promised an ongoing employment relationship with the defendant but was fired shortly after the transaction sets quite a different tone than the facts of the subject case. Such action in *Somerset* reveals the defendant's bad faith which was particularly harsh in light of the twenty-year non-compete agreement signed by the plaintiff in that case. *Id.* at 328, 104 S.E.2d at 346. No such facts exist here.

In this case, the Agreement provided specifically that Appellants were allowed to keep their existing body bag business and the Exclusivity Provision guaranteed Appellants a revenue stream from Respondent for a period of ten years. (R. pp. 372-407; p. 375 at § 3.4.8.) As evidence in the Record shows, Respondent not only paid Appellants \$590,000.00 for Appellants' mortuary transport business, but also Respondent provided Appellants at least \$45,000.00 from its purchases of body bags within a period of less than five years following the parties' execution of the Agreement. (R. p. 160, lines 10-20; pp. 408-448.)

The Court's narrow reliance on *Somerset* to overturn enforcement of the parties' Covenant was error and should be reconsidered.

II. THE COURT FAILED TO CONSIDER THAT APPELLANTS' BREACH OF THE EXCLUSIVITY PROVISION OF THE AGREEMENT PROVIDES SEPARATE AND INDEPENDENT GROUNDS FOR AFFIRMING THE SPECIAL REFEREE.

The Court only disposed of one issue on appeal, enforcement of the Covenant. *See* Opinion. After concluding the Covenant was invalid because of an unreasonable territorial restriction, the Court "decline[d] to address the remaining issues on appeal." *Id.* In doing so, the Court refused to consider Respondent's argument that even if the non-compete agreement was invalid, Appellants are liable for their separate and independent violation of the Exclusivity Provision which required Appellants to make certain body bags available to Respondent for purchase for a period of ten years. (R. p. 375 at § 3.4.8.)

The Court ignored evidence that in 2011, in conjunction with their submission of a competing bid for mortuary transport services to Richland County, Appellants informed the Richland County procurement office that they were "withdrawing odor proof body bags from the market." (R. p. 166, line 6 – p. 168, line 13; p. 241, lines 14-24; p. 346, line 14 – p. 347, line 25.) Appellants' affirmative statement that it was a sole provider of odor proof body bags, and intended consequence of knocking Respondent out of the bid, was in direct violation of Appellants' contractual obligation to provide odor proof body bags to Respondent for a period of ten years. (R. p. 375 at § 3.4.8; p. 241, lines 2.5.)

Even if Appellants were permitted to compete against Respondent, i.e., if Covenant were not enforceable, and are therefore not liable for submitting a competing bid for mortuary transport services, Appellants' act of withdrawing odor proof body bags from the market was the only reason Appellants won the Richland County five-year mortuary transport contract, not because they were the lowest bidder. (R. p. 225, lines 1-

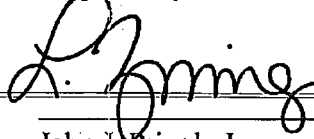
14; p. 168, lines 14-25; p. 241, lines 2-25.) As evidence in the record shows, Appellants' breach of the Exclusivity Provision damaged Respondent in the same way as Appellants' breach of the Covenant and this breach separately supports an affirmance of the lower court's order.

In reversing and remanding the lower court's order in favor of Respondent and failing to address Respondent's claim that Appellants breached the parties' Agreement by withdrawing odor proof body bags from the market, the Court overlooked or misapprehended issues on appeal and failed to consider record evidence which would support an affirmance.

CONCLUSION

This Court overlooked or misapprehended the issues on appeal because it has failed to appropriately apply all factors for considering the validity of a non-compete agreement ancillary to the sale of a business and in wholly failing to acknowledge Appellants' breach of the exclusivity provision of the parties' agreement which provides a separate basis for affirming the lower court. For the reasons stated above, this Court should grant Respondent's Petition for Rehearing.

Respectfully submitted,



John J. Pringle Jr.
Lyndey Ritz Zwingelberg
Adams and Reese LLP
1501 Main Street, Fifth Floor
Columbia, South Carolina 29201
(803) 254-4190
*Attorneys for Respondent Palmetto
Mortuary Transport, Inc.*

May 19, 2016.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James Randall Davis, Special Master/Referee

Case No. 2014-001819

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

v.

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

RECORD ON APPEAL

Reginald I. Lloyd
The Lloyd Law Firm, LLC
715 West DeKalb Street
Post Office Box 1555
Camden, South Carolina 29021
(803) 432-0004

Christopher Todd Hagins
The Hagins Law Firm, LLC
825 Meeting Street
West Columbia, South Carolina 29169
(803) 466-4373

Attorneys for Appellants

John J. Pringle
Adams and Reese, LLP
1501 Main Street, Suite 500
Columbia, South Carolina 29202
(803) 343-1270

Lyndey Ritz Zwingelberg
Adams and Reese, LLP
1501 Main Street, Suite 500
Columbia, South Carolina 29202
(803) 254-4190
Attorneys for the Respondents

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

Palmetto Mortuary Transport, Inc.) Civil Action No.: 2011-CP-32-04051
BETH A. CARRIGGS
CLERK OF COURT
LEXINGTON, SC

Plaintiff,) ORDER

v.)

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

Defendants)

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

PROCEDURAL BACKGROUND

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

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

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



FINDINGS AND CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Mrs. Lintal and Mr. Knight both testified that the \$1,000 allocation ultimately attributed to the Non-Compete Agreement was primarily driven by Mr. Knight at the instruction of his accountant. *Id.* at 160:1-24; 161:4-19; 201:8-25. Both Mrs. Lintal and Mr. Knight testified that Mr. Knight wanted to allocate \$1,000 to the Non-Compete Agreement in order to allow him and Knight Systems to minimize their potential capital gains tax. *Id.* at 162:20-163:2; 179:10-23; 201:6-25.² After collectively determining what allocation was best for the parties following the advice of

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

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

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

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

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

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

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

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

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

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

³ Where an employment contract contains a non-compete agreement, the courts strictly construe the terms of the covenant not to compete against the employer. See *Team 1A, Inc. v. Lucas*, 395 S.C. 237, 245, 717 S.E.2d 103, 107 (Ct. App. 2011) ("Restrictive covenants not to compete are generally disfavored and will be strictly construed against the employer.") (*quoting Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675-76, 301 S.E.2d 142, 143 (1983)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Bag Purchases by Plaintiff

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

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

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

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

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

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

54. Plaintiff's acts of purchasing body bags from other sources do not constitute *material* breaches of the Agreement which would excuse Defendants' performance under the Agreement. Rather, Defendants are only entitled to monetary damages which are proximately caused by Plaintiff's breach, a total damages amount of \$478.50.⁸ *See* Trial Tr. at 49:21-50:10; 52:4-23.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

against Palmetto Mortuary for a period of ten years that began on January 5, 2007. *See* APA. At the time of Knight System's breach in June of 2011, five years and seven months remained on the Non-Compete Agreement. Additionally, at that time Palmetto Mortuary had significantly complied with the terms of the parties' Agreement, by paying the full purchase price, \$590,000.00, and purchasing significantly all of its body bags from Knight Systems pursuant to the Exclusivity Provision, a total amount of more than \$45,000.00. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

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

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

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

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

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

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

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

68. Moreover, considering the context in which the Tape Recording took place and the timing of the Richland County Coroner's contract bid, the Court accepts Mr. Lintal's testimony that Mr. Knight knew or should have known that Palmetto Mortuary previously purchased body bags from other manufacturers. However, instead of bringing the breaches to Mr. Lintal's attention when he was aware of such allegations¹⁰, Knight held onto the information until a time that was beneficial to him.¹¹ *Id.* at 239:9-240:21. Additionally, Mr. Knight's conduct on June 16, 2011, including surreptitiously tape-recording Mr. Lintal, bringing up Palmetto Mortuary's purchases of body bags from other manufacturers after more than three years after the purchases, and immediately placing a bid for the Richland County contract one day following the parties' discussion, evidences something less than good faith with respect to adhering to the terms of the APA.

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

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

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

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

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

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

A. Plaintiff is Entitled to Lost Profit Damages

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

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

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

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

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

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

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

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

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

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

B. Plaintiff is Entitled to Injunctive Relief

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

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

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

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

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

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

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

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

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

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

CONCLUSION

For the foregoing reasons, the Court orders as follows:

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

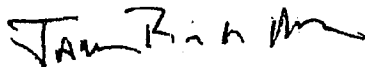
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(B) Plaintiff is ordered to pay Four Hundred Seventy Eight Dollars and Fifty Cents (\$478.50) in damages proximately caused by Plaintiff's breaches of Section 3.4.8 of the Agreement by purchasing body bags from sources other than Defendants. This amount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

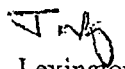
(2) The Court finds that the Non-Compete Agreement is a separately executed contract for which adequate consideration was exchanged. The Court additionally finds that the term and scope of the Non-Compete Agreement is reasonable. Defendants are required to comply with the terms of the parties' Non-Compete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

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

AND IT IS SO ORDERED.



James Randall Davis, Special Master/Referee

 July 22, 2014
Lexington, South Carolina.

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COPY

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2014 SEP 10 A 9:41

FOR THE ELEVENTH JUDICIAL CIRCUIT

Palmetto Mortuary Transport, Inc.,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Case No.: 2011-CP-32-04051

Plaintiff,

v.

SUPPLEMENTAL ORDER

Knight Systems, Inc. and Robert L. Knight,

Defendants.

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

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

I SO ORDER.



James Randall Davis, Special Master/Referee

September 5, 2014
Lexington, South Carolina



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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Palmetto Mortuary Transport, Inc.,

Plaintiff,

v.

Knight Systems, Inc. and Robert L.
Knight,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2011-CP-32-040

) AFFIDAVIT OF JOHN J. PRINGLE, JR.

FILED

2014 SEP 10 A 9:41

DETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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

1. I am a partner with the law firm of Adams and Reese LLP in Columbia, South Carolina, and I am counsel for the Plaintiff in the above-referenced case.
2. I am licensed to practice law in the State of South Carolina, and have been a member of the South Carolina Bar since 1996.
3. I have more than 17 years of experience in a variety of litigation, transactional, and regulatory matters.
4. I earned a Bachelor of Arts in European History from Washington and Lee University in 1990. I earned a Juris Doctor from the University of South Carolina in 1996.
5. I was asked to represent Plaintiff in this matter involving an alleged violation of a Non-Compete Agreement contained in an Asset Purchase Agreement entered into by the parties to this action, due to my experience litigating these matters throughout my career.

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

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

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

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

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

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

- a. Summons and Complaint;
- b. Reply to Defendants' Counterclaims;
- c. Responses to Defendants' First Interrogatories and Requests for Production;
- d. Review Discovery Responses of Defendants throughout the case;

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- c. First Set of Interrogatories, Requests for Production, and Requests to Admit to both Defendants;
- f. Consultation Letter to Counsel for Defendants regarding Discovery Responses;
- g. Consultation Letter to Counsel for Defendants regarding Notice of Deposition;
- h. Motion for Protective Order regarding Notice of Deposition;
- i. Motion to Compel Discovery Responses;
- j. Argue Motion to Compel;
- k. Meet with Counsel for Defendants to discuss various issues in case;
- l. Amended Complaint and letter to Defendants' Counsel enclosing same;
- m. Consent Order of Substitution of Counsel;
- n. Consent Order for Leave to Amend Complaint;
- o. Consent Order of Reference;
- p. Second Interrogatories and Requests for Production;
- q. Reply to Defendants' Counterclaim in Response to Plaintiff's Amended Complaint;
- r. Respond to Defendants' Second Interrogatories and Requests for Production;
- s. Deposition of Robert L. Knight
- t. Defend Depositions of Don Lintal and Ellen Lintal;
- u. Preparation for and Conduct of Trial;
- v. Preparation of Proposed Order.

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

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

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

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

By: John J. Pringle, Jr.
John J. Pringle, Jr.

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

Victoria M. Hoodey
Notary Public for South Carolina
My Commission expires 02/17/19

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

FILED

CIVIL ACTION NO.: 2011-CP-32-04051

Palmetto Mortuary Transport, Inc. -b 12:16

Plaintiff, CADROG
CLERK OF COURT
LEXINGTON, SC

v.

AMENDED SUMMONS

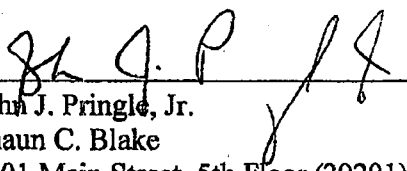
Knight Systems, Inc. and Robert L.
Knight,

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

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

ADAMS AND REESE, LLP


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

ATTORNEYS FOR PLAINTIFF

June 5, 2013
Columbia, South Carolina

0000041

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Palmetto Mortuary Transport, Inc.,

Plaintiff,

v.

Knight Systems, Inc. and Robert L.
Knight,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)

CIVIL ACTION NO.: 2011-CP-32-04051

AMENDED COMPLAINT
(Non-Jury)

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

The Parties

1. Plaintiff is a domestic corporation duly organized and in good standing under the laws of the State of South Carolina.
2. Upon information and belief, Knight Systems is a domestic corporation duly organized and in good standing under the laws of the State of South Carolina.
3. Upon information and belief, Buddy Knight is a citizen and resident of Lexington County, South Carolina

Jurisdiction and Venue

4. Knight Systems' principal place of business is in Lexington County, South Carolina.
5. This court possesses personal jurisdiction over Buddy Knight as a citizen and resident of South Carolina.

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

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

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

For a First Cause of Action
(Breach of Contract)

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

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

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

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

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

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

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

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

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

2. Covenants against Competition. For a period of ten (10) years after the date hereof:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

expectation using improper methods.

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

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

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

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

Prayer for Relief

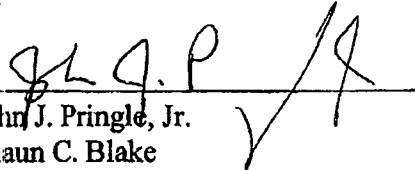
WHEREFORE, Plaintiff, having complained of the Defendants herein, prays for:

- (1) the entry of a judgment against Buddy Knight and Knight Systems for actual damages and consequential damages in an amount to be proven at trial;
- (2) injunctive relief as provided in the Agreement and the Non-Compete;
- (2) along with an award of punitive damages, pre-judgment interest, reasonable attorneys' fees, the costs of the action, and such other relief in law or equity that this Court may find is just and proper.

0000046

Respectfully submitted,

ADAMS AND REESE LLP


John J. Pringle, Jr.

Shaun C. Blake

1501 Main Street, 5th Floor (29201)

Post Office Box 2285

Columbia, South Carolina 29202

Telephone: (803) 254-4190

Facsimile: (803) 799-8479

ATTORNEYS FOR PLAINTIFF

June 5, 2013

Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Palmetto Mortuary Transport, Inc.,

2013 JUN -6 P 12:16

CIVIL ACTION NO.: 2011-CP-32-04051

BETH A. CARRIGG
Plaintiff,
CLERK OF COURT
LEXINGTON) SC

v.

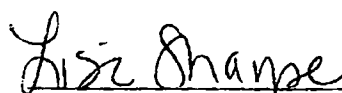
Knight Systems, Inc. and Robert L.
Knight,

Defendants.

CERTIFICATE OF SERVICE

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

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


Lisa Sharpe, Paralegal

Columbia, South Carolina
June 5, 2013

0000047

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Palmetto Mortuary Transport, Inc.,

Plaintiff,

v.

Knight Systems, Inc. and Robert L.
Knight,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT

2011 JUL 25 A 11:12

) CIVIL ACTION NO. 2011-CP-32-04051

) BETH A. CARRIGG
) CLERK OF COURT
) LEXINGTON, SC

) **REPLY TO COUNTERCLAIM TO
) PLAINTIFF'S AMENDED COMPLAINT**

COPY

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

FOR A FIRST DEFENSE

(Rule 12(b)(6), SCRCP)

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

FOR A SECOND DEFENSE

(Qualified General Denial)

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

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

3. Paragraph 39 does not require a response.

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

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

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

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

FOR A THIRD DEFENSE
(Waiver)

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

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

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

FOR A FOURTH DEFENSE
(Estoppel)

COPY

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

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

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

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

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

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BETHE A. CAMPOS
CLERK OF COURT
LEWISTON, ME

FOR A FIFTH DEFENSE
(Failure to Mitigate)

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

Prayer for Relief

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

- (1) the dismissal of Defendants' Counterclaim;

- COPY**
- (2) the dismissal of Defendants' affirmative defenses;
 - (3) the entry of a judgment against Buddy Knight and Knight Systems for actual damages and consequential damages in an amount to be proven at trial;
 - (4) in the alternative, the entry of a judgment requiring specific performance by Buddy Knight and Knight Systems under the Agreement and injunctive relief;

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

Respectfully submitted,

John J. Pringle, Jr.
Shaun C. Blake
ADAMS AND REESE LLP
1501 Main Street, 5th Floor
Columbia, SC 29201
Tel.: (803) 254-4100
Fax: (803) 779-4749
Email: jack.pringle@arlaw.com
shaun.blake@arlaw.com

2013 JUL 25 AM 11:00
FILED

Attorneys for Plaintiff

July 24, 2013
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Palmetto Mortuary Transport, Inc.,

Plaintiff,

v.

Knight Systems, Inc. and Robert L.
Knight,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)

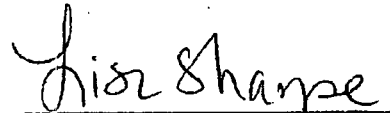
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) CIVIL ACTION NO.: 2011-CP-32-04051

) BETH A. CARRIGG
) CLERK OF COURT
) LEXINGTON, SC
)

)
) **CERTIFICATE OF SERVICE**
)
)
)
)
)

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

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


Lisa Sharpe, Paralegal

Columbia, South Carolina
July 24, 2013

0000052

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Palmetto Mortuary Transport, Inc.,

Plaintiff,

vs.

Knight Systems, Inc. and Robert
L. Knight,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2011-CP-32-04051

**DEFENDANTS' ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT**

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

FOR A FIRST DEFENSE

1. Each and every paragraph of the Plaintiff's Amended Complaint not specifically admitted, qualified, or explained is denied.
2. Upon information and belief, Defendants admit the allegations in Paragraph 1 of the Amended Complaint.
3. Defendants admit the allegations in Paragraphs 2 and 3 of the Amended Complaint.
4. Upon information and belief, Defendants admit the allegations in Paragraphs 4, 5, 6, 7, and 8 of the Amended Complaint.
5. The reallegations of Paragraph 9 are answered hereinabove and those answers are repeated herein as fully as if repeated verbatim.
6. Defendants admit the allegations in Paragraph 10.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Palmetto Mortuary Transport, Inc.,

Plaintiff,

v.

Knight Systems, Inc. and Robert L.
Knight,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)

2013 JUL 25 A 11:12

CIVIL ACTION NO.: 2011-CP-32-04051

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

REPLY TO COUNTERCLAIM TO
PLAINTIFF'S AMENDED COMPLAINT

COPY

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

FOR A FIRST DEFENSE

(Rule 12(b)(6), SCRCP)

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

FOR A SECOND DEFENSE

(Qualified General Denial)

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

0000061

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

3. Paragraph 39 does not require a response.

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

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

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

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

FOR A THIRD DEFENSE
(Waiver)

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

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

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

FOR A FOURTH DEFENSE
(Estoppel)

COPY

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

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

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

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

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

FOR A FIFTH DEFENSE
(Failure to Mitigate)

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

Prayer for Relief

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

- (1) the dismissal of Defendants' Counterclaim;

COPY

- (2) the dismissal of Defendants' affirmative defenses;
- (3) the entry of a judgment against Buddy Knight and Knight Systems for actual damages and consequential damages in an amount to be proven at trial;
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along with an award of punitive damages, pre-judgment interest, reasonable attorneys' fees, the costs of the action, and such other relief in law or equity that this Court may find is just and proper.

Respectfully submitted,

John J. Pringle, Jr.
John J. Pringle, Jr.
Shaun C. Blake
ADAMS AND REESE LLP
1501 Main Street, 5th Floor
Columbia, SC 29201
Tel.: (803) 254-4100
Fax: (803) 779-4749
Email: jack.pringle@arlaw.com
shaun.blake@arlaw.com

2013 JUL 25 A 11
FILED

Attorneys for Plaintiff

July 24, 2013
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Palmetto Mortuary Transport, Inc.,

Plaintiff,

v.

Knight Systems, Inc. and Robert L.
Knight,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
)

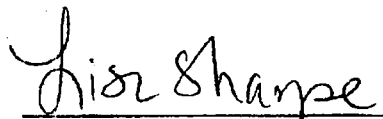
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) CIVIL ACTION NO.: 2011-CP-32-04051
)

) BETH A. CARRIGG
) CLERK OF COURT
) LEXINGTON, SC
)

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

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



Lisa Sharpe, Paralegal

Columbia, South Carolina
July 24, 2013

0000065

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

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

PROCEDURAL BACKGROUND

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

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

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

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

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

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FACTUAL BACKGROUND

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

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

2. Pursuant to the terms of the APA, Palmetto Mortuary purchased, among other assets specified in Section 1: tangible assets (defined in Section 1.1.1.1 of the Agreement), goodwill (defined in Section 1.1.1.6), customer lists (defined in Section 1.1.1.3). Palmetto Mortuary also obtained mutual covenants from Knight Systems, including a ten-year non-compete agreement which is set forth in Exhibit 3.2.6 to the APA ("Non-Compete Agreement").
3. In exchange for the assets and other contractual terms specified in the APA, including the covenant not to compete, Palmetto Mortuary was obligated to pay Knight Systems a purchase price of Five Hundred and Ninety Thousand Dollars (\$590,000.00). Trial Tr. at 24:8-12.
4. Additionally, Palmetto Mortuary agreed to exclusively purchase four types of body bags from Knight Systems. The types of bags are identified in Section 3.4.8 of the APA (the "Exclusivity Provision") as: (1) heavy duty body bags, (2) lightweight body bags, (3) odor-proof body bags, and (4) water-retrieval body bags. Plaintiff agreed to purchase the four stated body bags from Defendants for the ten-year term of the Non-Compete Agreement. *See* APA at Section 3.4.8; *see also* Trial Tr. at pp. 27:18-22.

ISSUES PRESENTED TO THE COURT

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

Defendants claim that Plaintiff breached the Exclusivity Provision at Section 3.4.8 of the APA by purchasing body bags from sources other than Defendants.

Defendants assert that Plaintiff's alleged breaches of the Exclusivity Provision entitled Defendants to repudiate the entire Agreement, including the Non-Compete Agreement.

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

FINDINGS AND CONCLUSIONS

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THE PARTIES' NON-COMPETE AGREEMENT IS ENFORCEABLE.

The Non-Compete Agreement is supported by valuable consideration.

1. Defendants allege that "the terms of the Non-Compete Agreement alleged by the Amended Complaint to be enforceable between these parties are unsupported by sufficient compensation, separate and apart from the purchase price of the assets set forth in the Asset Purchase Agreement." (Defendants' Answer to Plaintiff's Amended Complaint at ¶ 36). The Court disagrees.
2. The Non-Compete Agreement provides in relevant part: "NOW, THEREFORE, in consideration for the following premises, the promises set forth herein, the consideration of \$1,000 specifically allocated to this Agreement in the Purchase Agreement." See APA at Exhibit 3.2.6.
3. In South Carolina, covenants not to compete arising out of the sale of a business "will, in conformity with the just and equitable principles of the common law, be generally upheld and enforced if (1) supported by a valuable consideration, (2) reasonably limited as to time, and (3) reasonably restricted as to the place of the territory, that is, where the time is not more extended or the territory more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930) (citations omitted).
4. Consideration is generally considered "a bargained for gain or advantage to the promisee or a bargained for detriment or disadvantage to the promisor." *Weiner v. McGraw-Hill, Inc.*, 57 N.Y. 2d 458, 464 (N.Y. 1982). Consideration is present when the parties exchange something to which they attach value. Absent a claim of fraud or unconscionability, a court will not concern itself with whether there was adequate consideration. *Campbell v. Carr*, 361 S.C. 258, 265, 603 S.E.2d 625, 628 (Ct. App. 2004); *Spaulding v. Benenati*, 57 N.Y.2d 418, 423 (N.Y. 1982). "Generally, a court will not inquire into the adequacy of consideration for a contract, inasmuch as consideration based on value of property or performance of a promise is a matter of personal judgment by parties to a contract." *Buckingham v. Wray*, 366 N.W.2d 753 (Neb. 1985).
5. In *Lowery v. Callahan*, 210 S.C. 300, 304, 42 S.E.2d 457, 458 (1947), the South Carolina Supreme Court stated: "When the consideration agreed upon . . . is something of value, the courts will generally, in the absence of fraud, coercion, and undue influence, and if the parties are competent, not avoid the [contract] on the ground of the inadequacy of the consideration . . . , for the contracting parties, and not the courts, must determine the quid pro quo." "The inadequacy of price is determined at the date the contract was entered." *Campbell v. Carr*, 361 S.C. at 264, 603 S.E.2d at 628 (citations omitted).
6. Even the slightest consideration will be deemed sufficient. "The extent of the duty created by contract is not determined by the kind of consideration on which it is based; consideration consists of what is actually given or suffered and accepted for a promise." 17A Am. Jur. 2d Contracts § 115 (citations omitted). "Mutual promises . . . constitute a good consideration." *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013) (quoting *Evatt v. Campbell*, 234 S.C. 1, 8, 106 S.E.2d 447, 451 (1959)).
7. The consideration in the Non-Compete Agreement is unambiguously stated as \$1,000. "If consideration is found at all to support a contract, inquiry into its adequacy is forbidden." *Satellite Indus., Inc. v. Keeling*, 396 N.W.2d 635, 639 (Minn. Ct. App. 1986). This Court finds that \$1,000 is not ambiguous, and therefore, this Court must enforce the terms of the Non-Compete Agreement as written.
8. Defendants seek to show that the events leading up to the execution of the Non-Compete Agreement demonstrate a lack of consideration for it. In considering the adequacy of consideration, the Court must look to the four corners of the document, and cannot

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

9. Defendants do not allege an ambiguity with respect to the language of the Non-Compete Agreement, but even if such an ambiguity existed, the negotiation of the Non-Compete Agreement before the document was executed does not demonstrate a lack of consideration.
10. In October of 2006, Donald and Ellen Lintal met with a broker regarding the purchase of Defendants’ business. *See* Trial Tr. at 164:2-9. Shortly after meeting with their broker, in November of 2006, Mr. and Mrs. Lintal visited with Defendant Knight and looked at Knight System’s business location for the purpose of informing Plaintiff’s final valuation of Defendants’ business. *Id.* at 164:17-24; 165:3-13. From November of 2006 to January 5, 2007, the parties and their agents, including brokers, accountants, and attorneys for both sides, negotiated the terms of the Agreement. *Id.* at 135:11-136:15; 140:4-141:14; 198:5-9; 200:16-201:5; 245:20-249:19.
11. Mrs. Lintal, Palmetto Mortuary’s Chief Financial Officer, testified that one of the drafts of the Notice of Intent to Purchase submitted to Defendants and/or Defendants’ agents, including their brokers or attorney, included a Non-Compete Agreement with a term of ten years and a one hundred and fifty mile radius. *Id.* at 139:25-140:3; 165:20-166:11; 167:19-168:10. Mrs. Lintal also testified that she had a discussion with her attorney about having a term of only seven years for the Non-Compete Agreement, but that term was ultimately increased to ten years in the final Agreement. *Id.* at 168:16-169:1. On December 14, 2006, Plaintiff’s counsel sent a draft Non-Compete Agreement to Defendants’ counsel which was intended by both parties to be included in the final APA. *Id.* at 156:9-12.
12. Closing took place on January 5, 2007. *See* APA. At the closing, the parties for the first time allocated dollar amounts to each of the Agreement’s provisions. *Id.* at 98:5-13; 98:25-99:10. Mrs. Lintal testified that prior to closing, she “had discussions with our attorney and we were working with [Defendants’ attorney] to get an allocation of assets, because that was never put in the document prior to closing. [I] wanted it in . . . because I wanted to review it. It never got accomplished until we sat down at closing.” *Id.* at 157:3-8. There is no dispute that until closing no dollar figure was specifically assigned to the Non-Compete Agreement. *Id.* at 156:13-22.
13. Mrs. Lintal and Mr. Knight both testified that the \$1,000 allocation ultimately attributed to the Non-Compete Agreement was primarily driven by Mr. Knight at the instruction of his accountant. *Id.* at 160:1-24; 161:4-19; 201:8-25. Both Mrs. Lintal and Mr. Knight testified that Mr. Knight wanted to allocate \$1,000 to the Non-Compete Agreement in order to allow him and Knight Systems to minimize their potential capital gains tax. *Id.* at 162:20-163:2; 179:10-23; 201:6-25. After collectively determining what allocation was best for the parties following the advice of their agents, the parties executed the Agreement. *Id.* at 182:13-16 (Mrs. Lintal testified that negotiations were “a give and take”); 202:4-20 (Mr. Knight testified that “there was some discussion” regarding negotiating the amount allocated to the Non-Compete Agreement, but that he did not remember what it was). *See* Trial Tr. p. 250:1-13.
14. Mr. Knight testified that he “appeared at the closing [with his attorney] and . . . read the documents at closing.” *See* Trial Tr. at 249:16-19; 246:1-6. Mr. Knight further testified that “after th[e] discussion about the \$1,000 that’s mentioned as the consideration for the covenant not to compete, [he] did[] [not] object to that provision or any provision of either agreement at the closing.” *Id.* at 249:20-25.

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

15. Defendants did not assert that the Non-Compete Agreement was procured by fraud or that any of its terms were unconscionable. Accordingly, the Court can only consider the bargaining parity of the parties to determine whether there is some consideration exchanged or value placed on the Non-Compete Agreement. "It is not the business of courts to protect parties from the consequences of bad contracts, but to protect them from the consequences of either legal or moral fraud and imposition." *Jackson v. Carter*, 128 S.C. 79, 121 S.E. 559, 563 (1924) (quoting *Goree v. Wilson*, 17 S.C. L. 597 (S.C. Eq. 1830)).
16. The evidence in the record reveals that Defendants negotiated for a \$1,000 consideration as stated in the Non-Compete Agreement. See Trial Tr. at 160:1-24; 161:4-19; 201:8-25; 162:20-163:2; 179:10-23; 201:6-25. This negotiation was done with the advice and consent of Defendants' accountant and attorney. *Id.* "Where a party gets all the consideration he voluntarily and knowingly contracts for, he will not be allowed to say he got no consideration." *Jackson v. Carter*, 128 S.C. 79, 121 S.E. at 563 (citation omitted).
17. Defendants' claim that \$1,000 was an insufficient consideration for the ten-year and 150 mile radius Non-Compete Agreement is without merit. "The inadequacy must not be measured by grains, but it ought to be palpably disproportioned to the real and market value of the property, so as to constitute a hard, unreasonable, and unconscionable contract" *Campbell v. Carr*, 361 S.C. 258, 264, 603 S.E.2d 625, 628 (Ct. App. 2004) (quoting *Craven v. Williams*, 302 F.Supp. 885 (D.S.C. 1969)). The Court finds that all parties to the APA received mutual promises and consideration for those promises. Defendants' argument that \$1,000 was insufficient amounts to a request that this court "measure grains," which is not something the Court is in a position to do. The undisputed evidence shows that the amount of consideration exchanged between the parties was determined after all parties received advice and consent of their agents.
18. Based on the facts presented at trial, the Court finds that the Non-Compete Agreement contained in the APA was supported by adequate consideration.

. *The Non-Compete Agreement is Reasonably Limited in Time and Geographic Scope.*
19. Defendants allege and argue that "[t]he territorial and limitations and length of term of the Non-Compete Agreement are unduly broad and expansive and, therefore, constitute an unenforceable restraint on trade and unenforceable agreement. (Defendants' Answer to Amended Complaint at ¶ 37). The Court disagrees.
20. The Non-Compete Agreement at issue in this case arises out of the sale of a business, and not an employment contract. As such, the Court will not apply the test applicable to covenants not to compete contained in employment contracts. As the Fourth Circuit has recognized, "restrictive covenants not to compete in employment contracts . . . are scrutinized more rigorously than similar covenants incident to a sale of business." *American Hot Rod Ass'n, Inc. v. Carrier*, 500 F.2d 1269 (4th Cir. 1974) (noting that this is the "general trend of modern authority").
21. In South Carolina, covenants not to compete arising out of the sale of a business "will, in conformity with the just and equitable principles of the common law, be generally upheld and enforced if (1) supported by a valuable consideration, (2) if reasonably limited as to time, and (3) if reasonably restricted as to the place of the territory, that is, where the time is not more extended or the territory more enlarged than essential for a reasonable protection of the rights of the purchasing party." *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 7234 (1930) (citations omitted). "[T]he restraint must be reasonable, not oppressive, or out of proportion to the benefits which the vendee may in reason expect to follow from the restrictive features of the contract, and not injurious to the interests of the public." *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184 (1942) (citations omitted).
22. "In determining whether a contract in partial restraint of trade is reasonable, the court will look to the whole subject matter of the contract, the kind and character of the business, its location, the purpose to be accomplished by the restriction, and all circumstances which

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

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

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

We think the reasonableness of the restraint in the case at bar may be demonstrated. In the first place, we consider whether the restriction is more comprehensive than is necessary to secure to the plaintiff the benefits of his

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

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

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

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

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

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

28. Similar to the seller in *Reeves v. Sargeant*, Knight entered into the covenant not to compete, not only for the sale of his business and his business's assets, but he also realized a large sum of money, and by his execution of the Agreement he considered it to his advantage to make the sale. *Reeves*, 200 S.C. 494, 21 S.E.2d 184, 188. Accordingly, the Court finds that the consideration exchanged for the entire contract together with the consideration exchanged for the Non-Compete Agreement was reasonable and justifies the terms of the Non-Compete in this case.
29. Additionally, the Plaintiff provided testimony regarding the importance of the Non-Compete Agreement to its decision to buy the business. Mr. Lintal testified that the ten-year term of the Non-Compete Agreement was significant to Palmetto Mortuary's decision to purchase Knight's business. The ten year period was intended by both parties to protect Palmetto Mortuary from competition with Knight Systems for two five-year contract cycles with the University of South Carolina, and Richland and Lexington Counties' Coroners' Offices, contracts which were previously held by Knight Systems for more than fifteen years. See Trial Tr. at 74:25-75:12. The ten year period was selected so that Palmetto Mortuary would be able to get a second term with the Richland County Coroner's Office without the risk of competition by Knight. The Lintals wanted a ten year period to allow Palmetto Mortuary "to get through at least two cycles" of five-year contracts with the Richland and Lexington Coroner's Offices. See Trial Tr. at 103:16-25. "The contracts were the whole value to this business in regards to what types of guaranteed revenues that we were going to be able to generate. So we wanted at all costs to try to protect that for as long as we could." See Defendants' Exhibit 1 (Lintal Deposition) at 86:2-10. "[T]he value of th[e] contracts made up [the Lintals'] ultimate purchase price" of the business. *Id.* at 86:11-18. Mr. Lintal testified that the Non-Compete Agreement "was very important to [the Lintals' evaluation] because without the non-compete we wouldn't have bought the business." *Id.* at 88:6-10.
30. Mr. Lintal additionally testified that as to the geographic restriction, he believed Palmetto Mortuary would expand its business throughout other counties in the State of South Carolina. See Trial Tr. at 104:12-106:14 ("We did not know, but we did not want to limit our options if it was available to us. At the time it did not seem to be an issue on their part. I don't recall any objections to that.").
31. Given Mr. Knight's testimony that he did not intend to get back into the mortuary transport business both before and after the Agreement was executed by the parties (see Trial Tr. at 195:25-196:6; 204:1-8 (Mr. Knight testified that he "expressed [his] desire to [Mr. Lintal] how much I wanted to get out of the business.")) and the significant value placed on the restrictions by Palmetto Mortuary, the Court finds that the time and geographic restrictions imposed by the Non-Compete Agreement were reasonable. The Court recognizes that the Non-Compete Agreement was a significant part of the consideration expected by Palmetto Mortuary in exchange for its agreement to purchase Defendants' mortuary transport business for \$590,000. As a result of the foregoing evidence, the Court finds that the Non-Compete Agreement is enforceable.

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

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32. Plaintiff alleges that Defendants breached the Non-Compete Agreement (Exhibit 3.2.6) by submitting a bid for mortuary transport services to the Richland County Coroner's Office on June 17, 2011. Plaintiff also alleges that Defendants breached the Exclusivity Provision (Section 3.4.8) by removing its odor-proof bags from the market.
33. To recover for a breach of contract, the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962). As stated more fully above (*see supra* Section I(A) and (B)), the Non-Compete Agreement is enforceable because it is supported by adequate consideration and is reasonable in time and geographic scope.
34. The Non-Compete Agreement provides in relevant part:
- For a period of ten (10) years after the date hereof:
- **Customers, etc.** Seller shall not, directly or through Affiliate, (i) call upon or contact (or assist another person(s) or business entity to call upon or contact) any Customer for the purpose of furnishing the same or similar services provided or offered at any time by the Business to any Customer, or (ii) solicit or divert (or assist another person(s) or business entity to solicit or divert) any Customer from purchasing or using any of the Buyer's services, or (iii) provide or attempt to provide (or assist another person(s) or business entity to provide or attempt to provide) to any Customer the same or similar services provided or offered by the Business. For purposes of this Section 2(A), the term "Customer" shall mean any customer or client of the Business and shall include (without limitation) every such person(s) to which the Business or Seller has provided services prior to the date hereof.
 - **Territory.** In addition to (but not in limitation of) the restrictions of Section 2(A), Seller shall not, directly or through an Affiliate engage in, or assist another person or entity to engage in, providing services similar to those furnished by the Business or Seller at any time prior to Closing (as such term is defined in the Purchase Agreement) in competition with Buyer anywhere within 150 miles of the present location of the Business (the "Territory").
35. In early 2011, the Richland County Coroner's office issued a Request for Proposal ("RFP") seeking bids to provide mortuary transport services for a period of five years. At that time, Palmetto Mortuary held the mortuary transport services contract with Richland County as a result of the Agreement. *Id.* at 58:24-59:3; 61:18-62:5. The deadline for submission of bids was June 17, 2011 at 3:00pm. *Id.* at 58:12-22. Palmetto Mortuary prepared a bid and timely submitted it for Richland County's consideration. *Id.* at 59:4-5.
36. Defendants also submitted a bid to the Richland County Coroner's Office.
37. Additionally, after the RFP closed on June 17, 2011, Mr. Knight emailed Ms. Christie Swofford at the Richland County Procurement Office, seeking a determination that Knight Systems be chosen to provide mortuary transport services because Knight System is the "sole provider" of odor-proof body bags required by the RFP. *See* Trial Tr. at 62:6-64:13; 137:14-24; 242:14-243:25. There is no dispute that Richland County required odor-proof bags as part of the RFP. Mr. Knight stated in his email to Richland County that he was taking all of his odor-proof bags off of the market, despite the Exclusivity Provision's requirement that Knight Systems provide "odor-proof body bags" to Palmetto Mortuary. According to Mr. Lintal, he "was [not] aware of" needing any alternative to an odor proof bag for his bid to Richland County "[b]ecause [he] still was under the existing

- contract . . . with Knight Systems.” *Id.* at 136:24-137:1. That contract gave Palmetto Mortuary “the rights to buy th[e] odor proof bag [from Knight], as well as these other[] [types] of bags” in Section 3.4.8 of the Agreement. *Id.* at 137:2-5.
38. Despite the fact that Palmetto Mortuary submitted a bid with the lowest price for services and received the highest total of points from the Procurement Office as part of the review of the RFP, Richland County selected Knight Systems for the five-year contract. *Id.* at 122:1-14; 64:14-25; 137:2-24. There is evidence in the record supporting the contention that without Defendants’ claim that they were the sole provider of odor-proof body bags, the Richland County contract would have been awarded to Palmetto Mortuary. *See* Trial Tr. at 122:1-14; 64:14-25; 137:2-24. (Q: “And if [Knight] hadn’t [sent the letter], there wouldn’t have been an issue?” A: “I should have won the contract.”).
39. Defendants’ suggestion that they were the sole providers of odor-proof body bags contradicts the clear language of Section 3.4.8 of the parties’ Agreement which required Defendants to provide odor-proof body bags to Palmetto Mortuary for a price of \$50.00 per bag. *See* APA at Section 3.4.8. This Court concludes that the “shall provide” language in the Exclusivity Provision required Defendants to provide Palmetto Mortuary with odor-proof body bags at the time of the parties’ submission of bids to Richland County. *Id.*
40. Defendants’ bid submission and subsequent award of a mortuary transport contract with Richland County violates the terms of the Non-Compete Agreement as it represents “providing” body removal services to a “Customer” within the geographic territory and during the time period specified therein. Palmetto Mortuary’s principal place of business is Lexington County, South Carolina and the contract at issue was for Richland County, South Carolina, a county within one hundred and fifty (150) miles of Palmetto Mortuary’s business in Lexington County. Additionally, at the time Defendants submitted the bid to Richland County, there remained five years and seven months on the parties’ ten-year Non-Compete Agreement.
41. In addition, the Court concludes that Defendants breached the APA’s Exclusivity Provision by refusing to sell odor-proof body bags to Plaintiff as required by Section 3.4.8 of the Non-Compete Agreement and by claiming to Richland County that it was the “sole provider” of odor-proof body bags in order to increase its changes of receiving the Richland County Coroner’s Office contract.

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

42. Defendants assert that “Plaintiff’s breach of the agreement with Defendants negated all terms, conditions and responsibilities of the Defendants under the Asset Purchase Agreement and the Non-Compete Agreement.” (Defendants’ Answer to Amended Complaint, ¶ 42). The Court disagrees.
43. The Exclusivity Provision, Section 3.4.8 of the Agreement, provides:
- Knight, through his related body bag business (the “Related Business”), shall provide to Buyer body bags at a discounted rate and buyer shall for the term of the non-compete agreement buy all of their body bags from the Seller. Below are the current charges for different types of body bags. The prices cited below shall not be increased by more than ten percent (10%) in any calendar year.

Heavy Duty body bags: \$20.00

Lightweight body bags: \$8.00

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Odor-Proof body bags: \$50.00
Water-Retrieval body bags: \$30.00

44. In construing the Exclusivity Provision the Court is guided by South Carolina's contract law. "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958). "The parties' intention must, in the first instance, be derived from the language of the contract." *Schulmeyer v. State Farm Fire & Cas. Co.*, 323 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *C.A.N. Enters., Inc. v. S.C. Human & Health Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("In construing terms in contracts, this Court must first look at the language of the contract to determine the intention of the parties."). Contractual interpretation requires the Court to look at the language of the entire contract "and not . . . isolated portions" thereof. *See Buice v. WMA Securities, Inc.*, 380 S.C. 149, 156, 668 S.E.2d 430, 434 (Ct. App. 2008) (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975)). "Further, in determining the intent of the contracting parties, the court should . . . read together different provisions dealing with the same subject matter." *Id.* (citations omitted).
45. Plaintiff claims that the Exclusivity Provision obligated Plaintiff to buy those categories of bags listed in Section 3.4.8 of the Agreement from the Defendants (including heavy duty bags, lightweight bags, odor-proof bags, and water-retrieval bags only). Contrarily, Defendants assert that the Exclusivity Provision prevented Plaintiff from buying any body bag from any source other than Defendants. The Court agrees with Plaintiff's interpretation of Section 3.4.8.
46. Defendants are correct that the Exclusivity Provision states that Plaintiff "shall for the term of the non-compete agreement buy all of their body bags from the Seller." However, Defendants' focus on such language in isolation overlooks provisions providing context for that phrase. Significantly, preceding language in that same sentence requiring Defendants to "provide to Buyer body bags at a discounted rate . . ." would be meaningless without all of those discounted rates being enumerated within the Agreement. Accordingly, the Exclusivity Provision subsequently lists the types of bags actually offered by Defendants and the prices at which Plaintiff could purchase those bags.
47. Reading the Exclusivity Provision as a whole and considering all of its provisions demonstrates that the parties intended the term "all of their body bags" to mean "all" bags in the listed categories and priced accordingly. "Documents will be interpreted so as to give effect to all of their provisions, if practical." *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997) (citation omitted).
48. While Defendants allege that they were "at all relevant times, capable and willing to manufacture and/or provide Plaintiff with any desired or needed body bags," (Defendants' Answer to Plaintiff's Amended Complaint at ¶ 41), that reading of the Exclusivity Provision could lead to unreasonable results not intended by the parties. "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail." *C.A.N. Enters., Inc. v. S.C. Health & Human Serv. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (citation omitted). For example, the Exclusivity Provision as construed by Defendants is silent with respect to how a type of bag not specifically listed therein would be priced. The Plaintiff's reading, on the other hand, memorializes both the Plaintiff's obligation to buy certain bags, and the Defendant's obligation to sell those bags at specific, discounted prices.

Bag Purchases by Plaintiff

49. Palmetto Mortuary purchased one infant body bag from Southland Medical Corporation on or about April 3, 2008 for the purchase price of \$5.25, and on April 9, 2008 purchased one case containing thirty infant bags for a total price of \$187.50. *Id.* at 45:22-46:12; *see also* Plaintiff's Exhibit 4 (admitted through Donald J. Lintal) at p. 1. Mr. Lintal testified that after receipt of the first infant body bag (a "pediatric" size bag) and demonstration to the Lexington County Coroner, he purchased thirty of the larger sized infant bags. "[W]e, being Randy Martin and myself, [determined] that the larger size would be more versatile for [our] use." *Id.* at 49:7-13.
50. On March 6, 2009, Palmetto Mortuary additionally purchased six water-retrieval bags from Evident at a purchase price of \$45.00 a piece, for a total of \$270.00. *See* Trial Tr. at 49:25-50:5; 50:24-51:23. The price paid by Palmetto Mortuary for the water retrieval bags from Evident was fifty percent more than the guaranteed discounted rate in the Exclusivity Provision of the Agreement, Section 3.4.8. *Id.* at 50:24-51:22; *see also* APA at Section 3.4.8 ("Water-Retrieval [sic] body bags: \$30.00").
51. On July 14, 2010, Palmetto Mortuary purchased a total of ten body bags from Medical Products Limited, including four extra-large body bags, and six heavy-duty body bags. *See* Trial Tr. at 52:2-11. Extra-large body bags are not included in the list of "different types of body bags" required by the Exclusivity Provision to be purchased by Palmetto Mortuary, but "Heavy Duty body bags" are included. *Id.* at 52:12-24; *see also* APA Section 3.4.8. The total purchase price for the bags from Medical Products Limited was \$208.50. *See* Trial Tr. at 53:21-54:1. Palmetto Mortuary paid more for the heavy duty bags purchased from Medical Products Limited (\$34.75 per bag) than the \$20.00 per heavy duty bag set out in the Exclusivity Provision. *Id.* at 54:2-9; *see also* APA at Section 3.4.8.
52. This Court finds that the total amount of bags purchased by Palmetto Mortuary from sources other than Knight Systems totaled Eight Hundred and Eighty-Four Dollars and Ninety-Seven Cents (\$884.97). *See* Trial Tr. at 54:9-17. This total amount includes thirty-one (31) infant bags at a total price of 192.75, four (4) extra-large body bags at a price of \$213.72, six (6) heavy duty body bags at a total price of \$208.50, and six (6) water-retrieval bags at a total price of \$270.00. *Id.* at 48:5-25; 49:21-50:10; 52:4-23.
53. Infant body bags and extra-large body bags are not within the types of bags Palmetto Mortuary was required to purchase from Knight pursuant to Section 3.4.8. Therefore, the Court does not consider Plaintiff's purchases of such bags from manufacturers other than Defendants to be a breach of the APA. However, heavy-duty body bags and water-retrieval bags are included in the type of bags subject to the Exclusivity Provision of the APA. The total amount Palmetto Mortuary paid for bags that were included in the Exclusivity Provision was Four Hundred Seventy Eight Dollars and Fifty Cents (\$478.50). *See* Trial Tr. at 49:21-50:10; 52:4-23.

Plaintiff's Breaches of the Exclusivity Provision Were Not Material

54. Plaintiff's acts of purchasing body bags from other sources do not constitute *material* breaches of the Agreement which would excuse Defendants' performance under the Agreement. Rather, Defendants are only entitled to monetary damages which are proximately caused by Plaintiff's breach, a total damages amount of \$478.50. *See* Trial Tr. at 49:21-50:10; 52:4-23.
55. A breach of contract by nonperformance gives rise to merely a cause of action for damages. Monetary damages in a breach of contract action are intended to place the non-breaching party in the position he would have been in had there been no breach and the contract was performed. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 493 S.E.2d 875, 879 (Ct. App. 1997). The proper measure of compensation is the loss actually incurred as the result of the breach. *Willms Trucking Co., Inc. v. JW Construction Co., Inc.*, 314 S.C. 170, 442 S.E.2d 197, 202 (Ct. App. 1994) (*citing In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890, 897 (1937)).

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

56. typically the non-breaching party is not automatically excused from the future performance of contract obligations every time the other party commits a breach. Rescission or repudiation may only be granted when there is a breach which is so fundamental and substantial that it defeats the purpose of the contract. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004). If the breach is relatively minor and not of the essence, the non-breaching party is still bound by the contract and may not abandon performance and obtain damages for a total breach by the defendant. *Williston on Contracts* 63:3. "Otherwise stated, a nonperforming party is liable for any breach of contract, but the other party is discharged from further performance, and is entitled to substantial damages only when there is a material breach." *Id.* (citing *In re Krueger*, 192 F.3d 733 (7th Cir. 1999)). The determination of whether a material breach has occurred is generally a question of fact.
57. Under South Carolina law, "[i]n order to warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract." *Ackerman v. McMillan*, 314 S.C. 268, 442 S.E.2d 618 (Ct. App. 1994) (citing *Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 427 S.E.2d 701 (Ct. App. 1993)). "Where the breach is not so material as to defeat the purpose of the contract, the non-breaching party is compensated by damages." *Ackerman* at 271, 442 S.E.2d at 620 (citing *Childress v. C.W. Myers Trading Post, Inc.*, 247 N.C. 150, 100 S.E.2d 391 (1957)). Similarly, "[a] breach of contract warranting rescission of the contract must be so substantial and fundamental as to defeat the purpose of the contract." *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009) (citing *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 143, 382 S.E.2d 915, 917 (1989)). "Thus, a rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties." *Id.*
58. The Restatement (Second) of Contracts sets forth "circumstances significant in determining whether a failure is material" in Section 241. In determining whether a failure to render or to offer performance is material, the following circumstances are significant:
- (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
 - (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
 - (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
 - (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and
 - (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

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

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

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

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

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

62. The third Restatement element is the extent to which the party failing to perform or make an offer to perform (Plaintiff) will suffer forfeiture if the failure is treated as material.

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

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

Under the terms of the Non-Compete Agreement, Defendants were prohibited from competing against Palmetto Mortuary for a period of ten years that began on January 5, 2007. *See* APA. At the time of Knight System's breach in June of 2011, five years and seven months remained on the Non-Compete Agreement. Additionally, at that time Palmetto Mortuary had significantly complied with the terms of the parties' Agreement,

by paying the full purchase price, \$590,000.00, and purchasing significantly all of its body bags from Knight Systems pursuant to the Exclusivity Provision, a total amount of more than \$45,000.00. *See* Trial Tr. at 56:10-20; *see also* Plaintiff's Exhibits 2 and 3.

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

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

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

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

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

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

68. Moreover, considering the context in which the Tape Recording took place and the timing of the Richland County Coroner’s contract bid, the Court accepts Mr. Lintal’s testimony that Mr. Knight knew or should have known that Palmetto Mortuary previously purchased body bags from other manufacturers. However, instead of bringing the breaches to Mr. Lintal’s attention when he was aware of such allegations, Knight held onto the information until a time that was beneficial to him. *Id.* at 239:9-240:21.

Additionally, Mr. Knight’s conduct on June 16, 2011, including surreptitiously tape-recording Mr. Lintal, bringing up Palmetto Mortuary’s purchases of body bags from other manufacturers after more than three years after the purchases, and immediately placing a bid for the Richland County contract one day following the parties’ discussion, evidences something less than good faith with respect to adhering to the terms of the APA.

Rescission and restitution are equitable remedies which will not be provided when

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

70. Based on the evidence presented, the Court finds that Plaintiff’s purchases of certain bags from sources other than the Defendants do not constitute material breaches of the APA.

As a result, Defendants were not excused from performance under the Agreement, including the Non-Compete Agreement. Defendants are only entitled to monetary damages that naturally flow from Plaintiff’s breaches.

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

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

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

Plaintiff is Entitled to Lost Profit Damages

72. Defendants' breach of the Non-Compete Agreement entitles Plaintiff to monetary damages, pursuant to Section 3(A) of Exhibit 3.2.6 to the Agreement:
Accounting for Lost Profits. If Seller shall violate any of the provisions of Sections 1 or 2, Buyer shall be entitled to recover any non-speculative profits incurred by Buyer as a result of, growing out of, or in connection with, any such violation by Seller. This remedy shall be in addition to, and not in limitation of, any injunctive relief or other rights, remedies, or damages, to which Buyer is or may be entitled as a result of this Agreement.
73. "Under current South Carolina law, the standard of admissibility for evidence of future damages is 'any evidence which tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant's acts . . . if otherwise competent.'" *Burroughs v. Worsham*, 352 S.C. 382, 396, 574 S.E.2d 215, 222 (Ct. App. 2002) (quoting *Pearson v. Bridges*, 344 S.C. 366, 372, 544 S.E.2d 617, 620 (2001) (quoting *Martin v. Mobley*, 253 S.C. 103, 109, 169 S.E.2d 278, 281-82 (1969))).
"Whether future damages are 'reasonable certain to occur is the standard of proof for future damages, not the standard of admissibility.'" *Id.* (quoting *Pearson v. Bridges*, 344 S.C. at 371-72, 544 S.E.2d at 619) (emphasis omitted). See also *Western Insulation, LP v. Moore*, 242 Fed. Appx. 112 (4th Cir. 2007) (citing *Saks Fifth Ave., Inc. v. James, Ltd.*, 630 S.E.2d 304, 311 (Va. 2006) (explaining that to prove entitlement to damages, "a plaintiff must prove the amount of those damages by using a proper method and factual foundation for calculating damages.")).
74. This Court finds that Mrs. Lintal, as Palmetto Mortuary's CFO, is competent to testify as to Palmetto Mortuary's future damages from Defendants' breach as a result of their competition with Palmetto Mortuary in violation of the Non-Compete Agreement. See Rule 602, SCRE (lay testimony must be based on personal knowledge) and Rule 701, SCRE (lay opinions must be formed as a result of the witness' rational perception).
Additionally, the Court finds that Mrs. Lintal's testimony is admissible because it "tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant's acts." See *Burroughs v. Worsham*, 352 S.C. at 397, 574 S.E.2d at 222. Finally, the Court finds that the damages of Palmetto Mortuary, as introduced through Mrs. Lintal were "reasonably certain to occur" and were not challenged by Defendants. Therefore, the Court accepts Mrs. Lintal's testimony and finds that Palmetto Mortuary adequately submitted proof of damages under the *Burroughs* test.
75. Mrs. Lintal testified that Plaintiff's damages included "the overall profit that [the company] lost due to the fact of not having this business, with [the Richland County] contract." See Trial Tr. at 142:10-17. This amount represents the revenue Palmetto Mortuary would have received if it had won the Richland County contract in 2011 and performed that contract for a five-year term. If Palmetto Mortuary had been awarded the Richland County contract, Palmetto Mortuary's total revenue over the five year cycle would have been \$437,900.00. *Id.* at 144:17-145:6.
76. Mrs. Lintal also testified that Palmetto Mortuary's total expenses, if it would have won the Richland County contract and performed it for five years, equaled \$64,635.54. *Id.* at 145:7-147:6 (explaining calculation of expenses). The estimate of expenses calculated by Mrs. Lintal was based on the last contract year Palmetto Mortuary had with Richland County." *Id.* at 184:13-185:13.
77. Accordingly, Palmetto Mortuary's total lost profits for the five-year period "using [Palmetto Mortuary's] revenues" and expenses equal total revenues less total expenses, or \$373,264.54. *Id.* at 147:10-12.
78. However, as more fully discussed above, Defendants are entitled to a set-off of the total amount of body bags purchased by Palmetto Mortuary which should have been purchased

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

Plaintiff is Entitled to Injunctive Relief

79. Plaintiff has also requested a permanent injunction against Defendants. Injunctive relief is available under Section 3 of the Non-Compete Agreement. *See* APA at Exhibit 3.2.6. Plaintiff seeks an injunction prohibiting Defendants from competing against Plaintiff pursuant to the terms of the parties' Non-Compete Agreement, and specifically to prevent a breach by Defendants. The injunction Plaintiff seeks would last for five year and seven months, the length of time remaining on the parties' Non-Compete Agreement at the time Defendants submitted the competing bid to Richland County.
80. "A covenant not to compete is enforceable if it is not detrimental to the public interest, is ancillary to the sale of a business or profession, is reasonably limited as to time and territory, and is supported by a valuable consideration." *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 71, 119 S.E.2d 533, 542 (1961) (*citing* 36 Am.Jur., Monopolies, Combinations, and Restraints of Trade, Sections 52, 53, 54, 55, 56; *Metts v. Wenberg*, 158 S.C. 411, 155 S.E. 734; *Reeves v. Sargeant*, 200 S.C. 494, 21 S.E.2d 184; *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344). In this case, the award of a permanent injunction is necessary to give the Plaintiff the benefit of its bargain and to ensure Defendants' compliance with the Non-Compete Agreement. Although monetary damages are sufficient to put Plaintiff in the position it would have been in had Plaintiff held the Richland County contract for a five-year term, enforcement of the restrictive covenant is necessary to enforce the remaining term of the Non-Compete Agreement and to avoid a forfeiture of the contract as a whole.
81. The Court is not ordering specific relief with respect to the remaining terms of the APA, including the exclusive purchase clause in Section 3.4.8 of the APA. "Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 628 (Ct. App. 2004) (*quoting* *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 104, 531 S.E.2d 287, 291 (2000)). The Court finds that the Non-Compete Agreement was a separately executed contract which is supported by adequate consideration. Plaintiff is only seeking specific performance of the parties' Non-Compete Agreement and no one is seeking specific performance of the entire APA.
82. Additionally, specific performance of the APA, including Section 3.4.8, would not be equitable as between these parties. Requiring Palmetto Mortuary to purchase the types of body bags stated would be unjust, especially considering evidence that Defendants have removed at least one type of bag, the odor-proof disaster bag, from the market and refuses to sell the odor-proof disaster bags to Palmetto Mortuary. "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Campbell v. Carr*, *supra* (*citing* *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct. App. 1985)).
83. The Non-Compete Agreement is enforceable and the Court finds as a matter of fact that there are five years and seven months remaining on the original ten-year term. Accordingly, Plaintiff is entitled to an injunction enforcing the remainder of the Non-Compete Agreement. The injunction will begin as of the date of this order and will continue for five years and seven months.
84. However, because the Court has awarded monetary damages to the Plaintiff for the five-year term of the Richland County contract, the Defendants' performance of its contract with the Richland County Coroner for that time period does not violate the permanent injunction ordered by the Court.

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CONCLUSION

For the foregoing reasons, the Court orders as follows:

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

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

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

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

AND IT IS SO ORDERED.

James Randall Davis, Special Master/Referee

February ____, 2014
Lexington, South Carolina.

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Palmetto Mortuary Transport, Inc.,

Plaintiff,

vs.

Knight Systems, Inc. and Robert
L. Knight,

Defendants.

CIVIL ACTION NO: 2011-CP-32-04051

ORDER

INTRODUCTION

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

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

PROCEDURAL HISTORY

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Systems, Inc.'s "customer lists" (\$551,500.00).¹ See, Exhibit 2.3 (Purchase Price Allocations) attached to Plaintiff's Exhibit 1; see also, Trial Tr. 98-99:2-10; 157:3-13; 201:19-22. Both the Lintals and Buddy Knight testified that the Parties had no discussion about the amount of consideration to be paid for the Non-Competition Covenant prior to the Parties' arrival at the January 5, 2007 closing. Trial Tr. 156:9-25; 157-161:1-19; 166:12-16; 199:10-16.² In fact, the \$1,000.00 allocated for the non-compete agreement was merely deducted from the originally negotiated \$590,000.00 asset purchase price. Trial Tr. 158:13-20; 182:7-22. Thus, as Mrs. Lintal testified, there was never any discussion between the Parties about a separate and distinct offer of consideration for the non-compete agreement apart from the original purchase price for all assets of Defendants' mortuary transportation business. Trial Tr. 182: 17-22.

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

At the time of the asset purchase between these Parties, Don Lintal testified that Knight Systems, Inc.'s primary area of providing mortuary transportation was in Lexington and Richland Counties. Trial Tr. 104:12-15.³ Mr. Lintal further testified that the intent and affect of including a non-compete agreement within a 150 mile radius from Lexington County was to prevent Defendants from competing against Palmetto Mortuary anywhere within the State of South Carolina. Trial Tr. 104:1-11. Although Knight Systems, Inc. was primarily a Midlands, South Carolina based business, Mr. Lintal attempted to justify the statewide restriction on competition by stating that:

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

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

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

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

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

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

Plaintiffs allege that the Defendants breached the Non-Competition Covenant by submitting a 2011 bid to provide body removal and transportation services to the Richland County Coroner's Office. During Don Lintal's testimony at the trial, the Plaintiff also alleged that the Defendants breached Section 3.4.8 of the Asset Purchase Agreement (Seller's Related Business), by removing Knight's patented odor-proof bags from the open market, thereby preventing Plaintiff from meeting an essential requirement of the Richland County Coroner's Office Request for Proposals. Trial Tr. 62:10-24; 63:10-12; 189:6-22.⁴ Mrs. Lintal testified that the only way that Plaintiff could fulfill the requirements of the Richland County contract is to have access to purchase the odor-proof bags manufactured by Buddy Knight.⁵ Trial Tr. 189:6-18. Thus, according to testimony offered on behalf of the Plaintiff, even in the absence of Defendants' bid on the Richland County contract, Plaintiff was not guaranteed that Palmetto Mortuary would have been awarded this public contract. *Id.* at 189:19-22.⁶

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

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

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

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

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

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

Prior to any transfer of the Related Business to a third party, Knight shall offer to sell the Related Business to Buyer at the same price and on the same terms as those offered with respect to the proposed transfer of the Related Business.

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

Despite testimony by Don Lintal that he purchased approximately 31 infant body bags from a source other than Mr. Knight, Lintal offered conflicting testimony as to whether he knew that he could have purchased infant body bags from Mr. Knight, as required by Section 3.4.8 of the Agreement.⁷ Trial Tr. 45:22 - 49:16.⁸ During a secretly recorded conversation between Don Lintal and Buddy Knight, Lintal never states to Knight that Plaintiff believed that he was not required by the Agreement to purchase infant body bags from Knight. See, Defendants' Exhibit 1 (Audio recording). In fact, Lintal was also untruthful with Knight during that conversation by telling Knight that the infant bags were the only bags he had purchased from another body bag vendor, even though Plaintiff had at that time purchased other types of body bags from vendors other than Knight. *Id.*; see also, Trial Tr. 229:2-3.

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

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

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

County public contract.⁹ Trial Tr. 49:25-50:5; 50:24-51:23. Lintal testified that the total price paid for those water-retrieval bags was \$270.00. *Id.* On or about July 14, 2010, the Plaintiff purchased four extra-large and six heavy duty body bags from a company called Medical Products Limited. Trial Tr. 52:2-11.¹⁰ Palmetto Mortuary paid a total price of \$280.00 for the ten body bags purchased from Medical Products Limited. Trial Tr. 53:21-54:1. These purchases, like the purchases from Southland Medical Corporation and Evident, occurred well before Knight submitted a bid on the Richland County public contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reversing the lower courts, the South Carolina Supreme Court found a material breach of the sales contract. The Supreme Court stated that, [i]n our view, the trial court's and court of appeal's error stems from focusing on the dollar amount withheld in determining whether [purchaser's] actions defeated the purpose of the contract and the objective of the contracting parties." *Brazell*, supra at 827.²⁰ The Supreme Court held that "the overriding purpose of the contract was not merely to receive proceeds from the sale of a home, but rather to finalize a real estate transaction and transfer title from the vendors to the purchasers. *Id.* The Court further observed that the respondent "could have negotiated for provisions in the contract regarding the reverse osmosis system or could have sought relief by filing her own breach of contract action." *Id.*

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

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

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

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

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

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

"Explicit termination clauses are common in many different categories of commercial contracts, including employment agreements, service contracts, merger and acquisition agreements, loans, and franchise and distributorship arrangements." Anticipating Litigation In Contract Design, 115 Yale L.J. 814, 873 (Jan. 2006). "Under the common law of contracts, material breach entitles the nonbreaching party to withhold performance and seek damages for breach. One reason for explicit termination clauses is to provide for the conditions that trigger termination, rather than relying on the common law requirements for material breach." *Id.* at 874.²¹ In the absence of a termination clause, a party may ordinarily terminate a contract only in the event of a material breach. See, 33 New York Construction Law Manual § 4:2 (2d ed.)

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

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

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

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

Palmetto Mortuary and the Defendants included a specific termination clause in the Non-Competition Covenant. The termination provision expressly provides that any breach of the Asset Purchase Agreement, by Palmetto Mortuary, releases Knight from the restrictions imposed by the non-compete agreement. See, p. 3 of the Non-Competition Covenant, admitted as Plaintiff's Exhibit 1.²³ Don and Ellen Lintal's fears that Knight would compete for the Richland County Coroner's contract, following Don Lintal's June 16, 2011 conversation with Buddy Knight, is consistent with the Lintals' knowledge that the termination clause allowed Knight to terminate the non-compete. The recorded conversation between Lintal and Knight included statements by Lintal indicating that he was concerned that Knight would see Palmetto Mortuary's purchases of infant body bags as a breach of the Asset Purchase Agreement. See, Trial Tr. 221-225.²⁴ During the same conversation, Lintal was affirmatively untruthful with Knight, by denying that Plaintiff had purchased any bags, other than the infant body bags, from other vendors. Trial Tr. 223:4-9; 221 - 225. Don Lintal also discussed with his wife, and later their attorney, the issue of whether Knight's belief that Plaintiff had breached the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁵ See, Trial Tr. 104:1-25; 105:1-15.

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

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

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

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

³⁶ See, Trial Tr. 104 - 105.

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

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

CONCLUSION

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

AND IT IS SO ORDERED.

The Honorable James R. Davis
Special Referee
Eleventh Judicial Circuit

This ____ day of _____, 2014.

Lexington, South Carolina.

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF LEXINGTON) CASE NO.: 2011-CP-32-04051
3

4 Palmetto Mortuary Transport) REFERENCE HEARING
5 Inc.,) DECEMBER 18, 2013

6 Plaintiff,)

7 vs.)

8 Knight Systems, Inc. and)

9 Robert L Knight,)

10 Defendants.)
11 _____)
12

13 The reference hearing before the Honorable James
14 Randall Davis, Esquire, Special Referee for Lexington
15 County, was taken at the Offices of Davis Frawley, LLC,
16 140 East Main Street, Lexington, South Carolina on
17 Wednesday, the 18th day of December, 2013, scheduled for
18 10:00 a.m. and commencing at the hour of 10:05 a.m. before
19 Jaime D. Newton, Court Reporter and Notary Public in and
20 for the State of South Carolina; pursuant to Rule 30 of
21 the South Carolina Rules of Civil Procedure.
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APPEARANCES:

Representing the Plaintiff:

JACK PRINGLE, ESQUIRE
LYNDEY RITZ ZWING, ESQUIRE
Adam and Reese, LLP
1501 Main Street, Suite 500
Columbia, South Carolina 29202
jack.pringle@arlaw.com

Representing the Defendants:

REGINALD I. LLOYD, ESQUIRE
The Lloyd Law Firm
715 West Dekalb Street
Camden, South Carolina 29020
reggie@lloydlawfirm.net

TODD HAGINS, ESQUIRE
Hagins Law Firm
825 Meeting Street
West Columbia, South Carolina 29169
todd@haginslawfirm.com

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1 Also Present:
2 Robert L. Knight
3 Donald J. Lintal
4 Ellen Lintal

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* * * * *

EXHIBIT INDEX

Exhibits: Marked at Page

(Copy of exhibits attached to
each copy of transcript.

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* * * * *

Court Reporter's note:

-- indicates interruption; incomplete phrases; unfinished sentences

GARBER REPORTING SERVICE

803-256-4500

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

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

23 OPENING STATEMENT BY MR. PRINGLE:

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

1 and I'm counsel for the Plaintiff, Palmetto Mortuary
2 Transport. I'll probably call the PMT or Plaintiff.
3 With me are Don Lintal and Ellen Lintal who are
4 officers of PMT. Very briefly before we present our
5 witnesses, I wanted to give you just a brief, brief
6 overview. I think this is a fairly straightforward
7 case. My clients on January the 5th, 2007, by means of
8 an asset purchase agreement that there will be a great
9 deal of discussion about -- it was actually attached to
10 the complaint. But through this asset purchase
11 agreement bought a number of assets from Knight Systems
12 and Mr. Knight. Mr. Knight and Knight Systems are
13 parties to that agreement. And what they bought was
14 Knight's Mortuary Transport business. Very briefly
15 that means -- without being callous, it means
16 transporting dead bodies on behalf of governmental
17 entities like the Lexington County Coroner, like the
18 Richland County Coroner, like the University of South
19 Carolina, or on behalf of private entities like funeral
20 homes, and it involves a lot of picking up and
21 transporting and dropping off, and the kinds of things
22 that go along with that. And through the asset
23 purchase agreement my clients paid the total of
24 \$590,000 to the Defendants in order to purchase a few
25 hard assets. A few pieces of equipment that are listed

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

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

1 would enable him to walk away and keep \$590,000, but
2 get out of his covenant not to compete and his
3 obligations that at that time he was only four years
4 into. So ultimately what we're asking from you is that
5 pursuant to the specifics of the contract is that we be
6 awarded damages equal to the amounts that a profit that
7 he earned or that we would have earned had we been
8 performing that Richland County contract. But for his
9 involvement in the contract we would have that contract
10 as we had it before that request for proposal, and we
11 would have had it afterwards. We're seeking those
12 damages for the term of the Richland County contract,
13 as well as to the injunctive relief that's allowed in
14 the agreement that says specifically that he's not to
15 compete with us, and that that -- because of his
16 violation of the covenant not to compete, and the fact
17 that he's been actually competing with us for two and a
18 half years, that the covenant not to compete that was
19 originally scheduled to run from January 5th, 2007 to
20 January 5th, 2017 it be extended for an additional two
21 and a half years until roughly June of 2019 to reflect
22 the contract's specific provision that he not compete
23 with us for a period of ten years from January 5th,
24 2007. And that's it in a nutshell.

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

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

3 OPENING STATEMENT BY MR. LLOYD:

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

1 example, or customer list versus hard assets. There's
2 a dollar figure eventually attached at the closing of
3 \$1,000 for the non-compete. The non-compete, Your
4 Honor, is interesting in this instance. Mr. Knight had
5 obviously indicated that he planned to sell his
6 business and planned at that point because of a health
7 issue to only continue to run his body bag
8 manufacturing business. The non-compete that was
9 presented in the closing documents actually is for a
10 ten year period, which according to the testimony, Your
11 Honor, we'll hear was essentially designed to allow the
12 Lintals no competition from Mr. Knight over a couple of
13 contract periods with these public contracts; the
14 Richland County or Lexington County contracts. The
15 territorial restrictions on the non-compete was for a
16 distance of 150 miles from Mr. Knight's present location
17 at that time. So essentially the entire state of South
18 Carolina was off limits to him for this non-compete,
19 even though Mr. Knight's business prior to that was
20 essentially in Richland County, Lexington County, and
21 occasionally outside of the County. But that was not
22 the substance of his business. It was really a local
23 business. A dollar figure at the closing of \$1,000
24 gets attached to the price for the non-compete. That
25 was just by happenstance. It was whatever was left

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

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

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

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

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

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

24 THE COURT: How do you spell that last name?

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

1 THE COURT: L-I-N --

2 MR. LINTAL: T-A-L.

3 THE COURT: T-A-L. We'll go until 12:30. I've got a
4 conference call on something at 1:00 and start back at
5 2:00, if that's okay, and then we'll go to 5:00 or
6 5:30. Whatever suits you all.

7 MR. PRINGLE: Okay.

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

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

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

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

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

20 MR. PRINGLE: According to what? What authority?

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

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

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

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

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

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

25 THE COURT: Owner. A part owner.

1 MR. PRINGLE: Do you own any shares?

2 MRS. LINTAL: Yes, I do.

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

7 MR. PRINGLE: Okay.

8 MR. LLOYD: Thank you, Your Honor.

9 THE COURT: Swear the witness.

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

13 DIRECT EXAMINATION BY MR. PRINGLE:

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

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

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

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

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

1 How did you get in the business?

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

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

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

6 MR. LLOYD: Just a second.

7 MR. PRINGLE: Yeah.

8 Q: And get you to identify it.

9 THE WITNESS: Everybody gets one but me.

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

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

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

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

19 Q: Okay.

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

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

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

3 MR. PRINGLE: All right.
4 (Plaintiff's Exhibit Number One was admitted into
5 evidence.)

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

7 A: Okay. Thank you.

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

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

16 Q: Okay. Are those contracts listed on Exhibit
17 1.1.1.3 of the asset purchase agreement? You can
18 just answer yes.

19 A: Yes. I assume they're here.

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

23 A: Yes.

24 Q: Contract with Lexington County for body removal
25 services?

REFERENCE HEARING

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- 1 A: Yes.
- 2 Q: Contract with the University of South Carolina
- 3 for cadaver preparation and transportation
- 4 services?
- 5 A: Correct, yes.
- 6 Q: Okay. How much did PMT pay Buddy Knight and
- 7 Knight Systems for the assets it purchased?
- 8 A: The total value of the contract -- or the total
- 9 value of what was paid was \$590,000.
- 10 Q: So you paid Buddy Knight and Knight Systems
- 11 \$590,000?
- 12 A: Yes.
- 13 Q: Okay. In exchange for these assets?
- 14 A: Correct, yes.
- 15 Q: Did the agreement also have a non-competition
- 16 covenant in it?
- 17 A: It did.
- 18 Q: Okay. Is that one of the exhibits to the asset
- 19 purchase agreement?
- 20 A: Yes. Yes, it was.
- 21 Q: And briefly describe what the terms of that
- 22 agreement were.
- 23 A: For a period of ten years it was agreed upon that
- 24 Knight Systems and Robert Knight would not
- 25 perform mortuary services removal and

1 transportation services within 150 mile radius of
2 Lexington County.

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

5 A: Yes.

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

11 A: A, is customers, et cetera.

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

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

17 Q: Who are customers?

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

22 Q: Okay. So Richland County was a customer?

23 A: Yes.

24 Q: Lexington County was a customer?

25 A: Yes.

1 Q: USC, University of South Carolina, was a
2 customer?

3 A: Yes.

4 Q: And you've mentioned the territory which is B,
5 and then there's a 2C.

6 A: Right.

7 Q: Tell me the rationale, if you could, for a ten
8 year non-compete.

9 A: Our goal was to be able to run through two
10 contract cycles. Because of the staggered form
11 of the three contracts that were involved, ten
12 years would get us to a completion of two
13 contracts. The ability to bid two contracts.

14 Q: Meaning that -- and how long would one contract
15 cycle be?

16 A: One contract cycle complete was five years.

17 Q: All right. And then the -- this has already been
18 discussed a little bit at opening. The asset
19 purchase agreement had a provision that related
20 to body bags.

21 A: Yes.

22 Q: Can you talk a little bit about that.

23 A: In the agreement we were --

24 Q: What part of the agreement was that? What
25 section?

1 A: I don't know.

2 Q: Mr. Lintal, look to your right.

3 A: Oh, 3.4.8.

4 Q: Yeah. All right. And tell the Court a little

5 bit about that.

6 A: Okay. It was decided that Knight shall provide

7 us body bags at a discounted rate for the period

8 of the non-compete agreement. And buy other body

9 bags from the seller.

10 Q: Okay. So --

11 A: Yeah. Buy other body bags from the seller.

12 Q: Okay. And does 3.8 have any information with

13 respect to bags and prices?

14 A: Right, yes. It lists the current charges for

15 different types of bags that were involved, and

16 the prices shall not be increased more than ten

17 percent in a calendar year.

18 Q: What bags are listed in 3.4.8?

19 A: Heavy duty body bag at \$20 per bag. Lightweight

20 body bag at \$8 per bag. Odor proof body bag at

21 \$50 per bag. And the water retrieval body bag

22 for \$30 per bag.

23 Q: Okay. We'll talk a little bit about this more.

24 After January 5th, 2007, the date you purchased

25 the business or the assets from Mr. Knight and

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

3 A: Yes.

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

6 A: Yes.

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

9 A: Yes.

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

12 A: Yes.

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

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

15 MR. PRINGLE: Water Retrieval.

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

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

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

23 MR. PRINGLE: Go ahead and get that marked.
24 (Plaintiff's Exhibit Numbers Two was marked for
25 identification purposes.)

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

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

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

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

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

15 A: It would appear as such, yeah.

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

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

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

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

1 invoice amounts month by month and broke down by
 2 year as well.
 3 Q: Okay. So when does it start?
 4 A: January 10th, 2007.
 5 Q: Following your purchase of the assets from Knight
 6 Systems?
 7 A: That was what was initially purchased at the
 8 time, right.
 9 Q: And does the spreadsheet have a body bag amount
 10 associated with it?
 11 A: Yes.
 12 Q: What is that amount, for example, for January
 13 10th, 2007?
 14 A: \$2,506.
 15 Q: Okay. Why would that amount, for example, be
 16 different than the invoice amount? Just as a
 17 general proposition.
 18 A: There were other items probably purchased.
 19 Q: Okay. So you bought things other than body bags
 20 --
 21 A: Right.
 22 Q: -- from Knight Systems?
 23 A: Yes.
 24 Q: Did the asset purchase agreement have any
 25 requirements with respect to anything other than

1 body bags to be purchased from Knight Systems?

2 A: No.

3 Q: Okay. So you didn't have to buy --

4 A: No, it did not.

5 Q: -- stretches from Knight Systems?

6 A: No. No. For example, quite often we would buy

7 shipping containers initially and we were under

8 no obligation.

9 Q: It's not part of this contract?

10 A: No, sir.

11 Q: Not part of this case? Okay. Well so, for

12 example there, for 2007, what's the total amount

13 that PMT paid Knight Systems for body bags?

14 A: Just for bags --

15 MR. LLOYD: Your Honor, I'm going to object to him

16 testifying from this document at this point.

17 MR. PRINGLE: Well, then I'll ask that it be marked and

18 moved into evidence as a summary of the total number of

19 invoices.

20 MR. LLOYD: The first set is Exhibit Two?

21 MR. PRINGLE: Yes.

22 MR. LLOYD: We have no objection to Exhibit Two being

23 moved into evidence.

24 THE COURT: All right. Without objection, Number Two.

25 How do you want it? You want to put this just Exhibit

1 Two compiled, or you want 2A- --

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

3 THE COURT: Just two?

4 MR. PRINGLE: Two is fine.

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

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

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

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

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

25 MR. PRINGLE: Okay.

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

3 A: Okay.

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

6 A: \$7,336.

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

9 A: Oh, yes.

10 Q: -- in connection with that?

11 A: Yeah. Yes, there was.

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

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

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

1 listed on here is just for the body bag amount?

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

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

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

1 Okay?

2 MR. PRINGLE: Sure. Sure.

3 THE COURT: That will give you some time to look at it.

4 And if it's not enough time, let me know.

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

6 THE COURT: All right. We're dealing with proposed

7 Exhibit Three, I believe.

8 MR. LLOYD: Yes, sir. Your Honor, we would still raise an

9 objection to this that it's not an accurate summary.

10 The invoice amount appears to include the total that's

11 on Exhibit Two for the full amount including taxes.

12 The body bag amounts, it appears, just flipping through

13 some examples, does not include or account for the

14 taxes charged on that particular invoice. And so, you

15 know, we don't think it's an accurate summary under the

16 rule to be utilized.

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

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

19 MR. PRINGLE: Okay. And I'll just point out that even if

20 sales tax -- you know, \$61 on \$1,000 is not -- the

21 point we're not making is not the exact bottom line but

22 the general amount of purchases. But we'll just go

23 through it.

24 Q: Take a look at the first invoice.

25 A: Yes.

- 1 Q: The first item there is purchases of lightweight
2 300 body bags, does it not?
- 3 A: Correct.
- 4 Q: By the way, what is a lightweight body bag?
- 5 A: A lightweight is -- it's a low end standard bag,
6 regular use bag for average use for funeral
7 homes.
- 8 Q: Okay: Is it part of the contract?
- 9 A: It is, yes.
- 10 Q: What's the price for it?
- 11 A: Eight dollars.
- 12 Q: Okay. Can you turn back to 3.4.8.
- 13 A: It's on there.
- 14 Q: Okay. So it's \$8. And so, you got 36
15 lightweight bags at \$8?
- 16 A: Correct.
- 17 Q: And the total for that was \$288?
- 18 A: That is correct.
- 19 Q: Okay. And then you also got what? Eighteen of
20 what?
- 21 A: That's a heavy duty body bag listed at \$20 per
22 bag.
- 23 Q: Okay. Is that included in the contract, too?
- 24 A: It is. It's listed, yeah, at that price.
- 25 Q: So we've got \$288 plus \$360. Would you accept

1 subject to check that's \$648?

2 A: Yes.

3 Q: Okay. Then what's the next item there?

4 A: It's odor proof. It's OP 200 body bag.

5 Q: Okay. What's the price on that?

6 A: It's \$50 on both the invoice and the agreement.

7 Q: Okay. And you bought six of those for \$300?

8 A: Yes, sir.

9 MR. PRINGLE: And this is Lyndey Zwing --

10 MS. ZWING: Good morning.

11 MR. PRINGLE: -- an associate.

12 MS. ZWING: Lyndey Zwing. Nice to meet you.

13 MR. PRINGLE: Come in and sit down.

14 MS. ZWING: Thank you.

15 Q: And that was \$300, which leaves us with \$1,296,

16 correct?

17 A: Yes.

18 Q: Okay. And then what did you get?

19 A: Three water retrieval bags at \$30 each.

20 Q: Are those part of the contract?

21 A: They are. And agree to the price on the

22 contract.

23 Q: And you paid \$90 for those three, right?

24 A: For three, yes.

25 Q: Ending up now with a running total of \$1,386,

1 correct?

2 A: I guess, yes.

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

4 A: Okay.

5 Q: Okay. Then you move down past these removals to

6 what else did you get?

7 A: Additionally purchased during the month of

8 January. This would have been after acquisition.

9 Q: Yeah.

10 A: There were seven heavyweight bags at \$20 each, 41

11 lightweight bags at \$8 each, which is the same

12 item as the LTWT300 listed above. And then below

13 that was additionally bags purchased for stock on

14 February 1st of 2007 which included 30 heavy bags

15 at \$20 each and 50 lightweight bags at \$8 each.

16 Q: Okay. So with \$140 you have a running total of

17 \$1,526?

18 A: Yes.

19 Q: Okay. And all these are purchased pursuant to

20 the contract?

21 A: Yes, sir.

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

23 bags.

24 A: Yes.

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

1 A: Yes.

2 Q: Okay. And then we have \$600 for 30 heavy bags.

3 A: Correct.

4 Q: Bringing us to \$2,454, correct?

5 A: Correct.

6 Q: And then 50 lightweight bags at \$8 a piece for

7 \$400.

8 A: That is correct.

9 Q: Okay. And so, does that amount come out at

10 \$2,506, right?

11 A: That is correct.

12 Q: Okay.

13 MR. PRINGLE: Your Honor, I mean, we'll go through each

14 one of these things. I'm not saying that there may not

15 be sales tax discrepancies, but the point is to just

16 demonstrate, for example --

17 Q: Well, Mr. Lintal, in that month, \$2,506 in body

18 bags were purchased, correct?

19 A: That is correct.

20 Q: Okay. And we're going to talk about this in a

21 little bit. But do you recall what the sum total

22 of body bags that you bought outside of the

23 contract were, roughly?

24 A: Eight hundred dollars of total. But the ones

25 that applied it was approximately --

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

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

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

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

10 THE COURT: Right.

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

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

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

22 A: Yes.

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

25 A: Yes. According to this sheet.

1 Q: Taking into account sales tax and, you know,
2 possible other discrepancies, did you spend over
3 \$10,000 in purchasing body bags for Knight
4 Systems in 2007?

5 A: Yes.

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

8 A: Just in 2008 or --

9 Q: No. All the items in yellow.

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

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

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

21 Q: For whose use were they?

22 A: -- assigned to us.

23 Q: For whose use were they?

24 A: The bags that were sold?

25 Q: Yeah.

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

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

2 A: September. Well --

3 Q: When was the last bag purchase you made from

4 Knight, if you recall?

5 A: Possibly May or June of 2011.

6 Q: Okay. But accounting for sales tax and other

7 possible discrepancies, is it fair to say that

8 you spent over \$45,000 in bag purchases from

9 Knight according to the contract?

10 A: Yes, definitely.

11 MR. PRINGLE: Okay. You know, I don't necessarily need

12 the document. I think it's helpful for reference. I

13 think the -- certainly the invoices can stand on, you

14 know, what's actually in them, but this may be, you

15 know, a helpful reference. Again, not necessarily for

16 specifics but just for guidance as far as what

17 happened.

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

19 MR. PRINGLE: I do.

20 MR. LLOYD: Just because -- I mean, because, Your Honor,

21 we're not in front of a jury or anything --

22 THE COURT: Sure.

23 MR. LLOYD: -- we'll withdraw our objection to that. Your

24 Honor, we would, as you're considering this though,

25 just raise the issue that we're not sure about this

1 issue with the taxes and whether that accurately --

2 MR. PRINGLE: And that's fair, Your Honor.

3 MR. LLOYD -- reflects --

4 THE COURT: And I take that into consideration, as well as
5 his testimony as to what he said the lesser figure was.

6 MR. LLOYD: Yes, sir.

7 THE COURT: It was below the 50,000. So under that basis,
8 we'll let it in as Exhibit Number Three.

9 MR. PRINGLE: I think that's actually going to be four.

10 THE COURT: Is it four?

11 MR. PRINGLE: Is it four? It's three.

12 MR. LLOYD: Three.

13 MR. PRINGLE: You're absolutely right. So that's three.

14 (Plaintiff's Exhibit Number Three was admitted into
15 evidence.)

16 Q: Now, there were occasions, were there not, where
17 you had too many folders and you couldn't find
18 the exhibits, right? No. Where you bought bags
19 outside the contract; is that correct?

20 A: That is correct, yes.

21 Q: Okay. And we're going to locate --

22 MR. PRINGLE: Give me just a second, Your Honor. I beg
23 the Court's indulgence for just a second.

24 THE COURT: Sure. I understand. I don't have anything
25 here. I think these are my exhibits here, so I don't

1 think I have anything here.

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

4 MR. PRINGLE: Just mark that for identification.

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

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

9 A: Invoices from bag suppliers other than Knight
10 Systems.

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

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

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

18 MR. LLOYD: Without objection.

19 THE COURT: Be marked as Number Four without objection.
20 (Plaintiff's Exhibit Number Four was admitted into
21 evidence.)

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

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

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

- 1 of items there. But with respect to body bags,
2 tell me about what that invoice describes?
- 3 A: There's a listing for one infant eight mil curved
4 zipper, I assume, body bags.
- 5 Q: Okay. And what was the price for that?
- 6 A: \$5.25.
- 7 Q: And how many of them did you buy?
- 8 A: One.
- 9 Q: Okay. And that's the only body bag that's on
10 this invoice? You've got some other things you
11 purchased from Southland.
- 12 A: Yes, sir.
- 13 Q: Things that you weren't obligated to purchase
14 from anybody else?
- 15 A: Correct..
- 16 Q: Okay. And the date on this is what?
- 17 A: April 3rd, 2008.
- 18 Q: All right. And what kind of bag is this?
- 19 A: This is a baby bag. Infant bag, in this
20 particular case, it says.
- 21 Q: I'll refer you back up to 3.4.8 on the board
22 there. Is there a category for infant bags in
23 the 3.4.8?
- 24 A: No, sir.
- 25 Q: How did you come to purchase an infant bag from

1 Southland Medical Corporation?

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

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

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

23 Q: What did you do then?

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

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

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

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

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

16 A: It's again an invoice from Southland Medical
17 Corporation dated the next day -- no. April 9th.
18 The first one was April 3rd. This one is April
19 9th, 2008. And it was for one case of a baby
20 bag, eight millimeter curved zipper.

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

22 A: It was \$187.50 plus freight.

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

25 A: Yes. I believe so.

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

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

6 Q: Okay. So why were they different?

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

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

16 A: Well, they would -- yes.

17 Q: Right.

18 A: That was their preference, yeah.

19 Q: That's what they wanted. Okay.

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

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

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

1 6, 2009 for six recovery body bags.

2 Q: Okay. How much --

3 A: Water recovery bags.

4 Q: How much did you pay for those?

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

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

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

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

1 A: Let's see. Can I use my calculator?

2 Q: Would you except, subject to check, that it's \$45

3 per bag?

4 A: If you say so, yes.

5 Q: Okay.

6 THE COURT: Excuse me -- go ahead. I'm sorry.

7 MR. PRINGLE: Yeah.

8 THE COURT: Excuse me. I have one question. On Exhibit

9 Four, the water recovery bag is the same as a water

10 retrieval bag?

11 THE WITNESS: It is, yeah.

12 Q: Okay. And what price were you obligated to pay

13 Mr. Knight for water retrieval bags under the

14 contract?

15 A: Thirty dollars.

16 Q: So you paid 50 percent more for those \$45 bags

17 than you would have paid under the contract?

18 A: Yes.

19 Q: So you didn't get a deal?

20 A: No.

21 Q: In fact, you paid more.

22 A: Yeah.

23 Q: Okay. So that's \$270. If we add that to the

24 5.25 that we talked about for the infant bag and

25 the 187.50, those are the three we've got so far

- 1 that the totals that you bought outside the
2 contract. Let's turn to the next page. The next
3 invoice. And tell me what this is.
- 4 A: This is an invoice dated July 14th, 2010, and
5 it's from Medical Products Limited. It is for
6 two different bag types. Four of a -- ultimately
7 it's a heavy duty extra large bag. And the
8 second one is a -- there's four of those in the
9 purchase. And six each of the heavy duty -- HD60
10 is their model on that. Heavy duty body bag,
11 adult size.
- 12 Q: Are any of those body bags listed as a category
13 on the contract?
- 14 A: Yes.
- 15 Q: Which one?
- 16 A: The one with six. The heavy duty HD60.
- 17 Q: Okay. With a price of 34.75?
- 18 A: Correct.
- 19 Q: Okay. And a total amount paid of \$280.50?
- 20 A: That is correct.
- 21 Q: And then the other bags were \$213.72?
- 22 A: Yes, sir.
- 23 Q: For a total of \$422.22?
- 24 A: Yes.
- 25 Q: Okay. How did you come to purchase those bags?

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

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

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

1 is \$208.50.

2 Q: Okay. And what's the price for heavy duty body

3 bags under the contract?

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

5 Q: So again, you paid --

6 A: Considerably more.

7 Q: Considerably more for that.

8 A: 14.75.

9 Q: And a total of \$422. Okay. While I'm thinking

10 about it, would you accept, subject to check,

11 that the sum total of \$5.25 for the infant bag,

12 the initial infant bag, \$187.50 for the case of

13 infant bags, the \$270 for the six water retrieval

14 bags, and the sum total of these bags that you

15 bought from Medical Products of \$422.22 is a sum

16 total of \$884.97?

17 A: Yes.

18 Q: Okay. Now, as you mentioned, several of those

19 were bags that were not listed in the agreement,

20 correct?

21 A: That is correct.

22 Q: Okay. With respect, for example, to the water

23 retrieval bags, did Mr. Knight learn of your

24 purchase of those?

25 A: Yes.

1 Q: Okay. In response to that, did you do anything
2 in response to his knowledge that you had
3 purchased those bags?

4 A: I made an offering to reimburse him for the bags
5 that I'd bought.

6 Q: And what was the response to that?

7 A: There was no response that was plus or minus. It
8 was kind of agreed that I'd continue to buy from
9 him.

10 Q: Okay. Now, in every instance the purchases made
11 in April of 2008, March of 2009, July of 2010 --
12 well, let's say with respect to the Evident
13 purchase of water retrieval bags in March of
14 2009. Following March of 2009, did you buy water
15 retrieval bags from Knight Systems --

16 A: Yes.

17 Q: -- subsequently?

18 A: Yeah. I quit using the these bags and began
19 using his again. I mean, I bought them when they
20 became available, so.

21 Q: Okay. Following your purchase of those infant
22 bags in April, did you continue to buy heavy duty
23 body bags, lightweight body bags, odor proof body
24 bags and water retrieval body bags from Knight?

25 A: I never stopped. I mean, I guess. It was an

1 ongoing --

2 Q: Right. Up until when?

3 A: I think the last -- like I said, it was May or
4 June of 2011.

5 Q: Well, and we're going to talk about this. What
6 happened in June of 2011 that precipitated you
7 not buying bags from him anymore?

8 A: He bid against me in a contract to secure
9 Richland County Coroner's business.

10 Q: Okay. And so, you say continuously through this
11 time you were buying bags from Knight System with
12 the exceptions of the ones that we've just talked
13 about?

14 A: Yes.

15 Q: Okay. And as we mentioned, as you already
16 testified, that amount paid to Knight Systems was
17 somewhere -- you know, somewhere in the
18 neighborhood of, I think, \$45,000, or north of
19 that?

20 A: Yes.

21 Q: Okay. Can you hazard a guess just right off the
22 top of your head what percentage of \$45,884 is?

23 A: Probably less than one percent, I would guess.
24 Without calculating it.

25 Q: It is what it is. Okay. Well then, let's flash

1 forward to June of 2011. Do you remember when
2 you had a conversation with Mr. Knight about the
3 purchase of those water retrieval bags from
4 Evident? Generally, when that was, time frame?

5 A: Let's see. Give me a second. I'll give you the
6 best of -- I don't remember, but I would venture
7 to say it was probably sometime in 2009.

8 Q: Okay. Was it before 2011?

9 A: Absolutely, yes.

10 Q: Was it before 2010?

11 A: That I couldn't swear to.

12 Q: Okay. But certainly --

13 A: It all depended on when we used these bags, yes.

14 Q: Okay. But before 2011?

15 A: Definitely.

16 Q: Okay. What happened in June of 2011?

17 A: I was in the process of bidding the Richland
18 County Coroner's Office at their contract bid
19 period after the five year -- their first five
20 year term that we were in was expiring and found
21 out that Knight Systems was one of the people
22 competing in the bidding process.

23 Q: All right. Well, let's back it up a little bit.
24 Do you remember when the deadline for submission
25 was on the Richland County?

1 A: It moved. Initially, it was in May, but
2 ultimately, I believe, it was June 17th.

3 Q: Right. Okay.

4 MR. PRINGLE: Let's just hand these out and go ahead and
5 get these marked. I represent that's a copy of the
6 request for proposal for body removal services that
7 we've had some discussion about.

8 MR. LLOYD: Without objection.

9 THE COURT: Marked as Number Five.
10 (Plaintiff's Exhibit Number Five was admitted into
11 evidence.)

12 Q: If you could turn -- just turn to the last page
13 of this document and that would refresh your
14 memory. I think you already said it. But the
15 last page of this.

16 A: Yeah, June 17th.

17 Q: Okay. And that was the date when what had to
18 happen?

19 A: The bid had to be received and dated, then --
20 received by Richland. Procurement by 3:00 p.m.
21 on the 17th of June, 2011.

22 Q: Okay. June 17th, 2011.

23 A: Correct.

24 Q: And so, if you're bidding on that contract to do
25 body removal services, the contract that PMT

1 held, you had to submit your bid by June 17th,
2 2011?
3 A: Yes.
4 Q: Okay. And PMT submitted a bid, correct?
5 A: Oh, yes.
6 Q: And Knight Systems submitted a bid?
7 A: Yes, they did.
8 Q: Okay. Prior to that submission, that deadline
9 date, did you have a conversation with Mr.
10 Knight?
11 A: Regarding this contract or --
12 Q: In June of 2011 --
13 A: Yes. Yes. We did have a contract.
14 Q: Okay. Tell me about the circumstances of that
15 contract. I mean, that conversation.
16 A: I believe the one you're referring to is the one
17 that was tape recorded for -- unknowing to me.
18 At the time, I had offered to take an order that
19 Knight Systems had to the University to South
20 Carolina for delivery because I had access. He
21 didn't. And it was an order that was delinquent
22 and being shipped by him. And we were need of
23 them for University purposes. So I had made
24 contact with them about it that day. The day
25 before being -- the best of my recollection it

1 was around the 16th, but it might have -- in that
2 time frame of June. And during the course of
3 this conversation, we had talked about a number
4 of things. One of which was this Richland County
5 contract of which I was trying to find out
6 information in regards to if -- what was
7 suggestions for helping me to win this and such.

8 Q: And what happened?

9 A: He ultimately bid against me. But during the
10 conversation, it wasn't --

11 Q: What was discussed during the conversation?

12 A: The infant bags was part --

13 Q: Just describe what the allegation was.

14 A: Okay. The allegation -- well, he brought up the
15 point that he had been told by one of my
16 competitors that I was buying bags elsewhere than
17 him. And I questioned him in regards to if it
18 was the infant bag that he -- I said that, you
19 know, I believe that that had -- we had talked
20 about that before and I thought we were past it.
21 But the reason of bringing it back up after two
22 years or -- I mean, this is 2011 and the infant
23 bags were purchased in 2008, so it's actually
24 three years. I had no reason to know why it was
25 being brought up other than to try to, you know,

1 make me uncomfortable about our relationship.

2 And I was concerned about that at that point

3 because I had tried to address it in previous

4 conversations of which were not recorded. But it

5 caught me off guard quite frankly, you know.

6 Q: Did he bid on the Richland County contract the
7 next day?

8 A: Yeah. The next day would have been -- I mean, I
9 --

10 Q: After he informed you that you had breached the
11 contract.

12 MR. LLOYD: I'm going to object.

13 A: I don't believe there was any breach mentioned,
14 but --

15 Q: He mentioned to you that you had bought infant
16 bags from somebody else.

17 MR. LLOYD: I'm going to object. Leading.

18 Q: What did he tell you? What did he tell you?

19 A: He told me that I broke the contract.

20 Q: Okay. And then what did he do the next day?

21 A: Bid against me on the Richland -- as a entry into
22 the Richland County Coroner's bid.

23 Q: A contract that you held at that time?

24 A: Oh, yeah.

25 Q: And a contract that was purchased as part of the

- 1 asset purchase agreement?
- 2 A: A very big portion of the --
- 3 Q: And a contract that, according to the covenant
- 4 not to compete, he was prohibited to compete for?
- 5 A: That was my belief, yes. Yes.
- 6 Q: All right. Following June 17th, 2011, did
- 7 anything else happen in the RFP process with
- 8 respect to the consideration of the various
- 9 offerors?
- 10 A: Initially, he took the odor proof bag off the
- 11 market that made it -- which he was the only
- 12 supplier of this particular style of bag, which
- 13 we were obligated as part of our contract to be
- 14 able to have access to at a given price.
- 15 Q: It was one of the categories?
- 16 A: It is. Definitely. It was the \$50 item. The
- 17 odor proof body bag.
- 18 Q: And he was obligated to sell it to you?
- 19 A: Yes. But he took it off by making note of it on
- 20 his website, and I was informed of that some way
- 21 or another. And then subsequently it was
- 22 discovered that he had approached the County
- 23 about sole sourcing the bid because he was the
- 24 only one that could provide that particular bag.
- 25 Q: Well, explain that a little bit.

1 A: Since he no longer -- he had previously sold to
2 competitors, but he had chosen -- he had stated
3 in the letter that it was to his best interest --
4 to the best interest -- it was decided by Knight
5 Systems and its employees that it was in their
6 best interest to no longer to handle that
7 practice and keep it in-house for their own use.

8 Q: Okay. And did that mean not selling it to you?

9 A: That's the way I read it, yes.

10 Q: So odor proof body bags, he had an obligation to
11 sell them to you at one point.

12 A: Yes.

13 Q: And then decided that he would not offer them --

14 A: Right.

15 Q: -- to you?

16 A: Yes.

17 Q: Okay. And then what did he do with respect to
18 the County and the RFP?

19 A: Well, sometime in that period he approached them
20 about making him the sole source vendor based on
21 the fact that that was a bag required for the
22 contract and that he was the only one that could
23 provide it. That was in later June, after --
24 after the bid had been submitted, so.

25 Q: And if the contract were in affect, or if he was

1 -- he would have had an obligation to provide you
2 the odor proof body bags --

3 A: Yes.

4 Q: -- right?

5 A: Yes, he would have.

6 Q: And couldn't make that a sole source?

7 A: Correct.

8 Q: Because you would have been a source for it in
9 addition to him?

10 A: That's correct.

11 Q: So in his mind, he couldn't have the contract in
12 affect and then claim that he was sole source?

13 A: That is correct.

14 Q: Okay. And so, did the County ultimately -- what
15 did the County do in response?

16 A: Well, ultimately they awarded the contract to him
17 three months later.

18 Q: Right. Right. Do you recall what offeror
19 received the highest total of points from the
20 folks who evaluated the contract?

21 A: Palmetto Mortuary Transport, by quite a
22 significant amount.

23 Q: Okay. But you still ended up losing the contract
24 to Knight?

25 A: That's correct

1 Q: All right. And did you do anything after the
2 contract was awarded to Knight with respect to
3 procurement? Did you protest it?
4 A: We didn't protest it. We were actually brought
5 in by them -- we talked to them after the fact,
6 yes.
7 Q: Okay. And then you filed the lawsuit?
8 A: Correct, yes.
9 Q: Tell me what a disinterment is.
10 A: Removing human remains from it's interned
11 position in the ground.
12 Q: Okay. And doing what with it?
13 A: Taking it from the ground ultimately. That's
14 what disinterring is, but --
15 Q: Okay. Well, is a disinterment mortuary
16 transport?
17 A: If the body's moved, that's transport. For
18 example, the carrying of the body from --
19 involving a disinterment, carrying it from a
20 cemetery to -- often times disinterments are done
21 for autopsies at a later date. And carrying it
22 from the cemetery to the hospital and returning
23 to the cemetery, that's transportation. And
24 mortuary transportation is carrying a deceased
25 human being, so I believe it applies.

1 Q: Okay. Have you performed disinterment since
2 January 5th of 2007?
3 A: Yes, sir.
4 Q: Okay. For what kinds of entities or --
5 A: It was for a funeral home that -- the transfer of
6 human remains from a cemetery in Columbia to
7 Oklahoma, so.
8 Q: All right. What kind of equipment is necessary
9 to perform a disinterment?
10 A: For our part virtually a truck and a trailer and
11 straps and basic heavy rigging-type materials and
12 such.
13 Q: Okay. Do you have access to that equipment?
14 A: Yes.
15 Q: Okay. To your knowledge, did Mr. Knight perform
16 any disinterments after January 5th, 2007?
17 A: Yes. Two that I know of.
18 Q: Who did he do those for?
19 A: The Richland County Coroner's Office.
20 Q: Okay. Just based upon your understanding of the
21 contract, was that mortuary transport?
22 A: I would consider it, yes. And discussions we had
23 to that effect were considered that as well, so.
24 MR. PRINGLE: Okay. That's all I have for Mr. Lintal.
25 THE COURT: All right. Thank you, sir. Cross

1 examination?

2 MR. LLOYD: Beg the Court's indulgence.

3 THE COURT: Yeah.

4 THE WITNESS: Can I get some water?

5 THE COURT: Sure.

6 (Off the record from 11:40 to 11:42 a.m.)

7 CROSS EXAMINATION BY MR. LLOYD:

8 Q: Mr. Lintal, good morning again.

9 A: Hello.

10 Q: I'll ask you if we can start with -- I believe
11 that's 3.4.8 of the --

12 A: You want me to turn it a little?

13 Q: If you don't mind. I'm not as young as I used to
14 be. I'm having a little trouble. Thank you.
15 Can you still see it from where you're at?

16 A: Me? Oh, yeah.

17 Q: Okay. And that is the provision in the asset
18 purchase agreement which you contend obligates
19 you to purchase your bags from Mr. Knight; is
20 that right?

21 A: These bags listed, yes.

22 Q: Now, in that paragraph the only thing that it
23 obligates Mr. Knight to do is actually sell you
24 body bags at a discount; isn't that correct?

25 A: Yes. Right. Without -- yeah. And additionally,

- 1 without raising more than ten percent in any
2 calendar year.
- 3 Q: Right. In fact, 3.4.8, seller's related
4 business, only obligates Mr. Knight in terms of
5 the prices he's going to charge you for body bags
6 that he chooses to sell; is that right?
- 7 A: Only obligates --
- 8 Q: Only obligates Mr. Knight to charge you those
9 rates if he's selling you body bags; is that
10 right?
- 11 A: That doesn't make any sense to me.
- 12 Q: Is 3.4.8 require Mr. Knight to do anything other
13 than charge you the stated prices for those body
14 bags?
- 15 A: No. Not that I can see.
- 16 Q: And, in fact, if you look at the second and third
17 line of paragraph 3.4.8, it actually obligates
18 you to buy all of your body bags from Mr. Knight;
19 isn't that right?
- 20 A: For the types listed, yeah. For different types.
- 21 Q: Well, I'm not sure I understood or heard your
22 last part of your answer.
- 23 A: It says for different types of body bags, which
24 they're listed here.
- 25 Q: Okay. That's not my question. Let's go through

1 this paragraph then. It says Mr. Knight. That's
2 Buddy, right?

3 A: Yeah.

4 Q: Through his related body bag business. That's
5 the body bag manufacturing business that you are
6 aware he had?

7 A: Knight Systems.

8 Q: Right. And it says he shall provide you, the
9 buyer, body bags at a discounted rate; isn't that
10 right?

11 A: Yes.

12 Q: It doesn't require him to do anything else as it
13 relates to those body bags; is that right?

14 A: No.

15 Q: And then it says and you shall, for the term of
16 the non-compete agreement -- and we've
17 established the non-compete is ten years; is that
18 right?

19 A: Correct.

20 Q: For the term of the non-compete agreement you
21 agree to buy all of your body bags from Mr.
22 Knight; isn't that right?

23 A: As it's stated, yes.

24 Q: Well, is that what it says?

25 A: That's what it says, yes.

1 Q: Okay. And then it says below are current charges
2 for different types of body bags; is that right?
3 A: Right.
4 Q: It doesn't say the exclusive list of body bags
5 that Mr. Knight sells, does it?
6 A: No. It does not.
7 Q: And then it says the prices below shall not be
8 increased by more than ten percent in any
9 calendar year; is that correct?
10 A: Correct.
11 Q: So the only obligation under that agreement, as
12 far as it relates to Mr. Knight, is that Mr.
13 Knight has to sell -- any bags he sells you have
14 to be at that discounted rate; is that correct?
15 A: Correct.
16 Q: Let's talk briefly about the non-compete
17 agreement.
18 MR. LLOYD: I beg the Court's indulgence. I believe the
19 non-compete agreement is attached as Exhibit One.
20 MR. PRINGLE: Exhibit One.
21 Q: Just let me know when you found --
22 A: I have it.
23 Q: Okay.
24 A: This was the reference to Robert Knight?
25 Q: I'm talking about the non-compete agreement that

1 was signed between the two parties. Now, when
2 you all started out -- let me rephrase that
3 question. If you'd flip over to page three of
4 the non-competition agreement, or covenant. Do
5 you see that?

6 A: I'm there.

7 Q: And down at the bottom under remedies on page
8 three there's a paragraph that says injunctive
9 relief; is that right?

10 A: Yes, it does.

11 Q: Now, let's back up for a second. This non-
12 complete agreement was drafted by your lawyer; is
13 that right?

14 A: Yes.

15 Q: Now, under the section marked injunctive relief.
16 Are you with me?

17 A: I am.

18 Q: It says that you have the right, should you
19 believe that there be a breach or threatened
20 breach by Mr. Knight, to seek remedies in equity,
21 meaning that you could go to a court and seek an
22 injunction prohibiting Mr. Knight from competing
23 against you; is that right?

24 A: Uh-huh (affirmative response.)

25 MR. PRINGLE: Yes?

1 Q: And you claim that as of June 16 of 2011, you
2 were aware that Mr. Knight was going to submit a
3 bid for the Richland County contract; is that
4 right?

5 A: I was aware that he was going to?

6 Q: Yes, sir.

7 A: No, I was not.

8 Q: You did not know that he was submitting a bid?

9 A: Not definitely.

10 Q: Not definitely? You had some inclination that he
11 was going to?

12 A: I did.

13 Q: Okay. A moment ago didn't you tell us that at
14 that point in time Mr. Knight, as of that June
15 16th conversation, had told you that you had
16 breached his agreement?

17 A: I don't believe it was -- the terminology was
18 breached. It might have been it broke my
19 agreement. But in effect, yes, it was the same
20 inference.

21 Q: Whatever the formal words he used, you say as of
22 that June 16, 2011 conversation that Mr. Knight
23 indicated to you that he believed you were in
24 violation of the asset purchase agreement; is
25 that right?

- 1 A: You know, as I -- I mean, I'm sure that the tape
2 recording would reveal what was exactly said. As
3 I recall, I'm on it. It was that I -- I don't
4 recall it stating that I broke the agreement,
5 even though I might have said that at a previous
6 testimony or something. But it was more about
7 that I had bought bags elsewhere. That he was
8 assuming the accusation. But if it did say
9 breach, then that's fine. This June 16th was the
10 pivotal date in that regard during the course of
11 our conversation.
- 12 Q: The evening of June 16, did you go home and tell
13 your wife that you believe Mr. Knight was going
14 to bid against you for the Richland County
15 contract?
- 16 A: Yes. I said I wasn't sure of what was going to
17 happen, but I was quite confident that that was
18 what was going to happen, yes.
- 19 Q: So as of June the 16th, the evening of June the
20 16th, you were of the belief that Mr. Knight was
21 going to bid against you for the Richland County
22 contract; is that right?
- 23 A: Yes.
- 24 Q: Now, did you get back to your attorney who
25 drafted this agreement and discuss your fear that

1 Mr. Knight was going to compete against you
2 again?

3 MR. PRINGLE: Objection. That's attorney/client
4 privilege.

5 THE COURT: I agree with that.

6 MR. LIBBY: Well, Your Honor, I'm not asking him what they
7 said. I'm just asking if he, in fact, went back to his
8 attorney to, in fact, address that.

9 THE COURT: That's okay. You can answer this.

10 A: No, I did not. Not at that time.

11 Q: Okay. Did you ever attempt or have the attorney
12 who drafted the agreement or anybody else file an
13 injunction against Mr. Knight for bidding for
14 that Richland County contract?

15 A: We did not.

16 Q: And, in fact, between the time that -- of June
17 16th -- at least the evening of June 16 when you
18 had the discussion with your wife and you
19 believed that Mr. Knight was going to compete
20 against you, up until the time that you all filed
21 this lawsuit several months later, is that right,
22 you don't take any action to seek injunctive
23 relief against Mr. Knight; is that right?

24 A: No.

25 Q: This non-compete agreement actually has a term of

1 ten years. And you explained earlier, I believe,
2 in direct examination that that would have
3 allowed you to go through at least two contract
4 cycles; is that right?

5 A: Yes. It would have.

6 Q: And that would have been at least -- let's talk
7 about a couple of contracts. The Lexington
8 County Coroner's Office contract and the Richland
9 County Coroner's Office contract. That would
10 have allowed you to get through two cycles with
11 both of those contracts; is that right?

12 A: It was our -- yes.

13 Q: Okay. Now, on the Richland County contract over
14 a ten year period, how much did you stand to make
15 through your business on that contract?

16 A: Ten years?

17 Q: Yes, sir.

18 A: I don't know the exact dollar amount.

19 Q: Give me a ballpark. How much were you
20 anticipating making per year on that contract?

21 A: Let's see. It's about 100,000 a year. So what
22 is that?

23 Q: So over ten years, you would have anticipated
24 making a million dollars on that Richland --

25 A: Yes.

1 Q: -- County contract?

2 A: Yes.

3 Q: Roughly?

4 A: That's close enough.

5 Q: And per year on the Lexington County contract,

6 how much did you anticipate making?

7 A: Let's say 40,000 a year. I don't recall exactly

8 what that was. Forty to \$50,000 a year maybe.

9 Q: So roughly --

10 A: A half a million.

11 Q: -- a half a million?

12 A: Say half a million. Let's use rough numbers.

13 Q: I'm sorry. If I ever talk over you --

14 A: No.

15 Q: I'm trying not to do that. The court reporter,

16 who we all have to be very sympathetic to --

17 A: I understand.

18 Q: -- and we dealt with this in the deposition. She

19 can only take down one of us at a time, so --

20 A: That's fair.

21 Q: -- I apologize if I trip over you. Roughly half

22 a million dollars you anticipated making on the

23 Lexington County contract; is that right?

24 A: That's a fair estimation, yes.

25 Q: So just those two contracts, Lexington County and

1 Richland County, over the ten year period, you
2 anticipated making maybe a million and a half
3 dollars?

4 A: Okay, yes.

5 Q: Now, when you all got to the closing of this
6 asset purchase agreement, did you have a dollar
7 amount in mind for the non-compete?

8 A: No.

9 MR. PRINGLE: I'm going to lodge a continuing objection
10 about this line of testimony. I think that, as I
11 referenced earlier, the contract speaks for itself, and
12 any of the discussion about the mindset, or the
13 negotiations, or what people believed going into it are
14 not only irrelevant, they're immaterial. In fact,
15 really can't be considered as parol evidence. The
16 contract clearly speaks for itself in terms of the
17 amounts that are included. Certainly legal arguments
18 can be made, and perhaps about the effect of those
19 things. But what the individual parties thought, or
20 felt, or believed, or negotiated is completely
21 inadmissible.

22 MR. LLOYD: Your Honor, one of the very issues about a
23 non-compete, any non-compete, is whether there's
24 adequate compensation for the length and term both
25 geographic as well as time period of that non-compete.

1 One of the issues that this court is going to have to
2 deal with is is there adequate compensation for this
3 particular non-compete. Very essential to that is how
4 the parties arrived at this \$1,000 figure for the non-
5 compete and what the value to both sides for that non-
6 compete actually was.

7 MR. PRINGLE: Let me just respond briefly.

8 THE COURT: Sure.

9 MR. PRINGLE: Certainly the general black letter law is
10 that there has to be adequate consideration for a
11 covenant not to compete, or frankly any particular
12 contract. That amount is stated. There is a \$1,000
13 amount that's been allocated for purposes of the
14 purchase agreement to the covenant not to compete.
15 Like I said, you can have an argument about whether
16 that is considered to be substantial enough for -- or a
17 requisite amount of consideration. Certainly we would
18 maintain that there's not any argument or any law at
19 all that would suggest that a \$1,000 -- any different
20 than a one dollar consideration in a real estate
21 contract, one dollar and other consideration, that
22 there is nothing that would call that into question as
23 a matter of law. But in any event, the number is
24 stated in there. It doesn't have to be -- you don't
25 have to figure out what it is. And that any

1 discussions by the parties don't go at all to whether
2 that is considered adequate consideration for purposes
3 of whether it's a valid covenant not to compete.

4 THE COURT: Yeah. My thought process on that is that --
5 and I can hear the question again. But the question
6 being asked is -- as I understand it, is why that
7 figure. Why is it that figure. And that testimony
8 would not be varying the dollar figure. So you
9 wouldn't be admitting conflicting testimony that's --
10 you would not be admitting testimony which would be
11 varying the terms of the contract. So I don't think
12 the parol evidence would come into play there. Because
13 he's asking why that figure.

14 MR. PRINGLE: Okay. But even if he is, putting aside the
15 parol evidence, asking why the figure, what does why
16 that figure have anything to do with an issue that's in
17 play here? Either a \$1,000 amount is considered
18 adequate consideration or it isn't.

19 MR. LLOYD: Your Honor, we would -- I'm sorry.

20 THE COURT: Go ahead.

21 MR. LLOYD: Your Honor, we would suggest that that's
22 obviously exactly what the Court has to do. In all
23 these cases that look at non-competes, that's what the
24 Court is weighing, including looking at the amount of
25 compensation for that non-compete against what's the

1 term, what's the length of that non-compete, as well as
2 what's the geographical restrictions on that non-
3 compete. And that's a balancing act that respectfully
4 Your Honor is going to have to --

5 MR. PRINGLE: I don't think that's what the legal analysis
6 says at all, especially in view of the fact that we
7 know that \$590,000 was the total amount paid for the
8 contract. That something is given -- the law -- the
9 state of the law, the way I understand it, is that
10 putting an amount in a contract that is allocable to a
11 covenant not to compete, because you have to have
12 separate consideration for a covenant not to compete as
13 opposed to for other things. If there is any separate
14 consideration that's considered, a court is not going
15 to fly spec and decide that \$1,000 is inadequate and
16 relevant to \$10,000, and certainly not any requirement
17 that the covenant not to compete and the amount that is
18 just allocated, mind you, in this -- you know,
19 allocated in the agreement when you have a full amount,
20 that that amount is going to be deemed inadequate if it
21 doesn't measure up to or equal exactly the parties'
22 belief as to what it meant to them to have Mr. Knight
23 not competing. So I think all of this discussion
24 doesn't go to anything that's going to lead to any
25 facts, whatever they think about it, that's going to

1 lead to any more -- make it any more or less likely
2 that there was adequate consideration via \$1,000
3 allocated to a covenant not to compete.

4 MR. LLOYD: Your Honor, I don't want to prolong this.

5 THE COURT: Yeah.

6 MR. LLOYD: And I would agree with Mr. Pringle if we were
7 asking a court to blue line this non-compete. But one
8 of the things -- it's our contention, and one of the
9 things Mr. Pringle and I agreed to last week, Your
10 Honor, is that once all the testimony is taken and the
11 exhibits put in today, that obviously we would request
12 that both sides submit proposed orders after this
13 hearing discussing these issues.

14 THE COURT: I'm going to allow the testimony, noting your
15 objection, and allow it in. And we're on a non-jury
16 basis here. And when I make a final decision, I'll
17 make a final ruling then as to the admissibility.

18 MR. PRINGLE: Okay, sure.

19 THE COURT: And we've got excellent lawyers here and good
20 arguments, but that's my feeling now is allow it in,
21 subject to your objection, and we will deal with it
22 finally at the order stage.

23 MR. PRINGLE: Right.

24 MR. LLOYD: Thank you.

25 THE COURT: Answer the question.

1 Q: Do you recall the question?
2 A: What was the question again?
3 Q: We always do that to witnesses. Let me ask you
4 again, and then we'll back up a little bit and
5 put this in a little more context. Prior to
6 coming to the closing where you all signed the
7 asset purchase agreement, there had not been a
8 dollar figure attached to the non-compete; is
9 that right?
10 A: I would believe so. I really don't know.
11 Q: You don't know whether or not there was a --
12 A: Personally, no, sir.
13 Q: -- dollar figure attached to it?
14 A: I don't. Not to be definitive, I don't. Even if
15 I -- I mean, I -- okay. I don't really -- I
16 mean, I would -- I don't know, I would say. I
17 don't recall.
18 Q: You don't recall today, or you never knew whether
19 or not?
20 A: I don't recall from that time. No. You know, I
21 really just don't recall. I don't take care of
22 that aspect of -- and I did not during the time
23 of the negotiation, did not deal with these parts
24 of the aspects of it. You know, the allocations
25 and such.

1 Q: Okay. Do you recall at the day of the closing
2 having a conversation with your wife about the
3 non-compete agreement?
4 A: There were conversations, yes.
5 Q: Okay. Specifically, about the non-compete
6 agreement; is that right?
7 A: Yes.
8 Q: And part of that conversation with your wife
9 centered around the fact that she disagreed with
10 the amount that was attached to the non-compete,
11 allocated to the non-compete, at the day of the
12 closing; isn't that right?
13 A: I overheard that, yes.
14 Q: Okay. Well, did she have that conversation with
15 you?
16 A: Trying to explain it to me.
17 Q: Okay. So prior to going into the closing, there
18 was no dollar amount that you all brought to the
19 table as far as that non-compete; is that right?
20 A: I don't recall.
21 Q: Okay. Let me approach it this way then. At some
22 point you all agreed on a purchase price of
23 \$590,000; is that right?
24 A: That's correct.
25 Q: And the purchase price for that business being

1 sold by Mr. Knight, that included the hard
2 assets; isn't that right? By hard assets, I
3 mean, the stretchers --
4 A: That was listed, yes.
5 Q: -- vehicles; is that right?
6 A: That's pretty much it, yeah.
7 Q: Those tangible assets that were listed --
8 A: Right.
9 Q: -- in the exhibits to the exhibits to the --
10 A: Yes, sir.
11 Q: -- purchase agreement?
12 A: Agreed.
13 Q: And it also included, for example, the customer
14 list; isn't that right?
15 A: Yes.
16 Q: And it included the good will of the business;
17 isn't that right?
18 A: I believe that was part -- yes. That would
19 normally --
20 Q: And it didn't include anything else, did it?
21 A: I don't recall.
22 Q: Did it include, for example, anything other than
23 those items I just listed?
24 A: I don't know.
25 MR. PRINGLE: I'll just lodge an objection. I think the

1 agreement speaks for itself. But I think he's answered
2 it.

3 Q: Do you recall us having that discussion at your
4 deposition?

5 A: Yeah.

6 Q: About what was included in the purchase price?

7 A: I was very confused during that whole period of
8 time, yes.

9 Q: Why were you confused?

10 A: Because this is not my strength. This area. I
11 don't recall the exact proceedings at it, and I
12 believe, if you recall, I suggested you have this
13 discussion with my wife because she's more in
14 tuned with this than I.

15 MR. PRINGLE: And as part of my continuing objection, I
16 would just note that --

17 THE COURT: I note your objection.

18 MR. PRINGLE: -- that is why we have written contracts.

19 Q: My question though is as --

20 MR. LLOYD: I'm sorry.

21 THE COURT: Go ahead.

22 Q: My question though is as of the day of your
23 deposition I asked you questions about the
24 purchase price; isn't that right?

25 A: Yes.

1 Q: Okay. And I asked you what items were included
2 in that purchase price; isn't that right?

3 A: I believe so, yes.

4 Q: And I asked you if there was anything else other
5 than those items that we just discussed a few
6 moments ago, hard assets, good will, the
7 contracts, that was included in your offer of
8 \$590,000 for the purchase of that business; isn't
9 that right?

10 A: I don't recall.

11 Q: Okay. Well, let me start. Was there anything
12 about that day of that deposition that caused you
13 not to understand my questions?

14 A: Confusion would be the biggest portion of it. I
15 was -- I think I -- if I recall -- I don't have a
16 copy in front of me. But I would recall that at
17 some juncture in time I would have probably
18 expressed that I was really unsure of that part
19 of the testimony and tried to defer you to
20 discuss that with my wife when you deposed her at
21 that point in time. I might have agreed to
22 something, but I quite frankly didn't understand.

23 Q: Okay. And as part of your deposition, do you
24 recall me saying that if you didn't understand
25 any questions --

1 A: Yes, I do recall it.

2 Q: -- you could ask me to repeat them?

3 A: Sorry. Yes.

4 Q: Isn't that right?

5 A: That is correct.

6 Q: Okay. And when we were talking about those items

7 that were included in your offer price, you

8 didn't ask me to repeat that question or tell me

9 that you were confused; isn't that right?

10 A: I would have imagined not, yeah.

11 Q: So today you're telling me that you do not know

12 whether or not there were other items included in

13 the purchase price other than the hard assets,

14 the good will and the contracts?

15 A: May I ask you a question?

16 THE COURT: Just answer what you're being asked. Just to

17 the best of your ability, answer.

18 MR. PRINGLE: And objection. Asked and answered.

19 A: I don't know the answer, sir. I mean, I really

20 don't. I mean, I could -- and I might have made

21 the assumption that based on the fact that I was

22 getting worn down by your asking me questions

23 that agreed to something that I was unsure of,

24 and it's probably erroneous on my part.

25 MR. LLOYD: Your Honor, I'm going to ask if we can unseal

1 Mr. Lintal's deposition.

2 MR. PRINGLE: Sure. Put the whole thing in. Put the
3 whole thing in.

4 MR. LLOYD: Your Honor --

5 THE COURT: Yes. You can do it. I can do it. Did you
6 hear what Mr. Pringle said?

7 MR. LLOYD: No, I didn't.

8 MR. PRINGLE: Put the whole thing in if you want. I mean,
9 it doesn't make a bit of difference.

10 THE COURT: You want to do that?

11 MR. LLOYD: Without objection then we --

12 THE COURT: Yeah.

13 MR. PRINGLE: Continuing to make the point that -- and I
14 would, you know, ask where this is going in terms of
15 relevance to this case.

16 THE COURT: Well, let's hear what the next question is and
17 we'll make a decision here.

18 MR. LLOYD: This is the sealed original of Mr. Don
19 Lintal's deposition taken on Wednesday, July 31st, 2013
20 and we'll offer it as Defendants' One.

21 THE COURT: Any objection?

22 MR. PRINGLE: No objection.

23 (Defendants' Exhibit Number One was admitted into
24 evidence.)

25 MR. LLOYD: Thank you. And I beg the Court's indulgence

1 for a moment.

2 Q: Mr. Lintal, that's Exhibit One and there are
3 several places I'm going to ask you to refer to.
4 Let's start page 32 of your deposition.

5 A: Yes, I'm there.

6 Q: And what should be beginning at line four. Do
7 you see that?

8 A: I do.

9 Q: And my question was, "Let's talk about what you
10 were negotiating over that period of time. There
11 were the hard assets, so to speak, there were the
12 stretchers and vans; is that right?"

13 A: I agree with that, yes.

14 Q: And what was your answer?

15 A: Yes.

16 Q: And my question next was, "What else did you
17 understand was included in that purchase price?"
18 Do you see that?

19 A: Yes.

20 Q: And your answer on line 11 was what?

21 A: "The vans. Well, okay. You said the vans,
22 right?" And you said --

23 Q: And I said right. And then the next statement by
24 you is what? Can you read that for me?

25 A: "Okay. Three contracts, and that was probably

1 primarily it."

2 Q: Okay. Let's go down to line 20. I said, "Did
3 you believe good will was included in that
4 initial asking price as well as the prices you
5 all were negotiating back and forth?" And your
6 answer?

7 A: "I -- can you define your good will?"

8 Q: Okay. My question to you next was, "Well, in
9 other words, just the reputation of the business.
10 The relationship that Mr. Knight had
11 established," is that right? Do you see that?

12 A: Yeah.

13 Q: And if you skip down to line number four what is
14 your answer?

15 A: "Then there was good will involved."

16 Q: And my next question was, "How did you value the
17 good will?" Do you see that?

18 A: I do see that.

19 Q: Okay. And your answer to that was what?

20 A: "I'm sure there was a consideration put in there
21 at that point for it, but I don't recall what
22 percentage or what number was tied to good will.
23 Don't know."

24 Q: Now, skip down to line 20. I asked you a
25 question: "Is there anything else other than the

1 hard assets, the stretchers, vans and the good
2 will that was included to your knowledge in the
3 negotiations of a price?" And your answer?

4 A: "Not that I recall."

5 MR. PRINGLE: Again, while there's a break here, I'll make
6 an objection that even if Mr. Lintal had said that
7 there was a blue elephant that was being included in
8 the purchase price in his deposition or at the
9 negotiating table it wouldn't make any difference
10 because the final agreement states what all of those
11 things were and what was purchased and what was bought.

12 THE COURT: Let me ask the question now. I know we're on
13 cross examination and you have leeway. And our
14 direction now is still on this particular point about
15 what Mr. Lintal thought was in the contract?

16 MR. LLOYD: The consideration. Specifically, the
17 consideration for the non-compete.

18 THE COURT: Okay. Have you asked anything about the --
19 you've asked questions about what assets were in it.

20 MR. LLOYD: Yes, sir.

21 THE COURT: But how about as to the non-compete because
22 that's where we started out.

23 MR. LLOYD: Your Honor, one of the issues that is being
24 brought up in this, and we'll get to in this line of
25 questioning, is was there actually separate

1 consideration paid for the non-compete, or are we just
2 talking about the original purchase price.

3 THE COURT: Well, I think the asset purchase agreement
4 should answer that question as to whether it's a
5 specific figure for --

6 MR. LLOYD: Yes, sir.

7 MR. PRINGLE: And it does. It's \$1,000

8 MR. LLOYD: I would agree. It does say \$1,000.

9 THE COURT: Okay. Now, what I allowed was if you wanted
10 to ask him why that figure is what I understood. I
11 said subject to his objection and me make a final
12 ruling I'll allow that to be asked, but that's the
13 direction I saw where we were going with this thing.

14 MR. LLOYD: Yes, sir. And then I was asking him initially
15 about whether there was, in fact, a figure attached to
16 the non-compete other than what eventually happens at
17 the closing. And that's where I was going with that.

18 THE COURT: You're asking him to -- a question that would
19 vary the terms of the contract. And at this point, as
20 far as I know, the evidence says that nothing -- no one
21 has indicated there's any ambiguity in that contract as
22 to what the language is as to a dollar figure for the
23 non-compete. So I think that would not be a
24 permissible question under cross examination.

25 MR. LLOYD: Well, Your Honor, we're not asking them to

1 alter the terms of the contract. We're asking is about
2 how they get to that figure. That figure includes
3 separate compensation for the non-compete, or are we
4 really talking about an allocation of the original
5 purchase price, which had already been negotiated.

6 THE COURT: If you want again ask him why the \$1,000, I'm
7 going to allow that subject to Mr. Pringle's objection.
8 I'm going to allow that question.

9 MR. LLOYD: Thank you, Your Honor. And, Your Honor, let
10 me ask, if I might, for some clarification from the
11 court. You did rule that it's proper to get back into
12 this issue of whether or not there was a dollar figure
13 from the purchasers prior to the closing?

14 THE COURT: A dollar figure from the --

15 MR. LLOYD: As to the non-compete. I'm sorry.

16 THE COURT: If you want to ask does the contract call for
17 a separate dollar figure for the non-compete, the
18 answer is yes. Now, you want to ask that when he came
19 to closing --

20 MR. LLOYD: Yes, sir.

21 THE COURT: -- did he have on his mind a -- I really think
22 as to that he's already answered, as I remember, I
23 don't know, is what I've heard a number of times. And
24 if that's his answer, I think we need to move on from
25 there, if I'm correct.

1 MR. LLOYD: Well, I'd like to be able to go back to the
2 deposition again on that subject --

3 THE COURT: Okay. All right. You may.

4 MR. LLOYD: -- if I might. I beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. LLOYD: Well, Your Honor, let me withdraw that
7 question at this point in time --

8 THE COURT: Okay.

9 MR. LLOYD: -- and look at it a different way, subject to
10 Mr. Pringle's objection.

11 Q: Mr. Lintal, let me ask you. At some point during
12 the negotiation or during the drafts of this
13 asset purchase agreement, the non-compete went
14 from a period of three to five years, is that
15 right, up to ten years?

16 A: I believe I previously said it went three to five
17 years, but I later found that the ten years was
18 in from the beginning, from our aspect. The only
19 change was the three year on the purchase of body
20 bags to ten years at the time of closing. That's
21 my understanding of this. I know I said three to
22 five before. But there were previous markups
23 that I think that you've been provided. Did any
24 of those show the three year period in them?

25 Q: Well, let me ask you, because you're the witness

1 here today.

2 A: Okay.

3 Q: At some point during the drafting of the asset
4 purchase agreement, including the non-compete,
5 was it your understanding from those drafts that
6 the non-compete was for a term of less than ten
7 years?

8 A: No. I might have stated that, but I don't
9 recall. I mean, I really don't. Our ultimate
10 goal was that two term of contracts based -- in
11 order to offset the fair price that we were
12 offering for the business. And that was the --
13 okay.

14 Q: Is it your testimony today that, to your
15 knowledge, the non-compete was always a period of
16 ten years?

17 A: My knowledge is that I'm really not sure. That I
18 believe that -- I knew there was variance in
19 something at the time of closing that was changed
20 for a given reason. But it went for -- where it
21 was a difference in a time duration. That's what
22 I was confused on at the deposition, because I
23 was thinking that it pertained to the contract --
24 or the non-compete portion of the contract, not
25 to the agreement for purchase of body bags.

1 That's where I got confused.

2 Q: Okay. Now I'm confused. At some point- during
3 the drafting of the asset purchase agreement, the
4 length of time that you were required to purchase
5 body bags from Mr. Knight was less than the ten
6 year term of the non-compete; is that right?

7 A: Yes.

8 MR. PRINGLE: I'm just going to lodge this objection yet
9 again. All of this is parol evidence.

10 THE COURT: I tell you. I think we're at the point where
11 we have a problem with parol evidence rule, because the
12 contract, I'm assuming, sets these -- has information
13 in the contract which indicates what the answer are of
14 these questions and you're trying to vary from the
15 agreed upon contract, and I see that as a parol
16 evidence problem.

17 MR. LLOYD: Yes, sir. And just respectfully --

18 THE COURT: Sure.

19 MR. LLOYD: -- parol evidence would be to introduce some
20 other interpretation of the agreement, and that's not
21 what we're getting into. What we're getting into are
22 negotiations leading up to this agreement and what
23 terms of that were in those drafts. We're not offering
24 that to suggest that any of these terms that eventually
25 were in the agreement should be interpreted in a

1 different way.

2 MR. PRINGLE: Well, respectfully. Exactly for what
3 purpose could they be offered other than to compare and
4 contrast a just oppose against a term that eventually
5 ended up being what we're arguing over here today and
6 what may have been discussed back and forth. You can't
7 get a motive. You can't get state of mind.

8 THE COURT: What would be the reasoning?

9 MR. LLOYD: Again, Your Honor, one of the issues in this
10 is going to be that the value of this non-compete and
11 how the Court values that. One of the issues, I think,
12 central to that is this length of time. Obviously, the
13 eventual ten years length of time. I believe the
14 evidence shows is that over those negotiations the
15 eventual value, despite the changes in the length of
16 time for the non-compete, don't change.

17 THE COURT: I tell you, my ruling is going to be that --
18 on this subject is if you want to have questions in
19 regards to why does it say \$1,000 for non-compete, you
20 can do that. As to other questions related to the non-
21 compete, I'm going to limit the cross examination. If
22 you want to go at that one question as to why it's
23 \$1,000 and ask this witness that question, I think you
24 have a right to do that.

25 MR. LLOYD: Okay. Thank you, sir.

1 THE COURT: Yes, sir.

2 Q: Now, Mr. Lintal, you were at the closing; is that

3 right?

4 A: Yes, sir.

5 Q: And when you got to the closing, you all were

6 trying to allocate the purchase price to varying

7 things; is that right?

8 A: My wife and my lawyer were, yes.

9 Q: Okay. Now, they were doing this on your behalf;

10 isn't that correct?

11 A: Our behalf. It's mutually --

12 Q: Our includes you.

13 A: Our, my wife and myself. The owners of Palmetto

14 Mortuary Transport.

15 Q: Okay. You weren't just a passive observer. All

16 of these discussions about allocation of purchase

17 price were on your behalf; is that right?

18 A: They were on my behalf, but I really didn't have

19 a lot of say in the matter. It's not my

20 strength.

21 Q: And I'm not asking whether you were, in fact --

22 A: Okay.

23 Q: -- contributing with --

24 A: What is your question then?

25 Q: My question to you was there was discussion --

1 A: Yes.

2 Q: -- at the closing about allocation of the

3 purchase price; isn't that right?

4 A: That is correct.

5 Q: Okay. And there was back and forth with Mr.

6 Knight and your side over what parts of the

7 purchase price would be attributed to in terms of

8 tangible assets versus intangible assets; isn't

9 that right?

10 A: That's correct, yeah.

11 Q: And part of the concern was your wife being able

12 to, on your behalf and the company's behalf,

13 being able to amortize certain of that purchase

14 price; isn't that right?

15 MR. PRINGLE: Objection. We're not talking about the

16 price or the amount allocated to the covenant not to

17 compete.

18 THE COURT: I think that's where we need to -- the

19 question -- if you want to go into what I said before

20 about why the \$1,000 non-compete --

21 MR. LLOYD: Yes, sir.

22 THE COURT: -- you can ask -- if you want --

23 MR. LLOYD: I'm sorry.

24 THE COURT: Go ahead.

25 MR. LLOYD: I was just trying to establish Mr. Lintal, at

1 least in his testimony just a moment ago, seemed not to
2 be sure what was going on, or at least seemed to
3 indicate that it was other people doing things and he
4 was there and it was being done on his behalf and he
5 was certainly observing the discussions.

6 MR. PRINGLE: And I would maintain that even if he were
7 unconscious, it wouldn't make a difference in terms of
8 what these terms are and what they mean in the
9 agreement.

10 MR. LLOYD: Again, Your Honor, I'm not asking him to
11 change any of the terms. I'm just asking him what was
12 occurring at the closing.

13 THE COURT: What I've heard from this witness is that this
14 was not his area and it was his lawyer and his wife.
15 But I think that's clear to me. And you've made that
16 clear based on your cross examination. So I think we
17 can move beyond that one, because I think that's set in
18 my mind as to what he said on that one.

19 MR. LLOYD: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 Q: And again, part of that discussion that was going
22 on was as to what was going to be attributed or
23 allocated to the non-compete; isn't that right?

24 A: I would assume so.

25 Q: Okay. And did your side propose that the non-

1 compete be for \$1,000?

2 A: I don't recall.

3 Q: Do you recall having again a discussion with your
4 wife where she disagreed with the amount that was
5 attached to the non-compete?

6 A: That we've submitted?

7 Q: The \$1,000. Do you recall having a discussion --

8 A: No. I don't recall.

9 Q: -- with your wife about her disagreement with the
10 amount of \$1,000 being attributed to the non-
11 compete?

12 A: I don't know. I don't recall what was --
13 actually, I didn't know until this period of time
14 what was attached to it. It's nothing I know. I
15 mean, I'm sorry, but I'm ignorant in this regard.
16 You can ask me and ask me, but -- you know, you
17 might have gotten me to agree to something in the
18 course of testimony -- in deposition, but --

19 Q: Okay. A moment ago you just told me you did
20 recall your wife discussing with you or in your
21 presence with your lawyer about the amount that
22 was attributed to the non-compete. Do you recall
23 that?

24 A: I recall a conversation regarding this area of
25 the negotiation. In regards to what actually was

1 being said and the allocations of different
2 things, I recall there was a disagreement in
3 certain forms of the allocation, but I don't know
4 -- to this day I could not say the amount, the
5 areas that this involved. Once again, you should
6 defer these questions to her because she knows
7 it. I don't.

8 Q: Okay. Well, let's take it this way then, because
9 your wife is here to testify later on.

10 A: Yes.

11 Q: You have absolutely no knowledge as to how the
12 \$1,000 value gets in the agreement for the non-
13 compete?

14 A: Truly, no.

15 Q: You didn't suggest \$1,000 for the non-compete?

16 A: No.

17 Q: You didn't suggest any figure for the non-
18 compete?

19 A: Not that I recall.

20 Q: Okay. As far as you knew -- did you actually
21 review the non-compete prior to the closing?

22 A: Certain portions.

23 Q: Which portions did you review?

24 A: The portions that were non-business related.

25 They would have been things that --

1 Q: Okay. Such as?

2 A: -- like the term or the length of the term, the -

3 -

4 Q: By length of the term, you mean the years?

5 A: The non-agreement term. The ten year period that

6 was agreed upon.

7 Q: Did you review the portion that related to the

8 geographical restriction on competition?

9 A: I did.

10 Q: Okay. Did you suggest those terms of the non-

11 compete?

12 MR. PRINGLE: Let's just keep the continuing objection to

13 all of this. I just want to make sure that it's --

14 THE COURT: It's noted.

15 A: I was involved in it, sure.

16 Q: Okay. And the ten year period, again, you've

17 explained that that was to allow you to get

18 through at least two cycles; is that right?

19 A: Correct.

20 Q: When you would have -- at least in your mind

21 because of Buddy's non-competition against you,

22 you would have earned just from the Lexington

23 County and the Richland County contracts maybe a

24 million and a half dollars, thereabout?

25 A: If I was able to retain them, yes.

1 Q: Okay. And the 150 mile radius from Lexington,
2 that was your suggestion?

3 A: More than likely, yes.

4 Q: Okay. And the 150 radius from Lexington would
5 have essentially prevented Mr. Knight from
6 competing against you anywhere in South Carolina;
7 isn't that right?

8 MR. PRINGLE: Objection. It assumes facts not in
9 evidence.

10 THE COURT: I think it's a legitimate question.

11 A: Yes. For a period of ten years.

12 Q: And now, when you bought the business, Mr.
13 Knight's business was primarily in Lexington and
14 Richland County; isn't that right?

15 A: Right. Yes, sir.

16 Q: Okay. And the need for Mr. Knight not to compete
17 against you in, let's say, Marion County, in your
18 mind, was what? Why was that important to you?

19 A: Just because I didn't -- why was it important?
20 Putting a geographic distance on it would have
21 strengthened -- I didn't -- it wasn't to go
22 against Mr. Knight in that regard. We didn't
23 know where the business was actually going to --
24 what we were going to -- if we were going to try
25 to expand it at different locations. We wanted

1 to keep our options opened if it was doable, I
2 guess. I mean, you know, the standard -- a
3 standard contract -- I mean, he didn't have to
4 accept it. We put it in there. He accepted it.
5 So, I mean, the significance of it was that not
6 only was there a duration of time, but we defined
7 the territory, the boundary of which this
8 applied.

9 Q: Okay. I guess my question again. When you
10 purchased Mr. Knight's business, you understood
11 that he primarily serviced Lexington and Richland
12 County; isn't that right?

13 A: Based off of his customer list, yes.

14 MR. PRINGLE: Objection. He's answered the question.

15 A: Yes.

16 Q: And --

17 THE COURT: Hold it right there. It maybe have been asked
18 twice, but the Court recognizes what Mr. Lintal just
19 said as to the geographic area involved, meaning
20 Richland and Lexington County. I understand that part.
21 So what's the next question on that issue?

22 MR. LLOYD: Again, I'm not sure -- the latter part of Mr.
23 Lintal's answer was a little confusing to me, so I was
24 trying to establish if I could ask it this way.

25 Q: Again, you wanted Mr. Knight not to compete

1 against you outside of this two county area,
2 including all the way up to Greenville or Pickens
3 County, because you anticipated potential
4 expanding into those markets?

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

9 Q: But again, the importance to you was to have
10 statewide no competition from Mr. Knight?

11 MR. PRINGLE: Objection.

12 THE COURT: I think he's answered that. I think he has
13 answered that.

14 THE WITNESS: Thank you.

15 Q: Now, anything else did you propose in the non-
16 compete agreement other than the geographical
17 distance and the length of the non-compete?

18 A: Let me read it page by page. Give me a second.
19 I'm sure I would have been involved in the
20 transition assistance portion of it. 3.4.6

21 Q: And when you say you would have been involved in
22 that, would you have been suggesting the terms?

23 A: Yes.

24 Q: So other than that, everything else related to
25 this non-compete as it related to negotiations by

1 your side, your wife is in a better position to
2 answer those questions than you?

3 A: I would say yes.

4 Q: Now, let me ask you, going back to the body bags.
5 You indicated that at some point Randy Martin
6 discussed body bags with you? Infant bags; is
7 that right?

8 A: Yes, sir.

9 Q: And is that the first time that you realized that
10 there was such a thing as infant bags?

11 A: I believe so, yes.

12 Q: Now, when you purchased Mr. Knight's business,
13 were there infant bags in the inventory that you
14 purchased from him?

15 A: No, sir.

16 Q: Do you recall again the deposition that you took
17 on July 31, 2013 when I asked you about whether
18 or not there were infant bags --

19 A: In the inventory I took?

20 Q: Yes, sir.

21 A: If you asked it and I answered that there were
22 then I answered incorrectly, because to my
23 knowledge there was none in there. The inventory
24 we took at that date was --

25 Q: Okay. Mr. --

1 A: -- was on the invoice that --

2 Q: Mr. Lintal, I'm not --

3 THE COURT: You answer it and then we'll get a question.

4 You finish answering --

5 MR. PRINGLE: He's explaining his answer.

6 THE COURT: I know. I think he was.

7 A: The first invoice that was given on our part was

8 invoice 2185. This was the list of items that we

9 purchased that -- of body bags purchased at the

10 time of sale. And these were the items that were

11 included. Included in the business, I do not

12 recall any infant bags being included in any part

13 of this.

14 Q: Okay. My question was, on the day that we took

15 your deposition, do you recall telling me that

16 you were, in fact, aware back in -- at the time

17 of the this conversation with Mr. Martin, that

18 there were infant bags in the inventory that you

19 purchased from Mr. Knight?

20 A: I don't recall saying that.

21 Q: Again, if you could turn to page 137 of your

22 deposition.

23 MR. PRINGLE: I'll just interpose an objection. He's just

24 described and shown the things that were purchased from

25 Knight Systems as part of the transaction that was --

1 that body bag inventory.

2 THE COURT: I think he has the right to ask him what's in
3 the deposition.

4 MR. PRINGLE: All right.

5 THE COURT: As compared to testimony today.

6 A: Okay. What number, sir.

7 Q: Okay. If you look on page 137. Well, let's go
8 back so that we can put it in context to some
9 degree what this conversation is about. So if
10 you could flip back to page 136.

11 A: Okay.

12 Q: Okay. And is it fair to say that this discussion
13 between you and I involved you describing a
14 conversation you had with Mr. Archie Maddox in
15 2012?

16 A: It does.

17 Q: And this was about whether Mr. Knight produced or
18 carried infant or pediatric bags; is that right?

19 A: Correct.

20 Q: And at line 21 I asked the question, "I just want
21 to be sure I understand. In 2012, Capital
22 Transportation, through Archie Maddox, told you
23 that Mr. Knight had produced a --" that should be
24 bag, "-- in 2009 a pediatric or infant bag that
25 had been rejected by Lexington County Coroner's

1 Office?" And your answer was?

2 A: "That was my understanding."

3 Q: And you go on to say?

4 A: "I mean, it was made out of heavier material.
5 Heavier weight material," excuse me.

6 Q: Okay. My next question to you was, "Okay. Now,
7 did he have that discussion" -- referring to Mr.
8 Maddox -- "with you prior to June 16 of 2011?"
9 And your answer?

10 A: "No."

11 Q: And my next question was, "Again, what was the
12 source? What created this conversation in 2012
13 about infant or pediatric bags that may or may
14 not have been made by Mr. Knight?" And your
15 answer?

16 A: "Probably when I took on inventory that we bought
17 as part of the acquisition and there were infant
18 bags in that inventory." Shall I continue?

19 Q: Yes, sir.

20 A: "So there were -- I acquired infant bags from his
21 as a result of the sale of his current inventory.
22 So it likely came up, but I don't recall the
23 exact reasons it came about."

24 Q: Okay. In fact, when you acquired the body
25 removal business from Mr. Knight, Buddy Knight

1 was already selling body bags to Lexington County
2 Coroner's Office; isn't that right?

3 A: That's correct.

4 Q: And he continued to sell body bags even after you
5 acquired the business from Mr. Knight through you
6 on at least a couple of occasions; isn't that
7 right?

8 A: Yes.

9 Q: And if Lexington County Coroner's Office wanted
10 infant bags, they had the opportunity to purchase
11 those directly from Mr. Knight, didn't they?

12 A: They had the opportunity, yes. That was not what
13 this infant bag was intended for. But yes, they
14 could have.

15 Q: I'm sorry?

16 A: That was not the purpose of -- that was not what
17 that bag purchase was intended for, or the
18 discussion that we had was intended for. It was
19 for the at need things of which we were supplying
20 the bags at the at need period of time on the
21 majority of calls, and still do on the majority
22 of calls that we take on -- for Lexington County.

23 Q: Okay. Mr. Lintal, when you purchased the infant
24 body bag from Southland, at that point in time --
25 this was 2008; is that right?

1 A: Yes, sir.

2 Q: And at that point in time that purchase was,
3 according to your testimony, triggered by this
4 conversation you had with Randy Martin; is that
5 right?

6 A: Yes.

7 Q: And at the time that you purchased -- let me
8 rephrase that. At the time you had this
9 conversation in 2008, you had already acquired
10 the inventory from Mr. Knight; isn't that right?

11 A: That's correct.

12 Q: And in that inventory there were infant bags; is
13 that right?

14 A: No, there were not. Can I refer you back to
15 this?

16 Q: Yes, sir.

17 A: That is not talking about Mr. Knight. It's
18 talking about Mr. Maddox. We acquired these
19 infant bags through the acquisition of Mr.
20 Maddox. Not through the -- of the Capital
21 Transportation business. These were not infant
22 bags that were provided by -- to the best of my
23 knowledge, provided by Mr. Knight. They were
24 similar in style and -- I don't know where they
25 came from, but this was the Capital

1 Transportation inventory that I had acquired.
2 That's where I noticed them in the items that we
3 were given as part of the purchase.

4 Q: Let me phrase it to you this way. At the time
5 you purchased those infant bags in 2008, --

6 A: Yes.

7 Q: -- the first bag, had you had any discussion with
8 Mr. Knight about --

9 A: Yes.

10 Q: Let me finish the question.

11 A: Okay.

12 Q: About him either purchasing or manufacturing an
13 infant body bag for you?

14 A: I inquired about his ability to provide them for
15 me. To get me -- I didn't ask him to make them.
16 I didn't feel it was my job. He was the
17 supplier. He was the master bag maker. You
18 know, I talked to him about the Lexington County
19 conversation, the Randy Martin conversation, and
20 said that they had the desire to look for a bag
21 that was more suitable for the size of the infant
22 than the adult size bags that we were using. And
23 he brushed it off to say that we just always
24 wrapped them in a sheet. Didn't make any
25 offerings on his part to provide, or that he had

1 the ability to make them. So he had no interest.
2 It's such a small volume, why do you want to mess
3 with it. Just wrap them in a sheet and put them
4 in an adult bag when you get to the hospital. So
5 that's where it left and that's where I made the
6 assumption at that point that he had no interest
7 in it and proceeded, so.

8 Q: Do you know who sells Lexington County Coroner's
9 Office body bags currently?

10 A: Currently?

11 Q: Yes, sir.

12 A: I've sold them bags.

13 Q: Infant bags?

14 A: No.

15 Q: Are you aware of -- when did you get the contract
16 -- and I'm not sure -- just for the Court's
17 edification, I think this was discussed at some
18 point. At some point after you acquired the
19 business you lost the Lexington County Coroner's
20 Office contract; is that right?

21 A: I did. Yes, sir.

22 Q: Okay. And when did you get it back?

23 A: At the time of the acquisition of Capital which
24 was in 2012.

25 Q: And are you aware that Mr. Knight was supplying

1 them body bags during the time period that you
2 lost the Lexington County contract?

3 A: Exclusively?

4 Q: I'm not saying exclusive. I'm saying are you
5 aware that he was still supplying --

6 A: I am not aware. I am not aware.

7 Q: You don't know who was supplying them body bags?

8 A: During that period of time, I do not.

9 Q: Okay. Did you ever know --

10 MR. LLOYD: Beg the Court's indulgence.

11 Q: During that time period that you had the contract
12 -- the first time period before you lost it, how
13 many occasions did you use an infant body bag?

14 A: In Lexington County?

15 Q: Yes, sir.

16 A: I wouldn't know without looking through my
17 records. A very small number.

18 Q: After you got the contract back, how many times
19 have you used an infant body bag?

20 A: None, zero. Well, none of ours. None that we
21 provide. If we did, it would have been a bag
22 that they provide.

23 Q: And that's because Lexington County had infant
24 body bags already; isn't that right?

25 A: They get them from another avenue. They have

1 another source for that.

2 Q: The time period that you had this conversation
3 with Mr. Martin Lexington County Coroner's Office
4 was already purchasing through some means infant
5 body bags; isn't that right?

6 A: The Coroner's Office?

7 Q: Yes, sir.

8 A: No, sir. Not to my knowledge, no. I don't know
9 that.

10 Q: To your knowledge, when did they start purchasing
11 infant body bags?

12 A: I don't think they -- I mean, I don't think
13 they've ever purchased them. It's used for their
14 services. Services that are provided by the --
15 to transport personnel or for work that they
16 would do. But the first time that they would
17 have had access to them, to the best of my
18 knowledge, based off of that conversation, was
19 after I acquired the first order of the Southland
20 ones.

21 Q: And sitting here today you cannot tell us when
22 you used an infant body bag in Lexington County?

23 A: No. I'd have to look through the invoices, sir.

24 Q: Are those invoices here?

25 A: No. I don't believe so.

1 Q: Now, the water retrieval bags that you purchased,
2 and you referred to them in your direct
3 examination -- do you recall that?

4 A: I do.

5 Q: And let me clarify. From a source other than Mr.
6 Knight. Do you recall that discussion?

7 A: I do recall, yes.

8 THE COURT: Mr. Lloyd, let me ask you this.

9 MR. LLOYD: Yes, sir.

10 THE COURT: Not to break you on your cross examination.

11 Are you at a breaking point or are you not? I've got a
12 conference call at 1:00 but I don't want to mess up on
13 -- if you're on your --

14 MR. LLOYD: No, sir. We can take a break.

15 THE COURT: I mean, you're okay with that?

16 MR. LLOYD: Yes, sir. Yes, sir. I need a restroom and
17 cigarette break anyway.

18 THE COURT: Let's do this. Let's take lunch. It's 15 to
19 1:00.

20 MR. PRINGLE: Yeah. Okay. Yeah, we can keep on.

21 THE COURT: And, let's see. It's 15 to 1:00. Let's get
22 back here at 2:00.

23 MR. PRINGLE: 2:00?

24 THE COURT: Yeah.

25 (A lunch break was taken from 12:48 p.m. to 2:00 p.m.)

1 THE COURT: On the record.

2 Q: Mr. Lintal, I think I won't be much longer with
3 you. I just wanted to ask you a few more
4 questions actually. You mentioned that Mr.
5 Knight had done a couple disinterments after you
6 purchased the business; is that right?

7 A: Yes, sir.

8 Q: And on both of those occasions he actually called
9 you and told you that he had been contacted by
10 Richland County Coroner's Office and asked to do
11 those; is that right?

12 A: No. On one occasion. The second occasion I
13 discovered it when I was taking a body into the
14 morgue at Richland and his trailer was outside
15 there.

16 Q: Okay. And on the first occasion when he called
17 you he said, hey, Richland County Coroner's
18 Office asked if I could do this disinterment for
19 them; is that right?

20 A: Pretty much, yeah. Last minute.

21 Q: And at that time you said you had no interest in
22 doing that; is that right?

23 A: I did, yes.

24 Q: I'm sorry. You did?

25 A: I did say that I didn't have any interest. But I

1 also said that I would like, you know, to be
2 involved in the future if they ever came about,
3 so.

4 Q: And at that time was there an equipment issue
5 when Mr. Knight first called you on your part?

6 A: I didn't have the equipment, but I didn't
7 necessarily not have access to it. So, I mean, I
8 didn't have a lot of time to respond. And it
9 seemed easier just to say yes. We had a good
10 relationship, so.

11 Q: And, in fact, the relationship was good to the
12 point that Mr. Knight actually called you ahead
13 of time before doing the disinterment and said,
14 hey, Don, they called me and asked me to do this.
15 Do you want to do it or do you mind if I do it?

16 A: It was more that he was going it. Did I mind.

17 Q: And let's talk about the Richland County
18 contract. You demonstrated an odor proof bag --
19 it's not really just a bag. Let's be a little
20 more clear. It's actually a process you go
21 through with the prototype that you showed to
22 Richland County, isn't it?

23 A: I didn't have a demonstration with Richland
24 County.

25 Q: Okay. You never showed them --

1 A: I was never allowed the opportunity.

2 Q: Okay. Let me ask you the question. After you

3 saw Mr. Knight's letter saying that he was no

4 longer going to make this odor proof bag

5 available on the open market, did you have any

6 discussions with anybody at Richland County

7 regarding an alternative to Mr. Knight's --

8 A: After they contacted me inquiring what I was

9 going to offer as an alternative. And yes, that

10 was the extent of it, yes.

11 Q: Okay. Is it your testimony then that you've

12 never demonstrated anything to --

13 A: Gary Watts didn't allow --

14 MR. PRINGLE: Let him ask the question.

15 THE WITNESS: Sorry.

16 Q: Is it your testimony that you never demonstrated

17 any type of odor proof bag or odor proof sealing

18 method to anybody at the Richland County

19 Coroner's Office?

20 A: That is my testimony.

21 Q: To your knowledge, did your wife take part in any

22 type of demonstration?

23 A: She did not.

24 Q: So as far as you know, nobody on behalf of

25 Palmetto Mortuary Transport made any type of

1 demonstration to the Richland County Coroner's
2 Office?

3 A: That is correct.

4 Q: Now, you say you did have a discussion with them
5 about an alternative?

6 A: I did.

7 Q: And as it related to that alternative, did you
8 describe for them what you would use in place of
9 Mr. Knight's odor proof bag?

10 A: Yes. As best I could, yes.

11 Q: And would you describe what that alternative is?

12 A: It's a laminated bioseal bag.

13 Q: And, in fact, you would have had to actually --
14 for lack of a better description, it's almost
15 like a heat seal bag.

16 A: It is a heat seal bag.

17 Q: And when you pick up a body on the scene and put
18 the body in the bag, you actually have to have an
19 apparatus to seal the bag; is that right?

20 A: Yes.

21 Q: And once they get to the Coroner's Office or to a
22 facility for an autopsy and open the bag, you
23 have to have that machine to reseal it; is that
24 right?

25 A: That's correct.

- 1 Q: And Richland County said they were not interested
2 in that method; is that right?
- 3 A: They didn't tell me that.
- 4 Q: Okay.
- 5 A: A letter came. After a discussion that I had
6 with Gary Watts on the phone and offering a
7 demonstration of which he said that he didn't
8 need to see it because he knew about it, he --
9 that afternoon or the next day wrote a letter
10 that we later had in discovery to Christie
11 Swafford at Richland County Procurement that she
12 -- he gave his reasons for not finding an
13 acceptable solution, so. But I was not allowed a
14 demonstration.
- 15 Q: Now, prior to offering that alternative to
16 Richland County Coroner's Office, had you done
17 any research on other odor proof bags in the
18 market?
- 19 A: Yes.
- 20 Q: And are you familiar generally with how many
21 different types of odor proof bags there are on
22 the market?
- 23 A: One that I know of. Well, counting the bioseal
24 style, if you -- inclusionary of that type of
25 system, as you will, those are the only two that

1 I'm aware of.

2 Q: So you're only aware of two --

3 A: I have not been able to find any other solutions.

4 Q: After Richland County Coroner's Office rejected
5 that heat seal method, again, did you have any
6 further discussions with Mr. Knight regarding
7 whether or not he would sell you any more of his
8 bags? Odor proof bags?

9 A: Yes. I tried to make an order in September.

10 Q: And you made that order by telephone or by
11 written correspondence?

12 A: There was conversation and written correspondence
13 as well.

14 Q: And this was after the period when Mr. Knight had
15 been awarded the Richland County contract; is
16 that right?

17 A: No. To my knowledge, I hadn't been notified at
18 that point. If he had the award, I was still
19 providing service for Richland County Coroner's
20 Office at the point that I requested -- or I
21 wanted to make the order.

22 Q: Just to clarify a couple other points from your
23 earlier testimony. You said that you had had
24 earlier conversations with Mr. Knight about the
25 fact that you had purchased bags other than just

1 the infant bags prior to June 16th of 2011; is
2 that right?

3 A: Yes.

4 Q: And those conversations that you had prior to
5 June 16, 2011 about the purchase of other bags,
6 you did not reference those conversations at all
7 in that conversation on June 16, 2011, did you?
8 In other words, you didn't remind Mr. Knight that
9 --

10 A: No, sir. I did not.

11 Q: -- Buddy, we talked about this before. I've told
12 you before that I bought infant bags and --

13 A: You're right.

14 Q: -- water retrieval -- I'm sorry.

15 A: I'm sorry.

16 Q: Or other bags prior to that, did you?

17 A: No.

18 MR. LLOYD: Beg the Court's indulgence. Thank you, Your
19 Honor.

20 THE COURT: Yes, sir. Any re-direct?

21 MR. LLOYD: Final question. I'm sorry.

22 THE COURT: Oh, I'm sorry. Okay.

23 Q: The non-compete agreement, as well as the
24 provision 3.4.8 relating to the obligation to
25 purchase body bags from Mr. Knight, those were

1 all presented at the closing; is that right? All
2 those agreements were presented at the same time?
3 A: Be more clear, please.
4 Q: Your attorney drafted the non-compete; is that
5 right?
6 A: There was a trade off back and forth between --
7 Q: That's not my question. My question is your
8 attorney drafted the non-compete; is that right?
9 A: To the best of my knowledge.
10 Q: Yeah. And your attorney initially drafted the
11 asset purchase agreement; is that right?
12 A: I believe so.
13 Q: And included in there was also what we call the
14 right of first refusal that if Mr. Knight decided
15 to, in fact, sell his body bag manufacturing
16 business, that you and Palmetto Mortuary
17 Transport had the right to match that offer and,
18 in fact, purchase his business; isn't that right?
19 A: Yes.
20 Q: And all that was put into a collection of
21 documents that were executed at the closing;
22 isn't that right?
23 A: Yes.
24 Q: And so, let me ask you this way. Whose idea was
25 it to put into the agreement 3.4.8?

1 MR. PRINGLE: Just the continued objection to --

2 A: The whole thing?

3 Q: Yes, sir.

4 A: Probably our attorney.

5 Q: And, in fact, 3.4.8 was not offered as any
6 separate consideration for the non-compete; is
7 that right?

8 MR. PRINGLE: Objection. I don't even know what that
9 means or what it asks, but if it asks anything, it
10 calls for a legal conclusion.

11 THE COURT: I think it calls for a legal conclusion.

12 MR. LLOYD: Can I rephrase the question?

13 THE COURT: Sure.

14 Q: All of this was initially drafted to carry out
15 the effect of what you all were trying to
16 purchase and bind Mr. Knight to; is that right?

17 A: Yes.

18 MR. PRINGLE: Objection. Ambiguous.

19 THE COURT: Hold on a minute. Would you say that again?

20 Q: The initial draft of these agreements, the asset
21 purchase agreement, the non-compete agreement,
22 everything that was marked as Plaintiff's Exhibit
23 Number One, those were all initially drafted to
24 carry into effect your -- and by your, I mean,
25 Palmetto Mortuary Transport and you and your

1 wife, your desire to purchase not only the
2 business but also bind Mr. Knight to certain
3 obligations; isn't that right?

4 A: Yes, as I understand it.

5 Q: And we got into discussion about what was offered
6 up as compensation for the non-compete. Do you
7 recall that earlier?

8 A: Yes.

9 Q: And we've established the documents as there's
10 \$1,000 allocated for the non-compete. Do you
11 recall that?

12 A: I recall your statement of that, yes.

13 Q: My question is, when this provision 3.4.8 was
14 introduced into these documents, was that
15 introduced into the document as any sort of
16 compensation additional to the \$1,000 for Mr.
17 Knight entering into the non-compete?

18 MR. PRINGLE: Objection. It calls for a legal conclusion.
19 Again, it's parol evidence.

20 THE COURT: I think it's still a legal conclusion, Mr.
21 Lloyd, and probably does violate parol evidence is what
22 I see.

23 MR. LLOYD: Your Honor, if I could be heard.

24 THE COURT: Sure.

25 MR. LLOYD: I just want to make sure that Your Honor would

1 allow us to get into this issue and maybe -- this may
2 be an issue for a legal argument later on.

3 THE COURT: Right.

4 MR. LLOYD: Some of the case law actually discusses and --
5 to the extent that Mr. Pringle is raising this as an
6 objection, we would ask and argue at the conclusion of
7 this that they be bound by that. That you look to the
8 four corners of the entire agreement to discern what
9 was, in fact, consideration for a non-compete. So to
10 the extent that they're raising that objection, then we
11 would just ask that any consideration other than \$1,000
12 for the rest of the agreement also be barred by the
13 parties being able to argue that anything else was, in
14 fact, compensation or consideration.

15 MR. PRINGLE: I don't quite follow that. I mean, I
16 completely agree that all of this discussion should be
17 made in the context of legal arguments about what's
18 within the four corners of the document, and that my
19 objection to the line of questioning doesn't tie my
20 hands in any way as to what I may argue about what --
21 just as it doesn't tie the hands of Knight Systems in
22 terms of what they want to argue about whether or not
23 you consider the asset purchase agreement and the
24 covenant not to compete. I mean, all of that is -- I
25 mean, those are legal arguments to be made about what

1 the affect is of all of those things.

2 MR. LLOYD: Then, Your Honor, I think factually -- the
3 legal arguments are based on the factual reality of
4 whether or not that was, in fact, offered as
5 compensation or not. And that's my issue with if they
6 bar us from asking questions about this particular
7 provision as whether it was additional compensation,
8 then we would contend that they're barred then to argue
9 at the conclusion that anything other than the \$1,000
10 should be considered by a court as compensation for the
11 non-compete.

12 MR. PRINGLE: As I've said before, the only argument we're
13 making is that \$1,000, that figure contained in the
14 contract, is adequate consideration for that or any
15 covenant not to compete and it is what it is. We are
16 not going to argue that a lesser amount is
17 compensation. We're not going to argue that some other
18 portion was compensation for -- or, excuse me,
19 consideration. It is what it is. It's \$1,000. And as
20 I've said from the start, that's what we're standing
21 on, and that's what it is. And that's all that we have
22 to go on.

23 THE COURT: Okay. Now, I want to go back to your original
24 question that you had a moment ago on the 3. -- what is
25 it? I can't tell from here.

1 MR. LLOYD: 3.4.8.

2 MR. PRINGLE: The 3.4.8.

3 THE COURT: Yeah, 3.4.8. You were asking the question
4 about -- would you repeat that question, because I want
5 to rule on that particular issue right there.

6 MR. LLOYD: And, Your Honor, we were attempting to ask Mr.
7 Lintal if 3.4.8, from the Plaintiff's standpoint, was
8 put into the agreement as any type of additional
9 consideration for the non-compete.

10 MR. PRINGLE: And my only response is the agreement says
11 what it says. And frankly whether he said yes or no as
12 it was -- it was clearly tied to it doesn't change the
13 legal affect of -- and I guess if he wants to answer.
14 But we're still in this realm of talking about the
15 things that precede the contract.

16 MR. LLOYD: Again, I don't mean to belabor the point.

17 THE COURT: Go ahead. That's all right.

18 MR. LLOYD: I mean, our reading of the case law is that,
19 you know, you can look beyond just the -- you know,
20 there's a dollar amount in there. That the Court
21 actually looks to see what was the full agreement
22 between the parties. Is there additional give and take
23 between the parties that would form the basis of
24 consideration for a non-compete. If they are saying as
25 Plaintiff's now, the only thing Your Honor can look at

1 is the dollar amount that's attached, the \$1,000, and
2 we'd certainly take that, we just don't want to not be
3 allowed to inquire about other compensation or
4 consideration at this time during this examination if
5 they did argue --

6 MR. PRINGLE: That's not my point at all. My point is
7 that as far as the consideration -- I'm not saying you
8 don't consider everything about it. I feel, I mean,
9 very, very strongly that in particular the \$590,000
10 that's included in this is all part and parcel to that.
11 My point is the consideration is what it was stated in
12 there, and that is the -- and any significance you draw
13 from that or any other term are within the four corners
14 of the document and you argue about that.

15 THE COURT: I'm going to let you ask the question and note
16 his objection. And this is significant, so this is one
17 that we'll have to rule on when we issue a report. I
18 just had an identical case just like it, so I'm very
19 familiar with the -- not these set of facts, but the
20 contract issues of four corners and who drew the
21 document and parol evidence. So I just dealt with it
22 again. But I'm going to rule that way so everybody is
23 -- you can ask the question and he's protected as to
24 the objection and let's see what the answer is. All
25 right.

1 MR. LLOYD: Thank you, Your Honor.

2 Q: Mr. Lintal, was 3.4.8, at the time of the
3 execution of the asset purchase agreement, was
4 that considered by you to be additional
5 consideration for the non-compete?

6 A: I quite frankly don't know. The answer is no,
7 because I don't know what -- I mean, I don't
8 understand this part of it, so. You know, all I
9 know is how this thing came about, so.

10 MR. LLOYD: Okay. If I might have a little leeway, Your
11 Honor.

12 Q: The consideration for the non-compete included
13 \$1,000; is that right?

14 A: If you say so. I don't recall. It included --

15 Q: Well, can you look at Plaintiff's Exhibit One --

16 MR. PRINGLE: Objection. The document speaks for itself.

17 A: Is the allocation put in here.

18 THE COURT: Hold right there. The question asked was does
19 that document show \$1,000 for the non-compete. Does
20 the Plaintiff --

21 MR. PRINGLE: Stipulates that it does.

22 THE COURT: Okay. We're straight on that.

23 THE WITNESS: Okay.

24 A: Yes. Okay, yes.

25 Q: If that's the case, is there anything else that

1 was offered, including 3.4.8, as additional
2 consideration or compensation for Mr. Knight
3 signing the non-compete?

4 A: That was included in the original drafting after
5 we made the signed offer. So this was drafted as
6 a result of that. So from my point of view it
7 was in there from the beginning. This was varied
8 at the day of closing. This portion was varied.
9 Beyond that I don't recall what else changed.

10 Q: Okay. My question is, when you came to the
11 closing, was it your intention or belief that
12 3.4.8 was also part of the consideration paid to
13 Mr. Knight for executing the non-compete?

14 A: I have no knowledge of that. This was an area
15 that my wife would be much stronger in answering
16 that, too.

17 Q: So as far as you know, as it relates to the
18 compensation for the non-compete, the
19 consideration paid to Mr. Knight for that non-
20 compete, other than the \$1,000 that you
21 stipulated was consideration, you have no
22 knowledge of anything else that was or was not
23 offered as consideration?

24 A: I'd say the whole value had some benefit to that.
25 The 590,000, how you break it up is

1 insignificant.

2 Q: Okay. The \$590,000 was to purchase the assets,
3 good will and other intangibles of the business;
4 is that right?

5 A: And go into an agreement with us that was -- I
6 don't know at what point it was stipulated in
7 there, but this was drafted as a result of that.
8 To come up with an agreement that we could buy
9 the business within, so.

10 Q: So is it your testimony -- just so I understand --
11 -- is it your testimony that in addition to the
12 \$1,000 consideration paid to Mr. Knight to
13 execute the non-compete, that the \$590,000 total
14 or all was also additional consideration?

15 A: I don't know. I don't understand any part of
16 this. So, I mean, I don't know the answer.

17 Q: Okay. A moment ago you said --

18 MR. PRINGLE: He's answered --

19 THE COURT: I haven't heard a question and then I'll make
20 a decision here. Let's see what the question is.

21 Q: A moment ago you said that -- your counsel
22 stipulated to \$1,000. Do you remember that?

23 A: Your all saying that so --

24 MR. PRINGLE: Yes.

25 A: Yes.

1 Q: Okay. Well, let me ask you this way, Mr. Lintal.
 2 Do you have any clue as to what was offered as
 3 consideration -- independent of your counsel's
 4 stipulation, do you have any independent
 5 knowledge as to what was offered as consideration
 6 to Mr. Knight to sign that non-compete?
 7 A: No, I don't.
 8 MR. LLOYD: I have nothing else for you.
 9 THE COURT: Okay. Re-direct.
 10 RE-DIRECT EXAMINATION BY MR. PRINGLE:
 11 Q: Mr. Lintal, there's a lot of this discussion
 12 about who did the first draft, as if that had any
 13 significance in this case. Did anything happen
 14 after Chris Rogers created a first draft of the
 15 asset purchase agreement and the covenant not to
 16 compete?
 17 A: Yes. Changes were made.
 18 Q: By whom?
 19 A: Don Jonas, the --
 20 Q: Who does Don Jonas represent?
 21 A: He represented Buddy Knight at the time.
 22 Q: Okay, all right. Now, and with respect to --
 23 there was a first draft that was written and
 24 that's what we're talking about here, right, is a
 25 document that has 15 or 20 pages, right?

1 A: Yes, sir.

2 Q: Okay. Prior to this draft, had there been any

3 other document signed by both parties where the

4 big terms that ended up in this agreement were

5 agreed to?

6 A: The sale -- or the intent to -- what we did with

7 Sunbelt Business Brokers was the only other --

8 Q: What was in it?

9 A: -- that I recall.

10 Q: What was in it?

11 A: Virtually the same type of information.

12 Q: The purchase price?

13 A: There was an offer price and --

14 Q: A covenant not to compete?

15 A: Yes. Yes.

16 Q: Okay. You had this conversation with Mr. Lloyd

17 about when Richland County came to you and asked

18 if you had an alternative to the odor proof body

19 bag. On June 15th, or frankly on June 16th, did

20 you need an alternative to an odor proof body

21 bag?

22 A: Not that I was aware of.

23 Q: Why?

24 A: Because I still was under the existing contract

25 as best I could -- I was still under an existing

1 contract with Knight Systems.

2 Q: And what did the contract say with respect to
3 odor proof bags?

4 A: That we had the rights to buy that odor proof
5 bag, as well as these others.

6 Q: So under that contract, with that contract being
7 in effect, you would have been able to satisfy --
8 there wouldn't have been a Richland County
9 concern, would there have been?

10 A: No. I bid that as part of my package at the
11 time. We didn't have to list them out
12 individually as a price item, so it was, you
13 know, just an assumed.

14 Q: And so, what caused Richland County to have to
15 come to you with an alternative?

16 A: A letter was --

17 Q: Broadly.

18 A: A letter was sent in to the procurement by Buddy
19 Knight saying that he know longer was supplying
20 them to competition, competitors.

21 Q: Right. And if that hadn't happened, there
22 wouldn't have been an issue?

23 A: I should have won the contract.

24 Q: Right.

25 MR. PRINGLE: That's all I have.

1 MR. LLOYD: Just briefly, Your Honor.

2 RE-CROSS EXAMINATION BY MR. LLOYD:

3 Q: You said that Mr. Jonas who represented -- it was

4 your understanding he represented Mr. Knight?

5 A: Yes, sir.

6 Q: What terms did Mr. Jonas suggest be changed in

7 the agreement?

8 A: I have no clue. I don't recall.

9 Q: So you have no firsthand knowledge that Mr. Jonas

10 suggested any changes be made?

11 A: No, I don't.

12 Q: And as of June 16, the evening of June 16, 2011,

13 you believed that Mr. Knight was going to accuse

14 you of having breached the agreement between the

15 two parties and that he was going to bid on the

16 contract?

17 A: Yes.

18 Q: And starting from June 16 of 2011 until the time

19 the contract was awarded, did you undertake any

20 efforts to research or find an alternative to the

21 odor proof body bag that Mr. Jonas produced other

22 than this heat seal method?

23 A: Mr. Jonas produced them.

24 Q: I'm sorry. Mr. Knight.

25 A: Okay. No. Or yes, I did. Yes. No, I did try

1 to secure.

2 Q: And that was the heat seal method?

3 A: Well, it was one of the -- yes. I mean, I
4 researched. I never bought any. I never
5 purchased any materials or -- even at the time
6 that I offered the demonstration to Coroner
7 Watts. The representative lives in Ladson next
8 to Goose Creek. He had already agreed that he
9 could help me go in if need be.

10 Q: Okay. And you're talking about the heat seal
11 bag?

12 A: That is correct.

13 MR. LLOYD: Nothing further.

14 THE COURT: All right. Finished with the witness?

15 MR. PRINGLE: Yeah. Finished with that witness. And then
16 the next witness is Ellen Lintal. You guys what to
17 switch seats?

18 (Off the Record)

19 ELLEN LINTAL, being duly sworn and cautioned to speak
20 the truth, the whole truth and nothing but the truth,
21 testifies as follows:

22 DIRECT EXAMINATION BY MR. PRINGLE:

23 Q: If you would, state your full name.

24 A: Ellen Lintal.

25 Q: What is your job function with Palmetto Mortuary

1 Transport?

2 A: CFO. I handle all the financial aspects of the

3 business.

4 Q: Okay. Let's just jump in right here. Do you

5 recall that Chris Rogers, who is a lawyer at

6 Ellis Lawhorne, did the initial drafts of the

7 documents we're talking about here?

8 A: He did.

9 Q: Okay. Do you have any knowledge about what

10 happened to them after he drafted them?

11 A: They were circulated to all the parties,

12 including Mr. Knight and Mr. Jonas.

13 Q: Okay. Do you have any knowledge about what

14 happened after that?

15 A: There were many revisions back and forth between

16 --

17 Q: How do you know that?

18 A: There were email correspondence that we're all

19 copied on.

20 Q: Okay. What did you see on the email

21 correspondence?

22 A: There were attached documents with red lines

23 through them proposing different types of changes

24 or language.

25 Q: Okay. And without any of the specifics, but it's

1 your understanding from what you saw and what you
2 read that Mr. Jonas presumably read the documents
3 and then offered changes to them?

4 A: That is correct.

5 Q: Okay. And then he did appear at the closing with
6 Mr. Knight, correct?

7 A: That is correct.

8 Q: And, in fact, negotiated at the closing on behalf
9 of his client?

10 A: That is correct.

11 Q: Okay. Do you know whether or not Mr. Jonas
12 shared versions of the documents with Mr. Knight?

13 A: Other than what I saw in the emails, that he was
14 a copied recipient.

15 Q: All right. Have you had occasion to -- well, to
16 do some calculations of damages in connection
17 with how PMT has been damaged in this case?

18 A: I have.

19 Q: Okay. I'm going to pass out some documents that
20 are just for illustrative purposes. I'm not
21 actually to put -- but it's just something that
22 could be helpful to sort of follow along with as
23 we --

24 COURT REPORTER: Are we marking this?

25 MR. PRINGLE: Yeah. Just mark it for identification, but

1 not --

2 COURT REPORTER: And we're starting at one again?

3 MR. PRINGLE: Sure, I guess. Yeah.

4 THE COURT: What was that last comment?

5 MR. PRINGLE: Starting at one again.

6 THE COURT: Oh, okay.

7 MR. PRINGLE: That's fine.

8 (Plaintiff's Exhibit Number One was marked for
9 identification purposes.)

10 Q: Tell me, in terms of coming up with -- well, tell
11 me what your version of what damages are in this
12 case.

13 A: Damages would have been the overall profit that
14 we lost due to the fact of not having this
15 business, with this contract.

16 Q: Okay. Which contract?

17 A: The Richland County.

18 Q: Okay. So what would you start with in order to
19 calculate profit?

20 A: I would look at the overall terms of the contract
21 as far as the revenue that was to be generated to
22 the contract winner.

23 Q: Let's talk about revenue. And we can look at
24 this document but just use that as a guideline to
25 go from. In terms of revenue, what numbers did

1 you use for revenue?

2 A: I started with September of --

3 Q: Whose numbers did you start with?

4 A: I started with the award that was given to Mr.

5 Knight. So his monthly award from September 2011

6 to June 2012, which was a ten month period. So I

7 took ten months of that. And then every year --

8 Q: Of what?

9 A: I took ten months of what was awarded in his

10 contract of the amount that he could bill

11 Richland.

12 Q: Okay. Why don't you just describe that and --

13 just describe how you would calculate that.

14 A: So he was awarded \$8,000 a month is what he could

15 bill Richland. And so, I took \$8,000 a month for

16 ten months and came up with \$80,000.

17 Q: Why did you chose eight months?

18 A: Because we didn't lose the business until

19 September of --

20 Q: Excuse me. Ten months, yeah.

21 A: Yes. We started September of 2011 through June

22 of 2012, which is ten months, under that term of

23 revenue because --

24 Q: Going under a fiscal year or something?

25 A: Yes.

1 Q: All right. So what about the next line?

2 A: The next line. Each year he had an incremental
3 price increase, or every two years. So from July
4 12th to July 13th, according to the awarded
5 contract, that fiscal year he was allowed
6 \$102,982.50. Did the same for the next fiscal
7 year.

8 Q: Yeah.

9 A: And then when you get to the fiscal year 2014
10 through 2015, his award was 106,586.50. Then the
11 same for the last year of the contract. That
12 carried it out to a total of this contract being
13 awarded at 499,138.

14 Q: Okay. And why did you chose five years?

15 A: Because that was the length of the term of the
16 contract.

17 Q: All right. Now, those are his numbers. Can you
18 do -- you know, and we can maybe write on that
19 sheet -- do what the calculation would be based
20 upon what PMT bid.

21 A: I'm just going to have to look at a cheat sheet
22 just so -- PMT would have been for the ten
23 months, we were awarded \$7,550 was our contract.
24 So for ten months we would have been \$75,550.
25 And then we would have had 7,550 a month for

1 every month after that. We did not have an
2 increase. So for 48 months after that for our
3 total of revenue would have been 437,900.

4 Q: Okay. And that's based upon what you would have
5 earned?

6 A: That would have been what we would have earned.

7 Q: Okay. And then what else do you consider when
8 you're talking about coming up with product?

9 A: We went and looked at the average cost of bags.
10 As you see from the exhibit over there and from
11 the invoices earlier this morning, bag costs
12 vary. I went and looked at the last year that we
13 had the contract and went and looked at every
14 call that we did and itemized what bags we used
15 and came up with an average call based off of
16 that average sample from the year prior. And
17 that bag cost was \$15.67 based on that. So
18 various bags, various types. Not an exact
19 science, but I can't predict who's going to go in
20 what bag.

21 Q: But that was for that year?

22 A: That was for the year prior.

23 Q: Okay. And then what else did you consider?

24 A: I assumed that the average distance per trip is
25 60 miles. I assume that our vans get an average

1 of 20 miles per gallon, and --

2 Q: When you say assume, what do you mean by that?

3 A: Well, I looked at what our gas bills were and

4 estimated that our -- depending upon, you know,

5 how they drive, what they drive, it actually came

6 out to 18.9, but I used --

7 Q: 18.9 miles per gallon?

8 A: Right.

9 Q: Okay. But you rounded up?

10 A: Right.

11 Q: Okay. I looked at what the average cost per gas

12 was over the past year and that was just

13 published on the web. And based on regular gas,

14 it was \$3.50. So gas cost per trip is \$10.50

15 based on driving approximately 60 miles per trip.

16 Q: All right. And so, then what did you do?

17 A: I added that to the bag cost. So the cost was

18 \$26.17.

19 Q: Per call?

20 A: Per call. I looked at the actual calls from

21 7/1/2010 to 6/30/2011. So the last full year

22 that we had their contract, and we did 511 calls.

23 Q: For Richland County?

24 A: For Richland County.

25 Q: Okay. Then what did you do?

- 1 A: I took that 511 and prorated September 2011 to
2 June 2012 based on ten months. And then every
3 year after that I did 511 calls time the 26.17.
- 4 Q: And then what did you come up with?
- 5 A: And came up with the total of expenses of
6 \$64,635.54.
- 7 Q: Okay. Leaving a total net damages under Mr.
8 Knight's revenues of what?
- 9 A: 434,502.46.
- 10 Q: And what would that number be if you were using
11 your revenues?
- 12 A: 373,264.54.
- 13 Q: Okay. I notice on here that you don't -- there
14 aren't employee expenses. Why is that?
- 15 A: Our business was pretty fixed. We did not lay
16 anybody off as a result of losing this contract.
17 We did not terminate any vans. We did not change
18 any auto insurance or any other costs that would
19 be associated to this business. It was just
20 volume. So it should not be considered in this
21 case.
- 22 Q: So just to clarify. You served Lexington County,
23 Richland County and USC with a certain number of
24 employees?
- 25 A: And various funeral homes.

1 Q: And funeral homes.

2 A: Uh-huh (affirmative response.)

3 Q: Right. And then when you lost Richland, you

4 didn't need to lose any employees?

5 A: We did not.

6 Q: Okay. And I notice down there that you mention

7 attorney's fees to be provided. Do you know if

8 the agreement provides for attorney's fees for

9 prevailing parties?

10 A: In the asset purchase agreement, it does state

11 that it's damages plus attorney fees.

12 Q: Okay. And so, it's your testimony that you

13 wouldn't have to purchase any additional vehicles

14 or hire any additional employees to take this

15 contract back?

16 A: That is correct.

17 Q: Okay. And so, what date are you using as the

18 sort of final date for the damages analysis? I

19 mean, June of 2016?

20 A: Yes, sir.

21 Q: Okay. Not beyond that.

22 MR. PRINGLE: I think that's all I have. Please answer

23 any questions that -- you know, I don't know whether

24 you would agree to putting this in certainly as

25 illustrative since she's gone through it.

1 THE COURT: Can we at least mark it for an exhibit?

2 MR. PRINGLE: Oh, I think we did.

3 MR. LLOYD: Just refer to it.

4 MR. PRINGLE: We did. Yeah, I think we did.

5 MR. LLOYD: Plaintiff's Six?

6 COURT REPORTER: No. Plaintiff's One.

7 MR. PRINGLE: Plaintiff's One. So all other things being

8 equal I'd like to have it in, but I'm not going to push

9 it. You know, you've certainly got your ability to --

10 MR. LLOYD: I'm sorry. This is marked as Plaintiff's One?

11 MR. PRINGLE: Yeah.

12 COURT REPORTER: It started over.

13 MR. PRINGLE: It just started over again for some reason.

14 MR. LLOYD: Oh, I'm sorry. I'm going to reserve an

15 objection to this.

16 THE COURT: It's just marked for identification where it

17 is right now.

18 MR. PRINGLE: Yeah.

19 THE COURT: Okay.

20 MR. LLOYD: Let's just start and come back to this, if we

21 --

22 MR. PRINGLE: All right.

23 CROSS EXAMINATION BY MR. LLOYD:

24 Q: Your husband indicated a little bit ago during

25 his testimony that you were sort of the

1 knowledgeable party in the room for your side as
2 to the terms of the asset purchase agreement, the
3 non-compete and any other documents that were a
4 part of that closing; is that right?

5 A: That is correct.

6 Q: And let's talk about that non -- well, let's back
7 up for a moment even before that day of that
8 closing. You indicated that there were varying
9 drafts submitted of the closing documents and
10 that they were circulated between the attorneys
11 for the parties; is that right?

12 A: The attorneys and my husband and I and Mr.
13 Knight.

14 Q: And you're not aware of any particular changes
15 that Mr. Jonas has actually made or suggested,
16 are you?

17 A: Just what I saw in the emails that came back from
18 him with his red lines in them. I mean, I can't
19 recite which ones they were, but I remember
20 reading them and seeing them.

21 Q: Okay. And these came directly from Mr. Jonas to
22 you or did they go through your attorney?

23 A: They came from Mr. Jonas copying myself, Chris
24 Rogers from Ellis Lawhorne, my husband and Mr.
25 Knight.

1 Q: Are you aware of the Plaintiff responding to a
2 third set of request for production to you?
3 December 3rd, 2013.

4 A: December 3rd --

5 Q: Let me be more specific to job your memory.

6 A: Yeah.

7 Q: Do you recall responding to Defendants' request
8 for production for any emails or other
9 correspondence between your counsel and Mr. Jonas
10 related to the negotiation of these agreements or
11 documents?

12 A: I do.

13 Q: And are you aware of whether or not you fully
14 responded to that request for production?

15 A: I'd have to defer to counsel on that, to be
16 honest.

17 Q: Well, let me ask you. Are you aware of more than
18 two emails between Mr. Jonas and your attorney
19 regarding these documents?

20 A: That's all I had.

21 Q: And are you aware in response to this request for
22 production raising any objections as to
23 attorney/client privilege?

24 A: We did.

25 Q: You did raise objections?

1 A: We discussed it with Jack.

2 Q: Okay. Let me show you, if I may --

3 MR. LLOYD: Let me just show Mr. Pringle first.

4 MR. PRINGLE: Yeah, that's fine.

5 MR. LLOYD: Well, let me just mark it first as an exhibit

6 for ID purposes only. This is Defendants' One.

7 (Defendants' Exhibit Number One was marked for

8 identification purposes.)

9 Q: Have you seen that document?

10 A: I have.

11 Q: And as to the request for all emails or

12 correspondence between Mr. Jonas and your

13 attorney related to the closing documents, do you

14 see a response on Plaintiff's behalf?

15 A: That there were two emails.

16 Q: And were there any objections raised as to

17 producing anything additional?

18 A: No, sir.

19 Q: And in those two emails -- did you review those

20 before they were produced?

21 A: I went back and looked at them, yes.

22 Q: And in those two emails do you recall Mr. Jonas

23 actually suggesting any red lines or deletions,

24 additions, rewording, anything?

25 A: He had red lines in them, yes.

1 Q: Do you recall -- which email -- well, let me do
2 it this way, if I might.

3 MR. PRINGLE: Yeah, sure.

4 Q: This was produced with those.

5 MR. LLOYD: Jack, I'd be happy to put the whole thing in.

6 MR. PRINGLE: I don't think this is the whole --

7 MR. LLOYD: That's what we got.

8 MR. PRINGLE: Again, I'm fairly certain that there are
9 additional --

10 MR. LLOYD: I beg the Court's indulgence for a second.

11 THE COURT: Sure.

12 MR. LLOYD: You all electronically sent it to me as well.

13 MR. PRINGLE: Yeah. Well, I mean, do you have the whole
14 production? I can tell by looking at this.

15 MR. LLOYD: I took some of the emails out of there, but
16 yeah.

17 THE COURT: Do you all need to be off the record for a
18 second administratively or something?

19 MR. LLOYD: Yes, Your Honor.

20 THE COURT: Okay. Very good. Do that./

21 (Off the Record)

22 THE COURT: All right. Back on the record.

23 Q: Mrs. Lintal, I'm going to show you the emails
24 that were actually produced. Then if we need to,
25 we may introduce the entire production by the

1 Plaintiff to that request to produce. But do
2 those look familiar to you?

3 A: Yes, sir.

4 Q: And those are emails that you reviewed as a part
5 of responding to Defendants' Third Request for
6 Production?

7 A: Yes, sir.

8 MR. LLOYD: And just for record keeping purposes, could we
9 mark this as -- just for ID as Defendants' Two.
10 (Defendants' Exhibit Number Two was marked for
11 identification purposes.)

12 Q: And, Mrs. Lintal, I'm going to ask you if you'll
13 review those, and anywhere in those documents
14 that are produced do you see any reference by Mr.
15 Jonas that he is transmitting any changes,
16 additions or corrections to those closing
17 documents?

18 A: Well, there appears to be a section that's
19 missing, because down here it says, "If anything
20 needs to be discussed today I will meet with
21 Buddy this afternoon, Don Jonas." So there's a
22 piece of an email that appears to be missing from
23 here of his response.

24 Q: Okay. And when you reviewed the originals, did
25 that particular email --

1 A: There was a trail of which from Chris and Don and
2 response back from Don and this is what I saw. I
3 can't tell you verbatim what it said above this
4 white part that's missing. But what I can make
5 out that's on the top of this page, "If any --" I
6 don't know what that word is "-- needs to be
7 discussed today, I will meet with Buddy this
8 afternoon." Any items, any something. So that's
9 missing. But that was in the email where Don
10 responded back with attachments that I recall
11 seeing.

12 Q: Okay. Your recollection is that what's missing
13 from that portion of the email marked as
14 Defendants' Number Two are changes by Mr. Jonas?

15 A: A response that I believe I had documents
16 attached with changes.

17 Q: Any reason, to your knowledge, that that was not
18 included in this?

19 A: I don't know.

20 MR. PRINGLE: Attorney error.

21 MR. LLOYD: Attorneys are never wrong. Jack, without any
22 objection, can we leave this marked and then we can
23 discuss later, Your Honor --

24 MR. PRINGLE: Yeah.

25 MR. LLOYD: -- if we need to follow up on that?

1 THE COURT: Sure.

2 Q: As you recall, Ms. Lintal, what were the changes
3 proposed by Mr. Jonas?

4 A: To be honest, I can't recall them by item. I
5 mean, it would be unfair for me to do that.

6 Q: Any changes to the non-compete agreement?

7 A: They were both attached, so I really can't
8 recall.

9 Q: And, in fact, the first time it appears that your
10 counsel sent Mr. Jonas a draft non-compete
11 agreement was December 14, 2006; is that right?

12 A: The first -- yes.

13 Q: And we discussed this briefly with your husband.
14 In the original draft of the non-compete, was
15 there a dollar figure attached to the non-
16 compete?

17 A: Not in the non-compete, no.

18 Q: And in the course of the drafts going back and
19 forth as you recall them, was there ever a dollar
20 figure attached to the compensation or
21 consideration for the non-compete?

22 A: Not prior to closing, no.

23 Q: The very first time there's any discussion
24 between the parties about actual price to be
25 attached, for lack of a better description, a

1 dollar amount to be attached to the non-compete,
2 was at the closing itself?

3 A: I had discussions with our attorney and we were
4 working with Mr. Jonas to get an allocation of
5 assets, because that was never put in the
6 document prior to closing. We wanted it in -- I
7 did, because I wanted to review it. It never got
8 accomplished until we sat down at closing.

9 Q: Okay. What you're referring to is an allocation
10 of the purchase price for the business; is that
11 right?

12 A: Because that's where we were going to assign the
13 value of the non-compete.

14 Q: So the value of the non-compete was never -- at
15 least as you were viewing the negotiations, the
16 value that was going to be attached to the non-
17 compete was going to come out of the purchase
18 price; is that right?

19 A: Correct. It was never part of the negotiation.

20 Q: So whatever dollar figure you all were going to
21 be able to agree to could have been -- let me
22 start that question over. You all eventually
23 settled on \$1,000; is that right?

24 A: That is correct.

25 Q: At the closing, as far as you all were concerned,

1 you all could have attached any dollar amount to
2 that non-compete; is that correct?

3 A: That is correct.

4 Q: And prior to the closing, you never suggested --
5 or your side. I don't mean you personally, Mrs.
6 Lintal. Your side never suggested any particular
7 dollar amount to be attached or allocated to the
8 non-compete; is that right?

9 A: At the time we were waiting to get the initial
10 allocation of assets back from Don Jonas. We
11 never had a negotiation up until the time of
12 closing.

13 Q: And the reason you were waiting on that is again
14 because you were just going to allocate among a
15 list of items, including the hard assets that we
16 discussed earlier with your husband, good will,
17 the customer list, and this non-compete, you were
18 just going to allocate the negotiated sales price
19 among those items; is that right?

20 A: That is correct.

21 Q: So other than the \$590,000 that was agreed upon
22 for the sale of Mr. Knight's business, there was
23 never a proposal from your side of additional
24 compensation or consideration for the non-
25 compete?

1 A: No.

2 Q: Now, eventually Mr. Knight comes to the closing;

3 is that right?

4 A: That's correct.

5 Q: And Mr. Jonas comes to the closing?

6 A: Uh-huh (affirmative response.)

7 Q: And I believe you're at the closing along with

8 your husband; is that right?

9 A: That is correct.

10 Q: And your attorney is there?

11 A: Correct.

12 Q: And I believe your banker is there; is that

13 right?

14 A: Uh-huh (affirmative response.)

15 Q: Was anybody else at the closing?

16 A: The business broker.

17 Q: I'm sorry. You're right. The business broker

18 was also present.

19 A: Uh-huh (affirmative response.)

20 Q: During the course of that closing, dollar amounts

21 eventually do get attached to things like the

22 customer list and good will, et cetera; is that

23 right?

24 A: That is correct.

25 Q: And at some point -- do you recall -- let me ask

1 it this way. Do you recall who came up with the
2 \$1,000 figure?

3 A: The \$1,000 figure was really driven to minimize
4 Mr. Knight's capital gains tax. He wanted as
5 much of the purchase price attached to equipment,
6 good will and/or customer list so that he would
7 not have to pay capital gains tax. So the
8 discussion was driven around that.

9 Q: And that's because when you all were at the
10 closing, are you aware that Mr. Knight was
11 talking with his accountant?

12 A: Absolutely.

13 Q: And, in fact, you are an accountant; is that
14 right?

15 A: That is correct.

16 Q: And so, you understood the issues back and forth
17 from a tax liability standpoint that Mr. Knight
18 was discussing with his accountant; is that
19 right?

20 A: That is correct.

21 Q: And that's because there are certain things that
22 can be amortized or depreciated versus other
23 things; is that correct?

24 A: That is correct.

25 Q: And the discussions by Mr. Knight is how do you

1 allocate this \$590,000 agreed upon as the sales
2 price; isn't that right?

3 A: That is correct.

4 Q: And at some point, either based on the
5 negotiations or the advice of Mr. Knight's
6 accountant, or all of the above, you all allocate
7 everything but \$1,000?

8 A: Correct.

9 Q: And the \$1,000, was that just an amount left over
10 after everything else was allocated, or did you
11 all have a specific discussion about we've got to
12 allocate something for non-compete?

13 A: That was a discussion that was negotiated because
14 Mr. Knight wanted as much as he could attached to
15 good will. I said we couldn't have good will, so
16 we came upon that it would be customer list. So
17 we negotiated that we would put as much as we
18 could to customer list and we had to apply
19 something to the non-compete.

20 Q: And we know this from your deposition. You've
21 had prior experience with business acquisitions;
22 is that right?

23 A: That is correct.

24 Q: And would you tell the Court a little bit about
25 your prior experience.

- 1 A: I have 30 years in business, probably four years
2 doing mergers and acquisitions for a Fortune 500
3 company.
- 4 Q: And that included purchasing businesses; is that
5 right?
- 6 A: That is correct.
- 7 Q: And those purchases sometimes came with non-
8 competition agreements; is that right?
- 9 A: It came with all sorts of intangible assets.
- 10 Q: Including non-competition agreements?
- 11 A: Correct.
- 12 Q: And you had had some experience through that M&A
13 background with valuing non-compete agreement?
- 14 A: Correct.
- 15 Q: Now, at some point during the closing, you
16 actually have a discussion with your attorney and
17 with your husband about what you believe was the
18 inadequacy of the \$1,000 attached to a non-
19 compete; is that right?
- 20 A: As we were going through the negotiation as to
21 Mr. Knight wanting as minimal as he could for his
22 tax benefit, it was truly a negotiation and a
23 discussion between our attorney and my husband
24 and I to decide what did we want to do. Were we
25 going to continue with this transaction or were

1 we going to walk way over assigning a value for a
2 non-compete.

3 Q: But just to put it more simply, my question was
4 at some point you had a discussion with your
5 attorney and your husband, Mr. Lintal, that you
6 were concerned that the \$1,000 amount for the
7 non-compete was insufficient; is that right?

8 A: We had a discussion while we were trying to
9 resolve the negotiation.

10 Q: Is it correct that you had that conversation with
11 your attorney and with your husband that your
12 feeling was that the non-compete valuation was
13 too low?

14 A: We discussed it, yes.

15 Q: And part of the problem with coming to -- or at
16 least solving your concern about that amount is
17 that coming into the closing you all had never
18 proposed an amount separate and apart from the
19 purchase price for the non-compete; isn't that
20 right?

21 A: We hadn't got to that point. This was a pretty
22 fast transaction once we started with the asset
23 purchase agreement, because we were trying to
24 close by December 31st.

25 Q: But you all didn't close by December 31st?

1 A: We couldn't get it together, no.

2 Q: And you all began working with the broker in June

3 of 2006; is that right?

4 A: No. October of 2006.

5 Q: Began looking at the business with the broker in

6 October?

7 A: We looked at October 2006.

8 Q: So you didn't meet with the broker until October?

9 A: Correct.

10 Q: And from October to somewhere in December,

11 obviously it would have to be before a date that

12 your attorney first sent --

13 A: 14th. Yeah, December 14th.

14 Q: December 14. And that's the date that he sends

15 the first draft of the closing documents?

16 A: That is correct.

17 Q: Somewhere between October and December 14, you

18 all actually visited with Mr. Knight; is that

19 right?

20 A: That is correct.

21 Q: You actually go look at his business location; is

22 that right?

23 A: We looked at a building. Had kind of a room on

24 one side and an office on the other side.

25 Q: And you all actually talk about certain documents

1 that you wanted to see; is that right?

2 A: That is correct.

3 Q: And you wanted to see those documents in part to
4 help you value the business overall; is that
5 right?

6 A: At that point we had not signed a finalized
7 intent to purchase. So we are still making our
8 valuation.

9 Q: And at that point when you all visited Mr.
10 Knight, you were still trying to determine how
11 much you were going to offer for his business; is
12 that right?

13 A: That was in early November, yes.

14 Q: And part of what you wanted to see is a cash
15 flow; is that right?

16 A: We wanted to see a real owner's cash flow.

17 Q: And during those conversations with Mr. Knight,
18 was there any offer of we'll pay you x-amount if
19 you don't compete with us?

20 A: No, there was not. One draft we had of the
21 intent to purchase that hadn't been resolved yet
22 did have in there a ten year non-compete. No
23 value assigned.

24 Q: Have you produced the actual document that you're
25 referring to? We talked about this at your

1 deposition.

2 A: No. My hard drive died and actually I don't have
3 it. The business broker may have the copy, but I
4 don't.

5 Q: But you've not tried to get it from your business
6 broker?

7 A: He was Buddy's business broker. But no, I
8 didn't.

9 Q: You never contacted him. Did your attorney have
10 a copy of it?

11 A: I don't believe so.

12 Q: After you all meet with Mr. Knight, at any point
13 do you send anything in writing to Mr. Knight
14 offering a consideration amount or price to be
15 paid to Mr. Knight for the non-compete?

16 A: No.

17 Q: The only discussions you actually have with Mr.
18 Knight and the business broker is the amount of
19 the purchase price for the business itself; is
20 that right?

21 A: That is correct.

22 Q: And, in fact, all your efforts from October until
23 December 14 were centered around properly valuing
24 the purchase price for the business; is that
25 right?

1 A: That is correct.

2 Q: Now, Mrs. Lintal, let me ask you. Your husband
3 sort of touched on this earlier and he said
4 you're the one to turn to in the family regarding
5 financial matters. Did your husband play any
6 role in valuing the hard assets of the business
7 or any of the attainments?

8 A: I shared with him the values of the vehicles that
9 we came up with. They would be the only hard
10 assets were the vehicles and the stretchers.

11 Q: When you say you shared with him, you discussed
12 it with him or did he provide you with values?

13 A: He gave input.

14 Q: Anything else other than the vehicles?

15 A: No.

16 Q: So the remaining valuation of this business
17 purchase was left to you; is that right?

18 A: That is correct.

19 Q: And at some point during the transfer of draft
20 documents back and forth between the lawyers, the
21 ten year term of the non-compete actually was
22 less than ten years in one draft; is that right?

23 A: Not that I'm aware of. From the original intent
24 to purchase as an addendum it's at a ten year
25 non-compete with a 150 mile radius, and that

1 document both Mr. Knight and Mr. Lintal signed.
2 Where the, I think, confusion is is in the 3.4.8.
3 I should know that by heart. It stated three
4 years at one point. That we would buy bags for
5 three years. That's where the disconnect. And
6 that might have gone to five at one point.

7 Q: Well, my question is, as of the non-compete term,
8 did any of the drafts actually indicate a term
9 less than ten years?

10 A: No.

11 MR. LLOYD: I beg the Court's indulgence for one moment.

12 (Off the record discussion)

13 Q: Mrs. Lintal, I'm going to ask you, if you would,
14 turn to page 17 of your deposition.

15 A: I'm there.

16 Q: And line 19 I asked you, "At some point was the
17 non-compete for a less term than ten years?" And
18 your answer, beginning at line 21, was what?

19 A: "At one point it went to seven years and in one
20 of the drafts. Not sure where that came about or
21 how that came about."

22 Q: So at some point in some draft that you saw it
23 was less than ten years; is that correct?

24 A: I believe it was a discussion with Chris Rogers
25 and myself. But yes, at some point we discussed

1 seven years.

2 Q: And during those discussions about seven years
3 versus ten years, was there any discussion by you
4 or your husband, or Chris Rogers that the
5 compensation for the non-compete might need to
6 change?

7 A: No. We never discussed compensation or really
8 consideration.

9 Q: Now, let's talk about the conversation you had
10 with your husband on June 16 of 2011. Do you
11 recall him coming home and telling you about a
12 conversation he had with Mr. Knight on that date?

13 A: He didn't come home. So no, I don't recall that.

14 Q: Did he talk to you on that day?

15 A: He did.

16 Q: And that's because you all -- just so the Court
17 is aware and it doesn't seem like it sounds.
18 When he's up here working, you're actually -- you
19 all actually live permanently outside of
20 Lexington; is that right?

21 A: We have dual residency.

22 Q: So you actually live and work permanently in a
23 different county?

24 A: Correct.

25 Q: And he comes back and forth; is that right?

- 1 A: Uh-huh (affirmative response.)
- 2 Q: So he did have a conversation. Was it by phone
- 3 that night with you?
- 4 A: It was.
- 5 Q: And he told you during that conversation that he
- 6 had a discussion with Mr. Knight about whether or
- 7 not he had been -- your husband had been
- 8 purchasing body bags from sources other than Mr.
- 9 Knight; is that right?
- 10 A: I don't know the exact discussion or
- 11 conversation, but I know what I got out of it was
- 12 that he was concerned Buddy was going to bid the
- 13 business.
- 14 Q: And at some point -- I was coming to that. At
- 15 some point in that conversation Mr. Lintal
- 16 actually tells you, I believe, that Mr. Knight is
- 17 going to bid on the Richland County contract?
- 18 A: I think he is. I'm concerned.
- 19 Q: And he was concerned that Mr. Knight believed
- 20 that he, your husband, had, in fact, breached the
- 21 agreement between you all; is that right?
- 22 A: That was his basis.
- 23 Q: And when you say that was his basis, you're
- 24 referring to what your husband related to you as
- 25 what Mr. Knight had raised as a concern?

1 A: Correct.

2 Q: After your husband told you that, you all had no

3 other conversations with Mr. Knight about this

4 supposed breach or alleged breach by Mr. Lintal?

5 A: After the night of June 16th?

6 Q: Yes, ma'am.

7 A: No.

8 Q: And even after discussing whether or not, for

9 whatever reason, Mr. Lintal believed that Mr.

10 Knight was going to bid on a major portion of

11 your business, you had no further conversation

12 with Mr. Knight about trying to resolve this

13 potential dispute?

14 A: No.

15 Q: And did you contact your attorney between June

16 16, 2011 and the awarding of the Richland County

17 contract to discuss this fear or belief that Mr.

18 Knight was going to, in fact, get back into the

19 body removal service and compete with you?

20 A: We did make contact.

21 Q: Was that before or after the contract was

22 awarded?

23 A: Before.

24 MR. LLOYD: I beg the Court's indulgence for a moment.

25 Q: Did you make that contact personally?

1 A: I did not.

2 Q: Your husband did?

3 A: Yes.

4 Q: How do you know your husband did that?

5 A: Some point late August we discussed it. I can't

6 give you date and time.

7 Q: Do you recall during your deposition that you

8 told me that you all did not make contact with

9 your attorney or seek legal advice until after

10 the Richland County contract was awarded?

11 A: I do.

12 Q: So you admit today that it wasn't until after the

13 award of the Richland County contract that you

14 and your husband made contact with counsel

15 seeking advice?

16 A: I think the conversation was very brief. We

17 think Buddy has bid the contract. The response

18 was wait and see what happens. There was nothing

19 for us to do until we knew where the award was

20 coming back to, so...

21 Q: Okay. Did you make contact with your attorney

22 seeking legal advice regarding Mr. Knight getting

23 back into the body removal business prior to the

24 award of the Richland County contract?

25 A: I did not, no.

1 Q: Did your husband?

2 A: Yes.

3 Q: Let me ask you, if you will, go to page 50 of

4 your deposition.

5 A: Okay.

6 Q: And that line 17 I asked you a question, "Do you

7 know whether you or your husband ever sought

8 legal advice as to whether that might constitute

9 a breach of the agreement," and we're referring

10 to the issues raised in the conversation on June

11 16 between Mr. Lintal and Mr. Knight, and your

12 response on line 20 says what?

13 A: It says, "Not until after the contract was

14 awarded."

15 Q: Now, as it relates to the alternative odor proof

16 bag that your husband testified to earlier you

17 all looked at in or to comply with the Richland

18 County RFP, did you take any part in researching

19 odor proof bags or trying to find an alternative?

20 A: No, sir.

21 Q: That was totally left to your husband?

22 A: It's his skill set.

23 Q: And it's your understanding of the RFP that as

24 long as Richland County wanted this particular

25 method of odor proof bag sealant that Mr. Knight

1 had a patent on, that you were not going to be
2 awarded the contract; is that right?

3 A: It was a concern.

4 Q: And, in fact, at some point you said -- or let me
5 rephrase that question. Your understanding that
6 once you no longer had the ability to purchase
7 those odor proof bags or pouches from Mr. Knight,
8 that you no longer met the terms of the RFP; is
9 that right?

10 A: It was only after we saw the letter from
11 procurement that that was going to be their
12 requirement. The time we submitted the RFP we
13 did not know any such thing. So we submitted it
14 believing we met all the terms.

15 Q: Okay. What are you referring to as a document or
16 anything else that changed your belief as to
17 Richland County's requirement of odor proof bags?

18 A: My husband spoke to it this morning. It was an
19 email that came from procurement stating -- I
20 don't know if it was -- there was an email that
21 came saying that we did not have the ability to
22 purchase the odor proof bag anymore.

23 Q: In that email, in fact, you're referring to --

24 A: It was actually an email from Mr. Knight.

25 Q: You're referring to a letter from Mr. Knight

1 saying that he was no longer going to put his
2 odor proof bag on the market?

3 A: That's correct.

4 Q: And at some point there was an email from a
5 person within the Richland County Coroner's
6 Office; is that right?

7 A: That's correct.

8 Q: And they were addressing this issue of Mr.
9 Knight's letter regarding the removal of his
10 pouches from the market?

11 A: And did we have an alternative.

12 Q: Well, Ms. Swafford at some point sent an email in
13 response to Mr. Knight; is that right?

14 A: Correct.

15 Q: And in that email they weren't asking for an
16 alternative from you all; is that right?

17 A: I don't recall off the top of my head.

18 Q: At some point after that there may have been
19 correspondence between you and your husband and
20 the Richland County Coroner's Office where they
21 asked you if you had an alternative to Mr.
22 Knight's odor proof bags; is that right?

23 A: That's correct.

24 Q: And in other words, they gave you an opportunity
25 at that point to still provide an alternative

- 1 odor proof bag that would meet their
2 requirements; is that right?
- 3 A: That is correct.
- 4 Q: And were you aware of what the alternative was
5 that your husband was proposing?
- 6 A: I knew it was a heat seal bag.
- 7 Q: Prior to this, Mrs. Lintal, did you know anything
8 about body bags and the different types that
9 exist?
- 10 A: Prior to getting into this business?
- 11 Q: Yes, ma'am.
- 12 A: We had no clue.
- 13 Q: So if he came in and said this is a heat seal
14 odor proof bag, you had no objection to that or
15 support one way or the other for that?
- 16 A: My question would be what's the cost and how are
17 we going to deal with it.
- 18 Q: And at some point your husband either describes
19 or does a demonstration for Richland County of
20 that alternative; is that right?
- 21 A: He described it to Mr. Watts. There was no
22 demonstration.
- 23 Q: And Mr. Watts rejected that alternative; is that
24 right?
- 25 A: That is correct.

1 Q: And you're not aware of other types of odor proof
2 bags besides Mr. Knight's odor proof bags and
3 this heat seal method, you're not aware if there
4 are other alternatives to those two, are you?

5 A: No, sir.

6 MR. LLOYD: I beg the Court's indulgence.

7 THE COURT: Sure. Let me ask you. Are you at a breaking
8 point on cross?

9 MR. LLOYD: Yes, sir.

10 THE COURT: We'll take about ten minutes.

11 MR. LLOYD: Yes, sir. I don't believe I'm going to be
12 much longer.

13 THE COURT: We'll take about ten minutes.

14 (Off the record from 3:24 p.m. to 3:36 p.m.)

15 (Defendants' Exhibit Number Three was marked for
16 identification purposes.)

17 THE COURT: Back on the record.

18 Q: Mrs. Lintal, I'm going to show you what your
19 attorney has provided. It's been marked just for
20 ID as Defendants' Number Three. I believe this
21 is the cut off portion. I'll refer you to the
22 very top of this document where he says dear
23 Chris and it appears to be from Mr. Jonas. Can
24 you take a look at that and tell me if you
25 recognize that.

- 1 A: I do.
- 2 Q: And that refers to what you were referring to
- 3 earlier as an indication that Mr. Jonas had, in
- 4 fact, made some changes; is that right?
- 5 A: That is correct.
- 6 Q: And I believe in that email he references having
- 7 made some minor changes to the agreement; is that
- 8 right?
- 9 A: That's what it states.
- 10 Q: And can I see a copy of that?
- 11 A: Uh-huh (affirmative response.)
- 12 Q: There's some personal discussion about family
- 13 health crises that Mr. Jonas is having in the
- 14 first paragraph; is that right?
- 15 A: Uh-huh (affirmative response.)
- 16 Q: In the second paragraph of that, is it correct to
- 17 say that he describes some minor changes to the
- 18 documents that, in his words, eliminated the
- 19 various items from the asset purchase agreement
- 20 that were not involved in this transaction; is
- 21 that right?
- 22 A: That is correct.
- 23 Q: And he references, for example, a leasehold; is
- 24 that right?
- 25 A: Uh-huh (affirmative response.)

1 Q: And what he is referring to in that is that he
2 backed out those items that you all were not
3 purchasing or were not a part of the acquisition;
4 is that right?

5 A: Correct.

6 Q: And in that he doesn't refer to any other
7 changes, for example, to the non-compete, does
8 he?

9 A: Correct.

10 Q: Now, Mrs. Lintal, let's look at your detail of
11 damages document. Let me first ask you, Mrs.
12 Lintal, while you're finding that. You described
13 earlier in your testimony that Mr. Knight was
14 very concerned for tax purposes how the purchase
15 price was allocated; is that right?

16 A: That is correct.

17 Q: And there are certain advantages for him
18 allocating that \$590,000 to certain items in
19 order to avoid tax liabilities; is that right?

20 A: That is correct.

21 Q: And the same is true for you all as the
22 purchaser; isn't that correct?

23 A: That's correct.

24 Q: And you said you did not want a large amount, or
25 any amount attached to good will; is that right?

- 1 A: That's correct.
- 2 Q: And that's because from a tax standpoint is
- 3 actually less advantageous to you to assign a lot
- 4 of the purchase price to intangible assets; is
- 5 that right?
- 6 A: Specifically, good will.
- 7 Q: Good will. And is good will and the non-compete
- 8 treated any different for tax purposes, from your
- 9 standpoint?
- 10 A: No. They're two different items.
- 11 Q: You don't want a lot attached to good will
- 12 because you don't get to depreciate that; is that
- 13 right?
- 14 A: I don't get to amortize it.
- 15 Q: Amortize it. And isn't the same true with the
- 16 non-compete?
- 17 A: I can amortize the non-compete.
- 18 Q: Over what period of time?
- 19 A: The life of the non-compete.
- 20 Q: So in your mind it would have been advantageous
- 21 to assign a larger portion of the purchase price
- 22 to the non-compete; is that right?
- 23 A: Could have.
- 24 Q: It would have been more advantageous from your
- 25 tax standpoint to assign more to the non-compete?

1 A: Yes, it could have.

2 Q: And so, in addition to your concern that the
3 \$1,000 amount may be insufficient for the non-
4 compete, there was also a tax advantage for you
5 to have assigned more to the non-compete; is that
6 right?

7 A: No, not necessarily, because customer list and
8 non-compete both have the same tax treatment for
9 my books. So it wouldn't matter to either one of
10 those what the allocation was for a tax purpose.
11 They would both get amortized and I would realize
12 a tax benefit for it. So it didn't matter if I
13 put an amount in either bucket.

14 Q: So the conversation you had with Chris Rogers and
15 your husband regarding the \$1,000 amount was
16 solely related to your belief that given the
17 acquisition that was being made that the non-
18 compete consideration needed to be larger?

19 A: It was just a value. Yes.

20 Q: And that was a legal concern on your part?

21 A: That there should have been consideration. But,
22 like I said, we were in negotiation and the
23 negotiation was Mr. Knight did not want a large
24 number there.

25 Q: In fact, in your prior M&A experience, you had

1 had situations come up where non-competes were
2 contested because they were not -- there was at
3 least an allegation that there was not a
4 sufficient amount of consideration for it; is
5 that right?

6 A: I had seen where they had been contested. I
7 didn't get involved in it because I wasn't an
8 attorney at that time.

9 Q: So when you were at the closing of this
10 particular acquisition, that is the concern you
11 had and that you were sharing with your attorney
12 and Mr. Lintal; is that right?

13 A: To relatively come up with an allocation, yes.
14 But like I said, there was contention back from
15 Mr. Knight on what he was acceptable to. Again,
16 it was a give and take.

17 Q: And again there's that give and take and back and
18 forth because we're not dealing with a separate
19 offer of consideration for the non-compete, we're
20 dealing with allocating the purchase price of the
21 business; is that right?

22 A: That's correct.

23 Q: Now, looking at your detail of damages, it
24 doesn't take into account taxes, does it?

25 A: No.

- 1 Q: And your average is for expenses, where did you
2 get the average for gas?
- 3 A: I looked at what our vehicles' gas cost is over a
4 period of time, came up with miles per gallon
5 that we get, and the average for gas I got from
6 the Internet as to what the national average or
7 state average for gas was.
- 8 Q: And you didn't look at projections for what gas
9 prices might be over the next year, for example,
10 did you?
- 11 A: No.. Because if I did, I'd be a rich person.
- 12 Q: Are you aware that there are services that do
13 give you --
- 14 A: I do, yeah.
- 15 Q: -- anticipated averages for gas?
- 16 A: I do.
- 17 Q: And that's not reflected in this?
- 18 A: It is not. No.
- 19 Q: The expenses that you list on here, these are
20 necessarily dependent on the number of calls you
21 have; is that right?
- 22 A: Correct.
- 23 Q: And these are just guesses on your part as to
24 what the number of calls might be; is that right?
- 25 A: That's the actual of the year prior, so it's a

1 real number of calls. It's not a guess.

2 Q: Well, in years going forward, you have no idea of
3 what the number of calls are going to be; is that
4 right?

5 A: I can't predict who's going to die when.

6 Q: Right.

7 A: You can predict other things when you're doing
8 evaluations, but death is pretty hard.

9 Q: Except for actuarials.

10 A: Actuarials. But that's a different animal.

11 Q: They're a different beast altogether.

12 A: That's right.

13 Q: So these are just guesses on your part as to the
14 number of calls that you would experience --

15 A: And I stated, they're actuals from the year
16 prior's history.

17 Q: And so, for the years going forward through the
18 length of this contract with Richland County
19 these are just guesses on your part?

20 A: Correct.

21 Q: Now, again --

22 A: If I may state one other comment, too, that the
23 new contract that started when Mr. Knight won it
24 is no longer a cost per call. So that call
25 information, I don't know if it's a valuable to

1 project that forward. I can only go off of what
2 we have from actual work we did. It's a flat
3 fee per month. It doesn't matter if you do one
4 call that month or \$500 calls that month. It's
5 a flat fee per month. So again, it may not make
6 a difference from the calls based on expenses of
7 the revenue that's attached here.

8 Q: Right. In other words, your expenses -- because
9 it's a flat fee per month, your expenses may or
10 may not be what's reflected on here. They could
11 be higher or they could be lower; is that right?

12 A: Correct. Again, it's just taking the history
13 from what we have.

14 Q: I understand. I believe we're close to being
15 finished, Mrs. Lintal.

16 MR. LLOYD: Your Honor, if I could beg the Court's
17 indulgence just for a moment.

18 THE COURT: Sure.

19 Q: Mrs. Lintal, you said you took a previous year
20 to come up with these averages; is that right?

21 A: The last contract year that we had. Yes, sir.

22 Q: And was the last contract year, if you average
23 it out over the previous years of this contract,
24 was it higher or lower than previous years?

25 A: State that again?

1 Q: In other words, the number of calls you made,
2 was that higher or lower than the previous
3 years?
4 A: I'd have to go back and look. I don't know that
5 off the top of my head. This was -- I'd have to
6 go back and look. We'll leave it at that.
7 Q: You all are seeking injunctive relief from Mr.
8 Knight in this lawsuit, aren't you?
9 A: Yes, sir.
10 Q: To enjoin him from providing services to
11 Richland County Counsel; is that right -- I
12 mean, Richland County Coroner's Office?
13 A: That is correct.
14 Q: And if he's enjoined from providing services to
15 Richland County Coroner's Office, you have no
16 guarantee that you, in fact, would be awarded a
17 contract with Richland County Coroner's Office?
18 A: That is correct.
19 Q: And so, any damages going in years forward, even
20 if there was an injunction that you claim that
21 you have suffered would be merely speculative at
22 this point; is that correct?
23 A: That's correct.
24 MR. PRINGLE: Object to the form. It's a legal
25 conclusion.

1 THE COURT: Would you repeat your question again? I was
2 writing a note. I apologize.

3 MR. LLOYD: Okay. I'm sorry. I was waiting on a ruling.

4 Q: Mrs. Lintal, any --

5 MR. LLOYD: Let me back up a little bit --

6 THE COURT: Sure.

7 MR. LLOYD: -- to put it in some context.

8 Q: I just asked you a moment ago. The injunction
9 you all are seeking against Mr. Knight were to
10 be granted, there's no guarantee that you would
11 actually get the Richland County Coroner's
12 contract; is that right?

13 A: That is correct.

14 Q: And so, going forward years that you suggest
15 that you are owed damages for as a result of not
16 having that contract, the loss of that income
17 from the Richland County contract is merely
18 speculative at this point on your part?

19 A: Yes. But we actually won the contract if we had
20 the bags, so we would have obtained that revenue
21 for five years.

22 Q: You won the contract if you had the bags?

23 A: By points, we had the most points awarded that
24 business. So by not having the bag, we lost the
25 contract. So we lost that five years of

1 revenue.

2 Q: Is there any requirement in this agreement that
3 Mr. Knight sell you that odor proof bag?

4 A: Other than it's in that list.

5 Q: I understand. The list is an example of
6 discount prices that Mr. Knight has agreed that
7 if he sells you bags, he will sell you at those
8 prices; is that right?

9 A: Well, it says he shall provide body bags.

10 Q: At a discounted rate; is that right?

11 A: He shall provide us bags at a discounted rate,
12 but for the term -- he shall provide us bags at
13 the term of the non-compete.

14 Q: The remainder of that is, "Knight, through his
15 related body bag business, shall provide to the
16 buyer body bags at a discounted rate;" is that
17 right?

18 A: Yes, sir.

19 Q: And as you all discussed the terms of that
20 agreement, there's no obligation anywhere in
21 there that Mr. Knight actually has to sell you
22 any kind of body bags, does it?

23 A: Other than it says shall provide.

24 Q: Okay. So you're reading that in your
25 interpretation by leaving out the last part

1 which says at a discounted rate?

2 MR. PRINGLE: I'm objecting. This is all a legal
3 conclusion.

4 THE COURT: I think this would be a legal conclusion.

5 MR. LLOYD: We'll move on from there, Your Honor.

6 Q: So the only way you believe that you could
7 fulfill the requirements of the Richland County
8 contract is to, in fact, have access to Mr.
9 Knight's bags?

10 A: To have that odor proof bag. That was the bag
11 that was the discerning factor, or deciding
12 factor.

13 Q: And yet, the only way you can fulfill the terms
14 of that RFP is to, in fact, have his bags; is
15 that right?

16 A: To have that odor proof bag.

17 Q: Right.

18 A: That's the bag that's in contention.

19 Q: So if you don't have those bags, again, you're
20 not guaranteed that Richland County will award
21 you this contract; is that right?

22 A: Correct.

23 Q: And, in fact, in your lawsuit you're not asking
24 to enforce your belief that Mr. Knight has to
25 sell you those odor proof bags, are you?

1 A: I think we're asking for the contract to stay as
2 it was awarded -- or as it was written.

3 Q: Your request for relief in your lawsuit is that
4 Mr. Knight be enjoined or prevented from
5 competing against you; is that right?

6 A: That's correct.

7 Q: You're not asking in relief in your complaint or
8 amended complaint that the Court order Mr.
9 Knight to sell you those odor proof body bags;
10 is that right?

11 A: That's correct.

12 MR. LLOYD: Beg the Court's indulgence. Your Honor, we
13 tender the witness.

14 THE COURT: All right.

15 MR. PRINGLE: I don't have any more questions.

16 MR. COURT: All right. We're finished with Mrs. Lintal.

17 THE COURT: Okay. Another witness?

18 MR. PRINGLE: Not for our side.

19 THE COURT: All right. Any motions or anything at this
20 point or are we moving on to Defendants' case, or what
21 do we want to do here?

22 MR. LLOYD: Your Honor, I believe we would reserve motions
23 until the end --

24 THE COURT: Sure.

25 MR. LLOYD: -- just because we're asking we propose

1 orders. So we would ask if we could just --
 2 THE COURT: That's fine.
 3 MR. LLOYD: -- move motions to the end.
 4 THE COURT: That'll be fine.
 5 MR. PRINGLE: I move that you grant involuntary non-suit
 6 based upon the fact that we've established our case not
 7 only by preponderance of the evidence but beyond a
 8 reasonable doubt and ask --
 9 THE COURT: Appreciate your argument. We will reserve
 10 motions to the end.
 11 MR. PRINGLE: Right.
 12 MR. LLOYD: Your Honor, we would inquire of the Court and
 13 Mr. Pringle, do you want Jack to move around or --
 14 MR. PRINGLE: We could accommodate things.
 15 MRS. LINTAL: I could move.
 16 MR. PRINGLE: However, you guys want to do it.
 17 THE COURT: We'll move Mrs. Lintal right here.
 18 MR. PRINGLE: Sure.
 19 THE COURT: How many more witnesses we got on this matter?
 20 MR. LLOYD: Mr. Knight.
 21 THE COURT: Mr. Knight. Okay. So we can finish today.
 22 (Off the record discussion)
 23 MR. LLOYD: Your Honor, we would call Mr. Robert Knight.
 24 THE COURT: All right. Mr. Knight, please step over to
 25 the other side of the table. All right. If you will,

1 swear the witness then.

2 ROBERT L. KNIGHT, being duly sworn and cautioned to
3 speak the truth, the whole truth and nothing but the
4 truth, testifies as follows:

5 DIRECT EXAMINATION BY MR. LLOYD:

6 Q: Buddy, we've been referring to you throughout
7 this as Buddy. Would you state for the record
8 your full name.

9 A: Robert L. Knight.

10 Q: And out of no disrespect everybody refers to you
11 as Buddy; is that right?

12 A: That's correct.

13 Q: Is that what most of the people that you've done
14 business with and in this community know you by?

15 A: They have.

16 Q: And can you tell the Court when you started
17 Knight Systems, Incorporated?

18 A: I started Knight Systems in 1982 and was
19 incorporated in 1987.

20 Q: And just for the record, although we've had much
21 discussion about it, what business or services
22 does Knight Systems, Incorporated do?

23 A: When I started the business in 1982, primarily
24 started making removal for funeral homes from
25 the hospital to nursing homes, et cetera. And

1 in 1987, I started making body bags in the
2 business also.

3 Q: And let's talk first about the body removal
4 service. Exactly what do you do? Before
5 getting into this case, I never really paid much
6 attention to the fact that somebody does this.
7 What typically is done in --

8 A: We're actually on call 24 hours a day. I have
9 an answering service that actually picks up my
10 calls and calls me. A funeral home or a
11 coroner's office would call. A funeral home
12 would call and give us a deceased's name and ask
13 us could we go to, say, a certain hospital and
14 pick the remains up and bring to the funeral
15 home, or if a coroner -- had a coroner's call,
16 we would go out to that scene and make a removal
17 for them and take to the respective hospital for
18 that county.

19 Q: And as far as it relates to the side of the
20 business that is related to body removal and
21 transportation, where primarily was that
22 business, or those business services provided?

23 A: In basically Richland and Lexington County.

24 Q: So you're essentially a midlands based business?

25 A: Yes, sir.

1 Q: And as related to the body bag manufacturing
2 side of the business, and you told the Court
3 this earlier, but when did you get into that,
4 and how did you get into manufacturing body
5 bags?

6 A: Actually, I started manufacturing body bags -- I
7 had been making removal for Richland County for
8 a number of years and we had a drowning in a
9 pond. Had a gentleman that had been in a pond
10 probably about ten days. And I picked him up
11 and took him to the morgue. And, you know, you
12 could imagine the odor. And I went home that
13 evening and went in the refrigerator to get me a
14 sandwich, make a sandwich, and took some
15 tomatoes out of a zip lock bag, and it just
16 struck me that maybe I could make a body bag
17 with a zip lock seal to put a decomposed body
18 in. And through trial and error over a number
19 of years, I developed an odor proof body bag,
20 and that just snowballed into making other types
21 of bags.

22 Q: And do you have an example of an odor proof bag
23 here today?

24 A: I don't have it with me, no.

25 Q: You did bring some examples of other bags today?

1 A: I do.

2 Q: In a moment we'll get into those. But let me
3 ask you. Prior to getting into this business,
4 the Knight Systems, Incorporated, what was your
5 profession?

6 A: I'm a retired fireman from Columbia Fire
7 Department.

8 Q: And how long were you a fireman?

9 A: About eight years.

10 Q: And what caused you to no longer be a fireman?

11 A: I fell through the roof of a burning building.

12 Q: And you were injured during the course of that
13 and you retired?

14 A: Yes, sir.

15 Q: Mr. Knight, can you explain for the Court what
16 led to your decision to place your business up
17 for sale?

18 A: I had thought about it for a while, then I had a
19 leg injury in October of 2006 and put the
20 business up for sale. I had trouble with the
21 bone union -- I broke my tib fib in my left leg
22 and had trouble with bone union. Didn't know if
23 it would grow back together or not. And that's
24 one reason I had the business up for sale.

25 Q: And when you placed the business up for sale,

1 you were only selling the body removal or
2 transportation side of the business?

3 A: That's correct.

4 Q: And you intended to continue with the body bag
5 manufacturing?

6 A: Yes.

7 Q: Now, you've manufactured body bags of all
8 different types. Could you describe for the
9 Court some of the places you've sold or shipped
10 body bags?

11 A: Shipped body bags all over the country. I sold
12 about 12,000 bags to New York City after 911,
13 and sold roughly 9,000 to Mississippi and
14 Louisiana during Hurricane Katrina.

15 Q: And you said after your leg injury you decided
16 to place the business up for sale. The part of
17 the business of body removal, or transportation.
18 How did you go about advertising your business
19 for sale?

20 A: I approached a company in Columbia that
21 specialized in selling businesses.

22 Q: And eventually did you come to know Mr. Lintal
23 through that offering of the business for sale?

24 A: I did.

25 Q: Can you describe for the Court when you first

1 had contact with Mr. Lintal, or somebody on his
2 behalf?

3 A: At the broker's office off of Huger Street.

4 Q: And was Mr. Lintal there at that time?

5 A: Yes.

6 Q: And what occurred at that initial meeting?

7 A: We actually just talked generals about the
8 business. Who I did work for, what kind of
9 contracts I had, et cetera.

10 Q: And we heard testimony earlier that Mr. Lintal
11 and his wife actually came to your business
12 location. Do you recall that visit?

13 A: I do.

14 Q: Can you describe what occurred during that visit
15 with the Lintals?

16 A: They came in the office. My office is on the
17 right and we have a game room on the left and a
18 sealing room where I make the bags in the middle
19 of the hallway there. And I'm not sure, but I
20 just showed them this or that contract. We went
21 over -- you know, showed them just business
22 related items.

23 Q: And at that point had you all begun the process
24 of negotiating a sales price?

25 A: Not really. At that point I was just showing

1 them -- they had signed an agreement to, you
2 know, not to disburse any information to
3 anybody. I was just showing them around the
4 company, showing them what the company was.

5 Q: And at some point did you all progress in
6 negotiations over the sale of your business to
7 the Lintals?

8 A: Pretty much the rest of it was done through the
9 business brokers with them back and forth.

10 Q: During the course of those negotiations through
11 or with the business broker, did the subject of
12 a non-compete agreement ever come up?

13 A: No.

14 Q: And did you ever see any hard copies of
15 documents during that negotiation period between
16 the broker?

17 A: Only after the closing.

18 Q: Had you all ever discussed provision 3.4.8,
19 sales related business, requiring the buyer to
20 purchase all of their body bags from you?

21 A: This agreement wasn't discussed, but it was
22 discussed about them buying bags over the period
23 of the non-compete. But it wasn't a lot of
24 detail discussed in it.

25 Q: Now let's go forward. What was your original

1 asking price for the business?

2 A: I think it was \$650,000.

3 Q: And, in your mind, what was that sales price or
4 offering price based upon?

5 A: I based it on about three years of income. Two
6 and a half to three years of income.

7 Q: Now, the business eventually was sold for a
8 figure of \$590,000; is that right?

9 A: Yes, sir.

10 Q: Now, when you all arrived at the figure of
11 \$590,000, at that point in time, was it your
12 understanding that any portion of that was to be
13 as compensation for a non-compete agreement?

14 MR. PRINGLE: I'm going to interject my continuing
15 objection about this line of questions.

16 A: No.

17 THE COURT: The Court notes his objection.

18 MR. LLOYD: Yes, sir. I'm sorry.

19 THE COURT: That's all right.

20 Q: So the \$590,000, in your mind, was allowing the
21 Lintals to purchase what?

22 A: The actual hard assets, which were vehicles --
23 items to work in the business. Stretchers,
24 scoop stretchers, et cetera, and several
25 vehicles.

1 Q: Were they to get customer lists?

2 A: Yeah, customer lists.

3 Q: And essentially you were assigning them

4 contracts with Lexington Coroner's Office?

5 A: Lexington, Richland and USC.

6 Q: And Richland County Coroner's Office. Any other

7 governmental contracts that you had at that

8 time?

9 A: No.

10 Q: And when we say customer lists, I don't want to

11 put words in your mouth, but what kind of

12 customer lists would we be talking about?

13 A: I just give them contact of names of funeral

14 homes that I did business for. And that would

15 include those contracts.

16 Q: Now, going forward for a moment to the actual

17 closing. You've seen us present documents to

18 Mr. and Mrs. Lintal and have discussions

19 regarding drafts of the closing documents. Did

20 you ever see those drafts prior to showing up at

21 --

22 A: No.

23 Q: Did Mr. Jonas ever show you copies of any

24 drafts, whether it was the asset purchase

25 agreement, non-compete or any other part of

1 this?

2 A: No.

3 Q: So the first time you ever saw the actual terms
4 of this agreement was at the actual closing?

5 A: When I signed them.

6 Q: Now, you recall there was testimony earlier
7 regarding how you all arrived at a figure of
8 \$1,000 for the non-compete agreement. Did you
9 have discussions with your accountant about
10 allocating the purchase price?

11 A: The only discussion I had was I had called an
12 accountant and there was some discussion about
13 how the funds would be distributed into what.
14 So I called my accountant and she told me to put
15 as much as possible in customer list.

16 Q: And did that conversation happen prior to the
17 closing or at the closing?

18 A: During closing.

19 Q: So at that time at the closing you were all
20 still in negotiations over allocating the actual
21 \$590,000?

22 A: Yes.

23 Q: Did you and Mr. Jonas propose that \$1,000 be
24 allocated to the non-compete agreement?

25 A: I didn't, no.

1 THE COURT: What was that response? I apologize.

2 THE WITNESS: No.

3 THE COURT: No.

4 Q: And did anybody during the course of the closing
5 direct any discussion towards you about how much
6 money would be allocated to the non-compete
7 agreement?

8 A: I'm sure it was when it was put as it was put on
9 paper.

10 Q: Do you recall any back and forth or negotiation
11 over that amount?

12 A: I remember there was some discussion -- I don't
13 know if it was that or what. Mr. and Mrs.
14 Lintal and their attorney walked out of the room
15 to discuss something and come back in. I don't
16 remember what it was.

17 Q: Fair enough. Do you recall there ever being any
18 figure other than \$1,000 allocated to the non-
19 compete?

20 A: No.

21 Q: Now, after the execution of these documents --
22 let me just go back for a moment. During the
23 negotiation process and immediately after the
24 closing of this transaction, did you and Mr.
25 Lintal have a good relationship?

- 1 A: Yes.
- 2 Q: And you all had gotten to know each other
- 3 through this acquisition process?
- 4 A: Yes.
- 5 Q: And after the acquisition was completed, were
- 6 there times when Mr. Lintal would call you to
- 7 ask you for advice or assistance on anything?
- 8 A: He pretty much used my office for the first
- 9 month or so.
- 10 Q: And we've heard testimony about this earlier.
- 11 At any point prior to the closing, did Mr.
- 12 Lintal enlist you for assistance with acquiring
- 13 lending for this transaction?
- 14 A: Yes.
- 15 Q: And could you tell the Court about how that came
- 16 about and what you recommended?
- 17 A: My recollection was that they couldn't come up
- 18 with all the money. I forget what the figures
- 19 were, but they couldn't come up with all the
- 20 money. And I said, why don't I call my banker
- 21 and see what she could do. Set up an
- 22 appointment so you call can go in and talk to
- 23 her.
- 24 Q: And did that occur, to your knowledge?
- 25 A: That did occur.

1 Q: And both before the closing and after the
2 closing, is it safe to describe your efforts to
3 either provide advice or assistance to Mr.
4 Lintal as representative of your desire to, in
5 fact, sell this business and get out of this
6 business?

7 A: I expressed my desire to him how much I wanted
8 to get out of the business.

9 Q: Now, at some point after the transaction was
10 completed, Mr. Lintal and Palmetto Mortuary
11 Transport ran into some trouble with Lexington
12 County Coroner's Office contract; is that right?

13 A: Yes.

14 Q: And can you describe for the Court what you came
15 to learn as the issue between Palmetto Mortuary
16 and the Lexington County Coroner's Office?

17 A: The bid came out. Mr. Lintal bid on it. There
18 was two other I think -- it might have been just
19 one, but I think it was two other companies bid
20 on it. And he lost the bid to Capital
21 Transportation, and he come to me asking me what
22 I could do to help him. I went to Lexington
23 County. Harry Harmon I've known for 35 years.
24 I went to Harry and talked to Harry to see if he
25 could help him with anything. I went to County

1 Council, Bobby Keisler, who I know. I've known
2 for years, that's on County Council, and talked
3 to Bobby Keisler. And Bobby told me that Mr.
4 Lintal had sent -- emailed a letter to County
5 Council pretty much telling him his --

6 MR. PRINGLE: Objection. Hearsay.

7 THE COURT: It is hearsay.

8 Q: Don't get into what the letter said.

9 A: Okay.

10 Q: But you can continue as to what your
11 understanding was from Mr. Lintal what the
12 problems were.

13 A: He told me there wasn't nothing he -- Bobby
14 Keisler told me there wasn't nothing he could --

15 MR. PRINGLE: Again, hearsay. What Bobby Keisler said.

16 THE COURT: Okay.

17 MR. LLOYD: I would just say we're not offering it for the
18 truth of the matter in this particular case. It's just
19 in reference to what actions Mr. Lintal took on behalf
20 -- I mean -- I'm sorry. Mr. Knight took on behalf of
21 Mr. Lintal and what he did as a result of those
22 conversations.

23 MR. PRINGLE: I think it can be expressed as there was --
24 I learned that there was nothing I could do. But
25 talking about what other people said is offered for the

1 truth of the matter asserted.

2 THE COURT: I'll note your objection and I'll allow him to
3 testify.

4 A: Bobby Keisler told me there as nothing he could
5 do to help him because he had sent a letter to
6 County Council that made all of them mad.

7 MR. PRINGLE: That's the same objection.

8 THE COURT: The part about Mr. Keisler told you what -- he
9 couldn't do anything is -- I've allowed. But you have
10 your objection, but that's as far as I can go.

11 Q: And let's just take it from the part that -- the
12 councilman said that there was nothing he could
13 do to turn this decision around?

14 A: That's correct.

15 Q: And at that point did you take any action to try
16 to get back into the body removal service to
17 compete for the business with Lexington County?

18 A: No. I actually went to the hearing Lexington
19 County had that, was signing off on the bid with
20 him to still see what I could do.

21 Q: So at that point you accompanied Mr. Lintal to
22 the County Council meeting to again do whatever
23 you could do on his behalf; is that right?

24 A: I did.

25 Q: And again, that's after you've already sold the

1 company?

2 A: That's correct.

3 Q: And you're no longer in the body removal
4 business?

5 A: No.

6 Q: At that -- let me, just for the Court's
7 edification. Prior to the sale of your business
8 to Palmetto Mortuary Transport, and even after
9 the sale, were you selling body bags to
10 Lexington County Coroner's Office?

11 A: I was.

12 Q: And how long had you been selling body bags to
13 the Coroner's Office?

14 A: Shortly after I started making them in 1987.

15 Q: Did anybody, like Randy Martin or anybody else
16 from the Coroner's Office, ever ask you for an
17 infant bag?

18 A: No, they did not.

19 Q: And they were familiar with the fact that you
20 actually manufactured bags?

21 A: Yes.

22 Q: And they knew that you could supply whatever
23 bags that they asked for?

24 A: Yes.

25 Q: After your efforts to help Mr. Lintal get the

1 Lexington County Coroner's Office contract back,
2 at some point did your efforts ever bear fruit,
3 so to speak?

4 A: No. I continually did my best talking to those
5 in the Coroner's Office and to Harry to -- they
6 had problems with the removal service that won
7 the bid. They had a number of problems with
8 them, and I kept addressing that with the people
9 at the Coroner's Office to try to get them to
10 quit using them but void the bid and go to Don's
11 bid. Mr. Lintal..

12 Q: And it was your understanding that based on the
13 problems that you believe existed in terms of
14 the service that was being offered, that the C
15 County could, in fact, have voided potentially
16 the contract?

17 A: Yes.

18 MR. PRINGLE: Well, this is -- I mean, that's a legal
19 conclusion. It's speculation. He's talking about what
20 he did, but now it's opinions and surmising about what
21 could or couldn't be done. We'll stipulate that he
22 helped -- you know, they helped him try to get the bid.
23 I'm not sure where else this is going to go.

24 THE COURT: Do you want to, Mr. Lloyd, still pursue that
25 question or --

1 MR. LLOYD: Yes, sir.

2 THE COURT: All right. Would you rephrase it again so
3 we'll have clarity on it?

4 A: Yes, sir.

5 Q: You had discussions, again, on behalf of Mr.
6 Lintal with Lexington County Coroner's Office
7 that they should, at some point, based on the
8 level of service they were receiving, void the
9 contract they were in and start doing business
10 with Mr. Lintal again?

11 A: On numerous occasions.

12 Q: At any point when you were having discussions
13 with the Coroner's Office about voiding that
14 contract, did you offer yourself up as able to
15 provide or willing to provide those services?

16 A: No.

17 Q: So all your actions were always intended to get
18 that contract back for Mr. Lintal?

19 A: It was.

20 Q: Now, you heard testimony earlier about the
21 purchase of body bags from sources other than
22 you by Mr. Lintal; is that correct?

23 A: Say that again. I'm sorry.

24 Q: You heard Mr. Lintal's testimony earlier that he
25 purchased body bags from sources other than you;

1 is that right?

2 A: Yes.

3 Q: Now, you heard testimony from him that he had
4 discussions with you about that. Do you recall
5 that testimony?

6 A: I recall the testimony.

7 Q: Did you ever, prior to June 16, 2011, ever have
8 a conversation with Mr. Lintal regarding his
9 purchase of body bags from any source other than
10 you?

11 A: No.

12 Q: Prior to June 16 of 2011, had you ever heard
13 that Mr. Lintal was purchasing body bags from
14 some source other than you?

15 A: On several occasions.

16 Q: And when was the first time you began to hear
17 that he may be purchasing body bags from some
18 place else?

19 A: It was either in '09 or 2010.

20 Q: And as a result of what you were hearing, did
21 you take any action at that point?

22 A: No. Because Don and I had a good rapport. I
23 would do anything I could to help him, and I
24 just shook it off considering the first time I
25 was told that considering the person that told

1 me that.

2 Q: So you didn't approach Mr. Lintal about the
3 rumor that you heard?

4 A: No.

5 Q: And he never came to you during that time
6 period, contemporaneous to that time period, to
7 say yes he was or no he wasn't selling body
8 bags?

9 A: That's correct.

10 Q: There was no discussion whatsoever about him
11 buying body bags from someplace else?

12 A: No.

13 Q: Before June 16, 2011, how many times do you
14 think you heard that Mr. Lintal was purchasing
15 body bags from someplace else?

16 A: At least twice. I won't say it's three or four
17 times, but at least twice minimum.

18 Q: And on June 16, 2011, do you recall having a
19 discussion with Mr. Lintal about whether or not
20 he was purchasing body bags from some other
21 source?

22 A: I did discuss it with him, yes.

23 Q: Tell the Court how that conversation came about.

24 A: I had sold some lightweight body bags to USC
25 school of medicine and he had told me -- I was

1 going to take them out there, and he and I had
2 conversation and he said he was going out there
3 himself that evening to finish an embalming job
4 for them and that he would take them out there.
5 And so I figured that was as good as time as any
6 to ask him if he had bought bags elsewhere.

7 Q: And did you, in fact, tape record that
8 conversation?

9 A: I did.

10 Q: What made you record that conversation?

11 A: Actually, for my own piece of mind. I didn't
12 know what I was going to do at the time. At the
13 last minute I felt -- on the way over there I
14 just felt like I was going to record it just in
15 case something -- down the road I needed it.

16 MR. LLOYD: Let me ask you to mark --
17 (Defendants' Exhibit Number One was marked for
18 identification purposes.)

19 Q: Let me show you what's been marked as
20 Defendants' Exhibit One for Mr. Knight's
21 testimony. Do you recognize that?

22 A: That's my handwriting.

23 Q: And what is that? What is Defendants' One?

24 A: It's the recorded conversation that I had with
25 Don Lintal that day.

1 Q: Is that a recording you made?

2 A: It is.

3 Q: And you actually put that on that disk?

4 A: I did.

5 Q: And is there anybody who is a party to that
6 conversation other than you and Mr. Lintal?

7 A: No. Just him and myself.

8 Q: And where did this conversation occur?

9 A: At his West Columbia residence.

10 MR. LLOYD: And, Your Honor, we would offer in Defendants'
11 Exhibit One to be played.

12 MR. PRINGLE: Well, I mean, you know, aside from the fact
13 that it was surreptitiously done and, you know, as a
14 result of that, you know, has very little, you know,
15 probative value at all. And the conversation, I don't
16 believe, is relevant, especially when we've already
17 talked about the bags were purchased outside the
18 contract. There's not any new information in it. It's
19 duplicative at best. And, you know, it's not going to
20 give the Court any more information than it has right
21 now as far as what happened between these two parties.
22 And, you know, I'd also add that I think it's
23 extraordinarily prejudicial to -- you know, not
24 withstanding whether it violates the South Carolina
25 Homeland Security Act or not, or Wiretap Act. Maybe it

1 does and maybe where one party taking state. But the
2 very idea of, you know, taping somebody that you've
3 described as having a good relationship with for
4 purposes of then using that later on without telling
5 them is unethical and I believe that it's prejudicial
6 and it's duplicative.

7 THE COURT: Mr. Lloyd.

8 MR. LLOYD: Your Honor, we are a one party state. These
9 conversations specifically do not violate the State
10 Homeland Security Act. In fact, our Supreme Court just
11 recently dealt with this issue in a case dealing with
12 whether or not a parent could consent to a recording
13 made of a conversation between their minor child and
14 another individual, and the very issue of the State
15 Homeland Security Act came up and, of course, that was
16 not violative of that. Your Honor, again, this goes to
17 the very issues that were raised by Mr. Lintal about
18 whether or not he had previous conversations with Mr.
19 Knight about the purchase of other body bags from other
20 sources. It goes to statements that Mr. Lintal made
21 about Mr. Knight's awareness of -- supposed awareness
22 of purchases by him on prior occasions. And it goes to
23 the heart of the issue of Mr. Knight's contention that
24 there was, in fact, a breach of the agreement by Mr.
25 Lintal prior to anything coming up with him bidding for

1 the Richland County contract.

2 MR. PRINGLE: We've already testified about those very
3 bags, including the very bag that's on here. To the
4 duplicative, Mr. Lintal also testified that in the
5 conversation where Mr. Knight surreptitiously tapes him
6 that he said that he didn't mention the previous
7 conversations or the previous testimony that was given
8 about whether or not, for example, that he had
9 mentioned this to Mr. Knight before. There's nothing
10 new in it. Absolutely nothing new in it that hasn't
11 already been aired in this and it's (just -- you know, I
12 mean, I realize you're probably going to let it in, but
13 we're going to -- you know, just another thing to sit
14 here and listen to facts that are already out there.

15 MR. LLOYD: Your Honor, again, not to prolong our response
16 from this issue. But Mr. Lintal did testify very
17 explicitly about his characterization of that
18 conversation which we contend is vastly different than
19 the actual conversation, which luckily from Mr. Knight
20 was recorded. And it certainly is relevant to this
21 issue of whether or not Mr. Lintal's testimony is, in
22 fact, accurate or truthful as to these previous
23 conversations he's supposedly referencing with Mr.
24 Knight. And, in fact, Mr. Lintal offered testimony
25 about the fact that these issues about infant bags that

1 come up previously, that the Court would be able to
2 discern whether you believe that that happened based on
3 his statements to Mr. Knight in this conversation. He
4 also references this issue of water retrieval bags or
5 other bags being purchased prior to this particular
6 date, and that his conversations with Mr. Knight upon
7 previous occasions and, in fact, revolve around that.
8 And we believe that once the Court hears this, the
9 Court will have a better ability to discern whether or
10 not Mr. Lintal's testimony is, in fact, accurate.

11 MR. PRINGLE: Again, he testified that he did not talk
12 about those issues and the previous conversations that
13 he had with Mr. Knight. He testified to that already.
14 So all this is going to do is just to add a different
15 characterization on facts that are already there.
16 Characterizations by somebody who went in there to set
17 up my client and to take and to find out what he said,
18 and with knowledge that he was taping somebody and that
19 somebody else didn't know they were being taped to
20 steer the conversation that way. But, you know, that's
21 --

22 MR. LLOYD: I'm going to object to the characterization of
23 that. And I think once the Court hears the tape,
24 you'll hear that Mr. Knight actually does very little
25 talking in this tape. The suggestion that he somehow

1 did something unethical or set up Mr. Lintal, you'll
2 hear Mr. Knight in this conversation certainly is not
3 steering this conversation. And, in fact, he does very
4 little talking in this recording.

5 THE COURT: The case that you cited.

6 MR. LLOYD: Yes, sir.

7 THE COURT: I'm not comfortable putting that into evidence
8 even over an objection unless I see that case and see
9 what that case says. And I don't know whether you all
10 intend to finish today or what --

11 MR. LLOYD: Yes, sir. I believe we can finish today.

12 THE COURT: You do?

13 MR. LLOYD: Yes, sir.

14 THE COURT: You think you can finish today?

15 MR. PRINGLE: I know I can finish today. I mean, it's
16 subject to -- I don't remember the tape being --

17 MR. LINTAL: Forty-three minutes.

18 THE COURT: It's how long?

19 MR. LINTAL: Forty-three.

20 MR. LLOYD: We can fast forward through a good part of
21 that. Because a good part of the conversation is just
22 sort of a diatribe on some unrelated topics. But I
23 would cite the Court to State v. Andrews, 479 SE 2nd
24 808, 1996 case, you know, with this very issue of this
25 being a one party state. That private conversations

1 are admissible as long as one party, in fact, knows
2 that the recording is being made. I would also cite
3 the Court to State v. Whitner 732 SE 2nd 861, 2012 case
4 where the court dealt with this very issue. Supreme
5 Court dealt with this very issue whether or not a
6 private taped conversation -- in this particular case,
7 the question was whether or not -- they'd already
8 gotten past obviously the issue of whether or not we're
9 a one party state. They discuss that. The issue in
10 that particular case, Your Honor, was whether or not a
11 parent could, in fact, consent on behalf of a minor to
12 tape a conversation where a parent was not a party to
13 that conversation. It was a situation, Your Honor,
14 dealing with some alleged abuse of a minor and they
15 were trying to deal -- the offered reason by the parent
16 was discern what the extent of that abuse was and what
17 kind of assistance was needed for the minor. The Court
18 had to deal in that particular case with this very
19 issue of, number one, can there be a parental consent
20 even if the parent is not a party to that conversation.

21 THE COURT: What's that citation?

22 MR. LLOYD: 732 SE 2nd 861, 2012.

23 THE COURT: Okay. Give me about ten minutes. I'll be
24 right back.

25 MR. LLOYD: Yes, sir.

1 (Off the record from 4:33 p.m. to 4:48 p.m.)

2 THE COURT: Back on record. I read both of the cases that
3 were cited by counsel and it looks like if one party
4 does consent, that it's not a violation of Wiretap
5 Statute itself. I'm going to allow it in subject to
6 the other basis you have for your objection so we can
7 deal with it later.

8 (Defendants' Exhibit Number One was admitted into
9 evidence.)

10 MR. PRINGLE: Okay.

11 THE COURT: All right.

12 MR. LLOYD: Your Honor, we don't intend to play the whole
13 thing. We're going to try to skip through some of it
14 since it's in evidence.

15 THE COURT: Somebody said it's 43 minutes. Can we get to
16 the part that you're interested in and --

17 MR. LLOYD: Yes. We'll have to fast forward, I think,
18 through different -- a little bit of the problem, Your
19 Honor, is I'm not technologically adept enough to have
20 marked different portions of it time-wise. But there's
21 conversation about this, then they go off on some other
22 issues and back.

23 THE COURT: Okay. Well, I'm in that same category, so.

24 MR. LLOYD: I'm actually going to have to rely on Todd a
25 bit here to --

1 (Playing Audio)

2 MR. LLOYD: And just for the Court's edification.

3 Q: Mr. Knight, whose voice was that?

4 A: That's mine.

5 Q: That's your voice.

6 MR. PRINGLE: And we'll stipulate the other one was Mr.

7 Lintal.

8 THE COURT: All right. Did you pick up the stipulation?

9 COURT REPORTER: Uh-huh (affirmative response.)

10 (Playing Audio)

11 MR. LLOYD: Your Honor, we're going to try to drag it to

12 the beginning of that. It's near the beginning.

13 (Playing Audio)

14 MR. KNIGHT: Let me ask you a question. Your

15 competitor told me that you were using some body bags

16 from somewhere else and that you had some baby bags or

17 youth bags or something.

18 MR. LINTAL: I have -- I have a baby bag, yeah.

19 It's a small -- I think that -- you don't have those

20 things though.

21 MR. KNIGHT: I manufacture bags.

22 MR. LINTAL: Okay. Can you make me these bags?

23 MR. KNIGHT: I can make anything.

24 MR. LINTAL: Okay. Do you want one so you can

25 see what --

1 MR. KNIGHT: I made the odor -- I made the odor
2 proof bags.

3 MR. LINTAL: Okay. Well, these are a light --
4 these are a lightweight bag, you know. And the only
5 reason I ever bought them was -- and, Buddy, I probably
6 have used -- I might have bought ten at the initial
7 time that I bought them. And between Lexington and
8 Richland -- and Lexington was really the primary reason
9 for it because they bitched about going into a house
10 with a -- with a big -- a full sized bag folding it up.
11 So I said, well, if I can get them. And I -- and I
12 swore I asked you at one point about those things. But
13 -- and I'm not trying to get around or break anything
14 or go behind your back. Please understand that, you
15 know. But, I mean, it -- out of the ten that we bought
16 I bet I've still got six of them left, you know, maybe
17 seven of them. No, not seven. I've probably got half
18 of them left. I don't even know, you know. But -- but
19 it's not such a significant thing. I mean, it's -- you
20 know, I pay like, you know, \$6. I paid like \$6 for
21 these bags, you know. Initially, I got two bags and --
22 just to see if they were something that the -- these
23 guys would ever -- ever consider doing and -- and are
24 using. And they liked them. And after I showed them,
25 I showed Richland just to say, you know, if we have a

1 need for it, do you want these to be available, and
2 they said yeah. That would be great.

3 MR. KNIGHT: How big a bag is it?

4 MR. LINTAL: Twenty-eight by -- do you want one?

5 MR. KNIGHT: No. Huh-uh (negative response).

6 MR. LINTAL: I mean, I'll get one. It's -- it's
7 -- it's -- it's probably maybe --

8 MR. KNIGHT: For babies or something like that?

9 MR. LINTAL: It's for, you know -- I told you I
10 bought two initially. I bought one that was a real
11 small one, and that just isn't versatile enough. I
12 mean, there's no sense -- we don't -- even if it is an
13 infant type thing --

14 MR. KNIGHT: Yeah. We've always just wrapped
15 them in sheets.

16 MR. LINTAL: Exactly, you know. And -- but --
17 and that suffices until you get to the morgue. That's
18 the issue with putting a lock on at the morgue and all
19 that part with the sheets. But there you can at least
20 put it in a regular size bag, but they get lost in
21 them. So -- so, I mean, these things you can crack off
22 at no -- nothing flat. But I don't want the super
23 heavy material that you use for, you know -- because
24 for the -- the real stiff stuff if you can avoid it
25 because of the fact that they -- they -- they --

1 they're harder to work with. This has got the regular
2 zipper like you got, you know. And I guess if -- you
3 could use a straight zipper if it was easier.

4 MR. KNIGHT: Yeah, something like that is easier.

5 MR. LINTAL: I mean, like I said, I -- you know,
6 I haven't used that many that I really feel like it was
7 even a significant point on the others. I've been, you
8 know, loyal on everything that I knew you had. But as
9 far as I'm --

10 MR. KNIGHT: But your competitor asked me if I
11 had any and I said, well, I can make anything you want,
12 and he said well --

13 MR. LINTAL: Is that Capital that asked you
14 that?

15 MR. KNIGHT: Uh-huh (affirmative response).

16 MR. LINTAL: Okay, all right.

17 MR. KNIGHT: I said, well, I'll ask him about it
18 because we can always make them.

19 MR. LINTAL: And that's fine. I hope that
20 doesn't -- doesn't make you feel like I'm screwed you
21 on anything because it -- you know, I don't probably
22 have -- let's see, \$70 in bags that I've purchased in
23 the course of the time since I did it. And I probably
24 have -- you know, it was at the tail end of Lexington.
25 And what brought it on was one time when we were in a

1 house for Lexington and it was a way small infant that
2 was in there. And I brought the big bag in there with
3 a sheet. Wrapped him in the sheet. Which, first of
4 all, they're lost in the sheet, because we don't have a
5 big -- a small -- shorter sheet, you know. I probably
6 could have ripped it and made it that way. And we put
7 it into that bag and they said, you know, that was just
8 -- they're going to get lost in there, you know. And I
9 said, well, that's what I've got, you know.

10 MR. KNIGHT: That guy never come out and give
11 you a price on the roof or nothing?

12 MR. LINTAL: I -- I never heard from the roof
13 guy. The one that I heard from was the guy for the
14 trim and I -- and I tried calling him back but I don't
15 think -- I never got a call back from him or --

16 MR. LLOYD: Your Honor, we're going to try to fast forward
17 a little bit of the -- the reason this is 44 minutes is
18 it goes throughout the conversation like that.

19 MR. LINTAL: I talk a lot. Sorry.

20 (Fast Forwarding Audio)

21 MR. LLOYD: Jack, I'm just asking him how much further
22 forward this conversation is.

23 (Fast Forwarding Audio)

24 MR. LINTAL: I tell you what. When I -- when I
25 -- I'll give you plenty of notice on getting those

1 bags, if you can come up with something that I can use,
2 you know.

3 MR. KNIGHT: All right.

4 MR. LINTAL: Like I said, I'm not -- I don't
5 want to disappoint you on the fact that I did -- did
6 get some, but I -- I knew you didn't ever have them
7 that could be used, you know. I just probably reacted
8 in a way that I -- I should have asked you first.

9 (Playing Audio)

10 MR. LLOYD: I think I'm going to skip to near the end of
11 it. As I recall, there's some other -- they come back
12 and forth, and unfortunately I won't ask you to listen
13 to the whole thing, because in the middle of the
14 discussions about these other times they'll pop up and
15 say something about the body bags. But we'll forward
16 near the end.

17 (Fast Forwarding Audio)

18 MR. LINTAL: I swear to God, no more of that,
19 you know. I mean, I didn't -- I didn't think it was an
20 issue that was going to break your pocket(inaudible).
21 I didn't think it was going to be anything to break our
22 agreement on the basis of the fact that you didn't have
23 them. If you're willing to make them, I'm going to
24 order them.

25 MR. KNIGHT: I can make them.

1 MR. LINTAL: All right.

2 MR. KNIGHT: All right. Stay in touch.

3 THE COURT: That's it?

4 MR. LLOYD: Yes, sir.

5 Q: Mr. Knight, during that conversation --

6 THE COURT: Excuse me, Mr. Lloyd. Was that marked as an
7 exhibit?

8 MR. PRINGLE: Yes.

9 MR. LLOYD: Defendants' One.

10 THE COURT: What's that? Defendants' One?

11 MR. LLOYD: Yes, sir.

12 Q: Mr. Knight, during the course of that
13 conversation you just heard, Mr. Lintal referred
14 to the infant body bags as lightweight body
15 bags. Did you hear that?

16 A: Yes.

17 Q: And is that an accurate description of infant
18 body bags?

19 A: Pretty much, yes.

20 Q: They're lightweight bags?

21 A: Yes. They're just a small version of the adult
22 lightweight bag.

23 Q: He references in there that he should have asked
24 you first about the infant body bags. Is it
25 fair to say that this was the very first

1 conversation that you had with Mr. Lintal about
2 infant body bags?

3 A: Yes.

4 Q: Is it the first conversation you had with him
5 about his purchase of other bags from other
6 sources?

7 A: Yes.

8 MR. LLOYD: Beg the Court's indulgence.

9 Q: Mr. Knight, did you bring today an example of
10 the lightweight bag?

11 A: I did.

12 Q: And just for demonstrative purposes, can I pass
13 you this?

14 A: It's a white bag.

15 MR. PRINGLE: I don't necessarily want to object, but, you
16 know, the purpose of this I'm presuming he'll lay some
17 foundation about why this is relevant.

18 MR. LLOYD: Well, do you want --

19 MR. PRINGLE: No. Go ahead.

20 Q: We've been having a lot of discussions
21 throughout this about body bags. And just for
22 the Court's education, this is a full sized
23 adult lightweight --

24 A: No. This is an infant.

25 Q: The one you have there is an infant lightweight?

- 1 A: Yes.
- 2 Q: And it is the same essentially as an adult
- 3 lightweight bag?
- 4 A: With the exception it has a straight zipper and
- 5 an adult bag has a curved zipper.
- 6 Q: And is that a bag that you manufactured?
- 7 A: It is.
- 8 Q: And when is the first time you manufactured an
- 9 infant body bag?
- 10 A: In 2011, after our discussion.
- 11 Q: And prior to that, had anybody at Lexington
- 12 County Coroner's Office or anybody else ask you
- 13 to manufacturer an infant bag?
- 14 A: No.
- 15 Q: Now, during that conversation -- did that
- 16 recording represent the entire conversation
- 17 between you two?
- 18 A: It does, yes.
- 19 Q: And was there any part of the conversation that
- 20 wasn't on that tape that you presented?
- 21 A: No.
- 22 Q: And at any point during that conversation that
- 23 was recorded on June 16, 2011, does Mr. Lintal
- 24 reference or make you aware of the fact that he
- 25 purchased water retrieval bags from someone

1 other than you?

2 A: No. As a matter of fact, he referenced that he

3 hadn't bought any of the bags at all.

4 Q: And when is the first time that you had actually

5 learned that he had purchased water retrieval

6 bags from somebody other than you?

7 A: During discovery.

8 Q: And that would be discovery in this case?

9 A: Yes.

10 Q: Now, let's go to the closing again. Is there a

11 point in time when you realized at the closing

12 what the restrictions on you from the non-

13 compete would be in terms of years and

14 geographical area?

15 A: Yes, at the closing.

16 Q: And is that the first time that you had any --

17 let me rephrase that. Did you have any

18 knowledge prior to seeing that document of what

19 the geographic area that you would be restricted

20 from competing against the Lintals in was?

21 A: No.

22 Q: And based on the agreement, is there any place

23 that you believe within South Carolina that you

24 could compete against the Lintals?

25 A: No.

1 Q: Would their agreement also prohibit you from
2 competing against them in some out-of-state
3 markets?

4 A: No.

5 Q: I'm sorry?

6 A: It would not. As long as it was, I think, 150
7 miles.

8 Q: Right. From 150 miles from Lexington?

9 A: Yes.

10 Q: Would that stretch, for example, into some
11 markets within Georgia?

12 A: Yes.

13 Q: So under the terms of the non-compete, if it
14 were in force, it would also prohibit you from
15 competing over in Georgia against them?

16 A: It would.

17 Q: Now, had you ever done business on a regular
18 basis in Georgia?

19 A: No.

20 Q: Arguably the restriction would apply potentially
21 to parts of North Carolina; is that correct?

22 A: Yes.

23 Q: Had you ever done regular business in North
24 Carolina?

25 A: No.

1 Q: Did you discuss on June 16, 2011 with Mr. Lintal
2 that you were possibly going to bid on the
3 Richland County Coroner's contract?
4 A: No.
5 Q: Did that even come up in your conversation?
6 A: No.
7 Q: Following that taped conversation, did you ever
8 talk to Mr. Lintal again on June 16, 2011?
9 A: He called me several times.
10 Q: Can you tell the Court about those calls to you
11 from Mr. Lintal?
12 A: Apologizing for buying the bags that he bought
13 and assured me that the baby bag was the only
14 bags he bought.
15 Q: And what dates were those calls?
16 A: I think at least one that same day, possibly
17 two. And then a day or so later.
18 Q: And at that point, and during the course of
19 those conversations either that later that day
20 on June 16 or a day or so later after June 16,
21 did you ever indicate to Mr. Lintal that you
22 might bid on the Richland County contract?
23 A: No, I did not.
24 Q: Now, prior to bidding on the Richland County
25 contract, did you take any action in seeking

1 advice or determining whether or not you could
2 bid on that contract?

3 A: I did.

4 Q: Would you describe for the Court what you did
5 to, in your opinion, satisfy yourself as to what
6 your rights were under the contract?

7 A: After I left his office that day, or his
8 residence that day, I went back to my office and
9 read through the contract and found this part
10 here, 3.4.8 and read through it, and then called
11 my attorney who was then Don Jonas. Told him
12 what took place and asked him if I had a right -
13 - since he breached the contract, if I had a
14 right to go back in the business.

15 Q: And when you say you found 3.4.8, you were aware
16 that there was -- let me rephrase the question
17 so I'm not leading you. Prior to going back to
18 your office on June 16, 2011 and reviewing the
19 contract, were you aware of that provision in
20 the agreement?

21 A: I knew it was in there. I didn't recollect
22 exactly how it was worded.

23 Q: And you said you called Mr. Jonas at that point;
24 is that right?

25 A: It was either that night or the next day.

1 Q: And what, again, were you seeking to discern
2 from Mr. Jonas?

3 A: I was seeking legal advice. Told him what took
4 place and asked him if that allowed me to bid on
5 the Richland County contract.

6 Q: And would you explain for the Court why were you
7 feeling like you wanted to get back into the
8 business on the Richland County contract?

9 A: I didn't want to get back in the business. I
10 was forced to. I felt like I was forced to. I
11 had -- that's a four year contract. And I felt
12 like if I didn't take action at that time, I was
13 going to be left out in the cold. It only
14 cycles every four years. And I felt like it was
15 1,500, \$2,000 a month that bags should have been
16 bought from me over a ten year period, it would
17 have been a quarter of a million dollars. And I
18 felt like that I was not selling all the bags to
19 him. And furthermore, I was selling them bags,
20 like the odor proof bag, at a discount and he
21 was selling them to funeral homes in competition
22 with me.

23 Q: Let me explore that a little bit with you. When
24 you say Mr. -- you were selling odor proof body
25 bags and other body bags to Mr. Lintal and then

1 he was competing against you with funeral homes.
2 Can you describe for the court, first of all,
3 how you learned that he was selling your bags to
4 others?

5 A: I had a funeral home in Lugoff call me, Powers
6 Funeral Home, and told me that they were out of
7 odor proof body bags and they needed to buy
8 some. And my question to them was, I don't
9 think I've ever sold you any. How did you get
10 them. And they told me they'd been buying them
11 from Don Lintal.

12 Q: So you were selling them to him at the price of
13 \$50?

14 A: Yes.

15 Q: And that represented a discount from what
16 regular price?

17 A: Eighty-five dollars.

18 Q: And did you feel that he was selling body bags
19 to others besides Powers?

20 A: Well, I didn't know that. But, you know, I had
21 to take into account -- I knew he was buying
22 other bags. I don't know how many he was
23 buying. I knew his business had to be growing.
24 It's grown every year I've been in it. Plus he
25 had told me about the accounts he had acquired.

1 So I knew he should have been using more bags.
2 So in my own mind I knew he was buying bags
3 somewhere else, but I didn't know the number of
4 bags he was buying elsewhere. And I didn't know
5 whether he was selling to other funeral homes or
6 not. This is the only one I found out about.
7 Only by accident.

8 MR. LLOYD: Beg the Court's indulgence.

9 Q: Mr. Knight, I just have a few more questions for
10 you. You heard testimony earlier from Mr.
11 Lintal and Mrs. Lintal about their description
12 of an alternative odor proof bag to the Richland
13 County Coroner's Office, do you recall that
14 testimony?

15 A: I do.

16 Q: And they describe a -- in layman's term, I would
17 describe as a heat seal-type bag. Is that an
18 accurate description of a method that you're
19 familiar with?

20 A: Yes.

21 Q: And how does that work?

22 A: I saw it demonstrated on the Internet, but
23 that's the only place that I've read up on it
24 myself. It's actually a vinyl that you roll
25 out, place the deceased on it and seal the rest

1 of it up.

2 Q: And does it require some equipment to be
3 transported to the scene?

4 A: I think they have to plug it into a cigarette
5 lighter. If you don't have electricity at the
6 scene, you could probably plug it into a
7 cigarette lighter, and you have to wait until it
8 gets hot and then seal around it.

9 Q: And anytime that seal is broken does it have to
10 be resealed in the same method?

11 A: It does.

12 Q: Now, during your experience manufacturing body
13 bags and being in this business, are you
14 familiar whether or not there are other types of
15 odor proof bags on the market?

16 A: I know there's patents been issued for them.

17 Q: And when you say there are patents, those
18 patents differ from the patent you hold on your
19 odor proof bag; is that right?

20 A: It does.

21 Q: And they differ from this heat seal method; is
22 that right?

23 A: They are.

24 Q: And so, there are alternative odor proof bags
25 available?

1 A: I don't know whether there are now, but when I
2 researched by patent, I saw other patents out
3 there on odor proof bags.

4 MR. LLOYD: I beg the Court's indulgence for a moment. I
5 may be finished with Mr. Knight. Your Honor, we tender
6 the witness.

7 THE COURT: Cross examination.

8 CROSS EXAMINATION BY MR. PRINGLE:

9 Q: Mr. Knight, you testified that you needed to get
10 back in the business or you were going to be
11 left out in the cold; is that right? Those are
12 the exact words you used, right?

13 A: Yeah.

14 Q: Left out in the cold with \$590,000 that my
15 client paid you?

16 A: I wouldn't characterize it like that.

17 Q: You were paid \$590,000 by my client, correct?

18 A: Correct.

19 Q: Okay.. And you accepted that money?

20 A: I did.

21 Q: Okay. The comment that you mentioned that my
22 client was selling bags to funeral homes. Those
23 bags that he was selling that you found out
24 about, he bought from you pursuant to the
25 contract, didn't he?

1 A: He did.

2 Q: Under the terms of the contract?

3 A: That's correct.

4 Q: And the contract did not have any prohibition on

5 what he did with the bags once he had them?

6 A: It does not.

7 Q: Okay. You mentioned also that Mr. Lintal's

8 business had to be growing and you knew that he

9 bought some bags from someone else. As you sit

10 here today, do you have any evidence whatsoever

11 that he bought any more bags than the ones he

12 described and the ones that total \$884 worth of

13 purchases?

14 A: No, I don't.

15 Q: Okay. What was the date of your accident? The

16 one where you broke your leg?

17 A: October.

18 Q: Of?

19 A: 2006.

20 Q: October of 2006. Okay. And wasn't the posting

21 for the sale of your business actually posted in

22 August of 2006?

23 A: It was.

24 Q: Okay. So, indeed, you had just made the

25 decision to sell your business before you had

1 your accident?

2 A: I had talked to them at that time.

3 Q: Okay. And it was listed there?

4 A: Yes.

5 Q: Okay. So somebody could initiate discussions to

6 buy your business at that point, before your

7 accident?

8 A: But I hadn't talked to anybody, yes.

9 Q: All right. You mentioned that you found out in

10 either 2009 or 2010 that my client had bought

11 bags from somebody else?

12 A: That's correct.

13 Q: And was that Mr. Maddox?

14 A: It was.

15 Q: Okay. And at that point when you learned that,

16 you didn't tell me client about it?

17 A: No. I just -- I knew him.

18 Q: You knew Archie?

19 A: Well, I knew him and his ways, let's say.

20 Q: Okay. And you had some reason to believe

21 perhaps that he wasn't being truthful?

22 A: That's correct.

23 Q: Okay. But then when you asked my client about

24 this on June the 16th, maybe Mr. Maddox was a

25 little more truthful?

1 A: Yes. I had somebody that told me that they seen
2 a bag. And I don't remember who it was. They
3 told me they saw a bag. And I want to say it
4 was a huge bag or something in the morgue at
5 Lexington Medical Center.

6 Q: Okay. So Mr. Maddox went from being a little
7 bit less than trustworthy in 2009 and 2010 to
8 being a good source on June 16th, 2011?

9 A: I wouldn't say that. But, you know, that's when
10 I asked Mr. Lintal about it. I felt like it had
11 come from somebody else.

12 Q: Okay. And you mentioned it to him June 16th.
13 You took somewhat -- with someone that you had
14 characterized as having had a good relationship
15 that you had done things on their behalf, you
16 decided to tape him without telling him on the
17 day before you bid the Richland County contract?

18 A: I decided to tape him, yes.

19 Q: Okay. And that was the day before you bid the
20 Richland County contract?

21 A: Yes.

22 Q: And is it your testimony that you hadn't
23 prepared any of the bid when you had the
24 conversation with my client?

25 A: That's correct.

1 Q: Okay. And so, that was roughly, what, 4:00 or
2 5:00 in the afternoon on the 16th?

3 A: No. I don't think it was that -- I don't know.
4 It was midday, I think.

5 Q: You think it was midday.

6 A: I don't remember.

7 Q: So whether it was noon and -- and after that
8 conversation you managed to prepare an entire
9 bid and submit it by close of business on June
10 the 17th?

11 A: Yes.

12 Q: Okay. With respect to the RFP and the odor
13 proof bag and the discussion that you just had
14 with your counsel about the idea that there may
15 be other odor proof bags out on the market and
16 patents, or bags that had been patented,
17 certainly as of -- in the summer of 2011 it was
18 your contention that you were the only game in
19 town with respect to odor proof bags, wasn't it?

20 A: I was the only one in Columbia that had one.

21 Q: And the only one that could provide it, in fact,
22 to Richland County?

23 A: Not necessarily.

24 Q: Well, that's what you asked Richland County.
25 You asked them to award you the contract --

1 A: I was the only one that could give them my bag.
2 He had avenues to find his own odor proof bag.
3 I just said I wasn't going to sell him mine.

4 Q: No. But in addition to you saying to my client
5 that you weren't going to sell him bags pursuant
6 to the contract that you'd signed and paid my
7 client \$590,000, you specifically, after the RFP
8 had been closed, asked the County to award you
9 the contract based on that you were the sole
10 source for odor proof bags; isn't that correct?

11 A: I talked to my attorney. My attorney said that
12 he didn't have a contract with me any longer if
13 he said that he had bought bags elsewhere.

14 Q: Okay. That was not the question I asked you.
15 After the RFP was closed, after the RFP was
16 closed on June the 17th of 2011, you sent
17 communications in violations of the RFP to
18 Richland County --

19 MR. LLOYD: Objection.

20 Q: -- asking them --

21 MR. LLOYD: Assuming evidence.

22 MR. PRINGLE: Okay.

23 Q: You sent communications after the RFP was closed
24 asking Richland County to award you the contract
25 because you were the sole source provider of the

1 odor proof disaster pouch, didn't you?

2 A: I did.

3 Q: Okay. And so, at that time it was your opinion
4 that you had the only bag that could be used to
5 satisfy the body removal contract for Richland
6 County?

7 A: I felt like the bag I made was the only bag.
8 There was other avenues that he could have
9 looked into.

10 Q: You didn't say in your letter I have a bag.
11 There might be other avenues that somebody can
12 use to satisfy the RFP, but I think that this
13 one might be the best. You said this is the
14 only one that satisfies it, didn't you?

15 A: Yes.

16 Q: Okay. And that's what sole source means,
17 doesn't it?

18 A: Yes.

19 Q: Okay. And you did that after the RFP had been
20 closed?

21 A: I did.

22 Q: Okay. And you copied Gary Watts on an email,
23 along with Christie Swafford making that
24 request?

25 A: That's correct.

1 Q: Okay. And understanding that you believe that
2 even the purchase of a \$5.25 bag entitled you to
3 walk away from a \$590,000 contract, if the
4 contract were in place -- if it were in place,
5 you would not have had the right to send a
6 letter saying that you didn't offer these bags
7 to the public and to everybody else --

8 A: I felt like it was not a contract. He had
9 breached the contract.

10 Q: No. Listen to my question again. Putting aside
11 the fact that you believe that there was a
12 contract -- that had this contract been bid on -
13 - let's say, for example, January the 6th, 2007,
14 the day after my client had paid you \$590,000,
15 and you had agreed that you would not compete
16 for Richland County, and Richland County put out
17 an RFP, you would not have had the ability to
18 tell Richland County that you were the only
19 provider, the only entity that could provide
20 your odor proof bag, could you have?

21 MR. LLOYD: Your Honor, I'm going to object. Same basis
22 Mr. Pringle was objecting earlier, that that calls for
23 a legal conclusion.

24 MR. PRINGLE: I'm asking whether he could have sent the
25 letter or not.

1 MR. LLOYD: That requires a legal conclusion.

2 MR. PRINGLE: It was his belief he didn't have a contract.

3 Not the reason why he doesn't do it.

4 MR. LLOYD: Your Honor, that's the exact same --

5 THE COURT: I'm going to let him answer the question under
6 the objection.

7 MR. PRINGLE: Yeah.

8 A: Ask the question again, please.

9 Q: Okay. On January the 6th, 2007, you wouldn't
10 have had the ability to request that Richland
11 County, or anybody else within the territory or
12 limitations of your contract, to ask them to
13 approve you as a sole source of odor proof bags,
14 could you have?

15 A: I would have had the ability, but morally I
16 wouldn't have done it because I was under
17 contract with him.

18 Q: Morally and contractually, right?

19 A: That's correct.

20 Q: Okay, right. Let's talk a little bit about the
21 asset purchase agreement. I know whether you've
22 seen Exhibit One. There's some discussion --
23 you had some discussion about when you saw it
24 and when drafts were done. Don Jonas
25 represented you in that transaction, did he not?

- 1 A: Well, he went to the closing with me.
- 2 Q: Okay. He wasn't there on my client's behalf?
- 3 A: He went to the closing with me on my behalf.
- 4 Q: On your behalf. Okay. Representing you as an
- 5 attorney?
- 6 A: Yes.
- 7 Q: Okay. You're aware that Mr. Jonas was sent
- 8 drafts of the asset purchase agreement and the
- 9 covenant not to compete on December 14th of
- 10 2006?
- 11 A: No, I wasn't.
- 12 Q: Okay. The document is in evidence. We can show
- 13 it to you. The particular email that --
- 14 A: I think I looked at that and it had everybody's
- 15 email -- it was sent to everybody but me.
- 16 Q: Okay. But it was sent to your attorney?
- 17 A: But he got a copy, she got a copy and you got a
- 18 copy. I didn't get a copy of it.
- 19 Q: Okay. Did you believe that maybe your attorney
- 20 would send you documents that were sent to him?
- 21 A: I didn't get them, so that answers your
- 22 question.
- 23 Q: Okay. Wouldn't that be something that you
- 24 discussed between you and your attorney and not
- 25 between the attorney on my side?

- 1 A: But you understand, I didn't see it. I didn't
2 know it was there. So why would I ask him about
3 it?
- 4 Q: Well, I don't know. That's something that you
5 ask him about it. But he did receive a copy,
6 didn't it? Just to clarify that question.
- 7 A: By looking at the email address on the paper it
8 looks like it.
- 9 Q: Okay. He got it. And you showed up for the
10 closing with him?
- 11 A: I did.
- 12 Q: And you mentioned today that you did read the
13 asset purchase agreement at the closing?
- 14 A: Can I see that?
- 15 Q: The asset purchase agreement?
- 16 A: The email. No, the email. The email. There it
17 is. And before today I never saw this.
- 18 Q: You never saw the email?
- 19 A: No.
- 20 Q: Okay. But your attorney got it?
- 21 A: Well, his name is on there. It looks like he
22 got the email, yeah.
- 23 Q: Okay. And, indeed, as the discussion happened,
24 he provided a email response with some red lines
25 or changes to the drafts that had been sent to

1 him by my clients' attorney?

2 A: Well, I don't see anything that's red lined.

3 Q: Okay. But his references -- and I'll just refer
4 you to this particular email, and you can read
5 it if you want --

6 THE COURT: How about reference the exhibit, what it is.

7 Q: What exhibit is that?

8 A: Three.

9 Q: And is it an email from Don Jonas?

10 A: It is.

11 Q: To Chris Rogers?

12 A: To Kay Gaddis at the Carolina National Bank and
13 Lintal.

14 Q: Yeah. And what does it say?

15 A: It says, "Dear Chris, I was unfortunately
16 delayed in finishing this project as a result of
17 a family crises. My 100-year-old mother-in-law
18 in Indiana is suffering from what appears to be
19 her final illness. I just returned from the
20 Charlotte airport where I dropped off my wife.
21 Assuming mom gets through the night I will leave
22 from Columbia to join her immediately after this
23 closing. If not, I will send someone. I made
24 some very minor changes to the docs that
25 eliminated various items from the asset purchase

1 that were not involved; leasehold, et cetera. I
2 understand that you have the info regarding the
3 breakdown, the PP between good will and asset
4 purchase. I also understand you have the
5 employee information that Buddy provided. As I
6 advised, the parties have agreed to a pro rata
7 of the monthly billing so Buddy gets credit for
8 the five days in January. Anything further
9 needs to be discussed today. I will meet with
10 Buddy this afternoon."

11 Q: So he reviewed those documents on your behalf
12 and made changes?

13 A: Sounds like he reviewed something, yes.

14 Q: Okay. And he did that on your behalf?

15 A: Yes.

16 Q: Okay. And then you appeared at the closing and
17 testified just a little while ago that you read
18 the documents at closing?

19 A: Yes.

20 Q: Okay. And after this discussion about the
21 \$1,000 that's mentioned as the consideration for
22 the covenant not to compete, you didn't object
23 to that provision or any provision of either
24 agreement at the closing, did you?

25 A: I didn't.

1 Q: Okay. And you signed the documents, both of
2 them?

3 A: I did.

4 Q: Those are your signatures on both of those
5 things?

6 A: There was some talk -- like I said before, and
7 Mr. Lintal, Mrs. Lintal, and Mr. Rogers went
8 outside and -- and I even think Kay might have
9 went out with them but I'm not sure. They went
10 out and come back in, but I don't remember what
11 it was about.

12 Q: Okay. But you did sign it?

13 A: Yes.

14 Q: Okay. And, indeed, you believed that the
15 language of the contract entitled you to walk
16 away from it in June of 2011?

17 A: Yes. According to what he did, yes.

18 Q: Okay. Right. So you consulted the contract for
19 that?

20 A: Yes.

21 Q: Okay. You moved a dead body for Richland County
22 on December 2nd, 2008, didn't you?

23 A: I did a disinterment, yes.

24 Q: Okay. And you moved a dead body on March 9th,
25 2011 for the Richland County Coroner's --

1 A: I don't have the exact date.

2 Q: Okay. But you did two?

3 A: Yes.

4 Q: And as you testified in your deposition, you've

5 contacted the Lexington County Coroner's Office

6 asking them to rebid the contract that's held by

7 my client?

8 A: I don't think he had it at that time. I'm not

9 sure.

10 Q: No. I meant in the current time, we had a

11 conversation in your deposition.

12 A: Well, I don't remember whether it was after he

13 got it or -- it might have been after he bought

14 it from one of the other company.

15 Q: Okay. And you've contacted the University of

16 South Carolina asking them to rebid the contract

17 held by my client?

18 A: I have had discussions.

19 Q: Okay. So you're actively seeking to go after

20 the other two contracts?

21 A: I am. Yes, sir.

22 Q: All right. You mentioned some of the efforts

23 that you made on Mr. Lintal's behalf with

24 Lexington County. In fact, Mr. Lintal got the

25 Lexington contract back by buying Capital,

1 didn't he?

2 A: That's correct.

3 Q: Okay. So it was his efforts that got him the
4 contract back?

5 A: Yes.

6 Q: Okay. In your experience, do people with good
7 working relationships tape each other
8 surreptitiously?

9 MR. LLOYD: Objection.

10 THE COURT: Sustained.

11 Q: I mean, you mentioned you had a good
12 relationship with Mr. Lintal, right?

13 A: I did.

14 Q: All right. And -- all right. I'll just leave
15 it at that. On the tape Mr. Lintal, you know,
16 told you specifically that he bought two bags
17 initially, right?

18 A: That's what he said.

19 Q: And you didn't object to that at the time, did
20 you?

21 A: I was just after information.

22 Q: After --

23 A: I wasn't there for an argument.

24 Q: Of course you were after information.

25 MR. LLOYD: Objection.

1 MR. PRINGLE: Okay.

2 Q: And with that information you bid the contract

3 the next day?

4 A: I did.

5 Q: Okay. One more thing. You mentioned that you

6 had heard something about my client maybe -- was

7 it selling infant bags to Lexington or using --

8 right before your conversation in June of 2011?

9 A: Say that again?

10 Q: That you had heard -- there was something in

11 addition to what you heard from Archie Maddox

12 about something at the morgue or another

13 instance where my client had been buying bags

14 from somebody else?

15 A: I don't remember who it was told me they saw a -

16 - not an adult bag, but maybe a bag in between

17 this one and an adult size. Like a teen bag. A

18 small person bag.

19 Q: At the morgue?

20 A: At the morgue.

21 Q: Lexington County? And what time frame was this?

22 A: It's been a while. I don't know when it was.

23 Q: 2011?

24 A: I don't remember when it was. It was before the

25 bid of the contract. I had heard it several

1 weeks or --

2 Q: You're aware, aren't you, that my client didn't

3 hold the Lexington Contract in 2011?

4 A: I did.

5 MR. PRINGLE: All right. That's all I have.

6 THE COURT: Any re-direct?

7 MR. LLOYD: Thank you, Your Honor. Very briefly.

8 RE-DIRECT EXAMINATION BY MR. LLOYD:

9 Q: Mr. Pringle asked you about the quick turn

10 around from June the 16th to June the 17th and

11 being able to fill out the bid for the RFP for

12 Richland County. How many times had you

13 actually bid on the Richland County contract?

14 A: I probably had it 15/16 years.

15 Q: And is it --

16 A: Every four years.

17 Q: I'm sorry. Is it substantially different than

18 bidding them, the process and the bid proposal

19 that might be prepared for Lexington County?

20 A: It's basically the same. It's probably worded a

21 little different.

22 Q: So over the years of this business, how many

23 times do you think you've pulled together a bid

24 for an RFP?

25 A: Twelve or 15.

1 Q: Was there any trouble for you to pull together
2 this bid in one day?

3 A: No.

4 Q: Did you already have the outline of a bid, or
5 any standard or --

6 A: It was put together in a hurry, which is
7 probably why I didn't score as high as he did,
8 because I only had a day to do it.

9 Q: Now, Mr. Pringle asked you about that
10 conversation with you and Mr. Lintal where he
11 talks about the other purchase of other bags.
12 In that conversation, as you've gone through the
13 discovery process in this particular case and
14 learned just how many bags they have admitted to
15 purchasing from sources other than you, did Mr.
16 Lintal tell you the truth about how many bags he
17 had purchased from other sources in that taped
18 conversation?

19 A: No.

20 Q: And your knowledge of how many bags he's
21 purchased from sources other than you is limited
22 to what he's produced in this case; is that
23 right?

24 A: That's correct.

25 Q: Mr. Pringle asked you about actively seeking

1 other contracts with MUSC or Lexington County.
2 And again, at this point in time, after that
3 June 16 conversation and your consultation with
4 Mr. Jonas, did you believe you had the right to
5 go back into the body removal business?

6 A: I thought I did, yes.

7 Q: And as part of that, that includes not just
8 bidding on the Richland County Coroner's
9 contract but pursuing other body transportation
10 services?

11 A: Yes.

12 Q: Now, Mr. Pringle referenced just a moment ago
13 the fact that Mr. Lintal purports to have bought
14 840 some odd dollars worth of body bags. Do you
15 recall that?

16 A: I do.

17 Q: And earlier there was some testimony about what
18 percentage that represented of the total
19 purchase of body bags from you. Do you recall
20 that testimony?

21 A: Somewhat.

22 Q: And if you compare the percentage of the non-
23 compete price or consideration, \$1,000, to the
24 purchase price of the entire business itself,
25 what percentage -- and you can estimate it. I'm

1 not as good at numbers. But do you know what
2 percentage of the total purchase price that
3 \$1,000 presents?
4 A: You mean the non-compete \$1,000?
5 Q: Yes, sir.
6 A: Twenty/24 bags/25 bags.
7 Q: Well, what percentage does \$1,000 of \$590,000?
8 A: Oh, what percentage is the \$1,000?
9 Q: Yes, sir.
10 A: Five hundred ninety percent, isn't it?
11 MR. PRINGLE: We will stipulate that the figure is
12 .00169492, or like one -- is that one-tenth of one
13 percent, or one-100th of one percent? But it's .00169.
14 THE WITNESS: .0001.
15 MR. PRINGLE: There's two zeros, so --
16 THE COURT: Madam Court Reporter, do you have that
17 stipulation?
18 COURT REPORTER: Uh-huh (affirmative response).
19 MR. PRINGLE: It's a little over a tenth of one percent.
20 MR. LINTAL: Carry the two.
21 MR. PRINGLE: Yes.
22 MR. LINTAL: No rounding up.
23 Q: Now, there was some discussion in Mr. Pringle's
24 cross examination of you finding out -- or
25 hearing first in 2009 or 2010 from Mr. Maddox

1 that Mr. Lintal was buying bags from someone
2 else. Do you recall that?

3 A: Yes.

4 Q: And you indicated that you didn't believe that
5 Mr. Maddox was necessarily the most trustworthy
6 person on that subject matter; is that right?

7 A: That's correct.

8 Q: And subsequent to hearing that from Mr. Maddox -
9 - well, first of all, let me ask you this. When
10 you heard that from Mr. Maddox, did you have any
11 reason to believe that you needed to go confront
12 Mr. Lintal based on Mr. Maddox' statement?

13 A: No.

14 Q: And subsequent to hearing that from Mr. Maddox
15 was there further rumors or confirmation about
16 the fact that Mr. Lintal may be purchasing body
17 bags from someone other than you?

18 A: I've been told that there were other bags that
19 they were buying.

20 Q: And that culminated in the conversation you had
21 with them on June 16, 2011?

22 A: Yes.

23 Q: Where you confront him about that for the first
24 time?

25 A: Yes.

1 Q: And again, prior to that, you all have never had
2 a conversation about him purchasing infant bags,
3 and water retrieval bags, or any other type of
4 bag from any other source other than you?

5 A: No.

6 MR. LLOYD: And I believe that's it, Your Honor.

7 MR. PRINGLE: Okay. I've got one.

8 THE COURT: You have another question?

9 MR. PRINGLE: Yeah. Yeah, I got re-cross.

10 RE-CROSS EXAMINATION BY MR. PRINGLE:

11 Q: You mentioned now -- okay. We talked about
12 Archie Maddox. He told you in 2009 or 2010.
13 You then, when we were talking just now, your
14 testimony, you mentioned something about seeing
15 an infant bag at the morgue. At Lexington
16 morgue.

17 A: No. I said like a teen bag. It was a bag in the
18 middle of this one and that one.

19 Q: Okay. So that was one other instance where you
20 believed that my client was buying bags outside
21 the contract?

22 A: Yeah.

23 Q: Now you've said, in response to re-direct, that
24 you'd heard rumors from other people about this.
25 Now, you haven't testified about that before.

1 back of a truck, or a vehicle, do you have any
2 other --

3 A: There was other talk, as I said, that people
4 said he was using other bags besides mine.

5 Q: Other talk --

6 A: I don't remember who they were.

7 MR. PRINGLE: Okay. That's all I have. Done.

8 THE COURT: All right. Anything else from the Defendant?
9 Are you finished with this witness?

10 MR. LLOYD: Yes, Your Honor. There's nothing else further
11 from this witness, and no further witnesses from the
12 defense.

13 THE COURT: All right. So we've concluded the testimony?

14 MR. LLOYD: Yes, sir.

15 MR. PRINGLE: Yes, sir.

16 THE COURT: All right. So in regards to any motions, what
17 I heard was you're going to just take care of that in
18 your proposed order to us or --

19 MR. PRINGLE: I think so.

20 THE COURT: Okay, all right.

21 MR. LLOYD: Yes, sir. I think what Jack -- no disrespect.
22 But what Jack and I have talked about informally, and
23 as long as it's certainly amendable to the Court, is
24 that we would have some time period to probably get a
25 transcript and do proposed orders regarding this.

1 THE COURT: Okay. Let's do it this way. First of all, do
2 you got all your exhibits? Before we leave this room,
3 let's make sure we're covered there, and then we will -
4 -

5 MR. PRINGLE: I would like an expedited --

6 THE COURT: Okay. You've got your exhibits?

7 COURT REPORTER: Yes. Is the CD marked just for
8 identification purposes or was it admitted?

9 MR. LLOYD: It was admitted.

10 THE COURT: It was admitted.

11 COURT REPORTER: You admitted it? Okay.

12 THE COURT: Yeah, over an objection. It was admitted
13 though. But you've got your exhibits. So the next
14 thing we want to do proposed orders.

15 MR. PRINGLE: Yeah.

16 THE COURT: Okay. Let's see. You need the transcript
17 first. Let's see. December 24th is --

18 COURT REPORTER: Usually, hearings are 30 days, but
19 whenever y'all need it.

20 THE COURT: We'll do it this way. As soon as you finish
21 this transcript -- what you all want, 45 days, or 30
22 days, or --

23 MR. LLOYD: If I could just make a suggestion, and then I
24 can get with Jack. There may be parts that Jack and I
25 may be able to consent to in terms of part of the

1 factual background on this and it might short circuit
2 what we need from the transcript and --

3 MR. PRINGLE: But that would be amongst us. We can
4 certainly look at that. I mean, I want the quickest
5 turnaround that we could possibly get, subject to, you
6 know, everybody's schedules.

7 THE COURT: Okay. Well, I just heard what you said. But
8 still time frame-wise after the transcript is produced,
9 what are you all looking for? I'm flexible. It's what
10 -- I'm hearing everybody wants to move forward. What
11 kind of time frame do you want in regards to producing
12 a proposed order back to me? If you need 30 days, 45
13 days, whatever you -- it's whatever you --

14 MR. PRINGLE: I want to propose 15 after the transcript.

15 COURT REPORTER: I can get the transcript to you in two
16 weeks minus Christmas Eve and Christmas Day.

17 MR. PRINGLE: That's fine if you only work a half day on
18 Christmas Day.

19 MR. LLOYD: Could we have at least until the end of
20 January? I may have a grand jury case called in
21 January at this point. I just don't know. They're
22 supposedly asking the solicitor's office for a time.

23 THE COURT: Let me tell you. I really think the 30 day --
24 if she has it back -- you're talking about two weeks
25 from -- are you talking about --

1 COURT REPORTER: Today.

2 THE COURT: Today?

3 COURT REPORTER: Yeah. Two weeks from today minus -- two
4 weeks for business days only, and there's Christmas Eve
5 and Christmas Day following that.

6 THE COURT: I think 30 days is okay with me. That's when
7 I would want is within 30 days. However, but being
8 non-jury, so everybody knows what I'm looking for, is I
9 want to comply with the rule, is I'm looking for
10 findings of fact. I'm looking for what the issues are
11 as you see it. What I'm hearing here there's an issue
12 in regards to whether there's sufficient consideration
13 for the non-compete. So I'm looking for law on that
14 question. And also looking for law on the allegation
15 in the Defendants' counterclaim about the -- what I'm
16 primarily interested in is paragraph -- if I can find
17 it.

18 MR. PRINGLE: Is it the scope?

19 THE COURT: No. It's the paragraph in the counterclaim --
20 paragraph 42 about the Plaintiff's alleged breach --
21 breach negated all the terms and conditions,
22 responsibilities under the contract. I'm interested in
23 that obviously. But findings of fact, what the issues
24 are. The law on what you see here that you need to
25 cite and the factual argument to support your position

1 on the law, and then your recommended -- I think that
2 comes under Rule 42 of the Rules of Civil Procedure as
3 to what I have to do here.

4 MR. PRINGLE: Yeah.

5 THE COURT: Okay. Now, if you have something that you've
6 consented to, you know, facts-wise, get it to me and --

7 MR. LLOYD: I think we may be able to at least agree to
8 some background on this factual background, and then
9 hopefully the disputed facts will be --

10 THE COURT: Be minimized.

11 MR. LLOYD: -- not so much.

12 THE COURT: Okay. Anything else from anybody?

13 MR. LLOYD: Your Honor, you're saying 30 days to --

14 THE COURT: From the time the transcript is given to the
15 parties.

16 COURT REPORTER: Okay. So the attorneys need the
17 transcript within 14 days of today. So that would be
18 January 9th. Somewhere around there.

19 MR. LLOYD: Jack and I can send you an email just saying
20 we're in receipt of the transcript and --

21 THE COURT: Have her -- you send me a copy of that
22 transcript. Okay? And obviously it goes to the
23 lawyers at the same time. That would trigger the 30
24 day deal. Anything else by you all? Anything else you
25 all need to discuss? This is it?

1 MR. LLOYD: That's it.

2 MR. PRINGLE: I don't think so.

3 THE COURT: Your lawyers are very professional, civil and
4 well prepared. I appreciate the way they presented it
5 and they've done very well and we've finished in one
6 day and that's good.

7 MR. LLOYD: We appreciate Your Honor's time.

8 MR. PRINGLE: Thank you, You Honor.

9

10 Further deponent sayeth not.

11 (There being nothing further, the
12 hearing concluded at 6:00 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAIME D. NEWTON, COURT REPORTER AND NOTARY PUBLIC IN
3 AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE HEARING, ON WEDNESDAY, THE
5 18TH DAY DECEMBER, 2013, THAT THE WITNESSES WERE FIRST
6 DULY SWORN BY ME AND THAT THE FOREGOING PAGES CONSTITUTE A
7 TRUE AND CORRECT TRANSCRIPTION OF SAID HEARING.

8 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
9 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
10 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
11 INTERESTED IN SAID CAUSE.

12 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
13 WAS THEREAFTER SEALED AND DELIVERED TO JAMES RANDALL
14 DAVIS, ESQUIRE, DAVIS FRAWLEY, LLP, 140 EAST MAIN STREET,
15 LEXINGTON, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED
16 ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING
17 SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH
18 MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

19 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
20 15TH DAY OF JANUARY, 2014.

Jaime Newton

21
22 JAIME D. NEWTON, COURT REPORTER

23 MY COMMISSION EXPIRES MAY 14, 2017
24
25

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, is made and entered into this 5th day of January, 2007, by and among Knight Systems, Inc. ("Seller"), Buddy Knight ("Knight"), and Palmetto Mortuary Transport, Inc. ("Buyer").

Preliminary Statement

Seller owns and operates a mortuary transport business known as "Knight Systems" (the "Business") with its principal place of business located at 4959 Platt Springs Rd., West Columbia, 29170. Buyer desires to purchase certain assets and goodwill used in the conduct of the Business, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises hereof, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions and exceptions set forth below, the parties hereto agree as follows:

Statement of Agreement

1. Sale of Assets.

- 1.1 Transfer of Assets. At the Closing, for the consideration herein provided, the Seller shall convey, transfer, assign, and deliver to Buyer and Buyer shall purchase and accept from the Seller, all of the Seller's right, title and interest in and to the following assets (collectively the "Assets"), excluding the Excluded Assets.

1.1.1 "Assets" Defined. For purposes of this Agreement the terms "Assets" shall include:

1.1.1.1 All of the Seller's property described in Exhibit 1.1.1.1 attached as a part hereof.

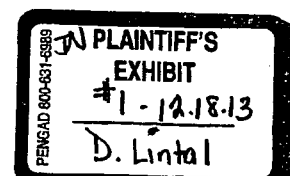
1.1.1.2 The Seller's Post Office Box 2423, West Columbia, 29171 used in the Business.

1.1.1.3 All of Seller's customer records, customer lists, customer contracts, customer information, general business records and data, advertising contracts and rights, and marketing materials, related to or used in the Business including (without limitation) those items described in Exhibit 1.1.1.3.

1.1.1.4 All of Seller's repair and service contracts, commitments, warranty rights related to or used in the Business.

1.1.1.5 All of Seller's goodwill, know how, computer software, trade secrets, trademarks, service marks, and trade names, and the benefit of all licenses for same which are used but not owned by the Seller and related to or used in the Business.

1.1.1.6 Every other asset (whether tangible, intangible, personal, real, or mixed property, or interests therein) of the Seller used or useful in the Business or in



connection with any portion of the Business, including (without limitation) employee, personnel, payroll, purchasing, production, sales, tax, business, and financial records; sales and promotional materials; training materials; and the benefit of all rights, claims, arrangements, and agreements of the Seller relating to the Assets and properties to be transferred hereunder, excluding only the "Excluded Assets" as defined below.

1.1.2 Excluded Assets. The parties acknowledge and agree that the Seller will not sell, assign, or convey to Buyer any of the assets or property of the Seller described in Exhibit 1.1.2 (collectively the "Excluded Assets"). The term "Assets" as used herein shall not include the Excluded Assets. The Seller will make all reasonable efforts to complete removal of the Excluded Assets, if any, within 10 days after Closing. Buyer shall not be an insurer of the safety or condition of the Excluded Assets after Closing.

1.1.3 Method of Transfer. The transfer and sale of the Assets will be evidenced by appropriate bills of sale, assignments, and other instruments executed and delivered by the Seller to Buyer at Closing.

1.1.4 Not Sale of Business. This transaction constitutes the sale and transfer of assets by the Seller and not the sale of a business. However, it is the intent of the parties that Buyer purchase and acquire from the Seller all properties and interests necessary to operate the Business substantially as it is presently being operated.

1.1.5 Possession. Buyer shall take, and the Seller shall deliver, possession of the Assets, and the Seller shall relinquish to Buyer operation of the Business, at Closing.

2. Consideration for Acquisitions by Buyer. Subject to Section 10.4, the consideration to be paid by Buyer hereunder for the acquisitions described in Section 1 above shall be \$590,000.00, which shall be paid, allocated, and held at Closing as follows:

2.1 Cash Payment. Buyer shall pay in conjunction with, or prior to, the execution of this Agreement, to the Seller in cash or other immediately available funds an amount equal to \$59,000.00 Dollars as a non-refundable deposit.

2.2 Cash at Closing. Buyer shall pay to seller at closing in cash an amount equal to \$531,000.00.

2.3 Allocations. The parties agree that the purchase price for the Assets shall be allocated, and the transaction shall be reported as provided in Exhibit 2.3.

3. Closing.

3.1 Closing Date. The closing of the sale and purchase of the Assets and related transactions (the "Closing") shall take place on or before January 5, 2007, at 1:00 p.m., at the offices of Ellis, Lawhorne & Sims, P.A., or at such other time or place as may be mutually agreed upon. The Closing shall be made effective as of 12:01 a.m. on January 1, 2007.

3.2 Transactions at Closing. At the Closing:

3.2.1 The Seller shall deliver to Buyer the bill of sale for tangible personal property and fixtures composing portions of the Assets in the form of Exhibit 3.2.1.

3.2.2 The Seller shall deliver to Buyer assignments of all other intangible personal property composing portions of the Assets in the form of Exhibit 3.2.2.

3.2.3 Buyer shall deliver to the Seller the cash payment pursuant to Section 2.2.

3.2.4 The Seller shall deliver to Buyer copies of such duly filed UCC termination statements or other lien satisfactions as are reasonably required by Buyer to evidence the Seller's clear and marketable title to the Assets as of the Closing.

3.2.6 Seller, Knight, and all immediate family members of Knight that are employed in the Business, shall execute a Non-Competition Covenant in the form of Exhibit 3.2.6.

3.2.7 Seller shall deliver any other instruments required to effect the conveyance of good and marketable title, free and clear of all liens, claims, and encumbrances.

3.2.8 As of the date of Closing, all employees of the Seller directly and primarily associated with the Business will cease to be employees of the Seller, and Buyer may in its sole discretion, offer immediately or thereafter to hire any or all of such persons. Buyer shall not assume any liability whatsoever which arose through Seller's employment of any employee, and Buyer shall not assume any liability whatsoever to any employee of the Seller not hired by Buyer. The Seller will be responsible for paying and reporting all costs and liabilities, including but not limited to compensation, severance, federal and state withholding and unemployment tax, and worker's compensation claims incurred or accrued prior to Closing.

3.3 Conditions of Title. At Closing, Seller shall convey good and marketable or insurable title to the Assets free and clear of all claims, liens, and encumbrances except personal property and ad valorem taxes for the year of Closing which are not yet due.

3.4 Transactions Subsequent to Closing

3.4.1 Taxes. Seller shall file such tax returns and reports, and pay such taxes, as are required for periods ending with the Closing Date.

3.4.2 Creditors. The Seller shall pay all valid liabilities and perform all valid obligations with respect to the ownership of the Assets and operation of the Business prior to the Closing Date.

3.4.3 Excluded Assets. The Seller or the Seller's designees shall remove the Excluded Assets and Buyer shall cooperate with such removal as provided in Section 1.1.2.

3.4.4 Trade Name. The Purchaser shall have the right to use the name "Knight Systems" until the existing contracts expire.

3.4.5 Restrictions. For a period of ten years after Closing, the Seller, Knight (for purposes of this Section 3.4.5, hereinafter collectively referred to as "Sellers"), shall not own, operate, or establish, in competition with Buyer, a mortuary transport business, within 150 miles of the location of the Business. The Sellers shall hold in confidence all documents and information concerning the Business and the Assets. The Sellers acknowledge and agree that these restrictions are reasonably related to the value of the

Assets, that the scope of these restrictions are reasonable in time and territory, and that Buyer shall be entitled to enforce these restrictions at law or in equity and obtain injunctive relief because monetary damages will not be an adequate remedy for, and because Buyer will suffer irreparable harm by the Sellers' violation of, these restrictions.

3.4.6 Transition Assistance. For a period of sixty (60) days after the Closing, Knight shall provide full time assistance to Buyer in connection with the transition of the customers, employees, vendors, operations, Assets, and goodwill of the Business from the Seller to Buyer, and shall be available for telephone consultation for a period of one year after the Closing.

3.4.7 Use of Premises. For a period of 30 days after the Closing, Seller shall allow Buyer to use the current location of the Business at 4959 Platt Springs Rd., West Columbia, 29170.

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

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

Prior to any transfer of the Related Business to a third party, Knight shall offer to sell the Related Business to Buyer at the same price and on the same terms as those offered with respect to the proposed transfer of the Related Business.

3.4.9 Allocation of Revenues and Expenses. All revenues and expenses shall be allocated through the date of Closing such that Seller shall reimburse Buyer for all expenses Buyer incurs that are attributable to Seller's conduct of the Business through the date of the Closing, Seller shall reimburse Buyer for all revenues it receives that are attributable to Buyer's conduct of the Business after Closing, Buyer shall reimburse Seller for all expenses Seller incurs that are attributable to Buyer's conduct of the Business after the date of the Closing, and Buyer shall reimburse Seller for all revenues it receives that are attributable to Seller's conduct of the Business through the date of Closing.

3.4.10 Other Actions. The parties shall take such other actions and comply with other obligations as are required after Closing under this Agreement or ancillary documents. In addition, Seller and Buyer agree that they will at any time and from time to time do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged, and delivered, all such further acts, assignments, transfers, conveyances, and assurances as may be reasonably required by the other party in order to carry out fully and to effectuate the transactions in accordance with the provisions of this Agreement.

4. Debts and Liabilities. Buyer does not assume, and expressly disclaims all, obligations or liabilities of Seller, contingent or absolute, including (without limitation) liabilities for (i) any and

all federal or state taxes, or (ii) any tort, contract, statutory, or other liability resulting from or alleged to have resulted from the business of Seller prior to the Closing Date.

5. Representations and Warranties of Seller. Seller hereby warrants, represents, and covenants to Buyer as follows:

5.1 Business's Status and Standing. The Seller is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Except as otherwise provided, none of the Assets are owned in any other individual names, or by any corporation, limited liability company, or limited or general partnership.

5.2 Authorization and Approval of Agreement. Seller has taken all action necessary to authorize the execution of this Agreement and the consummation of the transactions contemplated hereby. When executed and delivered by Seller, this Agreement and all related documents shall constitute valid and binding obligations of Seller enforceable in accordance with their terms and conditions. Neither the execution nor the delivery of this Agreement nor the consummation of the transactions, nor compliance with any of the terms and conditions, will result in the breach by the Seller of any of the terms, conditions, or provisions of any constitutive document, agreement, order, judgment, or instrument to which the Seller is a party, or by which the Seller is bound, or constitute a default of such constitutive document, agreement, order, judgment, or instrument.

5.3 Compliance with Laws. To the best of Seller's knowledge, after due inquiry, Seller is in substantial compliance with all laws, ordinances, and regulations that govern Seller's ownership and present use of the Assets, the violation of which would have a material adverse effect on the Assets or the Business. No notice has been issued and, to the knowledge of Seller, no investigation or review is pending or threatened by any governmental entity (a) with respect to any alleged violation by Seller of any law, ordinance, or regulation, or (b) with respect to any alleged failure to have any permit, certificate, license, or approval required in connection with ownership, occupancy, or use of the Assets or the operation of the Business.

5.4 Title to Properties. At Closing, the Seller will have, and shall be entitled to convey to Buyer, good, marketable, and insurable title to the Assets as required in Section 3.3.

5.5 Litigation. No judicial, arbitration, or other legal proceedings are pending or, to the best of Seller's knowledge, threatened that question the validity of this Agreement or any transaction contemplated or that relate to the Assets or to the conduct of the Business. No material judgment, decree, or order of any court, governmental department, commission, or arbitrator is outstanding against Seller; and Seller is not bound by any material judgment, decree, or order of any court, governmental department, commission, or arbitrator.

5.6 Consents. No consent of any third party, except as disclosed, is required in connection with the Seller's transfer and assignment of the Assets to Buyer.

5.7 Normal Course. Seller shall have operated the Assets in the normal and ordinary course of business since at least January 1, 2006, and shall have paid or caused to be paid promptly when due taxes, charges, and assessments imposed upon or assessed against the Assets prior to Closing. Seller shall have exercised its best efforts to preserve intact the business organization of the Business and the goodwill of the employees, customers, suppliers, and others having business relationships with the Business through Closing.

5.8 Financial Statements. The financial statements provided during the negotiation of this Agreement present fairly in all material respects the financial condition and results of operations of the Business as of their respective dates.

5.9 No Change or Undisclosed Liabilities.

(a) Between the date of the latest of the financial statements and Closing, no material adverse change has occurred in the condition (financial or otherwise) of the Business, and the Business has incurred no debts, liabilities, or obligations except in the ordinary course of business.

(b) With the exception of the liabilities incurred in the ordinary course of the Business, the Business does not have any liabilities of any nature.

5.10 Creditors, Solvency, and Bankruptcy. Seller has no intent to hinder, defraud, or avoid any obligation to any past, present, or future creditor. Seller has not initiated and does not intend to initiate any proceeding under bankruptcy, insolvency, or similar laws.

5.11 Employee Matters. Attached hereto as Exhibit 5.11 is a true and complete list as of the date hereof, showing the names of all employees of the Seller.

5.12 Status of Assets. The Assets constitute all of the assets of the Business (except the Excluded Assets) and include all property, rights, and intangibles necessary for Buyer to operate after Closing a business identical in all material respects to the Business. All Assets are generally sound, in good repair, and in merchantable condition. Seller does not anticipate any material capital expenditures which would be required to be made in connection with the Business as now conducted.

5.13 Taxes and Tax Returns. The Seller has filed and paid through the date hereof, and shall file and pay through the Closing Date, all income, property, ad valorem, sales, payroll, and other tax returns and taxes required by law.

5.14 Copyrights, Trademarks, Etc. To the best of Seller's knowledge, the Seller owns or possesses adequate title, license, or other right to use all intellectual property necessary to conduct the Business as now conducted without interference with or infringement on the rights of others and will transfer such title, license, or other right to Buyer.

5.15 Brokerage. Seller has retained Sunbelt Business Brokers as its broker in connection with this transaction. To the best of Seller's knowledge, no brokerage commission or claim therefor shall accrue or become payable to any person or entity respecting this transaction other than that of Sunbelt Business Brokers, the payment of which shall be the sole responsibility of Seller.

5.16 Disclosures. To the best of Seller's knowledge, all information and data furnished by Seller to Buyer with respect to the Assets and the Business is materially true, correct, complete, and not materially misleading.

5.17 Representations and Warranties at Closing. Except as expressly otherwise permitted in this Agreement, the representations and warranties of Seller set forth in this Agreement shall be true at Closing as though such representations and warranties were made on such date.

6. **Representations and Warranties of Buyer.** Buyer hereby represents, warrants, and covenants to Seller as follows:

6.1 **Authorization and Approval of Agreement.** When executed and delivered by Buyer, this Agreement and all related documents will constitute valid and binding obligations of Buyer, enforceable in accordance with their terms and conditions. Neither the execution nor the delivery of this Agreement nor the consummation of the transactions, nor compliance with any of the terms and conditions, will result in the breach by Buyer of any of the terms, conditions, or provisions of any constitutive document, agreement, order, judgment, or instrument to which Buyer is a party, or by which it is bound, or constitute a default of such constitutive document, agreement, order, judgment, or instrument.

6.2 **Consents.** No consent of any third party, except as disclosed, is required in connection with Buyer's acquisition of the Assets.

6.3 **Litigation.** No judicial, arbitration, or other legal proceedings are pending or, to the best of Buyer's knowledge, threatened that question the validity of this Agreement or any transaction contemplated, which if adversely determined would have a material adverse effect upon Buyer's ability to enter into this Agreement or perform its obligations. No material judgment, decree, or order exists of any court, governmental department, commission, or instrumentality outstanding against Buyer; and Buyer is not bound by any material judgment, decree, or order of any court, governmental department, commission, or instrumentality.

6.4 **Brokerage.** Buyer has not dealt with any broker in connection with this transaction; and, to the best of Buyer's knowledge, no brokerage commission nor claim therefor shall accrue or become payable to any person or entity respecting this transaction.

6.5 **Representations and Warranties at Closing.** Except as expressly otherwise permitted in this Agreement, the representations and warranties of Buyer set forth in this Agreement shall be true at Closing as though such representations and warranties were made on such date.

7. **Conditions Precedent; Additional Rights and Obligations.**

7.1 **Buyer's Contingencies.** Buyer's obligations shall be subject, to the extent not waived, to the satisfaction of each of the following conditions at the Closing:

7.1.1 **Financial Condition.** The financial condition of the Business shall not have materially degraded from that depicted in the Seller's financial statements and upon which the consideration contained in this Agreement is based.

7.1.2 **Financing.** Buyer shall have successfully obtained a loan commitment from a reputable financial institution to provide financing for the transaction.

7.1.3 **Seller's Representations and Warranties.** The representations and warranties made by Seller shall be true and correct in all material respects at Closing.

7.1.4 **Seller's Compliance with Agreement.** Seller shall have performed and complied with all obligations under this Agreement.

7.1.5 **Title to Assets.** Seller must have and be able to convey good and marketable title to the Assets as required herein at Closing.

7.1.6 Non-Solicitation and Employment Agreement. Buyer and Knight's son, who is employed by Seller in the Business, shall have entered into a Non-Solicitation and Employment Agreement in the form of Exhibit 7.1.6 regarding his employment with Buyer in the Business after the Closing.

7.1.7 Other Assurances. Seller shall have delivered to Buyer such other and further certificates, assurances, and documents as Buyer may reasonably request in order to evidence the accuracy of the Seller's representations and warranties, the performance of covenants and agreements to be performed prior to, at, or after the Closing, and the fulfillment of the conditions precedent to Buyer's obligations.

7.1.8 Good Faith. In order for any condition precedent in this Section 7.1, the accomplishment of which is within the control of Buyer, to be effective for the benefit of Buyer, Buyer shall have exercised its good faith and reasonable best efforts.

7.2 Seller's Contingencies. Seller's obligation to sell the Assets and to close shall be subject, to the extent not waived, to the satisfaction of each of the following conditions at the Closing:

7.2.1 Buyer's Representations and Warranties. The representations and warranties made by Buyer in or pursuant to this Agreement shall be true and correct in all material respects at Closing.

7.2.2 Buyer's Compliance with Agreement. Buyer shall have performed and complied with all of its obligations under this Agreement.

7.2.3 Good Faith. In order for any condition precedent in this Section 7.2, the accomplishment of which is within the control of Seller, to be effective for the benefit of Seller, Seller shall have exercised its good faith and best efforts.

8. Pre-Closing Covenants. From and after the date hereof and until the Closing:

8.1 Confidentially. Until such time as this Agreement is consummated, Buyer shall treat any information provided by Seller as confidential and shall use its best efforts to prevent disclosure of such information to third parties.

8.2 Operation in Regular Course. The Seller shall carry on the Business substantially in the same manner as it was carried on prior to negotiations.

8.3 Preservation of Books. For a period of at least three (3) years after Closing, Buyer will safekeep books of original entry acquired hereunder and will make them available to Seller.

9. Cost and Expenses.

9.1 Transactional Costs. Seller and Buyer shall be responsible for their respective attorneys' fees, accountants' fees, and other expenses incurred by them in connection with this transaction; provided however, in the event litigation is commenced to enforce any rights under this Agreement or to pursue any other remedy available to any party, all legal expenses or other direct costs of litigation of the prevailing party shall be paid by the other party.

9.2 Documentary Stamps. Seller shall pay all transfer taxes or filing fees which become due through the execution, delivery and/or recordation of any instruments of conveyance required to be executed or delivered by Seller under this Agreement.

10. Indemnity Rights.

10.1 Indemnity Damages. The term "Indemnity Damages" shall mean all losses, damages, non-speculative lost profits, liabilities, claims, suits, demands, penalties, assessments, remedial costs, fines, obligations, causes of action, expenses, or costs (including litigation expenses and reasonable attorneys fees) to which an indemnification right applies hereunder.

10.2 General Indemnity. Seller shall indemnify and hold Buyer and its agents harmless; and Buyer shall indemnify and hold Seller and their agents harmless, from any and all Indemnity Damages against or incurred by the indemnified party because of any breach of a representation, warranty, covenant, or agreement made by the other in this Agreement or any document to be delivered at Closing.

10.3 Special Indemnities. Seller shall indemnify and hold Buyer and its agents harmless from any and all Indemnity Damages asserted against or incurred by the indemnified party:

10.3.1 Environmental. As a result of any existing environmental contamination or the remediation thereof arising from the Business.

10.3.2 Bulk Sales. Under the Uniform Commercial Code - Bulk Transfers Act or similar law of any applicable jurisdiction relating in any way to this Agreement.

10.3.3 Worker's Compensation. As a result of any South Carolina Worker's Compensation award or settlement with respect to any claim of an employee of the Seller arising from an accident or work-related injury occurring prior to Closing.

10.3.4 Litigation. As a result of any lawsuit or similar claim related to the business of the Seller and arising from events or conditions prior to the Closing Date,

10.3.5 Title. As a result of any challenge to Buyer's title to the Assets.

11. Risk of Loss. In the event the Assets or any substantial part thereof shall be damaged or destroyed prior to Closing by any casualty or event, Seller shall promptly notify Buyer that such damage has occurred and the estimated extent thereof. Within five (5) days of receipt of such notice, Buyer may terminate this Agreement by giving Seller written notice of such termination and thereupon all parties shall be released of all further liability to the others.

12. Miscellaneous.

12.1 Entire Agreement. This Agreement, including the Exhibits, embodies the entire Agreement and understanding between the parties and supersedes all prior agreements.

12.2 No Waiver. No failure to exercise and no delay in exercising any right, power, or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power, or remedy which the parties hereto may have, nor shall any such delay be construed to be a waiver of any of such rights, powers, or remedies, or an acquiescence in any breach or default

under this Agreement, nor shall any waiver of any breach or default of any party be deemed a waiver of any default or breach subsequently occurring.

12.3 Survival. All representations, warranties, covenants, and agreements contained in this Agreement shall survive the Closing.

12.4 Amendment. No provision of this Agreement or any document or instrument relating to the Agreement may be amended, modified, supplemented, changed, waived, discharged, or terminated unless the parties consent in writing.

12.5 Notices. All notices, requests, approvals, consents, demands, and other communication provided for or permitted shall be in writing, signed by an authorized representative of the sender and addressed to the respective party at the address set forth below:

Seller: Knight Systems, Inc.

P.O. Box 84822
Lexington, SC 29073

Buyer: Palmetto Mortuary Transport, Inc.

200 Bay Tree Court
Wiker, SC 29803

A party may change its respective address by notice in writing given to the other parties to this Agreement. Any notice, request, approval, consent, demand, or other communication shall be effective upon the first to occur of the following: (i) when delivered to the party to whom such communication is being given, or (ii) three business days after being duly deposited in the U.S. mail, certified, return receipt requested.

12.6 Severability of Provisions. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

12.7 Successors and Assigns. This Agreement shall be binding upon the parties and their respective successors and assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns.

12.8 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one Agreement, and any party may execute this Agreement by signing any such counterpart. The attachment of counterpart signature pages shall constitute execution by the parties.

12.9 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

12.10 Usage. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Terms such as "hereof," "hereunder," "hereto," "herein," and words of similar import shall refer to this Agreement in its entirety; and all references to "Articles," "Paragraphs," "Sections," and similar cross references shall refer to specified portions of this Agreement unless the context clearly requires otherwise.

12.11 Assignment. This Agreement is not assignable by any party without the prior written consent of the other parties.

12.12 Termination. This Agreement constitutes the binding and irrevocable agreement of the parties and may be terminated or abandoned only as follows:

12.12.1 By Buyer and Seller. This Agreement may be terminated without liability upon the mutual written consent of Buyer and Seller.

12.12.2 By Buyer. In the event that Closing has not been completed by January 15, 2006, as a result of the non-satisfaction or non-fulfillment in any material respect of any of the conditions upon Buyer's obligations (which had not been previously waived by Buyer), then Buyer shall be entitled at its option to terminate this Agreement by notice to the other party.

12.12.3 By Seller. In the event that Closing has not been completed by January 15, 2006, as a result of the non-fulfillment or non-satisfaction in any material respect of any of the conditions upon Seller's obligations (which had not been previously waived by Seller), then Seller shall be entitled to terminate this Agreement by notice to the other party.

12.13 Remedies. Upon any breach or other violation of this Agreement, the parties shall be entitled to exercise any and all rights and remedies contained herein or now or hereinafter existing and available at law, in equity, by statute, or otherwise. No right or remedy conferred upon a party is intended to be exclusive of any other right or remedy contained herein; and every such right or remedy shall be cumulative and shall be in addition to every other right or remedy contained herein or now or hereafter existing and available at law, in equity, by statute, or otherwise.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement to be legally binding and effective as of the date first written above.

WITNESSES:

Chas. C. Brown
Paul E. Brown
Chas. C. Brown
Paul E. Brown

PALMETTO MORTUARY TRANSPORT, INC.,
Buyer

Donald J. Lint
By: Donald J. Lint
Its: President

KNIGHT SYSTEMS, INC., Seller

Robert E. Smith
By: Robert E. Smith
Its: President

Exhibit 1.1.1.1

Furniture, Fixtures, & Equipment

[See attached]

Knight Systems, Inc.
Equipment List
As of 11/30/2006

All stretchers and scoop stretchers are of Ferno-Washington brand name.

Stretcher Serial# L578994
Stretcher Serial#06015638
Stretcher Serial# L521846
Stretcher Serial# 06011114
Stretcher Serial# 06009288
Stretcher Serial# 06013114
Stretcher HVY 24MAXX Serial# L791435
Scoop Serial# I39262
Scoop Serial#016597
Scoop Serial# J06431
Scoop Serial# K19882
Scoop Serial# 016641
Scoop Serial# 016627
Scoop Serial# 016689

Vehicle Serial Numbers

*Estimated
Values*

1998 GMC Savana Van VIN# 1GKFG15R7W1032325 \$7,000.00
1998 Pontiac Montana Van VIN# 1GMDX03E3WD249569 \$6,500.00
2003 Chevrolet Astro Van VIN# 1GNDM19X93B146652 \$9,000.00

Exhibit 1.1.1.3

Customer Information and Marketing Materials

1. Contract with Richland County for body removal services.
2. Contract with Lexington County for body removal services.
3. Contract with the University of South Carolina for cadaver preparation and transportation services.

Exhibit 1.1.2

Excluded Assets

1. Any and all assets used in the Related Business that are not necessary for the operation of the Business as it is currently operated.

Exhibit 2.3

Purchase Price Allocations

Furniture, Fixtures & Equipment	\$37,500.00
Non-Competition Covenant	\$1,000.00
<u>Customer Lists</u>	<u>\$551,500.00</u>
Total	\$590,000.00

Exhibit 3.2.1

Bill of Sale

[See attached]

BILL OF SALE

THIS INSTRUMENT is made and delivered by Knight Systems, Inc., a South Carolina corporation, ("Seller") this 5th day of January, 2007.

WITNESSETH

WHEREAS, on January 5, 2007, Seller and Palmetto Mortuary Transport, Inc., a South Carolina corporation, ("Buyer") entered into an Asset Purchase Agreement (the "Purchase Agreement"), pursuant to which Seller has agreed to sell and Buyer has agreed to purchase certain Assets (as that term is defined in Section 1.1.1 of the Purchase Agreement) of the Seller;

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby sell, convey, transfer, assign and deliver to Buyer all of Seller's right, title and interest in and to the Assets.

TO HAVE AND TO HOLD such right, title and interest in and to the Assets hereby conveyed, assigned and transferred or intended so to be unto Buyer, its successors and assigns, **FOREVER**.

Seller hereby constitutes and appoints Buyer and its successors and assigns as the true and lawful attorneys in fact of Seller in connection with the transactions contemplated by this instrument, with full power of substitution, in the name of and stead of Seller but on behalf of and for the benefit of Buyer and its successors and assigns, to demand and receive any and all of the Assets hereby conveyed, assigned, and transferred or intended so to be, and to give receipts and releases for and in respect of the same and any part thereof, and from time to time to institute and prosecute, in the name of the Seller or otherwise, for the benefit of Buyer or its successors and assigns, proceedings at law, in equity, or otherwise, which Buyer or its successors or assigns reasonably deem proper in order to collect or reduce to possession the Assets, and to do all acts and things in relation to the Assets which Buyer or its successors or assigns reasonably deem desirable.

Seller hereby warrants and represents that it has good and marketable title to the Assets and that the same are free from any claims, liens, and encumbrances except those that have been expressly assumed in writing by the Buyer. Seller does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said Assets unto Buyer and the Buyer's heirs and assigns, against the Seller and the Seller's heirs and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof

Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Purchase Agreement.

This instrument shall be binding upon and shall inure to the benefit of the respective successors and assigns of Seller.

IN WITNESS WHEREOF, the undersigned has executed this instrument effective as of the date first written above.

KNIGHT SYSTEMS, INC.

By: Robert L. Knight
Its: President

Exhibit 3.2.2

Assignment and Assumption

[See attached]

ASSIGNMENT AND ASSUMPTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that Knight Systems, Inc., a South Carolina corporation ("Assignor") for the consideration paid by Palmetto Mortuary Transport, Inc., a South Carolina corporation ("Assignee") set forth in that certain Asset Purchase Agreement dated as of January 5, 2007, by and between Assignor and Assignee (the "Agreement"), the receipt and sufficiency whereof is hereby acknowledged, hereby assigns to Assignee all of Assignor's right, title and interest in and to any vendor contracts, customer lists, permits, licenses, computer software, and all other intangible assets and rights composing portions of the Assets as described in the Agreement.

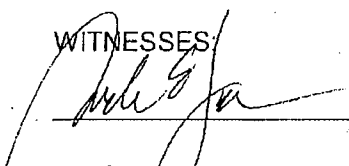
Assignee hereby covenants with Assignor to assume and faithfully perform and discharge all of the terms, covenants, liabilities and obligations set forth on Schedule 1 attached hereto (subject to the Agreement) maturing and to be performed or discharged by Assignor, if any, under the above assigned contracts beginning on the date hereof and henceforth.

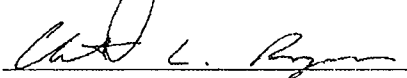
This Assignment is made, executed, and delivered pursuant to the Agreement, and is subject to all the terms, provisions and conditions thereof, including (without limitation) the mutual indemnification therein. To the extent of any conflict between the terms hereof and thereof, the terms of the Agreement shall be controlling. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Agreement unless the context clearly requires otherwise.

IN WITNESS WHEREOF, the parties have duly executed this Assignment and Assumption Agreement this 5th day of January, 2007.

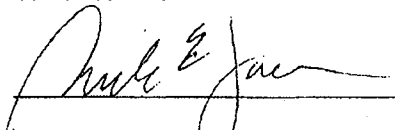
IN THE PRESENCE OF:

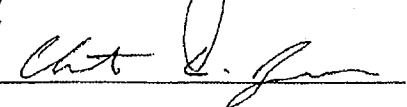
WITNESSES:



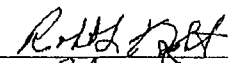


WITNESSES:

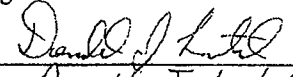




Knight Systems, Inc., Assignor


By: Robert S. Knight
Its: President

Palmetto Mortuary Transport, Inc.,
Assignee


By: Donald J. Little
Its: President

0 00392

Schedule 1

Liabilities To Be Assumed

1. Obligations under that certain contract with Richland County for body removal services.
2. Obligations under that certain contract with Lexington County for body removal services.
3. Obligations under that certain contract with the University of South Carolina for cadaver preparation and transportation services.

0 00393

Exhibit 3.2.6

Non-Competition Covenant

[See attached]

NON-COMPETITION COVENANT

THIS NON-COMPETITION COVENANT ("Agreement") is made and entered into this 5th day of January, 2007, by and between Palmetto Mortuary Transport, Inc. ("Buyer") and ~~Buddy~~ Knight ("Seller").

Robert L.

Preliminary Statement

Seller and Buyer have entered into that certain Asset Purchase Agreement dated January 5, 2007 (the "Purchase Agreement"), respecting the sale of substantially all of the assets used and connected with Seller's operation of its body removal services business in West Columbia, South Carolina (the "Assets") known as Knight Systems, Inc. (the "Business").

Seller has conducted and been involved with the Business for a substantial number of years. Thereby, Seller has made use of, acquired, and added to, or benefited from, the confidential and proprietary information and trade secrets, all of which are portions of the Assets which are being sold to Buyer pursuant to the Purchase Agreement.

Seller has also developed unique relationships with clients, customers, suppliers, and employees of the Business and unique information and knowledge about the competitive market, locations, potential customers and clients, processes, and prospects of the Business.

Buyer intends to operate the Assets acquired by it for Buyer's business similar to the past operations of the Business. The value of Buyer's acquisition would be diminished in the event that Seller were to compete with Buyer, to assist another person or business entity to compete with Buyer, or to wrongfully divulge any confidential information.

Buyer has required, as a condition precedent to its purchase of such Assets pursuant to the Purchase Agreement, that Seller covenant not to divulge any confidential information and not to compete with Buyer as set forth herein.

Seller has agreed to provide such covenants as set forth herein as a material inducement to Buyer to enter into and close the Purchase Agreement and in consideration of the payments to be made hereunder. Seller's covenants contained herein are ancillary to the Purchase Agreement.

Pursuant to the Purchase Agreement, Buyer and Seller desire to set forth the terms and conditions of their agreements and understandings respecting such covenants.

Statement of Agreement

NOW, THEREFORE, in consideration of the foregoing premises, the promises set forth herein, the consideration of \$1,000.00 specifically allocated to this Agreement in the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer, intending to be legally bound, hereby agree and covenant as follows:

1. Non-Disclosure of Information. Seller shall not, at any time after the date hereof, directly or indirectly, divulge or disclose any confidential information that has been developed or obtained by, or disclosed to, Seller at any time before or after the date hereof (exclusive of such information as is in the public domain or as is required to be disclosed pursuant to law, rule, regulation, or court order). Seller acknowledges that such confidential information is of a special and unique nature and value relating to matters of the Business, including, without limitation, the locations and lists of customers, clients, and potential customers or contacts, pricing and fee information and lists, sales and marketing materials and methods, proprietary information, trade secrets, trademarks, systems, procedures, manuals, confidential reports, records, operational expertise, the nature and type of services rendered by the Business and Seller, the equipment and methods used and preferred by the customers of the Business and Seller, and the fees or charges paid by them.

2. Covenants against Competition. For a period of ten (10) years after the date hereof:

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

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

C. Ownership. In addition to the restrictions of Section 2(A) and (B), Seller shall not, directly or through an Affiliate, own an equity interest (other than as the holder for investment purposes of the stock of any publicly traded corporation) in any entity conducting operations in the Territory which is competitive with the Business's activities prior to Closing.

D. Employees. In addition to (but not in limitation of) the restrictions of Sections 2(A), (B) and (C), Seller shall not, directly or through an Affiliate solicit or in any manner attempt to solicit or induce any person employed by Buyer to terminate such person's association or contract of employment or agency, as the case may be, with Buyer.

E. Definition of Affiliate. For purposes of this Agreement, an "Affiliate" of Seller is a Person that directly, or indirectly, controls, or is controlled by, or is under common control with Seller. For purposes of this Agreement, a "Person" includes, in addition to such person, all of the following persons: (i) any relative or spouse of such person, or any relative of such spouse, any one of whom has the same home as such person or has been employed by the Business at any time; (ii) any trust or estate in which such person or any person specified in Section 2(E)(i) above collectively own ten percent (10%) or more of the total beneficial interest, or of which any of such persons serve as trustee, executor, or in any other capacity; and (iii) any corporation, partnership, or other organization in which such person or any person specified in Section 2(E)(i) above are the beneficial owners collectively of ten percent (10%) of any class of equity securities or ownership interest.

F. Exceptions. Notwithstanding the foregoing, Seller shall not be deemed to be in violation of any covenant contained herein as a result of Seller providing services to Buyer or Seller selling body bags through his related body bag business.

G. Breach of the Purchase Agreement. Notwithstanding anything contained herein to the contrary, a breach by Buyer of the Purchase Agreement or such other documents ancillary thereto, shall constitute a breach of this Agreement and shall release Seller from any and all restrictions hereunder.

3. Remedies.

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

B. Injunctive Relief. In the event of a breach or threatened breach by Seller of Sections 1 or 2, Buyer, in addition to, any other rights, remedies, or damages available to Buyer at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction, and permanent injunction in order to prevent or restrain such breach by Seller or Seller's agents, representatives, or any and all persons acting for or with Seller. Seller agrees that in the event of any breach by him of the covenants set forth in this Agreement, Buyer shall suffer immediate and irreparable harm for which the remedy of monetary damages may be inadequate.

C. Alternatives. The Buyer shall have the option to enforce the various restrictions of Sections 1 and 2 cumulatively or, in the alternative, consecutively.

4. Reasonableness of Restrictions.

A. Acknowledgement. Seller has carefully read and considered the provisions of Sections 1, 2, and 3, and, having done so, voluntarily agrees that the restrictions set forth in those Sections, including, but not limited to, the time period of restriction, the geographical areas of restriction, and the scope of restricted activities set forth in Section 2, are fair and are reasonably required for the protection of the legitimate interests of the Buyer.

B. Enforceability. In the event that, notwithstanding the foregoing, any of the provisions of Sections 1, 2, or 3 shall be held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable portions or parts had not been included. In the event that any provisions of Sections 1 or 2 relating to the time period, the areas of restriction, the scope of restricted activities, or related aspects shall be declared by a court to exceed the maximum restrictions such court deems reasonable and enforceable, the time period, areas of restriction, the scope of restricted activities, or related aspects deemed reasonable and enforceable by the court shall become and thereafter be the maximum restriction in such regard, and the restriction shall remain enforceable to the fullest extent deemed reasonable by such court.

5. Miscellaneous.

A. Burden and Benefit. This Agreement shall be binding upon Buyer's successors and assigns and Seller's heirs, personal and legal representatives, trustees, successors and assigns, and shall inure to the benefit of Buyer's successors and assigns and Seller's heirs, personal legal representatives, trustees, successors, and permitted assigns.

B. Modifications. This Agreement can only be modified by a written agreement signed by Seller and Buyer.

C. Waiver. Any waiver by any parties of any breach or any term or condition hereof shall be effective only if in writing and such writing shall not be deemed to be a waiver of any subsequent or other breach, term, or condition of this Agreement.

D. Assignments. Neither this Agreement nor any rights hereunder may be assigned or otherwise transferred by Seller.

E. Cumulative Remedies. All rights and remedies of a party hereunder shall be cumulative and in addition to any rights and remedies available to a party at law or equity.

F. Venue and Jurisdiction. The parties hereby (i) agree that any litigation, action, or proceeding arising out of or relating to this Agreement may be instituted in a state or federal court located in Richland County, South Carolina, (ii) waive any objection which they might have now or hereafter to any such litigation, action, or proceeding based upon improper venue or inconvenient forum, and (iii) irrevocably submit to the jurisdiction of such courts in any such litigation, action or proceeding.

G. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior contemporaneous written or oral agreements and representations between the parties with respect thereto.

H. Governing Law. The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of South Carolina.

I. Severability. The invalidity or unenforceability of any provision of this Agreement shall not render invalid or unenforceable any other provision hereof.

J. Survival. All terms of this Agreement shall survive the Closing under the Purchase Agreement.

K. Usage. Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Terms such as "hereof," "hereunder," "hereto," "herein," and words of similar import shall refer to this Agreement in its entirety; and all references to "Paragraphs," "Sections," and similar cross references shall refer to specified portions of this Agreement, unless the context clearly requires otherwise.

L. Enforcement. In the event litigation or other legal proceedings are commenced to enforce any rights under this Agreement, all reasonable legal expenses (including reasonable attorney's fees) and other direct costs of litigation of the prevailing party shall be paid by the non-prevailing party. All remedies specified herein are cumulative and non-exclusive, and parties shall be entitled to seek or enforce any other rights or remedies available to them at law or in equity.

M. Notices. Any notice, request, approval, consent, demand, or other communication shall be effective upon the first to occur of the following: (i) upon receipt by the party to whom such notice, request, approval, consent, demand or other communication is being given; or (ii) three (3) business days after being duly deposited in the United States certified mail, return receipt requested, and addressed as provided in the notice provisions of the Purchase Agreement. The parties hereto may change their respective addresses by notice in writing given to the other party to this Agreement.

IN WITNESS WHEREOF, this Non-Competition Covenant is executed under seal by Seller and Buyer to be legally binding and effective as of the 5th day of January, 2007.

Buddy Knight
Buddy Knight, Seller

Robert L.
Off
RLC Palmetto Mortuary Transport, Inc., Buyer

Donald J. Lintal
By Donald Lintal, its President

Exhibit 5.11

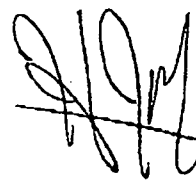
Employee List

[Seller to provide directly to Buyer]

Exhibit 7.1.6

Non-Solicitation and Employment Agreement

[See attached]



PALMETTO MORTUARY TRANSPORT, INC.

NON-SOLICITATION AND CONFIDENTIALITY AGREEMENT

THIS NON-SOLICITATION AND CONFIDENTIALITY AGREEMENT (the "Agreement") is entered into this 5th day of January, 2007, by and between Palmetto Mortuary Transport, Inc. (the "Employer") and James H. Mitchell (the "Employee").

WHEREAS, Employer has extended an offer of employment with the intent of retaining Employee to perform certain duties and render certain services;

WHEREAS, Employee acknowledges that, by virtue of the proposed position of employment with Employer, he will receive, and have access to, and use confidential information of Employer regarding, among other things, Customers (as defined below), accounts, suppliers, lists, costs, pricing materials, and financial data, all of which information is included in the term, "Trade Secrets" as defined below; and

WHEREAS, in consideration of Employer's offer of employment and the compensation to be paid thereunder, and other good and valuable consideration, Employee desires to enter into this Agreement not to disclose confidential information of Employer, nor to solicit customers of Employer.

NOW, THEREFORE, in consideration of the foregoing, these premises, and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employer and Employee agree as follows:

1. Definitions: As used in this Agreement

"Duration" means the period beginning on the date of the execution of this Agreement and ending twenty-four (24) months from the later of (i) the date of the execution of this Agreement and (ii) the date of termination of Employee's employment relationship with the Employer.

"Similar Organization" means any person or organization engaged, directly or indirectly, in the Employer's Business.

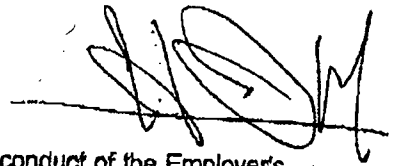
"Employer" means Palmetto Mortuary Transport, Inc., its successors and assigns, and any of its future subsidiaries or organizations controlled by, controlling, or under common control with it.

"Employer's Business" means the business of providing body removal, preparation, and transportation services.

"Employer's Trade Secrets" means the trade secrets, confidential and proprietary business information, and confidential and proprietary Customer Information of the Employer.

The Employer's Trade Secrets include, but are not limited to, the following: (1) the processes related to developing, marketing, selling, distributing, and/or the maintaining the Employer's Business to and for Customers, as defined in this section; (2) availability requirements, costs, and price information regarding the Customers; (3) sources of new Customers and the Employer's marketing plans, strategy and development tools related thereto; (4) all suppliers, sources, availability, costs, and prices relating to the Employer's Business, as defined in this

Palmetto Mortuary Transport, Inc.
Non-Solicitation and Confidentiality Agreement



section; and (5) the technical processes and techniques utilized in the conduct of the Employer's Business.

The Employer's Trade Secrets do not include (1) information that is now or subsequently becomes part of the public domain through no fault of Employee; or (2) information that subsequently comes into Employee's possession from an independent third source not under an obligation of secrecy to the Employer, which fact Employee can readily document.

"Customers" means the clients, partners, or participants in all aspects of the Employer's Business and prospective Customers solicited by the Employer and its employees, including Employee, and Customers who are attracted through the contacts, efforts and activities of the Employer, Employee, and other employees of the Employer.

2. Nondisclosure of Trade Secrets and Non-solicitation: Employee covenants and agrees as follows:

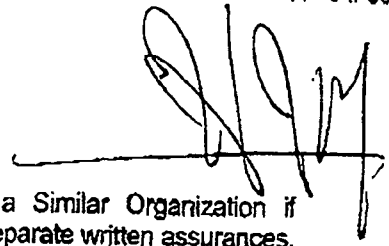
(a) Non-Disclosure of Trade Secrets: Employee agrees that he will not directly or indirectly disclose to any person, firm, or corporation, Similar Organizations, or entity any of the Employer's Trade Secrets for any purpose whatsoever. Employee acknowledges that the Employer's Trade Secrets have been acquired and maintained by the Employer at great effort and expense, constitute valuable assets to the Employer, and are maintained in secrecy by the Employer.

(b) Return of Employer's Property: Upon termination of his employment with Employer, Employee agrees that he will surrender to Employer all copies of all lists, books, documents or records, including computer records, connected with the Employer's Business or Customers, whether or not prepared by Employee, and all other property belonging to Employer.

(c) Non-Solicitation of Employees: During the Duration, Employee covenants and agrees that he will not directly or indirectly solicit for employment any of the Employer's employees.

(d) Non-Solicitation of Customers: Employee agrees that he will not, during the Duration, directly or indirectly, assist, be associated with, or support, whether as an individual on their own account, or as a partner, owner, shareholder, joint venturer, employee, agent, salesman, or official, any Similar Organization when that assistance, support or association involves Employee directly or indirectly calling upon, causing to be called upon, communicating with or assisting others in communicating with or otherwise attempting to bring about any transaction with any Customer:

- that was served by Employee at any time during his employment or consultation with Employer, or
- with whom Employee became acquainted while in the employ or consultation of Employer, or
- whose names and/or addresses were furnished to Employee by Employer, or
- with whom Employee had any contact, written or verbal, while in the employ of Employer.



However, Employee may accept employment with a Similar Organization if Employer receives, prior to Employee's accepting such employment, separate written assurances, satisfactory to Employer, from such Similar Organization and from Employee that Employee will not render services directly or indirectly to Customers and that the Employer's Trade Secrets will remain undisclosed. Employee further covenants that during the Duration they will send the Employer written notice of the name and address of their employer every six (6) months.

In the event that any of the agreements above stated are too broad in scope, space, or time to be enforceable, the parties request and agree that they may be reduced to such lesser breadth as may be necessary to make them enforceable. The covenants in this Section 2 shall be construed as an agreement independent of any other provision of this Agreement; the existence of any claim or cause of action of the Employee against Employer, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by Employer of these covenants.

(e) Other Acknowledgements: Employer and Employee acknowledge that Employer possesses, and Employee does not, the goodwill, financial resources, and the availability, source and supply of products and services in the Employer's Business, to attract and retain Customers for the Employer's Business, all of which information is part of the proprietary data, confidential information, and the Employer's Trade Secrets.

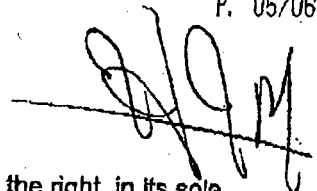
Employer and Employee acknowledge that the Employer's Business is competitive and that the essence of the Employer's Business consists of the Employer's Trade Secrets, confidential information and confidential, proprietary Customer relationships, all of which are zealously protected and kept by the Employer.

For these reasons, both Employer and Employee further acknowledge and agree that the restrictions contained herein are reasonable and necessary for the protection of their respective legitimate interests.

In the event of a breach or threatened breach by Employee of any provisions of this Section 2, Employee agrees and understands that Employer shall be entitled to an injunction restraining Employee from using, disseminating or disclosing, in whole or in part, any of such Trade Secrets or confidential information or confidential, proprietary business information and Customer relationships, or from rendering any services to any person, firm, corporation, association, or other entity to whom such information, in whole or in part, has been disclosed or is threatened to be disclosed. Nothing herein shall be construed as prohibiting Employer from pursuing any other remedies available to Employer for such breach or threatened breach of this Agreement, including the recovery of damages from Employee.

3. Terms Necessary for Employers' Reasonable Protection: Employee acknowledges that he has carefully read all of these terms, has given careful consideration to the restraints imposed upon him, and agrees to their necessity for the reasonable and proper protection of the Employer's Business. Employee admits and declares that Employer has been induced to agree to retain Employee, pay the consideration contemplated in this Agreement and the Employment Agreement, and provide Employee access to Employer's Trade Secrets, other employees, and Customers upon the representation of Employee that he will abide by each of the conditions and restrictions in this Agreement. Employee further admits and declares that he considers each and every restriction provided in this Agreement reasonable with respect to the subject matter, length of time and territory covered, and that this Agreement does not restrict Employee's ability to earn

*Palmetto Mortuary Transport, Inc.
Non-Solicitation and Confidentiality Agreement*



a livelihood. Employee acknowledges and agrees that Employer shall have the right, in its sole discretion, to reduce the scope of any covenant set out or contained in this Agreement, effective immediately upon the mailing of notice to Employee at the address noted below, and Employee agrees that Employee shall comply forthwith with this Agreement as so modified.

4. Remedies:

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

(b) Injunctive Relief. In the event of a breach or threatened breach by Employee of any of the provisions of Section 1, Employer, in addition to, and not in limitation of, any other rights, remedies, or damages available to Employer at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction, and permanent injunction in order to prevent or restrain any such breach by Employee or by Employee's agents, representatives, employers, employees, Similar Organizations, companies, consulting clients, and/or any and all persons directly or indirectly acting for or with Employee. Employee agrees that in the event of any breach by them of the covenants set forth in this Agreement, Employer shall suffer immediate and irreparable harm for which the remedy of monetary damages may be inadequate.

(c) Set Off. In the event of any breach by Employee of this Agreement, in addition to the other rights or remedies to which Employer may be entitled, Employer shall be entitled, at its option, to set off and recoup against payments becoming due pursuant to this Agreement and/or the Employment Agreement amounts to which Employer may become entitled. Employee's right to lawfully contest such set off or recoupment in any action to collect the amounts due hereunder shall not be impaired by Employer's exercise of such set off or recoupment right.

(d) Alternatives. Employer shall have the option, in its sole discretion, to enforce the various restrictions of Section 1 cumulatively or, in the alternative, consecutively.

5. Corporate Benefit: This Agreement inures to the benefit of the Employer, its subsidiaries, affiliates, successors and assigns.

6. Applicable Law: This Agreement shall be interpreted in accordance with the laws of the State of South Carolina.

7. Consent To Jurisdiction: This Agreement shall be deemed to have been entered into and performed in part in the State of South Carolina, and Employee hereby agrees that the courts in Columbia, Richland County, South Carolina, state and federal, shall have sole jurisdiction over any suit relating to or arising out of this Agreement.

8. Entire Agreement: This Agreement, which may be executed in duplicate original counterparts, all of which shall constitute one and the same agreement, embodies the entire understanding and agreement of the parties with respect to the subject matter herein, superseding all prior agreements whether written or oral.

Palmetto Mortuary Transport, Inc.
Non-Solicitation and Confidentiality Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
as of the date first written above.

PALMETTO MORTUARY TRANSPORT,
INC., EMPLOYER

Donald J. Lital
By: Donald J. Lital
Its: President

EMPLOYEE

* Hester J. Mitchell
Hester J. Mitchell
Print Name

135 Wildflower Ln
Address
W. Columbia SC 29140



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2185
Date 01/10/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O. Number

Terms

Sales Rep

Quantity	Description	Unit Price	Amount
36	LIWT 300 Bodybags	8 00	288.00
18	HDP150A Bodybags	20 00	360 00
6	OP200 Bodybags	50 00	300 00
3	WRP400 Water Retrieval Bags	30 00	90.00
	Removals made for Richland County Coroner 01/01/2007 Thru 01/05/2007		2,785.00
	Removals made for Lexington County Coroner 01/01/2007 thru 01/05/2007		2,045 00
	Bags furnished during the month of January		
7	Heavy Bags	20 00	140 00
41	Lightweight Bags	8.00	328 00
	Bags Purchased for stock on 2/1/2007		
30	Heavy Bags	20 00	600 00
50	Lightweight Bags	8 00	400 00

PAID

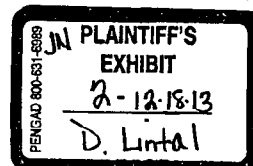
Amount Paid 0.00

Amount Due 7,336.00

TOTAL

\$7,336.00

ENTERED



P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 5

0 00408



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2185
Date 01/10/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms

Sales Rep

Quantity	Description	Unit Price	Amount
36	LIWT 300 Bodybags	8.00	288.00
18	HDP150A Bodybags	20.00	360.00
6	OP200 Bodybags	50.00	300.00
3	WRP400 Water Retrieval Bags	30.00	90.00
	Removals made for Richland County Coroner 01/01/2007 Thru 01/05/2007		2,785.00
	Removals made for Lexington County Coroner 01/01/2007 thru 01/05/2007		2,045.00

NO SALES TAX/FOR RESALE

Amount Paid 0.00

Amount Due 5,868.00

TOTAL

\$5,868.00

ENTERED

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT

0 00409



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2189
Date 04/12/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
per Don Lintal

Terms

Sales Rep

Quantity	Description	Unit Price	Amount
50	KS/LTWT 300	8 00	400 00
15	KS/HDP150	20 00	300 00
15	KS/HDP Black Heavy Duty	20 00	300 00
4	KS/OP200	50 00	200 00

NO SALES TAX/FOR RESALE!

*Items picked up on
3/2/07*

Amount Paid 0 00

Amount Due 1,200 00

TOTAL \$1,200.00

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 11

0 00410



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2190

Date 05/03/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
Per Don Lintal

Items

Sales Rep

Quantity	Description	Unit Price	Amount
50	KS/L IWT 300	8.00	400.00
15	KS/HDP Black Heavy Duty	20.00	300.00
10	KS/HDP150	20.00	200.00
1	KS/HDP 150 NO CHARGE		
3	KS/OP200	50.00	150.00
PAST DUE INVOICE#2189 .. Pd check 1162		1,200.00	1,200.00

Amount Paid 0.00

Amount Due 2,250.00

TOTAL \$2,250.00

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880 PMT 12

0 00411



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2196
Date 06/07/07

Bill To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
PER DON LINTAL

Terms

Sales Rep

Quantity	Description	Unit Price	Amount
50	KS/LTWT 300	8 00	400 00
15	KS/HDP BLACK HEAVY DUTY	20 00	300 00
15	KS/HDP150 A	20 00	300 00
4	KS/PO200	50 00	200 00
	INVOICE#2192 (AIR TRAYS)	260 00	260 00

Amount Paid 0 00

Amount Due 1,460 00

TOTAL \$1,460.00

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 14



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2198
Date 07/17/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O. Number
PER DON LINTAL

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
6	KS/OP200	taxable	50.00	300.00
15	KS/HDP Black	taxable	20.00	300.00
5	KS/HDP White	taxable	20.00	100.00
30	KS/L.TWT	taxable	8.00	240.00

PLEASE SEE ATTACHED SALES TAX STATEMENT.

Taxable Total 940.00

Amount Paid 0.00

Amount Due 996.40

Subtotal 940.00
Sales Tax @ 6% 56.40

TOTAL \$996.40

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 15



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2199

Date 08/07/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O Number
per Don Lintal

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
40	KS/LIWI 300	taxable	8 00	320 00
10	KS/HDP Black Heavy Duty	taxable	20 00	200 00
5	KS/HDP-150	taxable	20 00	100 00
1	KS/OP200	taxable	50 00	50 00

Taxable Total 670 00

Amount Paid 0 00

Amount Due 710 20

Subtotal 670 00
Sales Tax @ 6% 40.20

TOTAL \$710.20

7/17

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 16



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2202
Date 09/10/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O. Number
per Don Lintal

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
50	KS/LTWT300	taxable	8.00	400.00
10	KS/HDP150 White	taxable	20.00	200.00
5	KS/HDP150 Black	taxable	20.00	100.00
5	KS/OP200	taxable	50.00	250.00
4	Combo Air Trays	taxable	90.00	360.00

Taxable Total 1,310.00

Amount Paid 0.00

Amount Due 1,388.60

Subtotal 1,310.00
Sales Tax @ 6% 78.60

TOTAL \$1,388.60

00036

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number, 2203
Date 10/08/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description	Unit Price	Amount
60	KS/LTWI 300	8.00	480.00
5	KS/HDP150	20.00	100.00
10	KS/HDP150 Black	20.00	200.00
3	KS/OP200	50.00	150.00
1	KS/HDPXL (HEAVY DUTY POUCH LARGE 1000# CAPACITY)	100.00	100.00

Taxable Total 1,030.00

Amount Paid 0.00

Amount Due 1,091.80

Subtotal 1,030.00
Sales Tax @ 6% 61.80

TOTAL \$1,091.80

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 17



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2205

Date 11/22/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
60	KS/LTWT300	taxable	8 00	480 00
5	KS/HDP150	taxable	20 00	100 00
5	KS/HDP150 Black	taxable	20 00	100 00
2	HDPXL(Heavy Duty Large Capacity 1000#	taxable	100 00	200 00
3	Combo Shipping Trays	taxable	90 00	270 00
2	Casketed Air Trays	taxable	80 00	160 00

Taxable Total 1,310.00

Amount Paid 0 00

Amount Due 1,401.70

Subtotal 1,310 00
Sales Tax @ 7% 91.70

TOTAL \$1,401.70

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880 PMT 21



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2206
Date 12/17/07

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
60	KS/L WT300 lightweight pouches	taxable	8.00	480.00
5	KS/HDP150 Black	taxable	20.00	100.00

Taxable Total 580.00

Amount Paid 0.00

Amount Due 620.60

Subtotal 580.00
Sales Tax @ 7% 40.60

TOTAL \$620.60

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 22



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2209
Date 01/31/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
Per Don

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
50	KS/LTWT 200 Lightweight Pouch	taxable	8 00	400 00
15	KS/HDP 100 White Heavyweight Pouch	taxable	20 00	300 00
10	KS/HDP 100 Black Heavyweight Pouch	taxable	20 00	200 00
The above pouches were picked up by Shannon on 12/29/2007				
60	KS/LTWT 200 Lightweight Pouch	taxable	8.00	480 00
10	KS/HDP 100 Black Heavyweight Pouch	taxable	20 00	200.00
1	Heavyduty Oversize pouch for obese remains	taxable	100 00	100 00
6	KS/OP200 Odor-proof Pouch	taxable	50 00	300 00
2	Combo Shipping Containers	taxable	90 00	180 00

The above to be picked up 01/31/2008

Taxable Total 2,160 00

Amount Paid 0 00

Amount Due 2,311 20

Subtotal 2,160 00
Sales Tax @ 7% 151 20

TOTAL \$2,311.20

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 23



Knight Systems, Inc.

Buddy Knight - Owner

Invoice

Number 2211
Date 04/14/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2473
West Columbia SC 29170

P O Number
PER DON

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
50	March Bag Order			
	Lightweight Pouches	taxable	8 00	400 00
10	Black Heavy Duty Bags	taxable	20 00	200 00
	April Bag Order			
60	Lightweight Pouches	taxable	8 00	480 00
15	Black Heavy Duty Bags	taxable	20 00	300 00
5	White Heavy Duty Bags	taxable	20 00	100 00
4	Odor-Proof Bags	taxable	50 00	200 00

Taxable Total 1,680 00

Amount Paid 0.00

Amount Due 1,797 60

Subtotal 1,680 00
Sales Tax @ 7% 117 60

TOTAL \$1,797.60

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 24



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2212

Date 04/14/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
LC/803605

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
30	Odor Proof Disaster Pouches	taxable	85.00	2,550.00
3	Oversized Disaster Pouches	taxable	150.00	450.00
100	Lightweight Pouches 36x90	taxable	16.00	1,600.00
100	Heavyweight Disaster Pouches 36x90	taxable	46.00	4,600.00

Lexington County BY ORDER

Taxable Total 9,200.00

Amount Paid 0.00

Amount Due 9,844.00

Subtotal 9,200.00
Sales Tax @ 7% 644.00

TOTAL \$9,844.00

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880 PMT 26



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2214
Date 05/12/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PQ BOX 2423
West Columbia SC 29170

P O Number
per Don

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
30	Lightweight Pouches			
20	Black Heavy Duty Pouches	taxable	8 00	240 00
5	White Heavy Duty Pouches	taxable	20 00	400 00
2	Odor Proof Pouches	taxable	20 00	100 00
2	Casketed Air Trays	taxable	50 00	100 00
		taxable	80 00	160 00
	Discounted Loose Pouches			
32	Lightweight Pouches			
13	Black Heavy Pouches (NO HANDLES)	taxable	5 00	160 00
2	White Heavy Duty Pouches	taxable	13 00	169 00
7	Heavy Duty Pouches Black	taxable	15 00	30 00
		taxable	15 00	105 00
	UNPAID PREVIOUS BALANCE			11,641 60

Taxable Total 1,464 00

Amount Paid 0 00

Amount Due 13,208 08

Subtotal 13,105.60
Sales Tax @ 7% 102.48

TOTAL \$13,208.08

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 25

0 00422



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2217
Date 08/19/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number
Per Don

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
July Order				
60	KS/LT WT 300	taxable	8.00	480.00
10	White HDP 150	taxable	20.00	200.00
15	Black HDP 150	taxable	20.00	300.00
2	Oversized Pouches	taxable	150.00	300.00
August Order				
40	KS/L TWT Pouches	taxable	8.00	320.00
10	White HDP 150	taxable	20.00	200.00
20	Black HDP Pouches	taxable	20.00	400.00

THANK YOU!

Taxable Total 2,200.00

Amount Paid 0.00

Amount Due 2,354.00

Subtotal 2,200.00
Sales Tax @ 7% 154.00

TOTAL \$2,354.00

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880 PMT 28

0 00423



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2220

Date 12/04/08

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
60	KS/L I W I	taxable	8.00	480.00
10	KS/HeavyWeight White	taxable	20.00	200.00
25	KS/HeavyWeight Black	taxable	20.00	500.00
5	KS/OdorProof	taxable	50.00	250.00
2	Combo Shipping Trays	taxable	90.00	180.00
	The above was delivered on 10/22/2008			
80	KS/L I W I	taxable	8.00	640.00
5	KS/HeavyWeight White	taxable	20.00	100.00
	The above was delivered on 12/04/2008			

Taxable Total 2,350.00

Amount Paid 0.00

Amount Due 2,514.50

Subtotal 2,550.00
Sales Tax @ 7% 164.50

TOTAL \$2,514.50

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 29



Knight Systems, Inc.

Buddy Knight -- Owner

Invoice

Number 2222
Date 02/02/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
80	Lightweight bodybags KS/Lrwt 300	taxable	8 00	640 00
10	Black Heavy Duty	taxable	20 00	200 00
5	White Heavy Duty	taxable	20.00	100 00
6	Odor-Proof Standard	taxable	50.00	300 00
2	Odor-Proof Oversized	taxable	85 00	170 00
3	Combo Shipping Trays	taxable	90 00	270 00
2	Odor-Proof standard From Last Month	taxable	50 00	100 00

Taxable Total 1,780.00

Amount Paid 0 00

Amount Due 1,904.60

Subtotal 1,780.00
Sales Tax @ 7% 124.60

TOTAL \$1,904.60

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880 PMT 30

0 00425



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2224

Date 03/11/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P O Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
100	Lightweight Bodybags KSLT WT 300	taxable	8 00	800 00
25	Black Heavy Duty	taxable	20 00	500 00
5	White Heavy Duty	taxable	20 00	100 00
4	Standard Size Odor-Proof	taxable	50 00	200 00

THANK YOU!

Taxable Total 1,600.00

Amount Paid 0.00

Amount Due 1,712.00

Subtotal 1,600 00
Sales Tax @ 7% 112 00

TOTAL \$1,712.00

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 31



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2227

Date 04/03/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O. Number
LEX CTYP0903733

Terms
DUE UPON RECEIPT

Sales Rep
BK

Quantity	Description		Unit Price	Amount
30	KS/OP200	taxable	85.00	2,550.00
100	KS/HDP 100 Black	taxable	46.00	4,600.00
3	KS/HDP EXTRA WIDE/LONG	taxable	150.00	450.00

Taxable Total 7,600.00

Amount Paid 0.00

Amount Due 8,132.00

Subtotal 7,600.00
Sales Tax @ 7% 532.00

TOTAL \$8,132.00

00065

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

0 00427



Knight Systems, Inc.

Buddy Knight — Owner

Invoice

Number 2228

Date 05/31/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O. Number

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
120	Lightweight Bodybags	taxable	8 00	960 00
5	White Heavy Bodybags	taxable	20 00	100 00
25	Black Heavy Bodybags	taxable	20 00	500 00
4	OP Bodybags	taxable	50 00	200 00

Taxable Total 1,760 00

Amount Paid 0 00

Amount Due 1,883 20

Subtotal 1,760 00
Sales Tax @ 7% 123 20

TOTAL \$1,883.20

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 34



Knight Systems, Inc.

Buddy Knight -- Owner

Invoice

Number 2233
Date 07/13/09

Bill To
Palmetto Mortuary Transport
200 Baytree Court
Aiken SC 29803

Ship To
Palmetto Mortuary Transport
PO BOX 2423
West Columbia SC 29170

P.O. Number
per Don

Terms
DUE UPON RECEIPT

Sales Rep

Quantity	Description		Unit Price	Amount
50	KS/LTWJ300	taxable	8 00	400 00
10	KS/HDP150 White	taxable	20 00	200 00
10	KS/HDP 17B Black	taxable	20 00	200 00
8	KS/OP200	taxable	50 00	400 00
2	KS/HDP Extra Wide Long	taxable	100 00	200 00
4	KS/WRP400	taxable	30 00	120 00
2	Combo Air Trays	taxable	90 00	180 00

Taxable Total 1,700 00

Amount Paid 0.00

Amount Due 1,819 00

Subtotal 1,700 00
Sales Tax @ 7% 119 00

TOTAL \$1,819.00

P.O. Box 84822 • Lexington, South Carolina 29073 • (803) 359-1545 Fax (803) 359-0880

PMT 35

0 00429



Knight Systems, Inc.

P.O. Box 84822
Lexington, SC 29073

803-758-4103
Fax 803-359-0880
803-309-9547
e-mail @ knightsystemsinc@sc.rr.com
Website: www.knightsystemsinc.com

Invoice

Invoice No: 6
Date: 8/4/2009
Terms: Net 10
Due Date: 8/14/2009
Order No:
Territory:
Sales Person:

Bill To:

Palmetto Mortuary Transport Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 8/4/2009
Ship Via: PICK-UP
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT300	100.00	\$8.00	\$800.00
	KS/HDP150	10.00	\$20.00	\$200.00
	KS/OP200	3.00	\$50.00	\$150.00
	KS/WRP400	4.00	\$30.00	\$120.00

* Indicates non-taxable item

Subtotal	\$1,270.00
Tax (7.00%)	\$88.90
Shipping	\$0.00
Total	\$1,358.90
Deposit	\$0.00
Balance Due	\$1,358.90

**Knight Systems, Inc.**

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 11
Date: 9/23/2009
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

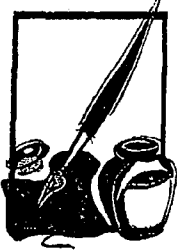
Ship Date	Ship Via	Tracking No	FOB
9/23/2009			

Code	Description	Quantity	Rate	Amount
	KS/LTWT300 Lightweight Pouch	70 00	\$8.00	\$560.00
	KS/HDP17B Black Heavy Duty Pouch	5 00	\$20 00	\$100 00
	KS/OP200 Odor proof Pouch	2 00	\$50 00	\$100 00
	Combo Shipping Air Trays	3.00	\$90 00	\$270.00

THANK YOU! PICKED UP BY SHANNON ON (9/23/09)

* Indicates non-taxable item

Subtotal	\$1,030.00
Tax (7.00%)	\$72.10
Shipping	\$0.00
Total	\$1,102.10

**Knight Systems, Inc.**

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 17
Date: 10/28/2009
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc.
200 Baytree Court
Aiken, SC 29803

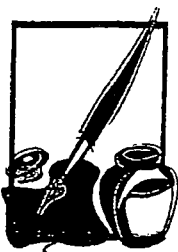
Ship To:

Ship Date	Ship Via	Tracking No	F.O.B.
10/28/2009	<shipvia>	<tracking number>	<shipping_fob>

Code	Description	Quantity	Rate	Amount
	KS/LWT300 Lightweight Body Bag	100.00	\$8.00	\$800.00
	KS/HDP17B Black Heavy Duty Body Bag	15.00	\$20.00	\$300.00
	KS/HDP150 White Heavy Duty Body Bag	5.00	\$20.00	\$100.00
	KS/OP200	4.00	\$50.00	\$200.00

* Indicates non-taxable item

Subtotal	\$1,400.00
Tax (7.00%)	\$98.00
Shipping	\$0.00
Total	\$1,498.00

**Knight Systems, Inc.**

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 21
Date: 12/9/2009
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc.
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date	Ship Via	Tracking No	FOB
12/9/2009			<shipping_fob>

Code	Description	Quantity	Rate	Amount
	KS/LTWT 300	100.00	\$8.00	\$800.00
	KS/HDP17B Black	10.00	\$20.00	\$200.00
	KS/OP200	3.00	\$50.00	\$150.00

* Indicates non-taxable item

Subtotal	\$1,150.00
Tax (7.00%)	\$80.50
Shipping	\$0.00
Total	\$1,230.50



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 30
Date: 2/1/2010
Terms: Net 05
Due Date: 2/6/2010
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 2/1/2010
Ship Via: PICK UP
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT 300 Light Weight Body Bags	90.00	\$8.00	\$720.00
	KS/HDP17B Black Heavy Weight Body Bag	15.00	\$20.00	\$300.00
	KS/OP 200 Odor-Proof Body Bag	2.00	\$50.00	\$100.00

* Indicates non-taxable item

Subtotal	\$1,120.00
Exc. Tax	\$78.40
Shipping	\$0.00
Total	\$1,198.40
Deposit	\$0.00
Balance Due	\$1,198.40

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Page 1 of 1

0 00434



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 33
Date: 3/11/2010
Terms: Net 05
Due Date: 3/16/2010
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 3/11/2010 Ship Via: <shipvia> Tracking No: <tracking number> FOB: <shipping_fob>

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT 300 Lightweight Pouch	100.00	\$8.00	\$800.00
	KS/HDP17B Black Heavyweight Pouch	25.00	\$20.00	\$500.00
	KS/HDP17B Black heavyweight Pouch Replacements	0.00	\$0.00	\$0.00*

* Indicates non-taxable item

Subtotal	\$1,300.00
Tax (7.00%)	\$91.00
Shipping	\$0.00
Total	\$1,391.00
Deposit	\$0.00
Balance Due	\$1,391.00



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 35
Date: 4/21/2010
Terms: Net 05
Due Date: 4/26/2010
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 4/21/2010
Ship Via:
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	100.00	\$8.00	\$800.00
.17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	10.00	\$20.00	\$200.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	4.00	\$50.00	\$200.00

* Indicates non-taxable item

Subtotal	\$1,200.00
Tax (7.00%)	\$84.00
Shipping	\$0.00
Total	\$1,284.00
Deposit	\$0.00
Balance Due	\$1,284.00



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightssysteminc.com

Invoice

Invoice No: 38
Date: 6/10/2010
Terms: Net 05
Due Date: 6/15/2010
Order No:
Territory:
Salesperson:

Bill To: Palmetto Mortuary Transport, Inc.
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 6/10/2010
Ship Via:
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	80.00	\$8.00	\$640.00
	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	3.00	\$50.00	\$150.00
	KS/HDP 100 White Heavy Duty Body Bag W/8 Carrying Strap Handles	5.00	\$20.00	\$100.00
	KS/WRP400 Water Retrieval Pouch	4.00	\$30.00	\$120.00
	KS/HDP17B Heavy Duty Black Body Bag	25.00	\$20.00	\$500.00

* Indicates non-taxable item

Subtotal	\$1,510.00
Tax (7.00%)	\$105.70
Shipping	\$0.00
Total	\$1,615.70
Deposit	\$0.00
Balance Due	\$1,615.70



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 42
Date: 7/21/2010
Terms: Net 05
Due Date: 7/26/2010
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 7/21/2010 Ship Via: Pick Up Tracking No: FOB: <shipping_fob>

Code	Description	Qty/Hours	Rate	Amount
	KS/LWT300	70.00	\$8.00	\$560.00
	KS/HDP17B Black	10.00	\$20.00	\$200.00
	KS/OP200 Regular	3.00	\$50.00	\$150.00
	KS/OP200 Oversize	1.00	\$85.00	\$85.00
	Thank You!			

* Indicates non-taxable item

Subtotal	\$995.00
Tax (7.00%)	\$69.65
Shipping	\$0.00
Total	\$1,064.65
Deposit	\$0.00
Balance Due	\$1,064.65



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 86
Date: 9/1/2010
Terms: Net 05
Due Date: 9/6/2010
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 9/1/2010
Ship Via: Pick Up
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
	KS/LTWT300	80.00	\$8.00	\$640.00
	KS/HDP150 White Heavy Weight	10.00	\$20.00	\$200.00
	KS/HDP17B Black Heavy Weight	15.00	\$20.00	\$300.00
	KS/OP200	6.00	\$50.00	\$300.00
	THANK YOU!			

* Indicates non-taxable item

Subtotal	\$1,440.00
Tax (7.00%)	\$100.80
Shipping	\$0.00
Total	\$1,540.80
Deposit	\$0.00
Balance Due	\$1,540.80



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 94
Date: 10/5/2010
Terms: Net 05
Due Date: 10/10/2010
Order No:
Territory:
Salesperson:

Bill To: [REDACTED] Ship To: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Ship Date: 10/5/2010 Ship Via: PICK UP Tracking No: [REDACTED] PO# [REDACTED]

Code	Description	Qty	Unit Price	Rate	Amount
	KS/LTWT 300	80.00	\$8.00		\$640.00
	KS/HDP17B	20.00	\$20.00		\$400.00
	KS/OP200	5.00	\$50.00		\$250.00
	THANK YOU!				

* Indicates non-taxable item

Subtotal	\$1,290.00
Tax (7.00%)	\$90.30
Shipping	\$0.00
Total	\$1,380.30
Deposit	\$0.00
Balance Due	\$1,380.30



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightssysteminc.com

Invoice

Invoice No: 101
Date: 11/18/2010
Terms: Net 05
Due Date: 11/23/2010
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 11/18/2010
Ship Via: Pick up
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	90 00	\$8 00	\$720.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	15 00	\$20.00	\$300.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	2.00	\$50 00	\$100.00

* Indicates non-taxable item

Subtotal	\$1,120 00
Tax (7.00%)	\$78 40
Shipping	\$0 00
Total	\$1,198 40
Deposit	\$0 00
Balance Due	\$1,198.40



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 106
Date: 12/23/2010
Terms: Net 05
Due Date: 12/28/2010
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 12/23/2010
Ship Via:
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
LTWT KS/LTWT 300	Light Weight White Body Bag Heat Sealed Around Edges	90.00	\$8.00	\$720.00
17B KS/HDP 17B	Black Heavy Duty Body Bag w/10 Handles	10.00	\$20.00	\$200.00
Without KS/HDP 150A	White Heavy Duty Body Bag W/8 Carrying Handles	5.00	\$20.00	\$100.00
View Panel				
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	4.00	\$50.00	\$200.00
	Credit Memo (Air Tray)	1.00	(\$80.00)	(\$80.00)*

* Indicates non-taxable item

Subtotal	\$1,140.00
Tax (7.00%)	\$85.40
Shipping	\$0.00
Total	\$1,225.40
Deposit	\$0.00
Balance Due	\$1,225.40



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

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Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 109
Date: 1/25/2011
Terms: Net 05
Due Date: 1/30/2011
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date:

1/25/2011

Ship Via:

Tracking No.:

FOB:

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	100.00	\$8.00	\$800.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	10.00	\$20.00	\$200.00
White Knight Systems Bag	KS/HDP 100 White Heavy Duty Body Bag W/8 Carrying Strap Handles	10.00	\$20.00	\$200.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	1.00	\$50.00	\$50.00
	Balance Forward From December	1.00	\$1,225.40	\$1,225.40*

* Indicates non-taxable item

Subtotal	\$2,475.40
Tax (7.00%)	\$87.50
Shipping	\$0.00
Total	\$2,562.90
Deposit	\$0.00
Balance Due	\$2,562.90



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 117
Date: 3/7/2011
Terms: Net 05
Due Date: 3/12/2011
Order No:
Territory:
Salesperson:

Bill To:

Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 3/7/2011
Ship Via: PICK-UP
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
LTWT KS/LTWT 300	Light Weight White Body Bag Heat Sealed Around Edges	100 00	\$8.00	\$800 00
17B KS/HDP 17B	Black Heavy Duty Body Bag w/10 Handles	15 00	\$20.00	\$300.00
Without KS/HDP 150A	White Heavy Duty Body Bag W/8 Carrying Handles	10.00	\$20.00	\$200.00
View Panel				
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	4.00	\$50 00	\$200 00

* Indicates non-taxable item

Subtotal	\$1,500 00
Tax (7.00%)	\$105 00
Shipping	\$0 00
Total	\$1,605 00
Deposit	\$0.00
Balance Due	\$1,605.00



Knight Systems, Inc.

P.O. Box 84822
Lexington, S.C. 29073

803-758-4103
Fax 803-359-0880
803-309-9547

Website: www.knightsystemsinc.com

Invoice

Invoice No: 125
Date: 4/27/2011
Terms: Net 05
Due Date: 5/2/2011
Order No:
Territory:
Salesperson:

Bill To:
Palmetto Mortuary Transport, Inc
200 Baytree Court
Aiken, SC 29803

Ship To:

Ship Date: 4/27/2011
Ship Via: PICK-UP
Tracking No:
FOB:

Code	Description	Qty/Hours	Rate	Amount
LTWT	KS/LTWT 300 Light Weight White Body Bag Heat Sealed Around Edges	110.00	\$8.00	\$880.00
17B	KS/HDP 17B Black Heavy Duty Body Bag w/10 Handles	10.00	\$20.00	\$200.00
White Knight Systems Bag	KS/HDP 100 White Heavy Duty Body Bag W/8 Carrying Strap Handles	10.00	\$20.00	\$200.00
Odor Proof	KS/OP 200 R White Odor Proof Body Bag W/Zip Lock Zipper	3.00	\$50.00	\$150.00

* Indicates non-taxable item

NOTE: STARTING APRIL 28, 2011, ALL BODYBAG
PRICES WILL INCREASE BY 10%
THE EXCEPTION IS LIGHTWEIGHTS, WHICH WILL
INCREASE BY \$1.00 EACH

Subtotal	\$1,430.00
Tax (7.00%)	\$100.10
Shipping	\$0.00
Total	\$1,530.10
Deposit	\$0.00
Balance Due	\$1,530.10



Buddy's Trim Shop
PO Box 84822
Lexington, South Carolina 29073

4752 Platt Springs Rd
758-4103
803-309-9547

FAX: 359-0880

Invoice

Invoice No: 516
Date: 6/1/2011
Terms: Net 05
Due Date: 6/6/2011
Order No:
Territory:
Salesperson:

Bill To: Palmetto Mortuary Transport, Inc.
200 Baytree Court
Aiken, South Carolina 29803

Ship To:

Ship Date: 6/1/2011
Ship Via: PICKED UP BY
Tracking No: DON LINTEL
FOB:

Code	Description	Qty/Hours	Rate	Amount
	KS/LWT 300 Lightweight Body Bags	120.00	\$8.80	\$1,056.00
	KS/HDP17B Black Heavy Duty Body Bags	10.00	\$22.00	\$220.00
Lightweight bags had a price hike of \$.80 cents instead of \$1.00 to comply with our contract agreement. Thanks				

* Indicates non-taxable item

Subtotal	\$1,276.00
Tax (7.00%)	\$89.32
Shipping	\$0.00
Total	\$1,365.32
Deposit	\$0.00
Balance Due	\$1,365.32

Page 1 of 1

REMITTANCE ADVICE FOR Invoice # 516 on 6/1/2011

Received From: Palmetto Mortuary Transport, Inc.

Balance Due: \$1,365.32

Amount Paid: \$

Please detach and send with remittance to:
Buddy's Trim Shop
PO Box 84822
Lexington, South Carolina 29073

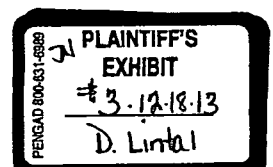
PMT 51

INVOICES FROM KNIGHT SYSTEMS, INC.

DATE	INVOICE NUMBER	INVOICE AMOUNT	BODY BAG AMOUNT
1/10/2007	2185	\$7,336.00	\$2,506.00
4/12/2007	2189	\$1,200.00	\$1,200.00
5/3/2007	2190	\$1,050.00	\$1,200.00
6/7/2007	2196	\$1,460.00	\$1,200.00
7/17/2007	2198	\$996.40	\$996.40
8/7/2007	2199	\$710.20	\$710.20
9/10/2007	2202	\$1,388.60	\$950.00
10/8/2007	2203	\$1,091.80	\$1,091.80
11/22/2007	2205	\$1,401.70	\$880.00
12/17/2007	2206	\$620.60	\$620.60
2007 Total:		\$17,255.30	\$11,355.00
1/31/2008	2209	\$2,311.20	\$1,980.00
4/14/2008	2211	\$1,797.60	\$1,797.60
4/14/2008	2212	\$9,844.00	\$9,844.00
5/12/2008	2214	\$1,566.48	\$1,304.00
8/19/2008	2217	\$2,354.00	\$2,354.00
12/4/2008	2220	\$2,514.50	\$2,170.00
2008 Total:		\$20,387.78	\$19,449.60
2/2/2009	2222	\$1,904.60	\$1,510.00
3/11/2009	2224	\$1,712.00	\$1,712.00
4/3/2009	2227	\$8,132.00	\$8,132.00
5/31/2009	2228	\$1,883.20	\$1,883.20
7/13/2009	2233	\$1,819.00	\$1,520.00
8/4/2009	6	\$1,358.90	\$1,358.90
9/23/2009	11	\$1,102.10	\$760.00
10/28/2009	17	\$1,498.00	\$1,498.00
12/9/2009	21	\$1,230.50	\$1,230.50
2009 Total:		\$20,640.30	\$19,604.60
2/1/2010	30	\$1,198.40	\$1,198.40
3/11/2010	33	\$1,391.00	\$1,391.00
4/21/2010	35	\$1,284.00	\$1,284.00
6/10/2010	38	\$1,615.70	\$1,615.70
7/21/2010	42	\$1,064.65	\$1,064.65
9/1/2010	86	\$1,540.80	\$1,540.80
10/5/2010	94	\$1,380.30	\$1,380.30
11/18/2010	101	\$1,198.40	\$1,198.40
12/23/2010	106	\$1,225.40	\$1,305.40
2010 Total:		\$11,898.65	\$11,978.65

Lexington County Invoice

Lexington County Invoice



0 00447

1/25/2011	109	\$1,337.50	\$1,337.50
3/7/2011	117	\$1,605.00	\$1,605.00
4/27/2011	125	\$1,530.10	\$1,530.10
6/1/2011	516	\$1,365.32	\$1,365.32
2011 Total:		\$5,837.92	\$5,837.92
2007-2011 Total:		\$76,019.95	\$68,225.77
2007-2011 Total: (minus LC Invoices noted above)		\$58,043.95	\$50,249.77

0 00448

INVOICE

SOUTHLAND MEDICAL CORPORATION
466 W. Meats Avenue Orange, CA 92865
(800) 959-9160 Fax (714) 456-9094

Invoice ID #103850
Sales Order ID #T07394
4/3/08

Bill to: Palmetto Mortuary Transport
1100 Pulaski St, Apt. 406
Columbia SC 29201

Ship to: Palmetto Mortuary Transport
Don Lintal
1100 Pulaski St., Apt. 406
Columbia SC 29201

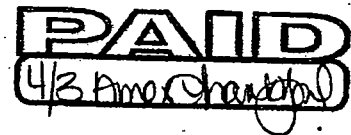
Phone: 803-359-1545

Phone: 803-359-1545

Cust. ID : Palmetto1
Terms : Net 15
Salesperson: Linda
Cust P O :

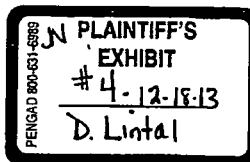
Quantity	Item No	Description	L	Unit Price	Amount
1	T1060-Burgandy	Cot Covers Lined Burgundy		95.95	95.95
1	NON70560W/Each	Body Bag Infant 8 Mil Curv		5.25	5.25
1	UL315-L/Cs	UltraOne PF Latex Gloves L		88.75	88.75
1	MF300-XL/Cs	Diamond Grip PF Latex Glov		79.00	79.00
1	Catalog	2008 SMC Catalog		0.00	0.00
1		Freight		45.83	45.83

Amount Tendered: \$314.78 American Express



THANK YOU FOR YOUR ORDER!!!
SMC IS DEDICATED TO PROVIDING ALL OF YOUR
PROTECTIVE CLOTHING AND PREP ROOM NEEDS.
NO SHORTAGE, DAMAGE OR ERROR CLAIMS
MUST BE MADE WITHIN 15 DAYS

Subtotal 314.78
Tax 0.00
TOTAL 314.78



PMT 52

0 00449

[Print Receipt](#)

Receipt

Merchant Southland Medical Corporation
466 W Meats Avenue
Orange, CA 92865
US

(714) 456-9160

Description:	Prep Supplies
Submission Date:	03-Apr-2008 11:45:49
Transaction ID:	1789673933
Transaction Status:	Captured/Pending Settlement
Authorization Code:	121246
Card Number:	XXXX1017
Payment Method:	American Express
Amount:	USD 314.78
Invoice:	103850
Customer ID:	Palmetto1

BILLING INFORMATION

SHIPPING INFORMATION

INVOICE

SOUTHLAND MEDICAL CORPORATION
466 W. Meats Avenue Orange, CA 92865
(800) 959-9160 Fax (714) 456-9094

Invoice ID #104132
Sales Order ID #T01598
4/9/08

Bill to: Palmetto Mortuary Transport
200 Bay Tree Court
Aiken SC 29803

Ship to: Palmetto Mortuary Transport
Don Lintal
1100 Pulaski St., Apt. 406
Columbia SC 29201

Phone: 803-359-1545

Phone: 803-359-1545

Cust. ID : Palmetto1
Terms : Net 15
Salesperson: Linda
Cust P O :

Quantity	Item No	Description	L	Unit Price	Amount
1	Dropshipped	From Manufacturer		0 00	0 00
1	NON70550W/Cs	Body Bag Child 8 Mil Curved Zi		187 50	187 50
1		Freight		14.12	14 12

Amount Tendered: \$201.62 American Express

THANK YOU FOR YOUR ORDER!!!
SMC IS DEDICATED TO PROVIDING ALL OF YOUR
PROTECTIVE CLOTHING AND PREP ROOM NEEDS.
ALL SHORTAGE, DAMAGE OR ERROR CLAIMS
MUST BE MADE WITHIN 15 DAYS.

PAID
4/10 Amex Thank You!

Subtotal	201.62
Tax	0.00
TOTAL	201.62

PMT 54

[Print Receipt](#)

Receipt

Merchant Southland Medical Corporation
466 W. Meats Avenue
Orange, CA 92865
US

(714) 456-9160

Description:	Body Bags
Submission Date:	10-Apr-2008 10:07:50
Transaction ID:	1797814080
Transaction Status:	Captured/Pending Settlement
Authorization Code:	181137
Card Number:	XXXX1017
Payment Method:	American Express
Amount:	USD 201 62
Invoice:	104132
Customer ID:	Palmetto1

BILLING INFORMATION

Don Lintal
Palmetto Mortuary Transport
200 Bay Tree Court
Aiken, SC 29803
USA

SHIPPING INFORMATION



Crime Scene Products
739 Brooks Mill Road
Union Hall VA 24176

Phone 800-576-7606
Fax 888-384-3368

Page	Date	Invoice
1	03/06/09	46012A

Federal ID #54-1634534

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PALMETTO MORTUARY TRANSPORT
ACCOUNTS PAYABLE
200 BAY TREE COURT
AIKEN, SC 29803

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PALMETTO MORTUARY TRANSPORT
DON LINTAL
1100 PULASKI ST APT 406
COLUMBIA, SC 29201

Customer No.	Sales I.D.	Purchase Order#		Media Code	Payment Terms			
27739	/GIL			ISC/	XXXXXXXXXX1017 AMERICAN			
Credit Card Number		Type	App. Code	Phone Number	Total Wt.	Zone	# Packages	Ship Via
			244554	(803) 359-1545	39.0		3 1	UPR

We Appreciate Your Business Call Us At 1-800-576-7606

Email Us At contact@evident.cc

View Our Product Catalog Online At www.evident.cc

Qty.	B/O	Shipped	Item #	Description	Unit Price	Disc.	Extension	Pkg.
1	0	1	7121	6 - Water Recovery Body Bags - Fluorescent Orange	270.00--		270.00	
1	0	1	NON-REFUND	ALL ITEMS ARE NON-REFUNDABLE AND NON-RETURNABLE	0.00--		0.00	
1	0	1	NLE4	NON-LAW ENFORCEMENT APPROVAL	0.00--		0.00	
1	0	1	RESIDENTIA	RESIDENTIAL DELIVERY	0.00--		0.00	

MERCHANDISE INVOICE TOTAL \$ 270.00
SHIPPING & HANDLING \$ 24.00
INVOICE TOTAL \$ 294.00
CR. CARD: AE, APPR:244554 \$ -294.00

www.EvidentCrimeScene.com

PMT 58

**MEDICALPRODUCTS LTD INC**

P.O. BOX 80685
CONYERS, GA 30013
USA

INVOICE

Invoice Number: 2906497
Invoice Date: Jul 14, 2010

Page: 1

Voice: 800-345-2922

Fax: 800-372-5649

Sales Order No. 9001509

Bill To:
PALMETTO MORTUARY TRANSPORT
200 BAY TREE COURT
AIKEN, SC 29803
USA

Ship To:
DON LINTAL
PALMETTO MORTUARY TRANSPORT
1426 HOLLYBERRY LANE
WEST COLUMBIA, SC 29169
USA

Customer ID	Customer PO	Payment Terms
PALMMORT	VERBAL	Net 30 Days
Sales Rep ID	Shipping Method	Ship Date
	GROUND	7/14/10
		Order Date
		8/13/10

Quantity	Item	Description	Unit Price	Amount
4.00	BBENV-CFX-HD60XL	54 X108 18 MIL 8 HAND HD SCRIM VNL XLG BLK	53.430	213.72
6.00	BBENV-CFX-HD60	36 X 94" 18 MIL ENV ZIP 6 HAND HD SCRIM VNL BLK ADULT SIZE	34.750	208.50

JUL 15, 2010 10:43AM
 MEDICAL PRODUCTS
 7100 WASHINGTON STREET
 COVINGTON, GA
 30014
 678-413-9200
 TERM : 9111755469
 MERCH :
 REF # : 001
 ACT # : *****1017
 CARD : AMERICAN EXPRESS
 ORDER # : 1509
 SALE : \$ 471.91
 RETR REF# : 019615205039
 APPROVAL CODE : 285615
 I AGREE TO PAY ABOVE
 TOTAL AMOUNT ACCORDING
 TO CARD ISSUER AGREEMENT
 Phone order
 SIGNATURE
 THANK YOU!
 PLEASE COME AGAIN SOON!
 CUSTOMER COPY

PLEASE REMIT TO:
P.O. BOX 80685
CONYERS GA 30013

Check/Credit Memo No:

Subtotal	422.22
Freight	49.69
Sales Tax	
Total Invoice Amount	471.91
Payment/Credit Applied	
TOTAL DUES	

www.medicalproducts.com

PMT 56

0 00454

Detail Continued

		Amount
07/22/10	STAMPS.COM SERVICE FEE 0102483035 90405	\$17.99
	DONALD LINTAL Card Ending 6-31017	
07/01/10	NORTON ANNUAL RENEWAL SOFTWARE VAB53923435 95014	\$69.99
07/09/10	USPS 451390955801026 WEST COLUMBIA 800-2758777	\$1.22
07/15/10	MEDICAL PRODUCTS CONYERS MEDICAL EQUIPMENT	\$471.91
07/19/10	ACE HRDWR OF CAYCE LCAYCE HARDWARE STORE	\$22.62

Fees

	Amount
Total Fees for this Period	\$0.00

Interest Charged

	Amount
Total Interest Charged for this Period	\$0.00

2010 Fees and Interest Totals Year-to-Date

	Amount
Total Fees in 2010	\$0.00
Total Interest in 2010	\$0.00

Includes fees and interest charged for billing periods with closing dates on or after June 25, 2010

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account

	Annual Percentage Rate	Balance Subject to Interest Rate	Interest Charge
Purchases	14.50% (v)	\$0.00	\$0.00
Cash Advances	25.24% (v)	\$0.00	\$0.00
Total			\$0.00

(v) Variable Rate

Continued on next page



**Request for Proposal
RC-025-P-1011 Body Removal Services**

Read all parts of the solicitation package thoroughly.

Follow all instructions exactly as written.

Return all paperwork requested.

Sign all documents as required.

Submit your complete package on or before the date required, before the time requested.

All submittals must be in English.

All cost and prices given must be in United States of America's currency.

** Upon receipt of this document electronically, the receiving party shall promptly issue an acknowledgement in writing on company/firm letterhead to the Director of Procurement address same as Section A, page #4, block # 6. Acknowledgements can be faxed to (803) 576-2135. The County will not be responsible for addendum's not received. Proposal will not be accepted without receipt of acknowledgement.*

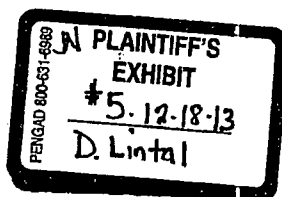
When received electronically this document shall be deemed to be signed on this page and when printed and maintained as a whole and in the normal course, shall be deemed to constitute an original document for all legal purposes, and shall not be contestable as to the validity or enforceability.

Richland County shall not be liable for any incidental or consequential damages arising from or as a result of the electronic transmission of this document, acknowledgements, or other data hereunder. In the event of receipt of an electronic document that is garbled in transmission or improperly formatted the Director of Procurement must be notified immediately for issuance of hard copy.

Failure to comply with the above could result in being declared non-responsive and may cause your Proposal to not be considered.

All Questions Must be Addressed to the Person Listed in Block 3 of Section "A" Prior to Completing and Submitting Proposal

Contracting Officer or Authorized Representative: Rodolfo A. Callwood, CPPO, CPPB	Signature: 	Date: May 2, 2011



0 00456

Table of Contents			
RC-025-P-1011 Body Removal Services			
1. Solicitation Contents:			
Sections	Form Description	# of Pages	Return with Proposal
Cover Page	Cover Page	1	No
Table of Contents	Table of Contents	1	No
Section - A	Solicitation, Offer & Award	1	Yes
Section - B	General Conditions	17	No
Section - C	Statement of Assurance, Compliance and Noncollusion	1	Yes
	Drug Free Workplace	1	Yes
	No Response Form (Return Only If Not Participating)	1	Yes
Section - D	General Information	1	No
Section - E	Special Conditions	7	No
Section - F	Requirements	3	No
Section - G	Minority Participation	1	Yes
Section - H	Advertisement	1	No
2. Acknowledgment of Amendments		Amendments #	Date
Offeror acknowledges receipt of the following amendment(s) to the solicitation (give number and date of each)			

Section - A

Solicitation Offer & Award

RICHLAND COUNTY COLUMBIA, SOUTH CAROLINA 29204 REQUEST FOR SOLICITATIONS, OFFERS AND AWARDS (supplies, equipment or services)			
*****Solicitation Information*****			
1. SOLICITATION: RC-025-P-1011		4. <u>Brief Description:</u> Body Removal Services	
2. ISSUE DATE: May 2, 2010			
3. FOR INFORMATION CALL: (803)576-2129, Procurement Agent : Christy Swofford			
E-mail: rsolicitations@rcgov.us			
5. Submit Solicitations To: Richland County Office of Procurement 2020 Hampton Street, Suite 3064 Columbia, South Carolina 29204		6A. Pre-Solicitations Conference: See "Pre-Conference" clause in Special Conditions for more information.	
6B. Submission Deadline: Day: <u>Tuesday</u> Date: <u>May 24, 2011</u> Time: <u>3:00pm</u> Eastern Standard Time			
7. Submit Sealed Solicitations: (1) <u>one</u> original and (1) electronic copy			
8. Firm Offer Period: <u>One-Hundred Twenty Days</u>			
9. This solicitation and any resulting contract consists of Section "A" through Section "H" to include all addendum's			
*****Offer (To be completed by Offeror)*****			
10. BUSINESS CLASSIFICATION	(Check Appropriate Box)	☐ Partnership ☐ Corporation ☐ Individual	☐ Sole Partnership ☐ Trading under Trade Name
11. Offer: In compliance with above, the undersigned agrees, if this Solicitation is accepted within the period specified in Block 8, above, to furnish any or all information requested.			
12. Firm's name and address (Type or print): e-mail : Telephone # Fax # Federal Identification #:		13. Name & Title of Person Authorized to sign the Solicitations. (Type or Print): 14. Qualifier's Signature & Date 15. Subscribed and sworn to me This ____ day of _____, 20____. My commission expires: _____ (Title) SEAL (Must be notarized by a Notary)	
*****AWARD (To be completed by Richland County)*****			
16. Richland County Council Approval Date:	17. Total amount of award:	18. Contract number:	
19. Contracting Officer: Rodolfo A. Callwood, CPPO, CPPB	20. Signature:	21. Award date:	

Section - B

General Conditions

1. ACCIDENTS	34. INSURANCE
2. ADVICE	35. LICENSES, PERMITS AND CERTIFICATES
3. AFFIRMATIVE ACTION	36. MATERIALS REQUIRED
4. AMBIGUOUS OFFERS	37. NON-APPROPRIATIONS
5. AMENDMENTS	38. NOTICE
6. ANTI-COMPETITIVE PRACTICE	39. OFFEROR'S PROPOSAL
7. ANTI-KICKBACK PROCEDURES	40. OFFEROR'S RESPONSIBILITY
8. ASSIGNMENT OF CONTRACT	41. OR APPROVED EQUAL' CLAUSE
9. AUDIT OF RECORDS	42. ORDER OF PRECEDENCE
10. CHANGES	43. OTHER WORK
11. COMPENSATION	44. PATENT
12. COMPLETE DOCUMENTS	45. PACKING AND DELIVERY
13. CONTRACT ADMINISTRATION	46. PRICING INFORMATION
14. COUNTY FURNISHED DATA	47. PERMITS, LAWS, AND REGULATIONS
15. COUNTY'S RIGHTS OF OWNERSHIP	48. PRIMARY CONTRACTOR, ASSIGNMENT AND SUBCONTRACTING
16. COVENANT AGAINST CONTINGENT FEES	49. PROHIBITION OF GRATUITIES
17. DEFAULT	50. PROJECT ORGANIZATION
18. DEFINITIONS	51. PROPRIETARY INFORMATION
19. DISCREPANCIES AND OMISSIONS	52. PUBLIC RELEASES
20. DISCUSSIONS	53. PROPOSAL
21. DISPUTE RESOLUTION	54. QUALITY OF PRODUCT
22. DOCUMENTATION AND PROJECT COMPLETION	55. REJECTION
23. DRUG FREE WORKPLACE	56. SECURITY - COUNTY'S RULES
24. EXAMINATION OF RECORDS	57. SPECIFICATIONS
25. EQUAL EMPLOYMENT OPPORTUNITY	58. SEVERABILITY
26. FAILURE TO SUBMIT SOLICITATION	59. SERVICE DATA MANUALS
27. FORCE MAJEURE	60. SOUTH CAROLINA LAW CLAUSE
28. GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA	61. STATEMENT OF COMPLIANCES AND ASSURANCE
29. GOVERNING LAWS/DISPUTES	62. SUBCONTRACTOR
30. GRATUITIES	63. TERMINATION
31. GUARANTEE	64. TIME OF COMPLETION
32. IMPROPER INFLUENCE	65. WAIVER
33. INDEMNIFICATION	

1. ACCIDENTS:

The Offeror shall hold the County harmless from any and all damages and claims that may arise by reasons of negligence on the part of the Offeror, his agents, or employees in the performance of this contract. In case of any action brought therefore against the County or any of its agents or employees, the Offeror shall assume full responsibility for the defense therefore, and upon his failure to do so on the proper notice, the County reserves the right to defend such motion and charge all cost thereof to the Offeror. The Offeror shall take all precautions necessary to protect the public against injury

2. ADVICE:

No official or employee of the County shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a proceeding, application, request for a ruling or other determination, contract, grant cooperative agreement, claim, controversy, or other particular matter in which these funds are used, where to his/her knowledge he/she or her/his immediate family, partners, organization, other than a public office in which he/she is serving as an officer, director, trustee, partner, or employee or any person or organization with which he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

3. AFFIRMATIVE ACTION:

The Offeror shall take affirmative action in complying with all Federal, State and County requirements concerning fair employment, employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reasons of race, color, sex, religion, national origin and/or physical handicap

4. AMBIGUOUS OFFERS:

Offers that are uncertain as to terms, delivery, compliance requirement, and/or specifications, may be rejected or otherwise disregarded.

5. AMENDMENTS:

All amendments to and interpretations of this agreement shall be in writing. Any amendments or interpretations that are not in writing shall not legally bind the County and or its agents. It is the Offeror's responsibility to acknowledge receipt of amendments either by signing and returning one (1) copy of the amendment or by letter.

6. ANTI-COMPETITIVE PRACTICE:

Offerors that developed or drafted specifications, requirements, statement of work, Request for Solicitations, or Request for Proposals from this agreement shall be prohibited from participation in this proposed procurement.

7. ANTI-KICKBACK PROCEDURES

a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, which is provided, directly or indirectly, to any prime Offeror, general Offeror employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or in connection with a subcontract relating to a contract.

"Person," as used in this clause, means a corporation, partnership, and business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the County for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"General Offeror" as used in this clause, means a person who has entered into a contract with the County.

"General Offeror employee," as used in this clause, means any officer, partner, employee, or agent of a prime Offeror.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a general Offeror or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the general Offeror, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Offeror or a higher tier Subcontractor.

b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from.

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a general Offeror to the County or in the contract price charged by a Subcontractor to a general Offeror or higher tier Subcontractor.

c) (1) The Offeror shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Offeror has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Offeror shall promptly report in writing the possible violation. Such reports shall be made to the Contracting Officer and the County Attorney.

(3) The Offeror shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

(i) offset the amount of the kickback against any monies owed by the County under the prime contract and/or

(ii) direct that the general Offeror withhold from sums owed a Subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the County unless the County has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the general Offeror shall notify the Contracting Officer and the County Attorney when the monies are withheld.

(5) The Offeror agrees to incorporate the substance of this clause, including paragraph (c)(5) but accepting paragraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

8. ASSIGNMENT OF CONTRACT:

No contract may be assigned, sublet, or transferred without a written consent of the Director of Procurement. The solicitation, specifications, scope of work, proposal and negotiated results between the County and Offeror shall constitute the entire contract.

9. AUDIT:

Offeror shall keep accurate records and books of account showing all charges, disbursements or expenses made or incurred by Offeror in the performance of the service herein. County shall have the right, upon thirty days notice, to audit at any time up to one year after payment of its final invoice, the direct costs, expenses, and disbursements made or incurred in connection with the services to be performed herein as well as for the validity of the representations made and in the compensation provisions of this Agreement, and may examine Offerors books and records relating to these several areas. County may execute a technical audit of project progress at any time during the duration of the contract. County will allow a minimum of 72 hours of notice of a pending onsite inspection of project materials. Materials to be inspected may include, but are not limited to, project progress reports, logs from mission flights concerning AGPS, IMU, and data acquisition, logs from Image processing, rectification, etc., procedure manuals, and QA/QC procedures manual.

10. CHANGES

All changes and claims for extra cost shall be in writing. The parties have right to make changes by written change order, with contract price and the time for completion being adjusted accordingly; and with the mutual acceptance by both parties

11. COMPENSATION:

COUNTY agrees to pay Offeror as compensation for Work and service provided fees in the amount agreed on, payable in installments for work confirmed as accepted and meeting the standard of quality to which agreed no later than thirty days after receipt of invoice by the County.

12. COMPLETE DOCUMENTS:

Plans, Specifications, General Conditions, Special Conditions, Requirements and all Supplementary Documents, will be essential parts of agreed on Contract and requirements occurring in one are as binding as though occurring in all.

13. CONTRACT ADMINISTRATION:

The Contracting Officer shall have the authority to act on the behalf of the County to make binding decisions with respect to this agreement. Questions or problems arising after award of this contract shall be directed to the Director of Procurement, 2020 Hampton Street, Suite 3064, Columbia, South Carolina 29204.

14. COUNTY FURNISHED DATA

All data and materials, negatives, diapositives, models, photographs, maps, plans, specifications, drawings, or other County furnished property shall remain the exclusive property of County. Offeror agrees by executing this agreement that such County property will be used for no purpose other than for work for County under this agreement. Offeror shall sign and deliver written itemized receipts for all such property and shall be responsible for its safekeeping. Upon conclusion of the work/services hereunder, all such property shall be returned to the County.

15. COUNTY'S RIGHTS OF OWNERSHIP:

Except for Offeror's proprietary software and materials, and the proprietary Operating System Software, all data, plans, drawings, images, materials, documentation (including electronic files or documents), and

applications generated and prepared by or exclusively for the County pursuant to any agreement shall belong to the County. Offeror shall not sell, give, loan nor in any other way provide such to another person or organization, nor otherwise utilize any commercially valuable data, images, or developments created specifically by or for the County under this agreement, without the written consent of the Contracting Officer. Any external requests to procure these data or materials must be forwarded to the County.

16. COVENANTS AGAINST CONTINGENT FEES:

The Offeror warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business. For breach or violation of this warranty, the County shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

17. DEFAULT

In case of default, the County reserves the right to purchase any or all items in open market, charging Offeror with any excessive costs. Should such charges be assessed, no subsequent Proposals of the defaulting Offeror shall be considered until the assessed charge has been satisfied.

18. DEFINITIONS:

- a) Richland County Government hereinafter will be referred to as "County" or "County."
- b) "Contracting Officer" shall be the person occupying the position of the Director of Procurement.
- c) "Offeror" shall be the firm submitting a proposal or solicitation for the pending acquisition.
- d) All references to days in this solicitation mean calendar days.
- e) All references to "shall", "must", and "will" are to be interpreted as mandatory language.
- f) Request for Proposals, Solicitations, and Proposal are procurement method selected for pending acquisition and will be referred to as "RFP", "RFB" or "RFP".

19. DISCREPANCIES AND OMISSIONS

In case of discrepancies in the Plans, calculated dimensions shall govern. Any omissions from the Specifications as to items of equipment and material or quantities therefore, the Plan shall govern. It shall be the responsibility of the Vendor to call to the attention of the Engineer obvious omissions of such magnitude as to affect the strength, adequacy, function, operation, completeness, or cost of any part of the work in ample time for amendment by Addendum prior to the opening date.

20. DISCUSSIONS:

Offeror shall not attempt to negotiate with the using department or other parties, and shall not discuss any aspects of the procurement without prior written approval of the Director of Procurement.

21. DISPUTE RESOLUTION

The parties agree utilize the "escalation clause" by elevating the dispute upward in the County and utilizing the requirements established by the Richland County Code of Ordinances.

22. DOCUMENTATION AND PROJECT COMPLETION:

Upon completion of the project, Offeror shall furnish, at no extra charge all closeout documentation including:

- Signed project completion notice approved, in writing, by County's Contracting Officer and Contracting Officer's Representative;
- Warranties and/or guarantees,
- Project-related training materials and/or training plan;
- Any licensing;
- Contracted or plan for tech support, when appropriate;
- All required deliverables

The County, Contracting Officer and the Contracting Officer's Representative will recognize each project as complete only upon written confirmation.

23. DRUG FREE WORKPLACE ACT:

The Offeror and the County agrees to comply with the requirements set forth in Title 44, Code of laws of South Carolina, 1976, Chapter 107, and shall apply to all procurement actions involving an award for FIFTY THOUSAND dollars, (\$50,000.00) or more. The Offeror is required to execute a statement certifying that they understand and are in full compliance with the Drug Free Workplace Act. Failure to comply with this requirement shall result in termination of this agreement.

24. EXAMINATION OF RECORDS:

The Administrator of Richland County or his duly authorized representative(s), and/or duly authorized representative from the office of the Internal Auditor shall until three (3) years after final payment under this contract, have access to and the right to papers and other records involving transactions related to this contract.

25. EQUAL EMPLOYMENT OPPORTUNITY

Offeror agrees not to discriminate against any employee or applicant on the basis of age, race, color, religion, sex, or national origin; and to take affirmative action to employ and treat employees without regard to such factors. Offeror will provide information and submit reports on employment as County requests.

26. FAILURE TO SUBMIT SOLICITATION

Recipients of this solicitation not responding with a solicitation should not return this solicitation, unless it is specified otherwise. Instead, they should advise the issuing office by letter or a postcard whether they want to receive future consideration for similar requirements. If a recipient does not submit a solicitation or fails to respond by submitting a "no solicitation" for three (3) consecutive solicitations for the same commodity, they shall be removed from the applicable Vendor list.

27. FORCE MAJEURE:

The Offeror shall not be liable for any excess costs if the failure to perform the contract arises out of cause beyond the control and without the fault or negligence of the Offeror. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. In every case the failure to perform must be beyond the control of both the Offeror and Subcontractor and without fault or negligence of neither of them. The Offeror shall not be liable for any excess costs for failure

to perform, unless supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Offeror to meet the required delivery schedule.

28. GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA:

Contractor/Vendor use of Richland County geographic information systems (GIS) data:

Prior to execution of contract, vendor must identify any and all existing Richland County's GIS data to be used in work identified within the project scope. Available data are listed on RichlandMaps.com ("Data" section). Justification of project need for GIS data must be identified on departmental form *GIS-0285 RC Contractor/Vendor GIS Data Request*. Delivery of requested GIS data will be arranged by the IT/GIS department without licensing fee to the contracted Contractor/vendor. Contractor/Vendor and any subcontractors must agree to and sign standard County GIS Data License Agreement (*GIS-0260 GIS Data License Agreement*). Per County Ordinance Section 2-261(D)(3), fee waiver requests must have written approval of County Administrator prior to execution of contract.

29. GOVERNING LAWS/DISPUTES

Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement that is not disposed of by agreement between Offeror and the County shall be decided by a court of competent jurisdiction of the County of Richland in the State of South Carolina, in accordance with the laws of South Carolina

30. GRATUITIES

County prohibits its employees from using their official position for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonable be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Offeror or its employees shall not, under circumstances which might reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of County.

31. GUARANTEE:

The Offeror shall guarantee all workmanship and materials utilized in and for this contract being furnished for a period of not less than the contract term after the final inspection and acceptance of the deliverables. When defects of faulty material is discovered during the guaranteed period, the Offeror shall, immediately, upon notification by the County, proceed at own expense, to repair or replace the same, together with any damage to all the finished deliverables that may have been damaged as a result of omission and/or workmanship.

32. IMPROPER INFLUENCE:

The Contracting officer is the person occupying the position of the Director of Procurement. He is the only authorized "Agent" of the County, and he is responsible for all contractual affairs of the contract to include service delivery. The Contracting Officer shall appoint, in writing, a technical representative to help him monitor performance. This individual shall be a county employee and hereinafter referred to as the Contracting Officer Representative (COR). The Offeror must use this chain of communications at all times on all aspects of this contractual relationship.

Soliciting of special interest groups or appointed and elected officials with the intent to influence contract awards or to overturn decisions of the Contracting Officer is hereby prohibited. Violation of this provision may result in suspension or debarment. Aggrieved Offerors are encouraged to use the County policy on any matter related to this contract.

33. INDEMNIFICATION:

Offeror shall indemnify, defend and hold harmless the County, its employees, and directors, each from and against all loss, damage, claims, and actions, and all expenses incidental to such claims or actions, including but not limited to liability as a result of injury to or death of any person, based upon or arising out of damage to property or injuries to persons or other tortuous acts caused or contributed to by the Offeror or anyone acting under its direction or control or in its behalf in the course of its performance under this agreement, and directly or indirectly caused, in whole or in part, by acts or omissions, negligence or otherwise, of Offeror or a Subcontractor or an agent of the Offeror or an employee of anyone of them, regardless of the negligence of the County or its employees, be it active or passive, except where such loss, cost, damage, claim, expense, or liability arises from the sole negligence or willful misconduct. Upon request of the County, Offeror shall, at no cost or expense to the County, defend any suit asserting a claim for any loss, damage or liability specified above, and Offeror shall pay any cost and attorneys' fees that may be incurred by the County in connection with any such claim or suit or in enforcing the indemnity granted above.

34. INSURANCE:

Offeror shall be accountable for any damages resulting from his/her activities. Offeror shall pay for all such damage. Prior to commencing work hereunder, Offeror, at their own expense, shall obtain and maintain, throughout the duration of this agreement, all such insurance as required by the State of South Carolina Statute, and minimally the below listed coverage's. Such insurance shall be issued by a company or companies authorized to do business in the State of South Carolina, Richland County, and any City in Richland County where any of the work is performed and must have a Best Rating of A-, VII or higher. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the County, but regardless of such acceptance, it shall be the responsibility of Offeror to maintain adequate insurance coverage at all times. Failure of Offeror to maintain insurance coverage shall not relieve Offeror of their contractual obligation or responsibility hereunder. The information described herein sets forth minimum coverages and limits and is not to be construed in anyway as a limitation of liability on Offeror.

Offeror shall obtain and maintain such Public Liability and Property Damage Insurance as shall protect Offeror, their Subcontractors, and the County from claims for damages for personal injury, including accidental death, as well as for claims for property damage which might arise from operations under this agreement, whether such operations be by Offeror, or its Subcontractors, or by any one directly or indirectly employed by them. The County shall be named as a **Certificate Holder** and as **Additional Insured** (e.g., trustees, officers, employees), against whom Offeror waives all rights of subrogation.

The Offeror must "flow-down" these provisions to its Subcontractors or insure its Subcontractors under its own policies. The Offeror shall furnish County with certified copies of certificates of insurance. County shall have the right to approve the carriers.

The Offeror's contractual liability insurance need not cover bodily injury or property damage resulting from the sole negligence of the County.

Workers Compensation Insurance including Statutory Workers' Compensation Amounts as then required under South Carolina law for Benefits, and Employer's Liability. The Policy shall include an "all states" endorsement.

Comprehensive Automobile Liability Insurance to protect Offeror against claims for damages from:

*Bodily injury, including wrongful death; and

*Property damage, which may arise from the operations of any owned, hired, or non-owned automobiles used by or for him/her in any capacity in connection with fulfillment of obligations under this contract. Minimum acceptable limits shall be: Bodily Injury \$1,000,000 per person and \$2,000,000 per occurrence; and Property Damage of at least \$3,000,000 Combined Single Limit.

Coverage shall include: Premises and Operations, Products and Completed Operations Broad Form Property Damage Endorsement, Blanket Contract Liability and Protective Liability protecting Contractor against claims arising out of operations by its subcontractors. Property damage deductibles shall not exceed \$500 for any one claim.

-The County's Protective Liability insurance which shall protect the County against any and all claims and liabilities for injury or death of persons, or damage to property caused in whole or in part by the negligent acts of CONTRACTOR, his agents, employees, or subcontractors, in connection with or resulting from the operations performed under the terms of this agreement.

The Certificate holder shall be *Richland County Government, South Carolina, Attn: Procurement and Contracting, Suite 3064, Columbia, South Carolina 29204*. The Certificate should state:

(1) Richland County, South Carolina is named as additional insured with the respects to liability arising out of any work performed by or on behalf of the Offeror; and

(2) "This insurance is primary to other insurance or self-insurance, whether such other coverage is stated as primary, excess, contingent or otherwise." Insurance shall provide that it may not be canceled or changed without thirty - (30) calendar days' written notice to County.

30 days cancellation, non-renewal, material change or coverage reduction notice is required. The words "endeavor to" and "and", but failure to mail such notice shall impose no obligation or liability or any kind upon the company its agents or representatives" should

be eliminated from the Notice of Cancellation provision on standard ACORD certificates

The Certificate should state, "The insurance evidenced hereon applies to work performed by or on behalf of **Name of the Vendor or Contractor**. ("the Offeror") for Richland County South Carolina.

35. LICENSES, PERMITS AND CERTIFICATES

The Offeror at their own expense shall secure all licenses, permits, variances and certificates required for and in connection with any and all parts of the work to be performed under the provisions of this agreement.

36. MATERIALS REQUIRED:

Materials required must be in conformity with the specifications and shall be subject to inspection and approval after delivery, and shall comply in quality and type of material and method of manufacturer with all applicable local and state laws pertaining hereto. The right is reserved to reject and return at the risk and expense of the Contractor such portion of any shipment, which may be defective or fail to comply with specifications, and without validating the remainder of the order.

37. NON-APPROPRIATIONS

Any contract entered into by the County shall be subject to cancellation without damages or further obligations when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

38. NOTICES

Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand and signed for or sent by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to any other person at any other address as may be designated in writing by the parties:

- notice may be by means other than those listed, other than oral;

- parties must acknowledge the receipt of any notice delivered in person;
- Date of notice shall be the date of delivery or date signed for on certified registered mail by the U.S. mail; and
- either party may change its address by written notice within ten calendar days to the other.

County:

*Richland County Coroner's Office
1931 Pineview Drive
Columbia, SC 29209
Attn: Cathy Rawls*

With a carbon copy to:

*Richland County Office of Procurement
Attn: Rodolfo A. Callwood, Director
2020 Hampton Street, Suite 3064
Columbia, SC 29204*

39. OFFEROR'S PROPOSAL:

Offeror must be regularly established in the business called for, and who by executing this agreement certifies that they are financially capable and responsible; is reliable and has the ability and experience, to include, the facility and personnel directly employed or supervised by them to complete this contract. Offeror certifies that they are able to render prompt and satisfactory service in the volume called for under this contract.

County may make such investigation, as he deems necessary to determine the ability of the Offeror to perform the work. The Offeror shall furnish to the County all such information and data as the County may request, including, if requested, a detailed list of the equipment which the Offeror proposes to use, and a detailed description of the method and program of the work he proposes to follow. The County reserves the right to terminate, if anytime throughout the term of this agreement the evidence submitted by, or investigation of, the Offeror fails to meet all requirements as stipulated or satisfy the County that the Offeror is properly qualified to carry out the obligations of the contract and to complete the work.

40. OFFEROR'S RESPONSIBILITY

The Offeror certifies that he/she has fully acquaint himself/herself with conditions relating to the scope, and restrictions attending the execution of the work under the conditions of this agreement. The failure or omission of a Offeror to acquaint himself/herself with existing conditions shall in no way relieve the Offeror of any obligation with respect to this contract.

41. OR APPROVED EQUAL" CLAUSE:

Certain processes, type of equipment or kinds of material are described in the specifications and/or on the drawings by means of trade names and catalog numbers. In each instance where this occurs, it is understood and inferred that such description is followed by the word "or approved equal." Such method of description is intended merely as a means of establishing a standard of comparability. However, the Owner reserves the right to select the items, which, in the judgment of the Owner, are best suited to the needs of the Owner based on price, quality, service, availability and other relative factors. Vendors must indicate brand names, model, model numbers, size, type, weight, color, etc., of the item solicitation. If not exactly the same as the item specified, vendor's stock number or catalog number is not sufficient to meet this requirement. If any Vendor desires to furnish an item different from the specifications, he/she shall submit, along with the solicitation, information, data, pictures, designs, cuts, etc., of the material he/she plans to furnish so as to enable the

Owner to compare the material specified; and, such material shall be given due consideration. The Owner reserves the right to insist upon and receive items as specified, if the submitted items do not meet the Owner's standards for acceptance.

42. ORDER OF PRECEDENCE

In the event of inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: **(a) SPECIAL SOLICITATION CONDITIONS, (b) SPECIFICATIONS, GENERAL SOLICITATION CONDITIONS AND (d) SOLICITATION SCHEDULE**

43. OTHER WORK

The County shall have the right to perform or have performed similar or such other work, as it may desire while Offeror is performing work. The Offeror shall perform its work in a manner that enables completion of other work without hindrance or interference (or shall properly connect and coordinate its work with that of others when required). Any claim of interference due to other work must be made to County within ten (10) calendar days of its occurrence or it is deemed waived.

44. PATENT:

The Offeror shall hold the County, its officers, employees, and agents, harmless from liability of any nature or kind whatsoever, on account of use by the publisher or authorized agent or manufacturer, and any copyrighted/un-copyrighted composition, secret process, article or application furnished or used under this solicitation.

45. PACKAGING AND DELIVERY:

All shipments shall be FOB to the County's location, as cited on the purchase order(s) and/or contract(s). Purchase order and/or contract number shall be clearly displayed on the shipping container. Furthermore, the parties agree hereto, that delivery by the Offeror to the common carrier does not constitute delivery to the County. Any claims for loss or damage, shall be between the Offeror and the carriers.

46. PAYMENT

Offeror will invoice County each month for services rendered during previous month. Under provisions of the Prompt Payment Act payment terms are "Net 30 days" the County will make every attempt to satisfy the payment request within thirty- (30) calendar days as of receipt of invoice by the Contracting Officer for work confirmed as accepted and meeting the standard of quality to which agreed. The County may pay interest to Offeror at a rate equal to 0.001% on sums, which the County fails to remit to the Offeror any undisputed portions within thirty - (30) days from date of Contracting Officer receipt of a valid and correct invoice on any unpaid amount for each month or fraction thereof, that such payment is delinquent due no fault of Offeror. Invoices shall be submitted periodically for the amount of work carried out and approved as accepted in that period. Invoices submitted for payment for services provided under this contract, shall contain as a minimum:

- Name of business concern;
- Contract number;
- Project number;
- Complete description of services;
- Cost/price of services actually delivered;
- Name; title; telephone number and complete mailing address of responsible official to whom payment is to be sent.

- shall be sent to the COR for the project at least four weeks prior to desired payment date.
- with the submission of any application for payment, Offeror must submit a schedule of values for the various parts of the work accomplished.
- Each month (or at such regular intervals as the parties may decide), County shall pay Offeror 90 percent of the value of the work
- Balance shall be paid upon completion of all work and County's final acceptance of all work.
- Option: After filing a Notice of Completion, County shall pay Offeror a sum sufficient to increase the total payments to 90 percent of the contract price (Completion Payment). No later than sixty days after filing of the Notice of Completion and upon receipt of a full and complete release of all liens or lien bonds, County shall pay the unpaid balance to Offeror (Final Payment).
- Payment does not constitute acceptance of defective or nonconforming work or work with errors or omissions or otherwise relieve Offeror of any obligation under the contract.
- The County may dispute the value and quality of the work in question
- The County shall have the right to withhold payments from the Offeror due to actual or prospective loss due to defective or nonconforming work;
- damage or cost for which Offeror is liable;
- amounts representing Offeror's inability to complete the work or breach of any terms or conditions of the contract,

Invoices submitted periodically for the amount of work carried out and approved as accepted in that period shall be sent to:

*Richland County Coroner's Office
1931 Pineview Drive
Columbia, SC 29209
Attn: Cathy Rawls*

47. PERMITS, LAWS, AND REGULATIONS

The Offeror will comply with "all applicable laws and regulations" and agrees to at a minimum comply with:

- The Fair Labor Standards Act;
- Statutes regarding Proposal to do business;
- Statutes prohibiting employment discrimination;
- OSHA (e.g., all materials and services furnished meet or exceed OSHA safety standards);
- EPA regulations;
- Governmental price regulations/orders (as required by law, Offeror will deliver proof that materials sold or installed and services rendered comply with price regulations) if a federal grant project.

The Offeror shall obtain all permits or licenses required in connection with the work,

give all notices, pay all fees, etc., to ensure compliance with law (unless County elects to procure and pay for same), and shall deliver all proof of compliance to County upon the County's final acceptance of the work.

- Offeror shall report to County any aspect of noncompliance of specifications, drawings, and other contract documents with the law.
- If Offeror cannot procure necessary permits, County may cancel the contract without liability or may procure the permits and deduct the cost thereof from the contract price (only at the discretion of the Director of Procurement/Contracting Officer).

48. PRIME CONTRACTOR, ASSIGNMENT AND SUBCONTRACTING

The Offeror shall be the "Prime Contractor", and the agreement shall be the primary agreement. All other agreements between the County and Offeror shall be subordinate to the primary agreement in the event of conflict between the primary agreement and any other agreements unless, otherwise specifically stated herein, or by mutually executed Amendment hereto. The County shall consider the Offeror to be sole point of contact with regard to all contractual matters of this project.

Offeror hereto without the express written consent of the Contracting Officer shall not assign obligation under this agreement to another party.

If any part of the work covered by the agreement is to be subcontracted, the Offeror shall submit the Proposal of the subcontracting organization and the proposed contractual arrangements to the County for approval prior to execution of the contract. The approved Offeror-Subcontractor contractual agreement, excluding financial information, shall be provided to the County. Approval by the County of such subcontract shall not in any way relieve Offeror of any of their obligations, responsibilities, or liabilities, under this agreement, regardless of the nature and conditions of such Subcontractor services and actions on Offeror's behalf.

49. PROHIBITION OF GRATUITIES:

Amended Section 8-13-720 of the 1976 Code of Laws of South Carolina states:

"WHOEVER gives or offers to any public official or public employee any compensation including a promise of future employment to influence his action, vote, opinion or judgment as a public official or public employee or such public official solicits or accepts such compensation to influence his action, vote, opinion, or judgment shall be subject to the punishment as provided by Section 16-9-210 and Section 16-9-220. The provisions of this section shall not apply to political contributions unless such contributions are conditioned upon the performance of specific actions of the person accepting such contribution nor shall they prohibit a parent, grandparent or relative from making a gift to a child, grandchild or other close relative for love and affection except as hereinafter provided."

50. PROJECT ORGANIZATION

It is expected that Offeror will be dealing with various members of the County's Staff during the course of this agreement. To establish a clear line of communications, a Contracting Officer Representative (COR), acting as Project Manager, shall be appointed to oversee and coordinate all aspects of the work. He/she shall be the focal point of contact with the Offeror.

51. PROPRIETARY INFORMATION:

Offeror(s) shall visibly mark as "Confidential" each part of their proposals which they consider proprietary information that could be exempt from disclosure under Section 30-4-40, Code of Laws of South Carolina, 1976 (1986 Cum. Supp.) (Freedom of Information Act). If any part is designated as "Confidential," there must be attached to that part an explanation of how the information fits within one or more categories listed in Section 30-4-40. The County reserves the right to determine whether this may be brought against the County or its agent for its determination in this regard.

52. PUBLICITY RELEASES:

Offeror agrees not to refer to award of this contract in commercial advertising in such manner as to state to imply that the products or services provided are endorsed or preferred by the County.

53. PROPOSAL:

- a) Solicitations shall be considered only from Offerors who are regularly established in the business called for, and who in the judgment of the Owner are financially responsible and able to show evidence of their reliability, ability, experience, facilities and personnel directly employed or supervised by them, to render prompt and satisfactory service in the volume called for under this contract.
- b) The Owner may make such investigations as he deems necessary to determine the ability of the Offeror to perform the work, and the Offeror shall furnish to the Owner all such information and data for his purpose as the Owner may request, including, if requested, a detailed list of the equipment which the Offeror proposes to use, and a detailed description of the method and program of the work he proposes to follow. The Owner reserves the right to reject any solicitation if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Owner that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional solicitations will not be accepted.

54. QUALITY OF PRODUCT:

Unless otherwise indicated in this solicitation, it is understood and agreed that any item offered or shipped shall be new and in first class condition, that all containers shall be new and suitable for storage and/or shipment, and that process include standard commercial packaging. For "information technology" procurements, if items are other than new (i.e. remanufactured or refurbished) are being proposed, the Offeror must obtain written permission to offer such items at least five (5) days in advance of RFB receipt date from the Director of Procurement.

55. REJECTION

- (a) Any Submittal that fails to conform to the essential requirements of the Request for Proposal (RFP) shall be rejected.
- (b) Any Submittal that does not conform to the applicable *requirements and specifications* shall be rejected unless the RFP authorized the submission of alternate Submittals and the Submittal offered as alternates meet the requirements specified in the invitation.
- (c) Any Submittal that fails to conform to the delivery schedule or permissible alternates stated in the RFP shall be rejected.
- (d) A Submittal shall be rejected when the Vendor imposes conditions that would modify requirements of the invitation or limit the Vendor's liability to the County, since to allow the Vendor to impose such conditions would be prejudicial to other Vendor's. For example, Submittals shall be rejected in which the Vendor-
 - (1) Protects against future changes in conditions, such as increased costs, if total possible costs to the County cannot be determined;
 - (2) Fails to state a price and indicates that price shall be "price in effect at time of delivery;"
 States a price but qualifies it as being subject to "price in effect at time of delivery;"
 Requires that the County is to determine that the Vendor's product meets applicable County requirements and specifications; or
 Limits rights of the County under any contract clause.

A Vendor may be requested to delete objectionable conditions from a Submittal provided the conditions do not go to the substance, as distinguished from the form of the Submittal, or work an injustice on other Vendor's. A condition goes to the substance of a Submittal where it affects price, quantity, quality, or delivery of the items offered.

Any Submittal may be rejected if the Contracting Officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the Submittal, but the prices for individual line items as well.

Any Submittal may be rejected if the prices for any line items or sub-line items are materially unbalanced.

Submittals received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the Submittal opening date shall be rejected unless a compelling reason determination is made.

The Contracting Officer must reject Submittals received from concerns determined to be non-responsible.

When a Submittal guarantee is required and a Vendor fails to furnish the guarantee in accordance with the requirements of the Submittals, the Submittal shall be rejected.

The originals of all rejected Submittals, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

After submitting a Submittal, if all of a Vendor's assets or that part related to the Submittal are transferred during the period between the Submittal opening and the award, the transferee may not be able to take over the Submittal. Accordingly, the Contracting Officer shall reject the Submittal unless merger, operation of law effects the transfer or other means not barred by law.

56. SECURITY - COUNTY'S RULES:

In consideration of the security responsibility of the County, the Contracting Officer or designee reserves the right to observe Contractor's/vendor's operations and inspect the related areas. Moreover, Contractor/Vendor agrees to asolicitation by any and all of the County's rules and regulations, procedures and General Orders, as well as any directives by the County Administrator, Contracting Officer or designee regarding Offerors performance when operating on or in County's property under the terms and conditions of this agreement. Contractor/Vendor agrees to provide the names of employees assigned to work in and on the County's property and that the County may make criminal background record checks, and County may require Contractor/Vendor to provide criminal background record checks. Contractor/Vendor is also required to provide a certified medical certificate stating that each proposed employee is free from communicable diseases. The Contracting Officer or designee reserves the right to require all of Contractor's/Vendor's employees, Contractors/Vendors, and sub-contractors accessing County property to have the company's identification with photograph, name, and position of the employee at the Contractor's/Vendor's sole expense. The Contractor/Vendor must issue photo identification cards if requested by County and require it to be worn by it's employees whenever they are present on or in the County's property. Persons not previously screened for admittance shall not be admitted on or in the County's property without proper notification and authorization from the Contracting Officer or designee.

The County reserves the right, upon showing probable cause to search the employees of the Contractor/Vendor while in or on County's property.

Contractor/Vendor is responsible for identifying fire escape routes in County facilities.

Contractor's/Vendor's employees shall comply with the County's written policies and procedures relating to County's security. Contractor's/Vendor's employees shall also comply with all of the County's rules concerning the use of the working areas.

Contractor's/Vendor's representative shall report any unusual occurrences immediately to the Contracting Officer or designee. It shall be the responsibility of Contractor/Vendor to secure any assigned areas before exiting the County's facilities, unless notified in writing by the Contracting Officer or designee to do otherwise.

57. SPECIFICATIONS:

Any deviation from the specifications indicated herein must be clearly pointed out, otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful Vendor shall be held responsible therefore. Deviations must be explained in detail on separate sheets and be attached to the submitted solicitation.

58. SEVERABILITY:

If any term of provision of any contract resulting from this solicitation shall be found to be illegal or enforceable, notwithstanding any such legality or enforceability, the remainder of said contract shall remain in full force and effect, and such term or provision shall be deemed to be deleted and severable there from.

59. STATEMENT OF COMPLIANCES AND ASSURANCES:

Offeror(s) to be eligible for consideration shall be required to certify in writing, that the firm or agency represented in the proposal submitted, complies with all applicable federal and state laws/regulations and County ordinances.

a. Offeror(s), shall be required to provide with each proposal, a written assurance of noncollusion and understanding and acceptance of any and all provisions stated in this contract.

b. A statement of Compliance and Assurance, along with other statements and certification shall be provided to Offerors and be part of each solicitation.

60. SERVICE DATA MANUALS:

The contractor agrees to furnish two (2) copies of a manual, handbook, or brochure containing operating and maintenance instructions (to include pictures, illustrations, and schematics and complete repair/test guides as necessary). When applicable, it shall include electrical data and connection diagrams for all utilities. The instruments shall also contain a complete list of all replaceable parts, showing part numbers, nomenclature and quantity required.

61. SOUTH CAROLINA LAW CLAUSE:

The Offeror must comply with the laws of South Carolina, which require such person or entity to be authorized and/or licensed to do business in this state. Notwithstanding the fact, that applicable statutes may be authorized and/or licensed to do business in this state, by signing this agreement, the Offeror agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina, as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability of taxes, licenses or fees levied by the State/County.

62. SUBCONTRACTS:

Offeror shall not subcontract work hereunder without the prior written consent of the County, and any such subcontract without consent of the County shall be null and void. If Offeror proposes to subcontract any of the work hereunder, it shall submit to the County the name of each proposed Subcontractor(s), with the proposed scope of work, which its Subcontractor is to undertake. The County shall have the right to reject any Subcontractor, which it considers unable or unsuitable to satisfactorily perform. Offeror shall not enter into any cost reimbursable contracts with any proposed Subcontractor without County's prior written authorization.

Notwithstanding any consent by the County to a proposed subcontract, Offeror shall remain responsible for all subcontracted work and services. Offeror agrees it shall be as fully responsible to the County for the acts and omission of its Subcontractors, their agents, representatives, and persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Offeror.

Neither this provision, this contract, the County's authorization of Offeror's agreement with Subcontractor, County's inspection of a Subcontractor's facilities, equipment or work, or any other action taken by the County

in relation to a Subcontractor shall create any contractual relationship between any Subcontractor and the County. Offeror shall include in each of its subcontracts a provision embodying the substance of this article and shall exhibit a copy thereof to the County before commencement of any work by a Subcontractor. Offeror's violation of this provision shall be grounds for the County's termination of this contract for default, without notice or opportunity for cure.

In addition, Offeror indemnifies and holds the County harmless from and against any claims (threatened, alleged, or actual) made by any Subcontractor (of any tier) for compensation, damages, or otherwise, including any cost incurred by the County to investigate, defend, or settle any such claim.

63. TERMINATION:

County shall have the right to terminate this Agreement in whole or in part for its convenience at any time during the course of performance by giving thirty- (30) days written or telegraphic notice. Upon receipt of any termination notice, Offeror shall immediately discontinue services on the date and to the extent specified in the notice. Offeror shall be paid the actual written approved costs incurred during the performance hereunder to the time specified in said notice, not previously reimbursed by County to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Offeror prior to and in connection with discontinuing the work hereunder. In no event shall such costs include unabsorbed overhead or anticipatory profit, nor shall such costs exceed the total price of any individual supplement or Project Release.

County may also cancel or terminate for default this Agreement in whole or in part by thirty (30) days written, electronic or telegraphic notice to Offeror.

if Offeror shall become insolvent or make a general assignment for the benefit of creditors; or

if a petition under the Bankruptcy Act is filed by Offeror; or

If Offeror becomes involved in some legal proceedings that in the opinion of County interfere with the diligent, efficient performance and satisfactory completion of the services; or

if Offeror fails to make delivery of the supplies or to perform the services within the time specified or any County-authorized extension thereof.

64. TIME OF COMPLETION:

Date of delivery shall be a consideration factor in the awarding process. The Vendor shall include with this solicitation delivery dates for each item as requested, and shall furnish all items in accordance with the solicitation solicitation unless an extension was granted by the Director of Procurement, in writing.

65. WAIVER:

The County reserves the right to waive any provisions of the General or Special Conditions, or specification deviations.

Section - C

Statement of Assurance, Compliance & Noncollusion

Drug Free Workplace

No Response Form

0 00478

Body Removal Services
RC-025-P-1011
Richland County, South Carolina
Statement of Assurance, Compliance and Noncollusion

State of _____)

County of _____)

_____ being first duly sworn, deposes and says that:

- (1) The undersigned, as Offeror, certifies that every provision of this Proposal have been read and understood.
- (2) The Offeror hereby provides assurance that the firm represented in this Proposal:
 - (a) Shall comply with all requirements, stipulations, terms and conditions as stated in the Proposal/Proposal document; and
 - (b) Currently complies with all Federal, State, and local laws and regulations regarding employment practices, equal opportunities, industry and safety standards, performance and any other requirements as may be relevant to the requirements of this solicitation; did not participate in the development or drafting specifications, requirements, statement of work, etc. relating to this solicitation; and
 - (c) Is not guilty of collusion with other Offerors possibly interested in this Proposal in arriving at or determining prices and conditions to be submitted; and
 - (d) No person associated with Offeror's firm is an employee of Richland County. Should Offeror, or Offeror's firm have any currently existing agreements with the County, Offeror must affirm that said contractual arrangements do not constitute a conflict of interest in this solicitation; and
 - (e) That such agent as indicated below, is officially authorized to represent the firm in whose name the Proposal is submitted.

Name of Firm:

Name of Agent:

Signature & Title:

Address:

City, State & Zip:

Telephone:

Subscribed and sworn to me this _____ day of _____, 20____.

(Title) My commission expires:

NOTARY SEAL:

0 00479

Body Removal Services
RC-025-P-1011
Drug Free Workplace Act Statement

The undersigned hereby certifies that he/she understands and is in full compliance with the requirements set forth in Title 44, Code of Laws of South Carolina, 1976, Chapter 107, Paragraph 47, as set forth in item 41 of the general conditions of this solicitation.

Name of Company: _____

Agent of Company: _____

Signature of Agent: _____

Date: _____

Subscribed and sworn to me this _____ day of _____, 20____.

(Title) My commission expires:

NOTARY SEAL:

0 00480

Body Removal Services
RC-025-P-1011
No Proposal Response

If a "No Proposal" is to be submitted, please check the appropriate box(es) below and return this form, prior to the Proposal due date, to:

Richland County Office of Procurement
2020 Hampton St, Suite 3064
Columbia, SC 29204

Cannot respond to this solicitation due to the following reason:

- ☐ Do not sell or provide the requested goods or services
 - ☐ Cannot comply with specifications/statement of work
 - ☐ Specifications/statement of work is unclear
 - ☐ Cannot meet delivery or period of performance
 - ☐ Delivery/period of performance is unreasonable
 - ☐ Cannot meet the bond requirements
 - ☐ Not enough time to prepare Proposal
 - ☐ Plan to subcontract
 - ☐ Job is too large
 - ☐ Job is too small
 - ☐ Other(please specify) _____
- _____
- _____

Company: _____

Phone/Fax: _____

Company Rep.: _____

Signature: _____

0 00481

Section - D

General Information

0 00482

**General Information
Body Removal Services
RC-025-P-1011**

Purpose of the Request for Proposal (RFP)

Richland County Government is seeking proposals from qualified vendor's to provide Body Removal Services for the Richland County Coroner's Office.

This RFP has been compiled for providing information, requirements, guidelines, specifications, and other data that can be used by vendors who wish to submit a Proposal for consideration.

It is the intention of this competitive procurement that other governmental and non-profit agencies operating within the State of South Carolina be permitted to procure the same services from the awarded Vendor, under the same terms and conditions set forth under the final negotiated contract between Vendor and Richland County. It is required that all such procurements reference the contract number that shall be assigned by Richland County at the time of contract award.

About Richland County

The County is located in the center of South Carolina and covers a total area of 756 square miles. The County surrounds the state capital city of Columbia, which is also the County seat. Established in 1785, the County has grown to become home to just over 334,000 residents, and represents a thriving business, industrial, governmental, and educational center. The County employs approximately 1765 people and operates a general fund budget in excess of \$100 million dollars.

Ranked consistently as one of the fastest growing areas in the State, Richland County and Columbia possess a virtually recession-proof economy. This is due to the presence of the seats of State and County government, the University of South Carolina, 7 additional institutions of higher education, and Fort Jackson (the nation's largest and most active initial entry Army training base). Other positive attributes of the area include the new 142,500 sq. ft. Columbia Metropolitan Convention Center, Riverbanks Zoo & Botanical Gardens (twice awarded the Governor's Cup for the most outstanding tourist attraction in South Carolina), the Richland County Public Library (ranked 8th national among urban libraries serving a population of 250,000 - 499,999) and the Colonial Center (the largest arena in the state of South Carolina at 18,000 seats and the 10th largest on campus basketball facility in the nation).

Approximately 65% of the land within the County is categorized as forest, 15% as urban, and the remaining 20% falls into the wetlands agriculture water, range land and barren categories. The average maximum temperature is 75.4 degrees Fahrenheit, the average minimum temperature is 51.4 degrees Fahrenheit, and the average annual precipitation is 48.5 inches.

The County is governed by an 11-member council, which in turn appoints an Administrator to handle daily operations and to provide professional expertise in government management. Under state law, the County is the primary governmental unit for the administration of law enforcement, justice, health, education, taxation, social service, library service, agricultural service, and the maintenance of public records.