THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Judge

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JUN 28 2018
SC Court of Appeals

Case No. 16-ALJ-30-0410-CC
Appellate Case No. 2017-002455

Wayne's Automotive Center, Inc., Appellant-Respondent,

v.

South Carolina Department of Public Safety, Respondent-Appellant.

INITIAL RESPONDENT BRIEF OF APPELLANT-RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL[1]

ARGUMENTS

I. DID THE ADMINISTRATIVE LAW COURT ERR BY DETERMINING APPELLANT-RESPONDENT PRUDENTLY DID NOT RELEASE THE CARGO BEFORE PAYMENT, SINCE RESPONDENT-APPELLANT DPS DID NOT ESTABLISH WHO HAD TITLE TO IT WHEN THE ACCIDENT OCCURRED AND/OR INSURANCE FOR IT THEN?

II. ALTHOUGH THE ADMINISTRATIVE LAW COURT ERRED BY ONLY ELIMINATING HALF OF APPELLANT-RESPONDENT'S SUSPENSION INSTEAD OF ALL OF IT, IS RESPONDENT-APPELLANT MISCHARACTERIZING THE LOWER COURT'S APPROACH?

III. DID THE ADMINISTRATIVE LAW COURT ERR BY ACCEPTING AS REASONABLE THE CHARGES FOR COMMUNICATIONS EQUIPMENT AND THE REFITTED TRUCK?

STATEMENT OF THE CASE AND STATEMENT OF FACTS

Appellant-Respondent incorporates by reference herein its Statement Of The Case And Statement Of Facts from its Appellant Brief.

STANDARD OF REVIEW

Appellant-Respondent incorporates by reference herein its Standard Of Review from its Appellant Brief.

ARGUMENTS

I. AS THE ADMINISTRATIVE LAW COURT FOUND, APPELLANT-RESPONDENT PRUDENTLY DID NOT RELEASE THE CARGO BEFORE PAYMENT, SINCE RESPONDENT-APPELLANT DPS DID NOT ESTABLISH WHO HAD TITLE TO IT WHEN THE ACCIDENT OCCURRED AND/OR INSURANCE FOR IT THEN.

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[1] Appellant-Respondent is providing this Statement Of Issues On Appeal, etc. regarding Respondent-Appellant's cross appeal and is also incorporating by reference herein its Statement Of Issues On Appeal, Statement Of The Case and Statement Of Facts, Standard Of Review, Arguments, and Conclusion from its Appellant-Respondent Brief and are all subject thereto.

Respondent-Appellant's contention Appellant-Respondent as Petitioner violated the one-time cargo retention and release provisions in S.C. Code Ann. § 56-5-3635 (F), contrary to the Administrative Law Court's analysis, is not sustainable for several reasons.

First, the provision only provides a single opportunity to request release of cargo and further requires satisfaction of factors justifying such release, which was not done in compliance with these factors.

Second, Respondent-Appellant failed in its investigation to seek any information from Premier, such as its motor vehicle transportation contract or insurance information for this shipment, which are necessary for it to meet its burden of proof to support such release; and it would have the Court instead improperly shift such burden to Appellant-Respondent in its lack of legal limbo contentions.

Third, rather than have developed, implemented, and followed a proven, objective, and thorough investigative approach to ensure compliance with this State's express public policy against temporary vesting of title to cargo, as required in S.C. Code Ann. § 58-23-110, Respondent instead ignored it through its positions set forth herein in derogation of its duties in hopes that the Court will overlook them.

In response to cross-examination questions, Respondent's witness Watson acknowledged the cargo Premier was transporting was a "commercial shipment." **Tr. @ 112, lines 9-11 (R. @);** and in her testimony on cross examination Petitioner's witness Rochester likewise characterized it as "commercial cargo".) **Tr. @ 479, lines 10-25 (R. @**). Respondent-Appellant otherwise did not provide evidence showing the owner sought to have the property removed or provided a certificate of registration with such a request. In its Brief @ 4-9, Respondent-

Appellant DPS incorrectly cited and would have the Court misapply S.C. Code Ann. §56-5-5635 (F), which states in full:

> After the vehicle is in the possession of the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the owner of the vehicle as demonstrated by providing a certificate of registration has one opportunity to remove from the vehicle any personal property not attached to the vehicle. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of the personal property.

While Reg. 38-600 (C) (6) does refer to release of "personal property" as "personal items such as medicines, medical equipment, keys, clothing, and tools of the trade, child restraint systems and perishable items", it makes no reference to cargo. The reference to "perishable items" does not include dog food loaded in bags on pallets in Premier's unrefrigerated trailer.[2] In its Brief @ 4, Respondent-Appellant fails to include the first sentence of S.C. Code Ann. §56-5-5635 (F), which must be construed in pari materia with the second sentence without conflicting with the general law. Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 315-19 (2006), citations omitted, and Lewis v. Gaddy, 254 S.C. 66, 173 S.E. 2d 376, 378 (1970).

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[2] Perishable items/goods are:

> (i)tems which have finite or limited shelf life.... These include items such as meat, vegetables, dairy products and even prescription drugs. One must ensure that these products are fresh until it reaches the consumer. The supply of perishable items deteriorates or disappears over time, even in complete absence of the demand.

https://www.igi-global.com/dictionary/perishable-items/52742,

> goods (such as fruits, flowers and vegetables) were among the first commodities carried by air. However, such goods deteriorate over time and under extreme temperatures and humidity, and must thus be handled with particular care. With years of operating experience, airlines have developed effective handling techniques for chilled and frozen products, providing shippers with optimum, cost-efficient packaging methods.

http://www.iata.org/whatwedo/cargo/Pages/perishables.aspx.

In the instant case--even assuming the Premier carrier was on an improved public highway in South Carolina and the cargo was "personal property,"--there was no certificate of registration requested or presented in the record showing who had title to the cargo in question at the time of the accident. Title to the cargo is obviously pertinent and important. S.C. Code Ann. § 58-23-30, cited in Petitioner's Final Arguments @ 6 in conjunction with -20 and -110, reference--as expressly against this State's public policy--manipulation of title to cargo temporarily during transit.[3] Rather than endeavoring to meet its burden of proof, DPS's approach

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[3] S.C. Code Ann. § 58-23-20 refers to transportation by motor vehicles for compensation and states:

> No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter. The commission may not fix or approve the rates, fares, or charges for buses. Provided, however, nothing herein shall affect the commission's jurisdiction to regulate street railway service or any successor to street railway service under Chapter 5 of Title 58.

S.C. Code Ann. § 58-23-30 defines "for compensation", as follows:

> 'For compensation' as used in Section 58-23-20 means a return in money or property for transportation of persons or property by motor vehicle over public highways, whether paid, received or realized, and <u>shall specifically include any profit realized on the delivered price of cargo where title or ownership is temporarily vested during transit in the carrier as a subterfuge for the purpose of avoiding regulation under this chapter.</u> Where the profit is equal to or less than the regularly established rate applicable to the transportation of property by common carriers authorized by law to transport property for compensation, such scheme or device shall be presumed to be a subterfuge for the purpose of avoiding regulation under this chapter for those other than certificated carriers within their operating authority; provided, however, nothing herein shall prohibit the vendor from delivering any purchased property to the vendee.

S.C. Code Ann. § 58-23-110 thereafter defines "motor vehicle transportation contracts" and addresses hold harmless provisions and exceptions, as follows:

to investigation and regulation in this towing contested case included its blatant failure to submit any request to Premier, Watson, Sentry Insurance, or anyone else for documentation for Premier's transportation contract and pertinent supporting cargo, insurance, related information.[4]

> (A) Notwithstanding another provision of law, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the contract's promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the contract's promisee, or any agents, employees, servants, or independent contractors who are directly responsible to the contract's promisee, is against the public policy of this State and is unenforceable.
>
> (B) As used in this section 'motor carrier transportation contract' means a contract, agreement, or understanding covering:
>
> (1) the transportation of property for compensation or hire by the motor carrier;
>
> (2) the entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or
>
> (3) a service incidental to activity described in items (1) or (2) including, but not limited to, storage of property.
>
> (C) Nothing contained in this section affects a provision, clause, covenant, or agreement where the motor carrier indemnifies or holds harmless the contract's promisee against liability for damages to the extent that the damages were caused by and resulting from the negligence of the motor carrier, its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier.
>
> (D) Notwithstanding the other provisions contained in this section, a 'motor carrier transportation contract' shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America, as that agreement may be amended by the Intermodal Interchange Executive Committee.

(Emphases added.)

[4] DPS called Sherry Corbett as a witness. On pages 5- 6 of its Appellant Brief, DPS improperly characterizes Appellant-Respondent witness Sherry Corbett's testimony regarding whether she "knew South Carolina law required the cargo to be released", according to DPS counsel during his direct examination with objection by Appellant-Respondent's counsel. **Tr. @ 242, l. 19-243, l. 6. R. @** . DPS further improperly cites Smothers v. U.S. Fidelity and Guaranty Co., 322 S.C. 207, 470 S.E. 2d 858, 860 (Ct. App. 1996) ("[e]veryone is presumed to have knowledge of

Moreover, DPS, which had the burden of proof, proffered Watson as one of its witnesses. However, he did not know who had title to the cargo during its transit.[5] And neither he nor anyone else at DPS obtained or provided at the hearing the Premier motor carrier transportation contract(s), as referenced in -110, to clarify these matters and related matters, including, but not limited to, insurance, hold harmless provisions, and tax consequences. Consequently, the

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the law"), since in that case litigants had had the opportunity to engage an attorney to review a proposed release prior to its execution and did not do so, while in the instant case before the Court, Appellant-Respondent has timely challenged the disciplinary action by DPS and further objected through its counsel to the cross examination question by DPS counsel.

[5] **Tr. @ 103, line 11 though 104, line 5 (R. @**):

Q: Well, let me just ask you, whose cargo was it?

A: It belongs to either the manufacturer, whoever paid for it, or the receiver. Somebody—if it's not paid for, it's owned by the manufacturer. And if it's paid for, it's owned by the receiver.

Q: By receiver, you mean the entity to whom it's to be transported?

A: Yeah, like for instance—

Q: Like Tractor Supply?

A: Tractor Supply.

Q: In Macon, Georgia?

A: If they take it—it's either Tractor Supply or it's the manufacturer is the owner of the cargo.

Q: Diamond Pet Food, a private---

A: Don't know.

Q: Do you know that it was manufactured in Gaston, South Carolina, for example?

A: No, I don't.

Administrative Law Court determined Petitioner prudently did not release the cargo until payment by Premier.

Therefore, in the absence of any testimony or evidence in the record from DPS personnel onsite or anyone else or any advance assistance or other timely guidance to Appellant-Respondent as to specific billing concerns without investigation on the scene, there is a lack of sufficient, supportive evidence to impose any suspension.

Similarly, Respondent-Appellant's contentions are inconsistent with S.C. Code Ann. § 56-5-1210 (B),[6] as well as its statutory duties as to public safety in S.C Code Ann. §23-6-10 et seq. Accord, S.C. Constitution Art. I, §§ 4 and 22, and Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E. 2d 663, 671 (2007) ("courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." and authorities cited therein), cited in Petitioner's Final Arguments in n. 1 @ 2 and Travelscope LLC v. South Carolina Department Of Revenue, 391 S.C. 89, 705 S.E. 2d 28, 38-39 (2011) (confirming the Administrative Law Court has the jurisdiction and authority to address as-applied challenges to the constitutionality of a regulation and statute), cited in Appellant-Respondent's Petition For Contested Case Hearing in n . 1 @ 1 and Final Arguments, supra, @ 2. See also, Ayres v. Crowley, 205 S.C. 51, 30 S.E.2d 785, 788 (1944), and Commercial Credit Corporation v. Nelson

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[6] Section 1210 (B) is referenced in Petitioner's Final Arguments @ 2, n. 2 (**R. @**) and states in pertinent part:

> The vehicle owner and any driver, or the owner's, driver's, or the at-fault party's insurance company, of a vehicle removed under this subsection, or the owner's, driver's, or the at-fault party's insurance company, shall bear all reasonable costs of removal.
>
> Nothing in this section shall bar recovery from an at-fault party when the accident was caused by the actions of that party.

Motors, Inc., 247 S.C. 360, 147 S.E. 2d 481, 484 (1966) (in South Carolina, every contract includes a covenant of good faith and fair dealing), cited therein as well.[7]

II. ALTHOUGH THE ADMINISTRATIVE LAW COURT ERRED BY ONLY ELIMINATING HALF OF APPELLANT-RESPONDENT'S SUSPENSION INSTEAD OF ALL OF IT, RESPONDENT-APPELLANT MISCHARACTERIZES THE LOWER COURT'S APPROACH.

While Respondent-Appellant raised arguments as to specific items in its post-trial brief, it did not do so in its Motion For Reconsideration. Therefore, these matters are not properly before the Court for its consideration.[8]

Rather than base objections on evidence in the record, Respondent-Appellant instead contends certain charges in the initial invoice were "patently unreasonable." However, as indicated in the second full paragraph @ 2 of the Final Order, Lt. King issued an internal memo to Capt. Grice on or about March 4, 2016; however, Appellant-Respondent as Petitioner only became aware of its existence or the specifics in it after its inclusion as part of an FOIA response by Respondent on July 19, 2016, per Petitioner's Exhibit 5 (**R. @**)--well after the Premier-Wayne's Auto settlement in full in early March or Respondent's Notice of Proposed Disciplinary Action, dated April 25, 2016.[9] In its Brief, however, Respondent-Appellant totally disregards this fact.

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[7] Again, as indicated in note 1, supra, Appellant-Respondent's prior Arguments are included herein, which, among others, include DPS failed to show the accident occurred in South Carolina and the 2016 Schedule is applicable, it otherwise improperly treated Appellant-Respondent by its suspension, and/or it otherwise misapplied the Schedule's provisions in the instant situation.
[8] As to its Arguments in §§ II and III of its Appellant Brief, DPS discussed specific items of contention in its post-trial brief; however, in its Motion For Reconsideration of the Administrative Law Court's Final Order it merely stated in ¶1 @ 4:

> Moreover, the Court is urged to reconsider and adjust its analysis to evaluate the unreasonable charges included in the $69,017.19 invoice.

[9] Accord, Petition For Contested Case Hearing in n. 5, ¶ 5 @ 8-9.

Without support, Respondent-Appellant DPS in its Brief @ 10 next contends Petitioner submitted an unreasonable invoice "in the first place", while DPS itself acknowledges several invoices were submitted, which Petitioner did in an honest effort to bill proper charges—even though Respondent had failed in its regulatory duty at the outset to provide guidance to Class C towers like Petitioner as to what constituted reasonable charges, as required by Regs. 38-600 (F) (3).

By DPS's failure to make Petitioner aware of the specific, alleged violations until it issued its April 25th Notice—almost 2 months after full settlement—it provided no knowledge or opportunity to understand DPS still wanted Petitioner to make further revisions before any final invoice would be acceptable to it. DPS's contention Lt. King timely directed otherwise is unsubstantiated in the record.

Contrary to DPS's contentions, the Administrative Law Court's rationale that DPS failed to give Petitioner proper notice of its concerns itself supports its focus on the "final bill", as referenced by DPS in its Brief @10. Furthermore, given the focus by DPS on one hand on retention of the cargo by Petitioner and DPS's failure on the other to investigate and provide any evidence regarding title to it in transit, insurance, and related issues, the Administrative Law Court's focus on the final bill is supported by: (a) the circumstances, (b) its Biblical reference to Matthew 21:28-31 in n. 6 of the Final Order @ 7 (**R. @**), (c) the Golden Rule, as in Matthew 7: 12 and Luke 6:31, (d) Simpson, supra., and (e) Joseph v. S.C. Dep't of Labor, 417 S.C. 436, 790 S.E.2d 763, 771-773 (2016), regarding unlawful binding norms and citing and discussing Home Health Serv. Inc. v. S.C. Tax Comm'n, 312 S.C. 324, 440 S.E.2d 375, 378 (1994), and Ryder Truck Lines, Inc. v. U.S., 716 F.2d 1369 (11th Cir. 1983). These circumstances, references, and decisions not only support such focus. They also support this Court determining no suspension is

supportable in the instant situation in light of the evidence of record and Issues and Arguments discussed herein and in Appellant-Respondent's Appellant Brief, incorporated herein by reference.[10]

Respondent-Appellant's contentions the Administrative Law Court's focus thereby gives rise to "significant and detrimental public policy repercussions" and relates to "utterance of a fraudulent check", as it did in its post-trial brief (**Id. @ 3**) (**R. @**) are otherwise misplaced.[11] DPS wants to have its cake and eat it, too—to the detriment of hard-working towers like Petitioner. DPS has patently failed in its regulatory duties to provide guidance to such towers as to reasonableness of rates and charges in advance of provision of wrecker and special operations services.

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[10] As approved in 2004, 2 S.C. Regs. 38-600 (C) (15) requires that "(o)nly one bill is to be submitted to the owner or operator for the work performed". However, DPS included a footnote in its 2016 Schedule without legislative approval to its "no fee will be set" provision for Class C Special Operations, as an effective amendment to the regulation, which states:

> *Although no Special Operations fee is set for Class C tows, a wrecker service may recover the actual cost of rented/subcontracted equipment or labor necessary to accomplish the job. Proof of these actual costs in the form of an itemized invoice or receipt from the third party providing such equipment or labor must accompany the tow bill.

As argued by Appellant-Respondent in its Final Arguments in §s III, IV, and V, Appellant Brief in §s I (D) and (E), and herein, DPS has failed to provide rate guidance and has no authority without amendment by the General Assembly of 2 S.C. Regs.38-600 to create, implement, and/or apply such provision, because it is either a binding norm under the Joseph line of cases cited or effectively an unconstitutional, retroactive amendment to the Regulation that cannot be implemented and legally applied. See, e.g., Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, 736 S.E.2d 651 (2012) (holding a statutory retroactivity provision unconstitutional in violation of State and Federal impairment of contract provisions in S.C. Const. art. I, § 4 and U.S. Const. art. I, § 10).

[11] In James v. Fast Fare, Inc., 685 F. Supp. 565 (D.S.C. 1988), cited by DPS in its Appellant Brief @ 12, the Court granted summary judgment to Fast Fare as to Plaintiff's malicious prosecution claim, because Plaintiff's admission of guilt of writing bad checks shielded Fast Fare from liability (Id. @ 568); whereas, Petitioner herein contests the disciplinary action proposed.

Furthermore, Respondent-Appellant's continuing reliance on potential consequences of utterance of a fraudulent check are clearly not relevant in this situation, since no evidence is in the record that Appellant-Respondent intentionally rendered any known, legitimate, improper charge under the particular circumstances.

Finally, even though (a) DPS knew Watson was harassing Petitioner's staff to obtain invoices even before the I-20 bridge was cleared for resumption of traffic, (b) Lt. King readily acknowledged he is no rate expert in connection with Class C towing and special operations,[12] and (c) Watson was providing Respondent-Appellant self-serving information, since he engaged in this process with a pecuniary interest, DPS nevertheless has the audacity to complain and argue unreasonableness as to initial charges for airbags ($8,000) thought to be irreparable after rupturing from use on the accident scene that were, in fact, repairable and entirely removed following such confirmation. Even so, Petitioner expert witness Rochester testified, based on her experience, $4,000 per airbag "is a normal price for the industry standard." **Tr. @ 475, l. 14-476, l. 14 (R. @).**

With respect to backhoe and traffic cone initial and final charges, Petitioner also substantially reduced such charges actually paid. DPS would have this Court rely on Watson's oral comment of a reasonable backhoe charge being $350 per day without any basis, while Petitioner proffered Class C operator Doug Busbee with Busbee Auto as to his experience regarding Class C rates in accordance with the 2016 Wrecker Rotation Schedule in South Carolina, who testified a backhoe rate would be "probably 175 to $200 per hour." **Tr. @ 431,**

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[12] See **Tr. @ 165, l. 19-167, l. 2. R. @ .** Lt. King thought "(t)hey were just very unreasonable" and further acknowledged he had no statistical database upon which to rely in making his adjustments, as referenced in the DPS Regulation.

lines 9-11. (**R. @**). And while Watson testified a cone could be bought online for $17 (**Tr. @ 74, l. 20-75, l. 15**) (**R. @**), Petitioner's rate expert Rochester testified in her opinion and based on her experience in South Carolina that $50 per hour per cone was reasonable, considering associated compliance costs[13] and varying grades of cones. **Tr. @ 476, line 15- 479, l. 9. (R. @**).

III. THE ADMINISTRATIVE LAW COURT PROPERLY ACCEPTED AS REASONABLE THE CHARGES FOR COMMUNICATIONS EQUIPMENT AND THE REFITTED TRUCK.

In its Brief, Respondent-Appellant claims inclusion of a mobile communications equipment charge of $1,785 in the invoice and $3,500 for the refitted truck were unreasonable without any citations to the Record. It is wrong.

In response to a discovery request from DPS, Petitioner circulated a Confidentiality and Non-Disclosure Agreement to provide the 2015 Wayne's Automotive and South Carolina Incident Management tax returns and the Corbetts' joint tax return to address mobile tow and recovery communications equipment and fire truck (refitted for supply and spill containment use), which DPS declined to sign. See, **Tr. @ 189, l. 20-190, l. 16 (R. @**). As Sherry Corbett testified on behalf of Petitioner as Appellant-Respondent herein, South Carolina Incident Management is a partnership between Sherry and Jeff Corbett that was included with Wayne's Automotive on the joint invoices generated in this matter. **Tr. @ 187, l. 9-188, l. 12 (R. @**).

In response to DPS attorney questions to its witness Watson, he indicated since the mobile communications equipment was reusable, the expense amount was unreasonable. He did not address the refitted truck expenses. **Tr. @ 76, ll. 17-21**) (**R. @**).

[13] Witness Rochester's references to "MUTCD compliant" (**Tr. @ 476, l. 22 and 479, l. 6**) (**R. @ and**) refer to the applicable national Manual On Uniform Traffic Control Devices, in 23 CFR 655, Subpart F (1983).

To address $4,850 in mobile communications expenses and $4,516 expenses for the refitted truck, Petitioner proffered Bill Rawl as its expert CPA, who had reviewed these returns and confirmed SCIM expensed these items in a single tax year rather than depreciated them over a longer period of time as qualifying equipment under 26 U.S. Code §179. **Tr. @ 401, l.23-406, l. 24 (R. @).**

Petitioner thereafter proffered expert Gaynell Rochester, who confirmed both the $69,000 invoice, as the "second bill" and "the first one that was combined", and $48,000+ settlement invoice were reasonable for the three services combined provided "by an incident management company in response for traffic control and a spill company that is in response to contain a diesel spill." **Tr. @ 471, l. 8-472, l. 11 (R. @).**

Respondent-Appellant DPS further mischaracterizes time entries for 21 hours for the use of the communications equipment and 20 hours for the truck as unreasonable, citing testimony by Jeff Corbett (**Tr. @ 351 and 355**) (**R. @**) as to what time the bridge was re-opened to traffic as being the appropriate criterion. However, on redirect examination, Mr. Corbett stated as to heavy equipment the industry customary practice is that the heavy equipment is to be available until completion of the call. **Tr. @ 388, l. 5-390, l. 1 (R. @).**

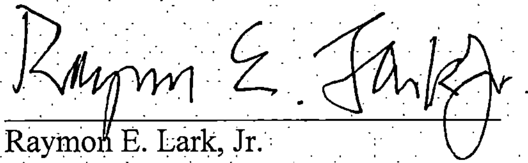
Moreover, the isolated DPS citations do not provide an accurate characterization of the additional time for proper completion of the work, requiring continuing availability of equipment and loading and reloading cargo, as Mr. Corbett explained in support of the hours included. <u>See</u>, <u>e.g</u>., **Tr. @ 355, l. 19-358, l. 15 (R. @).**

Appellant-Respondent expert witness Rochester thereafter correctly pointed out that DPS uses a CAD (Computer Activated Dispatch) system to track in real-time the duration of such

accidents; however, it presented no witness to refute the hourly entries by Wayne's. **Tr. @ 494, l. 16- 502, l. 13)** **(R. @)**.

CONCLUSION

For the foregoing reasons, Appellant-Respondent respectfully requests this Honorable Court to provide it the relief it seeks in its appeal and Respondent-Appellant's cross appeal and to grant such other relief for Appellant-Respondent deemed appropriate by the Court.



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South Carolina Department of Public Safety, Respondent-Appellant.

PROOF OF SERVICE

I, Raymon E. Lark, Jr., attorney for Appellant-Respondent herein, hereby certify I have served on Respondent-Appellant through its counsel via hand delivery and email and co-counsel via email the Initial Respondent Brief Of Appellant-Respondent And Designation Of Matter For Record On Appeal today, June 28th, as follows:

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Lindemann, Davis & Hughes, P.A.
5 Calendar Court, Suite 202
Columbia, SC 29206

marcusgore@scdps.gov
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Attorneys for Respondent South Carolina Department Of Public Safety

June 28, 2018

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June 28, 2018

RECEIVED
JUN 28 2018
SC Court of Appeals

VIA HAND-DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Initial Respondent Brief Of Appellant-Respondent, Designation Of Matter For Record On Appeal, And Proof Of Service In *Wayne's Automotive Center, Inc., Appellant-Respondent, v. South Carolina Department Of Public Safety, Respondent-Appellant*, Appellate Case No. 2017-002455, Our File No. 16145

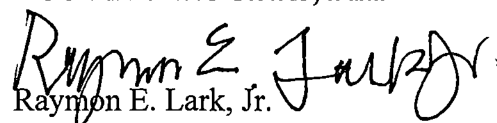
Dear Ms. Kitchings:

Enclosed are our Initial Respondent Brief Of Appellant-Respondent And Designation Of Matter For Record On Appeal with Proof Of Service in the above case. Please stamp the extra set for the courier.

Thank you for your assistance.

Sincerely,

AUSTIN & ROGERS, P.A.



Raymon E. Lark, Jr.

Attorneys for Appellant-Respondent

cc: SCDPS Attorney Andrew F. Lindemann Esquire **(Via Hand Delivery And Email)**
SCDPS Attorney Marcus K. Gore, Esquire **(Via Email)**