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DEC 09 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Department Of Public Safety (Administrative Tribunal)

Colonel Michael R. Oliver, Highway Patrol
Captain C.B. Hughes, Highway Patrol

Wayne’s Automotive Center, Inc. Order Denying Reconsideration (Col. Oliver)
Notice Of Disciplinary Action Decision-Wayne’s Automotive Center, Inc. (Cpt. Hughes)

Wayne’s Automotive Center, Inc.....Appellant,

v.

South Carolina Department Of Public Safety.....Respondent.

PETITION FOR WRIT OF SUPERSEDEAS AND MEMORANDUM OF LAW

Appellant hereby submits its Petition For Writ Of Supersedeas And Memorandum of Law.

Appellant will be imminently and irreparably harmed through imposition of the 120-day suspension, scheduled to begin on Monday, December 12th, resulting from issuance of Respondent’s “final agency action” order, only received December 7th. Such Orders, therefore, are **final orders that are immediately appealable** for which Appellant has no adequate remedy available to it.¹ **Exhibits A and B.**²

¹ As the Supreme Court has made clear, a writ of supersedeas is only available if there is an appealable order. *State v. Hill*, 314 S.C. 330, 444 S.E. 2d 255 (1994).

² The certified mail receipts for the two orders are included for both orders on appeal. Prior to filing the Notice Of Appeal and this Petition, Appellant’s undersigned attorney certifies as an officer of the Court, consistent with Rule 241(d), SCACR, that notice of the impending appeal was provided on December 7th to SCDPS counsel whereby Appellant’s counsel sought the consent of Respondent to

Appellant is a South Carolina corporation, which--through its Registered Agent, Walter Jeffrey Corbett--operates an automotive service center, including towing and recovery operations, at its facilities located at 1997 Richland Avenue East, Aiken, SC 29801. Mr. Corbett is also currently serving as President of the Towing And Recovery Association Of South Carolina (TRASC). Appellant has been in business for over 30 years, has over 30 employees, and has significant investments in towing and recovery equipment in use and at stake herein.

Respondent South Carolina Department of Public Safety (SCDPS) has three Divisions, including the Highway Patrol Division. SCDPS Director Leroy Smith is responsible for administration of its Divisions, and Defendant South Carolina Department of Public Safety is located in Richland County at 10311 Wilson Boulevard, in Blythewood, SC 29016.

On February 9, 2016, Appellant's name came to the top of the Rotation List to be summoned by the Highway Patrol to respond to a tractor trailer with cargo owned by Premier Transportation that had overturned on Interstate 20 near the South Carolina-Georgia border, categorized as a Class C (heavy duty) tow and recovery operation, to assist Premier Transportation (Premier). Appellant did so and issued an initial invoice to Premier (**Exhibit B (2)**) that was lowered and paid in full by Premier to Appellant in early March (*Id.* (**B (3)**) and **Exhibit C (Enclosure 2)**)³.

The parties with property interests had mutually resolved all issues over a month prior to issuance by the Respondent of the Notice of Proposed Disciplinary Action herein, dated April 25, 2016 (**Exhibit B (5)**). Despite such resolution, Respondent nevertheless issued that Notice, based

agree to stay imposition of the suspension pending appeal. However, Respondent would not consent. Therefore, exigent circumstances require that action be taken before there is adequate time for a hearing, Appellant will suffer irreparable harm if its suspension is allowed to be imposed, beginning December 12th. Proper circumstances exist for the Court to issue the writ of supersedeas *ex parte*, if it cannot schedule a hearing over the weekend. Appellant understandably does not want to waive its right by agreeing to a hearing on the 12th.

³ **Exhibit C** includes Appellant's internal appeal arguments previously provided to Respondent and its staff for re-consideration by Colonel Oliver.

solely on a complaint emailed to Highway Patrol Division staff (Lt. King and Captain Hughes) and others—but excluding Appellant or its staff--by Robert (Bob) Watson, received February 19, 2016, which Appellant received only after making a FOIA request for it. **Exhibit B (3)**. As it shows, Mr. Watson represented himself as President of Recovery Resolution Specialists and not an insurance adjuster for Sentry Insurance Company, which was Premier’s carrier, and had no underlying property interests concerning the matters. Despite this fact, Respondent violated the South Carolina Constitution, its own Regulation, and related statutory provisions by pursuing this matter and imposing a 120-day suspension of Appellant from the Rotation List to commence December 12, 2016, absent this Court granting the relief requested herein to halt such suspension during appeal(s).

Exhibits B and A.

Respondent through its actions and inactions violated the terms of the Rotation List and Reg. 38-600 and statutory provision enabling implementation of that Regulation, as well as the inherent covenant of good faith and fair dealing therein, as shown in its:

(a) reliance to discipline Appellant on an email complaint by Bob Watson, who had no standing, since he was neither a party with an interest nor an owner’s designee per Reg. 38-600 (C) (6);⁴

(b) failure to provide Appellant with a copy of the complaint, as required by that same subsection prior to issuance of its Notice of Proposed Disciplinary Action about the dispute;

(c) failure to acknowledge the complaint was resolved and, therefore, moot and not subject to any exception;

⁴ *Accord*, **Exhibit C**, West Virginia PSC Enclosures, wherein its legal staff expressed concern Watson had no standing since he had no personal stake or underlying property interests. In that situation, Watson got out of the case, Sentry Insurance reps got it, and the parties resolved the dispute at mediation. *Cf.*, S.C Code Ann. §23-6-20, referencing, in part, transfer of SC PSC transportation ratemaking authority as part of creation of SCDPS.

(d) issuance of a defective Notice of Proposed Disciplinary Action, Disciplinary Decision, and denial of Appellant's internal appeal;

(e) application of Reg. 38-600 provisions so as to utilize unlawful binding norms and improper evidentiary standards, such as shifting the burden of proof to Appellant to prove innocence rather than Respondent to prove guilt, and failing to enact a Wrecker Rotation Disciplinary Policy "setting out the procedures for enforcing this regulation" in Reg. 38-600 (D) (2);

(f) raising through its attorneys a new disciplinary matter (Herron) not known to Appellant or its undersigned attorney, involving an alleged unnecessary winching tow and overcharge by Appellant at the conclusion of the August hearing herein outside the hearing room in an effort to induce settlement of both incidents, then returning to the hearing room for *ex parte* discussions with Highway Patrol personnel involved, including presiding officer, Captain Grice, investigator, Lt. King, and administrative officer, Captain Hughes; and

(g) such other rights and interests Appellant has, as shown in the attached **Exhibits A through C**.

Appellant has, thus, been injured and is thereby entitled to recovery of actual damages, all expenses of litigation, and attorney's fees, as well as a declaratory judgment from the Court that Respondent has improperly developed and applied its Rotation List, the rates thereunder, and Reg. 38-600 and/or such List and Reg. are invalid, deficient, or otherwise unconstitutional. Respondent's violation of provisions of its own regulation also constitute negligence *per se* and gross negligence against Appellant in accordance with the common law and South Carolina Tort Claims Act, §15-78-10 *et seq.*⁵

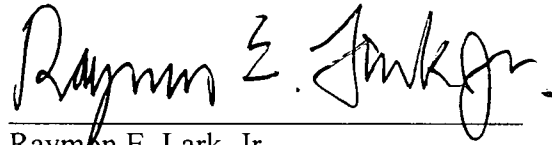
⁵ The South Carolina Supreme Court has also held that violation of statutory provisions is negligence *per se* and may be gross negligence, so that issue and the issue of punitive damages in a non-State party case go to the jury for its determination. *See Wise v. Broadway*, 315 S.C. 273, 433 S.E.2d 857 (1993).

Furthermore, Respondent's hearing process and procedure are patently deficient. No court reporter transcribes testimony, no witnesses are sworn, no subpoena power is available, Highway Patrol personnel do not testify or offer comments at the hearing, no Highway Patrol personnel may be questioned, and the same personnel are making the prosecution and adjudication of such disciplinary matters. Such process and procedure violate proper implementation of the Rotation List, Reg. 38-600, Article I, §§ 3, 22, and 23 of the South Carolina Constitution, the South Carolina Administrative Procedures Act in S.C. Code Ann. § 1-23-310 *et seq.*, the Declaratory Judgment Act in S.C. Code Ann. § 15-53-10 through -140, Rule 57, *SCRCP*, and case authorities, concerning procedural and substantive Due Process violations in particular, cited in **Exhibit C**. Furthermore, the complainant, Bob Watson, was not even present at the hearing (sic).

Appellant, therefore, also seeks the Court to determine and declare the actions and inactions of Respondent in failing to provide Appellant with the Watson email complaint, notify and allow Appellant to be present and heard violate the above Due Process Clauses of the South Carolina Constitution, in that it deprived Appellant of property without affording Appellant the procedural and substantive due process rights, as provided by such constitutional provisions as well as their own representations to Appellant and further to determine and provide Appellant proper monetary relief for such violations. Under the particular circumstances, the Court should otherwise declare Reg. 38-600 and S.C. Code Ann. § 23-6-20, and related statutory provisions unconstitutional to the extent they directly and/or indirectly take away or restrict Appellant's rights to Due Process, since the General Assembly cannot lawfully do this. Provision by this Court of the writ of supersedeas sought herein is necessary and appropriate to achieve justice in this situation.

AUSTIN & ROGERS, P.A.

By:



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Attorneys for Appellant

December 9, 2016

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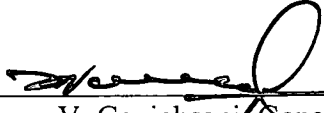
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ACCEPTANCE OF SERVICE

I, WARREN GANJEHSANI, GENERAL COUNSEL for Respondent South Carolina Department Of Public Safety in the above appeal or the undersigned on its behalf, hereby accept service of the (1) Notice Of Appeal with Orders (A) and (B), (2) Petition For Writ Of Supersedeas And Memorandum Of Law with **Exhibit C**, and Verification And Affidavit of Walter Jeffry Corbett this 9 th day of December, 2016.

By: 
Warren V. Ganjehsani, General Counsel
Marcus K. Gore, Assistant General Counsel
South Carolina Department of Public Safety
10311 Wilson Boulevard
P.O. Box 1993
Blythewood, SC 29016

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SCDPS
Office of General Counsel

Attorneys for Respondent South Carolina Department Of Public Safety

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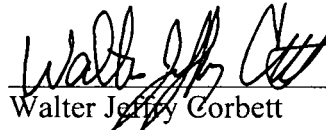
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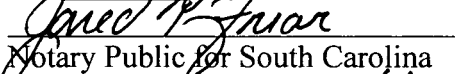
South Carolina Department Of Public Safety.....Respondent.

VERIFICATION AND AFFIDAVIT

Sworn to before me, Walter Jeffrey Corbett, who says and deposes that the affiant knows the facts in the foregoing Notice of Appeal and Petition For Writ Of Supersedeas to the South Carolina Court Of Appeals Court stated to be true of his own knowledge, except as to matters stated or information and belief, and as to that as to those matters he believes them to be true.


Walter Jeffrey Corbett

SWORN to and subscribed before me
this 9 day of December 2016.


Notary Public for South Carolina

My Commission Expires: 9/1/2025